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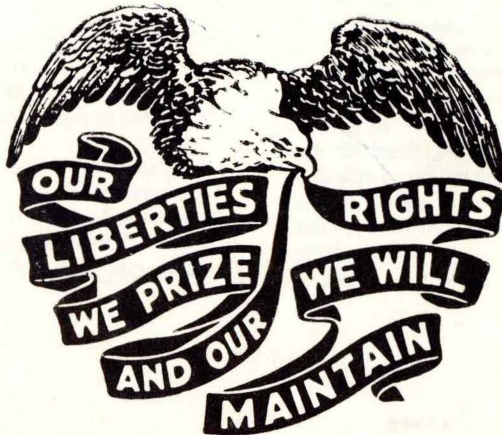
THE IOWA CIVIL RIGHTS ACT OF 1965

as amended through June 30, 1978 and

ADMINISTRATIVE RULES



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CHAPTER 601A

CIVIL RIGHTS COMMISSION

Referred to in §§601A.5, 605.6

See also ch 729

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601A.1 Citation. This chapter may be known and may be cited as the "Iowa Civil Rights Act of 1965." [C66, 71,§105A.1; C73, 75, 77,§601A.1]

601A.2 Definitions. When used in this chapter, unless the context otherwise requires:

1. *"Court"* means the district court in and for the judicial district of the state of Iowa in which the alleged unfair or discriminatory practice occurred or any judge of said court if the court is not in session at that time.

2. *"Person"* means one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state of Iowa and all political subdivisions and agencies thereof.

3. *"Employment agency"* means any person undertaking to procure employees or opportunities to work for any other person or any person holding himself or itself to be equipped to do so.

4. *"Labor organization"* means any organization which exists for the purpose in whole or in part of collective bargaining, of dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.

5. *"Employer"* means the state of Iowa or any political subdivision, board, commission, department, institution, or school district thereof, and every other person employing employees within the state.

6. *"Employee"* means any person employed by an employer.

7. *"Unfair practice"* or *"discriminatory practice"* means those practices specified as unfair or discriminatory in sections 601A.6, 601A.7, 601A.8, 601A.9, 601A.10 and 601A.11.

8. *"Commission"* means the Iowa state civil rights commission created by this chapter.

9. *"Commissioner"* means a member of the commission.

10. *"Public accommodation"* means each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee or charge, provided that any place, establishment, or facility that caters or offers services, facilities, or goods to the general public gratuitously shall be deemed a public accommodation if the accommodation receives any substantial governmental support or subsidy. Public accommodation shall not mean any bona fide private club or other place, establishment, or facility which is by its nature distinctly private, except when such distinctly private place, establishment, or facility caters or offers services, facilities, or goods to the general public for fee or charge or gratuitously, it shall be deemed a public accommodation during such period.

"Public accommodation" includes each state and local government unit or tax-supported district of whatever kind, nature, or class that offers services, facilities, benefits, grants or goods to the public, gratuitously or otherwise. This paragraph shall not be construed by negative implication or otherwise to restrict any part or portion of the pre-existing definition of the term "public accommodation".

11. *"Disability"* means the physical or mental condition of a person which constitutes a substantial handicap. In reference to employment, under this chapter, "disability" also means the physical or mental condition of a person which constitutes a substantial handicap, but is unrelated to such person's ability to engage in a particular occupation. [C66, 71,§105A.2; C73, 75, 77,§601A.2; 67GA, ch 1179,§2, 3]

601A.3 Commission appointed. The Iowa state civil rights commission shall consist of seven members appointed by the governor with the advice and consent of the senate. Appointments shall be made to provide geographical area representation insofar as may be practicable. No more than four members of the commission shall belong to the same political party. Members appointed to the commission shall serve for a term of four years except the initial appointees

shall be appointed by the governor to serve as follows:

1. Three members shall serve from the date of appointment until June 30, 1967.

2. Four members shall serve from the date of appointment until June 30, 1969.

Vacancies on the commission shall be filled by the governor by appointment for the unexpired part of the term of the vacancy with the advice and consent of the senate if the general assembly shall be in session. Any appointment filling a vacancy occurring while the general assembly is not in session shall be transmitted to the senate for confirmation within thirty days following the convening of the next session of the general assembly or the appointment shall expire. Any commissioner may be removed from office by the governor for cause.

The governor with the consent of two-thirds of the members of the senate shall appoint a director who shall serve as the executive officer of the commission. [C66, 71,§105A.3; C73, 75, 77,§601A.3]

601A.4 Compensation and expenses—rules. Commissioners shall be paid a forty-dollar per diem and shall be reimbursed for actual and necessary expenses incurred while on official commission business. All per diem and expense moneys paid to commissioners shall be paid from funds appropriated to the commission. The commission shall adopt, amend or rescind such rules as shall be necessary for the conduct of its meetings. A quorum shall consist of four commissioners. [C66, 71,§105A.4; C73, 75, 77,§601A.4]

601A.5 Powers and duties. The commission shall have the following powers and duties:

1. To prescribe the duties of a director and appoint and prescribe the duties of such investigators and other employees and agents as the commission shall deem necessary for the enforcement of this chapter.

2. To receive, investigate, and finally determine the merits of complaints alleging unfair or discriminatory practices.

3. To investigate and study the existence, character, causes, and extent of discrimination in public accommodations, employment, apprenticeship programs, on-the-job training programs, vocational schools, credit practices, and housing in this state and to attempt the elimination of such discrimination by education and conciliation.

4. To seek a temporary injunction against a respondent when it appears that a complainant may suffer irreparable injury as a result of an alleged violation of chapter 601A. A temporary injunction may only be issued ex parte, if the complaint filed with the commission alleges discrimination in housing. In all other cases a temporary injunction may be issued only after the respondent has been notified and afforded the opportunity to be heard.

5. To hold hearings upon any complaint made against a person, an employer, an employment agency, or a labor organization, or the employees or members thereof, to subpoena witnesses and compel their attendance at such hearings, to administer oaths and take the testimony of any person under oath, and to compel such person, employer, employment agency, or labor organization, or employees or members thereof to produce for examination any books and papers relating to any matter involved in such complaint. The commission shall issue subpoenas for witnesses in the same manner and for the same purposes on behalf of the respondent upon his request. Such hearings may be held by the commission, by any commissioner, or by any hearing examiner appointed by the commission. If a witness either fails or refuses to obey a subpoena issued by the commission, the commission may petition the district court having jurisdiction for issuance of a subpoena and the court shall in a proper case issue the subpoena. Refusal to obey such subpoena shall be subject to punishment for contempt.

6. To issue such publications and reports of investigations and research as in the judgment of the commission shall tend to promote good will among the various racial, religious, and ethnic groups of the state and which shall tend to minimize or eliminate discrimination in public accommodations, employment, apprenticeship and on-the-job training programs, vocational schools, or housing because of race, creed, color, sex, national origin, religion, ancestry or disability.

7. To prepare and transmit to the governor and to the general assembly from time to time, but not less often than once each year, reports describing its proceedings, investigations, hearings conducted and the outcome thereof, decisions rendered, and the other work performed by the commission.

8. To make recommendations to the general assembly for such further legislation concerning discrimination because of race, creed, color, sex, national origin, religion, ancestry or disability as it may deem necessary and desirable.

9. To co-operate, within the limits of any appropriations made for its operation, with other agencies or organizations, both public and private, whose purposes are consistent with those of this chapter, and in the planning and conducting of programs designed to eliminate racial, religious, cultural, and intergroup tensions.

10. To adopt, publish, amend, and rescind regulations consistent with and necessary for the enforcement of this chapter.

11. To receive, administer, dispense and account for any funds that may be voluntarily contributed to the commission and any grants that may be awarded the commission for furthering the purposes of this chapter with the approval of the executive council.

12. To defer a complaint to a local civil rights commission under commission rules promulgated pursuant to chapter 17A. [C66, 71,§105A.5; C73, 75, 77,§601A.5; 67GA, ch 1179,§4]

601A.6 Unfair employment practices.

1. It shall be an unfair or discriminatory practice for any:

a. Person to refuse to hire, accept, register, classify, or refer for employment, to discharge any employee, or to otherwise discriminate in employment against any applicant for employment or any employee because of the age, race, creed, color, sex, national origin, religion or disability of such applicant or employee, unless based upon the nature of the oc-

cupation. If a disabled person is qualified to perform a particular occupation, by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminating practices prohibited by this subsection.

b. Labor organization or the employees, agents or members thereof to refuse to admit to membership any applicant, to expel any member, or to otherwise discriminate against any applicant for membership or any member in the privileges, rights, or benefits of such membership because of the age, race, creed, color, sex, national origin, religion or disability of such applicant or member.

c. Employer, employment agency, labor organization, or the employees, agents, or members thereof to directly or indirectly advertise or in any other manner indicate or publicize that individuals of any particular age, race, creed, color, sex, national origin, religion or disability are unwelcome, objectionable, not acceptable, or not solicited for employment or membership unless based on the nature of the occupation. If a disabled person is qualified to perform a particular occupation by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminating practices prohibited by this subsection.

An employer, employment agency, or their employees, servants or agents may offer employment or advertise for employment to only the disabled, when other applicants have available to them, other employment compatible with their ability which would not be available to the disabled because of their handicap. Any such employment or offer of employment shall not discriminate among the disabled on the basis of race, color, creed, sex or national origin.

2. This section shall not prohibit discrimination on the basis of age if the person subject to the discrimination is under the age of eighteen years, unless that person is considered by law to be an adult.

3. Notwithstanding the provisions of this section, a state or federal program designed to benefit a specific age classification which serves a bona fide public purpose shall be permissible.

4. This section shall not apply to age discrimination in bona fide apprenticeship employment programs if the employee is over forty-five years of age.

5. This section shall not apply to:

a. Any employer who regularly employs less than four individuals. For purposes of this subsection, individuals who are members of the employer's family shall not be counted as employees.

b. The employment of individuals for work within the home of the employer if the employer or members of his family reside therein during such employment.

c. The employment of individuals to render personal service to the person of the employer or members of his family.

d. Any bona fide religious institution or its educational facility, association, corporation or society with respect to any qualifications for employment based on religion when such qualifications are related to a bona fide religious purpose. A religious qualification for instructional personnel or an administrative officer, serving in a supervisory capacity of a bona fide religious educational facility or religious institution, shall be presumed to be a bona fide occupational qualification. [C66, 71,§105A.7; C73,§601A.7; C75, 77,§601A.6; 67GA, ch 1179,§5-8]

Referred to in §601A.2(7)

601A.7 Unfair practices—accommodations or services.

1. It shall be an unfair or discriminatory practice for any owner, lessee, sublessee, proprietor, manager, or superintendent of any public accommodation or any agent or employee thereof:

a. To refuse or deny to any person because of race, creed, color, sex, national origin, religion or disability the accommodations, advantages, facilities, services, or privileges thereof, or otherwise to discriminate against any person because of race, creed, color, sex, national origin, religion or disability in the furnishing of such accommodations, advantages, facilities, services, or privileges.

b. To directly or indirectly advertise or in any other manner indicate or publicize that the patronage of persons of any particular race, creed, color, sex, national origin, religion or disability is unwelcome, objectionable, not acceptable, or not solicited.

2. This section shall not apply to:

a. Any bona fide religious institution with respect to any qualifications the institution may impose based on religion when such qualifications are related to a bona fide religious purpose.

b. The rental or leasing to transient individuals of less than six rooms within a single housing accommodation by the occupant or owner of such housing accommodation if the occupant or owner or members of his family reside therein. [C97,§5008; C24, 27, 31, 35, 39,§13251; C46, 50, 54, 58, §735.1; C66, 71,§105A.6; C73,§601A.6; C75, 77,§601A.7]

Referred to in §601A.2(7)

601A.8 Unfair or discriminatory practices—housing. It shall be an unfair or discriminatory practice for any owner, or person acting for an owner, of rights to housing or real property, with or without compensation, including but not limited to persons licensed as real estate brokers or salesmen, attorneys, auctioneers, agents or representatives by power of attorney or appointment, or any person acting under court order, deed of trust, or will:

1. To refuse to sell, rent, lease, assign or sublease any real property or housing accommodation or part, portion or interest therein, to any person because of the race, color, creed, sex, religion, national origin or disability of such person.

2. To discriminate against any person because of his race, color, creed, sex, religion, national origin or disability, in the terms, conditions or privileges of the sale, rental, lease assignment or sublease of any real property or housing accommodation or any part, portion or interest therein.

3. To directly or indirectly advertise, or in any other manner indicate or publicize that the purchase, rental, lease, assignment, or sublease of any real property or housing accommodation or any part, portion or interest therein, by persons of any particular race, color, creed, sex, religion, national origin or disability is unwelcome, objectionable, not acceptable or not solicited.

4. To discriminate against the lessee or purchaser of any real property or housing accommodation or part, portion or interest of the real property or housing accommodation, or against any prospective lessee or purchaser of the property or accommodation, because of the race, color, creed, religion, sex, disability, age or national origin of persons who may from time to time be present in or on the lessee's or owner's premises for lawful purposes at the invitation of the lessee or owner as friends, guests, visitors, relatives or in any similar capacity. [C71,§105A.13; C73,§601A.13; C75, 77,§601A.8; 67GA, ch 1179,§9]

Referred to in §601A.2, 601A.11

601A.9 Unfair or discriminatory practices—education. It shall be an unfair or discriminatory practice for any educational institution to discriminate on the basis of sex in any program or activity. Such discriminatory practices shall include but not be limited to the following practices:

1. On the basis of sex, exclusion of a person or persons from participation in, denial of the benefits of, or subjection to discrimination in any academic, extracurricular, research, occupational training, or other program or activity except athletic programs;

2. On the basis of sex, denial of comparable opportunity in intramural and interscholastic athletic programs;

3. On the basis of sex discrimination among persons in employment and the conditions thereof;

4. On the basis of sex, the application of any rule concerning the actual or potential parental, family or marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions dependent upon the physician's diagnosis and certification.

For the purpose of this section "educational institution" includes any public preschool, or elementary, secondary, or merged area school or area education agency and their governing boards. Nothing in this section shall be construed to prohibit any educational institution from maintaining separate toilet facilities, locker rooms or living facilities for the different sexes so long as comparable facilities are provided. [67GA, ch 1179,§22]

Referred to in §601A.2(7)

601A.10 Unfair credit practices. It shall be an unfair or discriminatory practice for any:

1. Creditor to refuse to enter into a consumer credit transaction or impose finance charges or other terms or conditions more onerous than those regularly extended by that creditor to consumers of similar economic backgrounds because of age, color, creed, national origin, race, religion, marital status, sex, or physical disability.

2. Person authorized or licensed to do business in this state pursuant to chapter 524, 533, 534, 536, or 536A to refuse to loan or extend credit or to impose terms or conditions more onerous than those regularly extended to persons of similar economic backgrounds because of age, color, creed, national origin, race, religion, marital status, sex or physical disability.

3. Creditor to refuse to offer credit life or health and accident insurance because of color, creed, national origin, race, religion, marital status, age, physical disability or sex. Refusal by a creditor to offer credit life or health and accident insurance based upon the age or physical disability of the consumer shall not be an unfair or discriminatory practice if such denial is based solely upon bona fide underwriting considerations not prohibited by title XX*.

The provisions of this section shall not be construed by negative implication or otherwise to narrow or restrict any other provisions of this chapter. [C75, 77,§601A.9; 67GA, ch 1179,§10]

Referred to in §601A.2

*Federal Act

601A.11 Aiding or abetting. It shall be an unfair or discriminatory practice for:

1. Any person to intentionally aid, abet, compel, or coerce another person to engage in any of the practices declared unfair or discriminatory by this chapter.

2. Any person to discriminate against another person in any of the rights protected against discrimination on the basis of age, race, creed, color, sex, national origin, religion or disability by this chapter because such person has lawfully opposed any practice forbidden under this chapter, obeys the provisions of this chapter, or has filed a complaint, testified, or assisted in any proceeding under this chapter. An employer, employment agency, or their employees, servants or agents may offer employment or advertise for employment to only the disabled, when other applicants have available to them other employment compatible with their ability which would not be available to the disabled because of their handicap. Any such employment or offer of employment shall not discriminate among the disabled on the basis of race, color, creed, sex or national origin. [C66, 71,§105A.8; C73,§601A.8; C75, 77,§601A.10]

Referred to in §601A.2(7)

601A.12 Exceptions. The provisions of section 601A.8 shall not apply to:

1. Any bona fide religious institution with respect to any qualifications it may impose based on religion, when such qualifications are related to a bona fide religious purpose.

2. The rental or leasing of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of his family reside in one of such housing accommodations.

3. The rental or leasing of less than six rooms within a single housing accommodation by the occupant or owner of such housing accommodation, if he or members of his family reside therein.

4. Restrictions based on sex on the rental or leasing of housing accommodations by nonprofit corporations.

5. The rental or leasing of a housing accommodation within which residents of both sexes must share a common bathroom facility on the same floor of the building. [C71,§105A.14; C73,§601A.14; C75, 77,§601A.11]

601A.13 Sex or age provisions not applicable to retirement plans. The provisions of this chapter relating to discrimination because of sex or age shall not

be construed to apply to any retirement plan or benefit system of any employer unless such plan or system is a mere subterfuge adopted for the purpose of evading the provisions of this chapter. [C71,§105A.15; C73,§601A.15; C75, 77,§601A.12]

601A.14 Promotion or transfer. After a handicapped individual is employed, the employer shall not be required under this chapter to promote or transfer such handicapped person to another job or occupation, unless, prior to such transfer, such handicapped person by training or experience is qualified for such job or occupation. Any collective bargaining agreement between an employer and labor organization shall contain this section as part of such agreement. [C73,§601A.16; C75, 77,§601A.13]

601A.15 Complaint—hearing.

1. Any person claiming to be aggrieved by a discriminatory or unfair practice may, by himself or his attorney, make, sign, and file with the commission a verified, written complaint in triplicate which shall state the name and address of the person, employer, employment agency, or labor organization alleged to have committed the discriminatory or unfair practice of which complained, shall set forth the particulars thereof, and shall contain such other information as may be required by the commission. The commission, a commissioner, or the attorney general may in like manner make, sign, and file such complaint.

2. Any place of public accommodation, employer, labor organization, or other person who has any employees or members who refuse or threaten to refuse to comply with the provisions of this chapter may file with the commission a verified written complaint in triplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

3. *a.* After the filing of a verified complaint, a true copy shall be served within twenty days by certified mail on the person against whom the complaint is filed. An authorized member of the commission staff shall make a prompt investigation and shall issue a recommendation to a hearing officer under the jurisdiction of the commission, who shall then issue a determination of probable cause or no probable cause.

b. For purposes of this chapter, a hearing officer issuing a determination of probable cause or no probable cause under this section shall be exempt from the provisions of section 17A.17.

c. If the hearing officer concurs with the investigating official that probable cause exists regarding the allegations of the complaint, the staff of the commission shall promptly endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion. If the hearing officer finds that no probable cause exists, the hearing officer shall issue a final order dismissing the complaint and shall promptly mail a copy to the complainant and to the respondent by certified mail. A finding of probable cause shall not be introduced into evidence in an action brought under section 601A.16.

d. The commission staff must endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion for a period of thirty days following the initial conciliation meeting between the respondent and the commission staff after a finding of probable cause. After the expiration of thirty days, the director may order the conciliation conference and persuasion procedure provided in this section to be bypassed when the director determines the procedure is unworkable by reason of past patterns and practices of the respondent, or a statement by the respondent that the respondent is unwilling to continue with the conciliation. The director must have the approval of a commissioner before bypassing the conciliation, conference and persuasion procedure. Upon the bypassing of conciliation, the director shall state in writing the reasons for bypassing.

4. The members of the commission and its staff shall not disclose the filing of a complaint, the information gathered during the investigation, or the endeavors to eliminate such discriminatory or unfair practice by conference, conciliation, and persuasion, unless such disclosure is made in connection with the conduct of such investigation.

5. When the director is satisfied that further endeavor to settle a complaint by conference, conciliation, and persuasion is unworkable and should be bypassed, and the thirty-day period provided for in subsection 3 has expired without agreement, the director with the approval of a commissioner, shall issue and cause to be served a written notice specifying the charges in the complaint as they may have been amended and the reasons for bypassing conciliation, if the conciliation is bypassed, and requiring the respondent to answer the charges of the complaint at a hearing before the commission, a commissioner, or a person designated by the commission to conduct the hearing, hereafter referred to as the hearing officer, and at a time and place to be specified in the notice.

6. The case in support of such complaint shall be presented at the hearing by one of the commission's attorneys or agents. The investigating official shall not participate in the hearing except as a witness nor shall he participate in the deliberations of the commission in such case.

7. The hearing shall be conducted in accordance with the provisions of chapter 17A for contested cases. The burden of proof in such a hearing shall be on the commission.

8. If upon taking into consideration all of the evidence at a hearing, the commission determines that the respondent has engaged in a discriminatory or unfair practice, the commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take the necessary remedial action as in the judgment of the commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the respondent, the complainant, and to any other public officers and persons as the commission deems proper.

a. For the purposes of this subsection and pursuant to the provisions of this chapter "remedial action" includes but is not limited to the following:

(1) Hiring, reinstatement or upgrading of employees with or without pay. Interim earned income

and unemployment compensation shall operate to reduce the pay otherwise allowable.

(2) Admission or restoration of individuals to a labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, with the utilization of objective criteria in the admission of individuals to such programs.

(3) Admission of individuals to a public accommodation or an educational institution.

(4) Sale, exchange, lease, rental, assignment or sublease of real property to an individual.

(5) Extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent denied to the complainant because of the discriminatory or unfair practice.

(6) Reporting as to the manner of compliance.

(7) Posting notices in conspicuous places in the respondent's place of business in form prescribed by the commission and inclusion of notices in advertising material.

(8) Payment to the complainant of damages for an injury caused by the discriminatory or unfair practice which damages shall include but are not limited to actual damages, court costs and reasonable attorney fees.

b. In addition to the remedies provided in the preceding provisions of this subsection, the commission may issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this chapter as follows:

(1) In the case of a respondent operating by virtue of a license issued by the state or a political subdivision or agency, if the commission, upon notice to the respondent with an opportunity to be heard, determines that the respondent has engaged in a discriminatory or unfair practice and that the practice was authorized, requested, commanded, performed or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of his or her employment, the commission shall so certify to the licensing agency. Unless the commission finding of a discriminatory or unfair practice is reversed in the course of judicial review, the finding of discrimination is binding on the licensing agency. If a certification is made pursuant to this subsection, the licensing agency may initiate licensee disciplinary procedures.

(2) In the case of a respondent who is found by the commission to have engaged in a discriminatory or unfair practice in the course of performing under a contract or subcontract with the state or political subdivision or agency, if the practice was authorized, requested, commanded, performed, or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of his or her employment, the commission shall so certify to the contracting agency. Unless the commission's finding of a discriminatory or unfair practice is reversed in the course of judicial review, the finding of discrimination is binding on the contracting agency.

(3) Upon receiving a certification made under this subsection, a contracting agency may take appropriate action to terminate a contract or portion thereof previously entered into with the respondent, either absolutely or on condition that the respondent carry out a program of compliance with the provisions of this chapter; and assist the state and all political subdivisions and agencies thereof to refrain from entering into further contracts.

c. The election of an affirmative order under paragraph *"b"* of this subsection shall not bar the election of affirmative remedies provided in paragraph *"a"* of this subsection.

9. The terms of a conciliation agreement reached with the respondent may require him or her to refrain in the future from committing discriminatory or unfair practices of the type stated in the agreement, to take remedial action as in the judgment of the commission will carry out the purposes of this chapter, and to consent to the entry in an appropriate district court of a consent decree embodying the terms of the conciliation agreement. Violation of such a consent decree may be punished as contempt by the court in which it is filed, upon a showing by the commission of the violation at any time within six months of its occurrence. In all cases where a conciliation agreement is entered into, the commission shall issue an order stating its terms and furnish a copy of the order to the complainant, the respondent, and such other persons as the commission deems proper. At any time in its discretion, the commission may investigate whether the terms of the agreement are being complied with by the responent.

Upon a finding that the terms of the conciliation agreement are not being complied with by the respondent, the commission shall take appropriate action to assure compliance.

10. If, upon taking into consideration all of the evidence at a hearing, the commission finds that a respondent has not engaged in any such discriminatory or unfair practice, the commission shall issue an order denying relief and stating the findings of fact and conclusions of the commission, and shall cause a copy of the order dismissing the complaint to be served by certified mail on the complainant and the respondent.

11. The commission shall establish rules to govern, expedite, and effectuate the procedures established by this chapter and its own actions thereunder.

12. A claim under this chapter shall not be maintained unless a complaint is filed with the commission within one hundred eighty days after the alleged discriminatory or unfair practice occurred. [C66, 71,§105A.9; C73,§601A.9; C75, 77,§601A.14; 67GA, ch 1179,§11-19]

Referred to in §601A.16, 601A.17(10)

601A.16 One hundred twenty-day administrative release.

1. A person claiming to be aggrieved by an unfair or discriminatory practice must initially seek an administrative relief by filing a complaint with the commission in accordance with section 601A.15. A complainant after the proper filing of a complaint with the commission, may subsequently commence an

action for relief in the district court if all of the following conditions have been satisfied:

a. The complainant has timely filed the complaint with the commission as provided in section 601A.15, subsection 12; and

b. The complaint has been on file with the commission for at least one hundred twenty days and the commission has issued a release to the complainant pursuant to subsection 2 of this section.

2. Upon a request by the complainant, and after the expiration of one hundred twenty days from the timely filing of a complaint with the commission, the commission shall issue to the complainant a release stating that the complainant has a right to commence an action in the district court. A release under this subsection shall not be issued if a finding of no probable cause has been made on the complaint by the hearing officer charged with that duty under section 601A.15, subsection 3, or a conciliation agreement has been executed under section 601A.15, or the commission has served notice of hearing upon the respondent pursuant to section 601A.15, subsection 5.

3. An action authorized under this section is barred unless commenced within ninety days after issuance by the commission of a release under subsection 2 of this section or within one year after the filing of the complaint, whichever occurs first. If a complainant obtains a release from the commission under subsection 2 of this section, the commission shall be barred from further action on that complaint.

4. Venue for an action under this section shall be in the county in which the respondent resides or has its principal place of business, or in the county in which the alleged unfair or discriminatory practice occurred.

5. The district court may grant any relief in an action under this section which is authorized by section 601A.15, subsection 8 to be issued by the commission. The district court may also award the respondent reasonable attorney's fees and court costs when the court finds that the complainant's action was frivilous.

6. It is the legislative intent of this chapter that every complaint be at least preliminarily screened during the first one hundred twenty days. [67GA, ch 1179,§1]

Referred to in §601A.19

601A.17 Judicial review—enforcement.

1. Judicial review of the actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petition for judicial review may be filed in the district court in which an enforcement proceeding under subsection 2 may be brought.

For purposes of the time limit for filing a petition for judicial review under the Iowa administrative procedure Act, specified by section 17A.19, the issuance of a final decision of the commission under this chapter occurs on the date notice of the decision is mailed by certified mail, to the parties.

2. The commission may obtain an order of court for the enforcement of commission orders in a proceeding as provided in this section. Such an enforcement proceeding shall be brought in the district court of the district in the county in which the alleged discriminatory or unfair practice which is the subject of the commission's order was committed, or in which any respondent required in the order to cease or desist from a discriminatory or unfair practice or to take other affirmative action, resides, or transacts business.

3. Such an enforcement proceeding shall be initiated by the filing of a petition in such court and the service of a copy thereof upon the respondent. Thereupon the commission shall file with the court a transcript of the record of the hearing before it. The court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified, or setting aside the order of the commission, in whole or in part.

4. An objection that has not been urged before the commission shall not be considered by the court in an enforcement proceeding, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

5. Any party to the enforcement proceeding may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereof, providing such party shall show reasonable grounds for the failure to adduce such evidence before the commission.

6. In the enforcement proceeding the court shall determine its order on the same basis as it would in a proceeding reviewing commission action under section 17A.19, subsection 8.

7. The commission's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the commission's orders.

8. The commission may appear in court by its own attorney.

9. Petitions filed under this section shall be heard expeditiously and determined upon the transcript filed without requirement for printing.

10. If no proceeding to obtain judicial review is instituted within thirty days from the service of an order of the commission under section 601A.15, the commission may obtain an order of the court for the enforcement of such order upon showing that respondent is subject to the jurisdiction of the commission and resides or transacts business within the county in which the petition for enforcement is brought. [C66, 71,§105A.10; C73,§601A.10; C75, 77,§601A.15; 67GA, ch 1179,§20]

Referred to in §601A.19

601A.18 Rule of construction. This chapter shall be construed broadly to effectuate its purposes. [C66, 71,§105A.11; C73,§601A.11; C75, 77,§601A.16]

601A.19 Local laws may implement this chapter. Nothing contained in any provision of this chapter shall be construed as indicating an intent on the part of the general assembly to occupy the field in which this chapter operates to the exclusion of local laws

not inconsistent with this chapter that deal with the same subject matter.

Nothing in this chapter shall be construed as indicating an intent to prohibit an agency of local government having as its purpose the investigation and resolution of violations of this chapter from developing procedures and remedies necessary to insure the protection of rights secured by the Iowa civil rights Act. An agency of local government and the Iowa civil rights commission shall co-operate in the sharing of data and research, and co-ordinating investigations and conciliations in order to eliminate needless duplication.

The commission may designate an agency of local government as a referral agency. A local agency shall not be designated a referral agency unless the ordinance creating it provides the same rights and remedies as are provided in this chapter. The commission shall establish by rules the procedures for designating a referral agency and the qualifications to be met by a referral agency.

A complainant who files a complaint with a referral agency having jurisdiction shall be prohibited from filing a complaint with the commission alleging violations based upon the same acts or practices cited in the original complaint; and a complainant who files a complaint with the commission shall be prohibited from filing a complaint with the referral agency alleging violations based upon the same acts or practices cited in the original complaint. However, the commission in its discretion may refer a complaint filed with the commission to a referral agency having jurisdiction over the parties for investigation and resolution; and a referral agency in its discretion may refer a complaint filed with that agency to the commission for investigation and resolution. The commission may promulgate rules establishing the procedures for referral of complaints. A referral agency may refuse to accept a case referred to it by the commission if the referral agency is unable to effect proper administration of the complaint. It shall be the burden of the referral agency to demonstrate that it is unable to properly administer that complaint.

A final decision by a referral agency shall be subject to judicial review as provided in section 601A.17 in the same manner and to the same extent as a final decision of the commission.

The referral of a complaint by the commission to a referral agency or by a referral agency to the commission shall not affect the right of a complainant to commence an action in the district court under section 601A.16. [C66, 71,§105A.12; C73,§601A.12; C75, 77,§601A.17; 67GA, ch 1179,§21]

Constitutionality, 61GA, ch 121, §13

CIVIL RIGHTS COMMISSION[240]

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CHAPTER 1
RULES OF PRACTICE

[Ch 1, IAC 7/1/75, renumbered 3.11 and 3.12, IAC 3/22/78]
[Similar text appeared as Ch 3 prior to 3/22/78]

240—1.1(601A) Definitions.

1.1(1) The term *"Act"* as used herein shall mean the Iowa Civil Rights Act of 1965, as amended (chapter 601A of the Code).

1.1(2) Unless indicated otherwise, the terms *"court"*, *"person"*, *"employment agency"*, *"labor organization"*, *"employer"*, *"employee"*, *"unfair practice"* or *"discriminatory practice"*, *"commission"*, *"commissioner"*, and *"public accommodation"* shall have the same meaning as set forth in chapter 601A.

1.1(3) The term *"chairperson"* shall mean the chairperson of the Iowa civil rights commission; and the term *"commissioner"* shall mean any member, including the chairperson, of the Iowa civil rights commission. The vice chairperson of the commission shall serve, in the absence of the chairperson, as acting chairperson; and, in the absence of the chairperson, the vice chairperson shall have all of the duties, powers and authority conferred upon the chairperson by the Act and these rules. At all times it shall be necessary that a quorum be present before the commission can transact any official business.

1.1(4) The term *"executive director"* shall mean an employee of the commission, selected by, and serving at the will of, the governor, who shall have such duties, powers and authority as may be conferred upon him or her by law.

1.1(5) The term *"issuance"* shall mean mailing by U.S. certified mail, a document or letter indicating a decision issued by the commission. The "date of issuance" shall be the date the commission mails a document or letter indicating a decision by the commission by U.S. certified mail.

1.1(6) *Final actions.* The following procedures shall constitute final actions of the commission under the Iowa Administrative Procedure Act:

a. The term *"no probable cause finding"* shall mean the procedure by which a complainant and respondent are notified that the investigating official has found that there is no probable cause to believe that discrimination exists after reviewing an investigation of a complaint.

b. The term *"withdrawn"* shall mean that a complainant has indicated in writing the desire that no further action be taken by the commission regarding his or her complaint.

c. The term *"satisfactorily adjusted"* shall mean that the complainant has indicated in writing that the complaint has been resolved to his or her satisfaction, and that no further action is desired from the commission. Whenever the offer of adjustment by a respondent is acceptable to the investigating official, but not to the complainant, the commission may close the case as satisfactorily adjusted.

d. The term *"successfully conciliated"* shall mean that a written agreement has been executed on behalf of the respondent, on behalf of the complainant, and on behalf of the commission, the contents of which are designed to remedy the alleged discriminatory act or practice and any other unlawful discrimination which may have been uncovered during the course of the investigation.

e. The term *"no jurisdiction"* shall mean that the alleged discriminatory act or practice is not one that is prohibited by the Iowa Civil Rights Act or where the complaint does not conform to the requirements of the Act.

f. The term *"administratively closed"* shall mean that, in the opinion of the investigating official, no useful purpose would be served by further action by the commission respecting a complaint, such as where the commission staff has not been successful in locating a complainant after diligent efforts or where the respondent has gone out of business.

1.1(7) The term *"terms and conditions of employment"*, as used herein, shall include but is not limited to medical, hospital, accident and life insurance or benefits, leaves, vacations, and other terms, conditions, and privileges of employment.

1.1(8) The term "*retirement plan and benefit system*" as used in section 601A.12 of the Code relates only to discontinuation of employment pursuant to the provisions of such retirement plan or system. A retirement plan or benefit system shall be limited to those plans or systems where contributions are based upon the anticipated financial costs of the needs of the retiree.

1.1(9) The term "*injury*" as used herein shall mean a loss of a pecuniary benefit, rights, or an offense against a person's dignity.

240—1.2(601A) Description of agency organization.

1.2(1) The Iowa civil rights commission consists of seven members appointed by the governor who set the policy of the commission to carry out its mandate of preventing and eliminating discrimination within the state of Iowa who have such powers as are set forth in

section 601A.5 of the Code. The policies of the commission are carried out by the commission staff under the direction of the executive director. The commission staff is divided into three divisions: (a) The compliance division which is involved in the investigation and conciliation of complaints, (*b*) the affirmative action division which assists employers with developing and implementing affirmative action programs, and (*c*) the education division which informs the public as to the activities of the commission and develops training programs for commission staff and staffs of the local civil rights agencies. These divisions are under the supervision of the compliance director, the affirmative action director, and the education director respectively.

1.2(2) The complaint process is initiated by the filing of a verified complaint form obtainable from the Iowa Civil rights Commission, State Capitol Building, Des Moines, Iowa 50319, where staff is available to assist the public in all matters pertaining to the activities of the commission.

240—1.3(601A) The complaint.

1.3(1) *Amendment of complaint.* A complaint or any part thereof may be amended by the complainant or by the commission any time prior to the hearing thereon and, thereafter, at the discretion of the hearing officer or commission. The complaint may be amended to include such additional material allegations as the investigation may have disclosed.

To prevent unnecessary litigation or duplication, the commission may amend a complaint based upon information gained during the course of the investigation.. The scope of the issues at public hearing shall be defined by the facts as uncovered in the investigation and shall not be limited to the allegations as stated in the original complaint. Provided, however, that when such an amendment is made, the respondent may be granted a continuance within the discretion of the hearing officer if the same is needed to allow respondent to prepare to defend on the additional grounds.

1.3(2) *Withdrawal of complaint.* A complaint or any part thereof may be withdrawn by the complainant at any time prior to the hearing thereon, and thereafter, at the discretion of the commissioners. However, nothing herein shall preclude the commission from continuing the investigation and initiating a complaint on its own behalf against the original respondent, as provided for in the Act, whenever it deems it in the public interest.

1.3(3) *Timely filing of the complaint.*

a. One hundred eighty-day limitation.* The complaint shall be filed within the one hundred eighty days after the occurrence of said alleged unlawful practice or act.

b. Continuing violation. If the alleged unlawful discriminatory practice or act is of a continuing nature, the date of the occurrence of said alleged unlawful practice shall be deemed to be any date subsequent to the commencement of the alleged unlawful practice up to and including the date upon which the unlawful practice has ceased.

1.3(4) *Filing complaint.* Any person claiming to be aggrieved by a discriminatory or unfair practice may, by him or herself, or his or her attorney, make, sign, and file with the commission, a verified, written complaint. The attorney general, the commission, a commissioner, or the executive director or designee when authorized by commission policy, may initiate the complaint process by filing a complaint with the commission in the same manner as an aggrieved person.

1.3(5) *Preservaton of records.*

a. Employment records. When a complaint or notice of investigation has been served on an employer, labor organization or employment agency under the Iowa Act against discrimination, the respondent, shall preserve all personal records relevant to the investigation until such complaint or investigation is finally adjudicated. The term "relevant to the investigation" shall include, but not be limited to, personnel, employment or membership records relating to the complainant and to all other employees, applicants or members holding or seeking positions similar to that held or sought by the complainant, and application forms or test papers completed by any unsuccessful applicant and by all other applicants or

*Emergency after Notice, pursuant to §17A.5(2)"*b*"(1-3) of the Code.

candidates for the same position or membership as that for which the complainant applied and was not accepted, and any records which are relevant to the scope of the investigation as defined in the notice or complaint.

b. Other records. Any other books, papers, documents, or records of any form which are relevant to the scope of any investigation as defined in the notice or complaint shall be preserved during the pendency of any proceedings by all parties to the proceedings unless the commission specifically orders otherwise.

240—1.4(601A) Processing the complaint.

1.4(1)* *Receipt and acknowledgment of complaint.*

a. Upon receipt of a verified complaint, the executive director or a member of the commission's staff designated by the executive director, shall serve by certified mail a copy of the complaint upon the respondent and complainant within twenty days. The letter of acknowledgement shall advise that the complainant will have the right to withdraw the complaint and sue in the district court if the commission has not resolved the case within one hundred twenty days.

b. Preliminary review. Each complaint shall then be processed through a preliminary review, which shall include a determination of jurisdiction and the feasibility of rapid processing of the charge.

1.4(2) *Withdrawal and no jurisdiction.* Designated staff of the commission shall promptly close those cases which have been withdrawn by the complainant or in which the commission has no legal jurisdiction.

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1.4(3) *Anonymity of complaint.* For purposes of public commission meetings the complaints shall be identified only by case number so that the anonymity of the complaints and respondents can be preserved. Nothing in this provision shall apply to executive sessions of the commission, or after the commission has made a decision to hold a public hearing.

240—1.5(601A)* Investigation and conciliation.

1.5(1) *Investigating official.*

a. Cause determinations. After a complaint has been filed, the executive director or a designated staff member shall assign a member of the investigatory staff to make a prompt investigation of the complaint. The investigator shall review all of the evidence and make a recommendation of probable cause or no probable cause or other appropriate action to the administrative hearing officer designated to issue findings. The hearing officer shall review the case file and issue an independent determination of probable cause or no probable cause, or other appropriate action.

b. Rejection of investigator's recommendation. Where the hearing officer rejects the recommendation of the staff, the reasons therefore shall be stated in writing and placed in the case file.

c. Notice of decision. Both the complainant and respondent shall be notified of the decision in writing by certified mail within fifteen days of the hearing officer's decision.

d. Conflicts prohibited. The administrative hearing officer designated to issue a finding shall not be permitted to serve as hearing officer in a subsequent contested case where (s)he has issued a finding in the same case.

e. Administrative closures. The hearing officer may rule that a case be administratively closed where no useful purpose would be served by further action by the commission, such as where the complainant has not been located after diligent efforts. This provision does not contemplate administrative closure where an alternative resolution, such as a full investigation is possible and is warranted.

f. Conciliation. All cases that result in findings of probable cause shall be assigned to a staff conciliator for the purpose of initiating attempts to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion. When a conference is held pursuant to this section, a synopsis of the facts which led to the finding of probable cause along with written recommendations for resolution will be presented to the respondent.

g. Participants. Both the complainant and respondent shall be notified in writing of the time, date, and location of any conciliation meeting. The complainant may be present during attempts at conciliation, if feasible.

h. Limitation on conciliation. Upon the commencement of conciliaton efforts, the commission must allow at least thirty days for the parties to reach an agreement. After the passage of thirty days the executive director may order further conciliation attempts bypassed if (s)he determines that the procedure is unworkable. The director must have the approval of a commissioner before bypassing conciliation.

i. Conciliation agreements. A conciliation agreement shall become effective after it has been signed by the respondent or authorized representative, by the complainant or authorized representative, and by a commissioner or the executive director on behalf of the commission. Copies of the agreement shall be served on all parties.

1.5(2)* *Contested case hearings.*

a. Notice of hearing. Where the conciliation efforts fail, the executive director, with the approval of a commissioner, shall serve upon the parties notice of an administrative hearing on the merits of a complaint.

b. Content of notice. Notice given under this subsection shall specify all original and amended charges of the complaint, and shall require the respondent to answer at hearing.

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1.5(3) *Hearing—other reasons.* At any other time, the commission, executive director or designee may, in its discretion, convene a hearing (1) whenever a problem of discrimination arises; (2) in order to expedite the disposition of preliminary matters in any action before it; or (3) otherwise, when in the judgment of the commission, executive director or designee, the circumstances so warrant.

1.5(4)* *Right to sue.*

a. Request for right to sue. If the commission has not concluded its action on a complaint within one-hundred-twenty days, the complainant may request a letter granting the complainant the right to sue in the state district court for relief.

b. Conditions precedent to right to sue. Upon request under the preceding section, the commission shall immediately issue to the complainant a right to sue letter where the following conditions have been met:

(1) The complaint was filed with the commission within one-hundred-eighty days of the alleged incident;

(2) A finding of "no probable cause" has not been issued;

(3) No conciliation agreement has been negotiated;

(4) Notice of hearing has not been served upon respondent.

c. Letter of right to sue. Where the above conditions have been met, a right to sue letter will be issued stating that complainant has a right to commence an action in the state district court within ninety-days of the issue date of the right to sue letter.

d. Closure by commission. Where the commission has issued a right to sue letter, the hearing officer shall approve the case for administrative closure. Notice of the closure shall be mailed to both parties by certified mail.

240—1.6(601A) Prehearing discovery.

1.6(1) The executive director, or designee, shall issue subpoenas.

1.6(2) Before a subpoena is sought to determine whether the agency should institute a contested case proceeding, the commission staff shall make a request in written form of the person having possession of the requested material or real evidence. The written request shall be either hand delivered by a member of the commission staff or sent by certified mail, return receipt requested. Where a person fails to provide requested information a subpoena may issue. A subpoena may be issued not less than one day after the written request had been delivered to the person having possession of the requested materials.

Subpoenas may be issued without prior oral or written requests where notice of a pending public hearing has been issued.

1.6(3) Every subpoena shall state the name of the commission, the purpose for which the subpoena is issued, and the name and address of the party on whose behalf it was issued.

1.6(4) The subpoena shall be directed to a specific person, or their attorney, or an officer, partner, or managing agent of any person who is not a natural person. The subpoena shall command that person to produce designated books, papers, or other real evidence under his or her control at a specified time and place. Where a public hearing has been scheduled, the subpoena may command the person to whom it is directed to attend and give testimony.

1.6(5) The subpoena shall be served either by personal service by an official authorized by law to serve subpoenas or by any member of the commission staff by delivery of a copy thereof to the person named therein.

1.6(6) Where service is accomplished by personal service, proof of service will be by acknowledgment of receipt by the person served or by the affidavit of the person serving the subpoena.

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1.6(7) Upon prompt petition by the person to whom the subpoena is addressed, the executive director or designee may quash or modify a subpoena where it is demonstrated by the petitioner that reasonable cause exists to quash said subpoena.

1.6(8) Where a party fails to respond to a subpoena, the executive director or designee may authorize the filing of a petition for enforcement with the district court.

1.6(9) Subsequent to notification to a respondent of the approval of a hearing upon the merits of a complaint, legal counsel, staff and respondent may employ prehearing discovery measures set forth in the Iowa Administrative Procedure Act, in addition to oral interviews and informal requests for documents and other materials and information. Prehearing discovery measures shall be available and must be completed within a reasonable time prior to the hearing date, such that it will not be necessary to postpone or reschedule the hearing.

240—1.7(601A) Injunctions. If the executive director or an appropriately designated staff person determines that a complainant may be irreparably injured before a public hearing can be called to determine the merits of the complaint, the executive director or designee may instruct an attorney for the commission to seek injunctive relief as may be appropriate to preserve the rights of the complainant and the public interest.

240—1.8(601A) Motions.

1.8(1) Motions for procedural rulings or relief shall be in writing, shall set forth the ruling or relief sought and shall state the grounds therefor and the statutory or other authority relied on, except that motions made during hearing may be stated orally upon the record.

1.8(2) The moving party shall file the motion with the compliance director of the Iowa civil rights commission unless a hearing officer has been appointed to hear the case, in which case all motions shall be filed with the hearing officer.

Where no hearing officer has been appointed to hear the case, the compliance director shall assign the motion to the hearing officer designated to issue cause decisions for disposition.

1.8(3) The moving party shall file a copy of the motion with all other parties to the complaint.

1.8(4) All nonmoving parties shall have an opportunity to promptly resist the motion.

1.8(5) All replies to motions shall be in writing and filed with the compliance director or hearing officer, whichever is appropriate.

1.8(6) A copy of the reply shall be filed with all other parties to the complaint.

240—1.9(601A) Conducting the hearing.

1.9(1) *Scheduling** After the executive director has issued notice of an administrative hearing, the director may designate a staff member to attend to the scheduling of the hearing.

1.9(2) *Notice.* At least twenty days prior to the scheduled date of a public hearing, the commission staff shall cause to be served upon the respondent a notice that a public hearing will be held relative to the complaint and stating the time, date, and location of such hearing.

1.9(3) *Hearing officers.* The chairperson of the commission shall designate three members of the commission, or an administrative hearing officer, to conduct the hearing. The absence or disqualification of one or more members of a hearing panel appointed to hear a particular case shall not prevent the remaining panel members from hearing the case as independent hearing commissioners, unless other good cause can be shown that would prevent the individual commissioner(s) from acting as independent hearing commissioner(s).

1.9(4) *Disqualification.* Any individual who has any interest in the case at issue, or personally knows the complainant or respondent, shall disqualify himself or herself to serve as a hearing examiner. The investigating commissioner in the case at issue shall not be appointed to serve as a hearing commissioner.

1.9(5) *Power of the hearing officers.* The hearing officer shall have full authority to make all decisions regarding the admission and exclusion of evidence, to control the

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procedures, and to rule upon all objections and motions. Except in extraordinary circumstances, evidence or testimony offered by any party shall be entered in the record subject to the objection of any party, in order that a complete record will be available in the event of appeal.

1.9(6) *Briefs.* The hearing officer may require that written briefs be submitted on behalf of the respondent and on behalf of the complainant.

1.9(7) *Sworn testimony.* All testimony given at a commission hearing shall be under oath administered by the court reporter present at the hearing.

1.9(8) *Order of presentation.* The case in support of the complaint shall be presented to the hearing officer by one of the commission's attorneys, or by the attorney for the complainant, who shall present complainant's evidence first. When there is more than one complaining party the order of presentation shall be in the discretion of the hearing officer. After all the evidence and testimony of the complaining parties has been received, all other parties shall be allowed to present their evidence or testimony. All parties shall be allowed to cross-examine any witness immediately after her or his testimony has been received.

1.9(9) *Stipulations.* The parties may, by stipulation in writing filed with the commission at any stage of the proceeding or orally made at the hearing, agree upon any pertinent facts in the proceeding.

1.9(10) No testimony or evidence shall be offered or received at any hearing concerning offers or counter-offers of adjustment during efforts to conciliate an alleged unlawful discriminatory practice, except that evidence presented by respondent of such offers or counter-offers shall constitute a waiver of the provisions of this subsection.

1.9(11) Any objection not duly made before the hearing officer shall be deemed waived.

1.9(12) When objections to the admission or exclusion of evidence are made, the grounds relied upon shall be stated briefly.

1.9(13) If a party intends to introduce expert testimony at the hearing, notice shall be provided the opposing party and the hearing officer as to the identity of the expert and the subjects upon which the expert shall testify. Such notice shall be provided no later than ten days prior to the hearing.

1.9(14) Transcript and record. All testimony given at a hearing held pursuant to chapter 601A, shall be transcribed by a certified court reporter retained by the commission. The written transcript of the record upon the hearing before the hearing officer shall consist of the notice of the hearing, the verified complaint, as the same may have been amended, the certified transcript of the testimony taken at the hearing, the exhibits and depositions in evidence, written applications and stipulations.

240—1.10(601A) Authorized ex parte communication. Unless required for the disposition of ex parte matters specifically authorized by statute, the hearings officer shall not communicate directly or indirectly with any person or party, nor shall such person or party communicate directly or indirectly with the hearings officer, concerning any issues of fact or law in a contested case unless:

1.10(1) Each party or their representative is given written notice of the communication. Such notice shall contain a summary of the communication, if oral, or a copy of the communication if written, and the time, place and means of such communication.

1.10(2) After such notice all parties shall have the right, upon written demand, to respond to such communication, including the right to be present and heard if the communication is oral and has not taken place. If the communication is not written or if oral and completed, any other person has the additional right to a special hearing for the purpose of responding to the ex parte communication.

240—1.11(601A) Inclusion in the record. Any ex parte communication prohibited by section 17A.17, subsection 2, of the Code received by a hearing officer shall be included in the record. If the prohibited ex parte communication is received orally, the hearing officer

shall summarize the communication and include it in the record. Any party to the contested case shall be immediately notified of the communication and given a reasonable opportunity to respond, including if necessary, a special hearing.*

240—1.12(601A) Penalty for ex parte communications. The commission may censure, suspend or revoke the privilege of practicing before it of any person making ex parte communications to a hearing officer if that person knows or reasonably should know that the ex parte communication is in violation of the provisions of section 17A.17, subsection 2, of the Code.

240—1.13(601A) Hearing officer penalty. The commission may censure, suspend or dismiss any hearing officer who fails to include an ex parte communication prohibited by section 17A.17, subsection 2, of the Code, in the record.

240—1.14(601A) Procedure for determination of penalty. The censure of a person or the suspension or revocation of a person's right to practice before the commission due to an alleged violation of the prohibition against ex parte communications shall constitute a contested case as that term is defined in section 17A.2 of the Iowa Code and no person shall be censured or the right to practice before the commission be suspended or revoked without notice and an opportunity to be heard as provided in chapter 17A of the Iowa Code, "The Iowa Administrative Procedure Act."

240—1.15(601A)* Findings and order.

1.15(1) *Recommended decision.* After a review of the transcript, the evidence, and the briefs, the hearing officer shall issue in writing his or her findings of face, conclusions of law, and order, then recommend the same to the commission for its adoption, modification, or rejection.

1.15(2) *Notification.* Upon receipt of the hearing officer's recommended decision the commission shall forward a copy of the hearing officer's recommended decision to each of the parties. The commission shall include with the hearing officer's recommended decision notice of the date, time, and place of the meeting at which the commission shall review the recommended decision. The notice shall also advise the parties that if they desire to take exceptions to or appeal the recommended decision they must file the exceptions or appeal with the commission and that they may file an appeal brief or brief in support of the exceptions as well. The appeal or exceptions and appeal brief or brief in support of exceptions must be filed with the commission no later than fifteen calendar days prior to the commission meeting at which the decision will be reviewed. The parties shall be afforded no less than fifteen calendar days between the date the hearing officer's recommended decision is mailed to the parties and the date the appeal or exceptions and appeal brief or brief in support of exceptions must be filed with the commission.

For the purpose of this subrule "file (d) with the commission" shall mean receipt of the appeal or exceptions and appeal brief or brief in support of exceptions (if any), by the commission at its office in Des Moines.

1.15(3) *Commission review.* The commission shall within sixty days of the date it receives the recommended decision of the hearing officer review the decision at a commission meeting. The commission shall consider all timely filed appeals, exceptions and briefs at the time it reviews the recommended decision. The commission may adopt, modify or reject the hearing officer's recommended decision or it may remand the case to the hearing officer for the taking of such additional evidence and the making of such further recommended findings of fact, conclusions of law, decision, and order as the commission deems necessary. Upon completing its review of the hearing officer's recommended decision the commission shall cause to have issued the appropriate order.

*Emergency, pursuant to §17A.5(2)"*b*"(1-3) of the Code.

1.15(4) *Final order.* If the commission fails to issue an order within sixty days from the date the administrative hearing officer submits his or her recommendations, the recommended findings and order shall become final.

1.15(5) *Content of orders.* Orders of the commission shall seek to remedy an injury in accordance with the intent of chapter 601A and consistent with the theories on remedies expressed in Amos v. Prom, Inc., 115 F. Supp. 127 (D.C. Iowa 1953).

240—1.16(601A) Access to file information. The disclosure of information whether a charge has been filed or not, or revealing the contents of any file is prohibited except in the following circumstances:

1.16(1) If a final decision per subrule 1.1(6) has been reached, a party or a party's attorney may, upon showing that a petition appealing the commission action has been filed, have access to the commission's case file on that complaint.

1.16(2) If a case has been approved for public hearing and the letter informing parties of this fact has been mailed, any party or party's attorney may have access to file information through prehearing discovery measures provided in subrule 1.6(9).

1.16(3) If a decision rendered by the commission in a contested case has been appealed, any party or party's attorney may, upon showing that the decision has been appealed, have access to the commission's case file on that complaint.

The fact that copies of documents related to or gathered during an investigation of a complaint are introduced as evidence during the course of a contested case proceeding does not affect the confidential status of all other documents within the file which are not introduced as evidence.

240—1.17(601A) Procedure to reopen.

1.17(1) Motion to reopen. The commission on its own motion may, whenever justice requires, reopen any matter previously closed by it, upon notice of such reopening being given to all parties. A complainant or respondent may for good cause shown apply for the reopening of a previously closed proceeding.

1.17(2) Time limit for reopening. Motions for reopening of any matter must be in writing alleging the grounds therefor and must be made within twenty days after the issuance of a final decision.

1.17(3) Participation of parties. The parties shall be afforded at least fourteen days to submit their position on the motion for reopening in writing. Requests to appear in person may be granted or denied at the discretion of the commission.

1.17(4) Commission action on reopening. The commission or a commissioner may grant or deny the application for reconsideration. If the application is granted, the matter shall be referred back to investigating staff, if further investigation is required. If no further investigation is required the commission shall decide the matter on the accumulated record of the case. Each of the parties to the case shall be informed of the action taken on the application to reopen in writing sent by certified mail to the last known mailing address.

240—1.18(601A) Appeals to the district court(s). Appeals to the district court from the decision of the commission shall be perfected pursuant to the provisions of section 601A.15.

240—1.19(601A) Partial invalidity. If any provision of these rules shall be held invalid, the remainder of these rules shall not be affected thereby. The invalidity of any of these rules with respect to a particular person or under particular circumstances shall not affect their application to other persons or under different circumstances.

240—1.20(601A) Availability of rules. Copies of these rules of practice and procedure shall be available to the public on request, and shall be kept on file in the office of the Secretary of State, State Capitol Building, Des Moines, Iowa 50319.

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CHAPTER 2
EMPLOYEE SELECTION PROCEDURES

240—2.1(601A) "Test" defined. For the purpose of the rules in this chapter, the term "test" is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. The rules in this chapter apply, for example, to ability tests which are designed to measure eligibility for hire, transfer, promotion, membership, training, referral or retention. This definition includes, but is not restricted to, measures of general intelligence, mental ability and learning ability; specific intellectual abilities; mechanical, clerical and other aptitudes; dexterity and co-ordination; knowledge and proficiency; occupational and other interests; and attitudes, personality or temperament. The term "test" includes all formal, scored, quantified or standardized techniques of assessing job suitability including, in addition to the above, specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements, scored interviews, biographical information blanks, interviewers' rating scales, scored application forms, etc.

240—2.2(601A) "Discrimination" defined. The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by Title VII, Civil Rights Act 1964 and chapter 601A of the Code constitutes discrimination unless: (1) The test has been validated and evidences a high degree of utility as hereinafter described, and (2) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable for his use.

240—2.3(601A) Evidence of validity.

2.3(1) Each person using tests to select from among candidates for a position or for membership shall have available for inspection evidence that the tests are being used in a manner which does not violate 2.2(601A). Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates. Furthermore, where technically feasible, a test should be validated for each minority group with which it is used; that is, any differential rejection rates that may exist, based on a test, must be relevant to performance on the jobs in question.

2.3(2) The term "technically feasible" as used in these rules means having or obtaining a sufficient number of minority individuals to achieve findings of statistical and practical significance, the opportunity to obtain unbiased job performance criteria, etc. It is the responsibility of the person claiming absence of technical feasibility to positively demonstrate evidence of this absence.

2.3(3) Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.

a. If job progression structures and seniority provisions are so established that new employees will probably, within a reasonable period of time and in a great majority of cases, progress to a higher level, it may be considered that candidates are being evaluated for jobs at that higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it shall be considered that candidates are being evaluated for a job at or near the entry level. This point is made to underscore the principle that attainment of or performance at a higher level job is a relevant criterion in validating employment tests only when there is a high probability that persons employed will in fact attain that higher level job within a reasonable period of time.

b. Where a test is to be used in different units of multiunit organization and no significant differences exist between units, jobs, and applicant populations, evidence obtained in one unit may suffice for the others. Similarly, where the validation process requires the collection of data throughout a multiunit organization, evidence of validity specific to each unit may not be required. There may also be instances where evidence of validity is appropriately obtained from more than one company in the same industry. Both in this instance and in the use of data collected throughout a multiunit organization, evidence of validity specific to each unit may not be required: Provided, that no significant differences exist between units, jobs, and applicant populations.

240—2.4(601A) Minimum standards for validation.

2.4(1) For the purpose of satisfying the requirements of this chapter, empirical evidence in support of a test's validity must be based on studies employing generally accepted procedures for determining criterion-related validity, such as those described in "Standards for Educational and Psychological Tests and Manuals" published by American Psychological Association, 1200 17th Street, N.W., Washington, D. C. 20036. Evidence of content or construct validity, as defined in that publication, may also be appropriate where criterion-related validity is not feasible. However, evidence for content or construct validity should be accompanied by sufficient information from job analyses to demonstrate the

relevance of the content (in the case of job knowledge or proficiency tests) or the construct (in the case of trait measures). Evidence of content validity alone may* be acceptable for well-developed tests that consist of suitable samples of the essential knowledge, skills or behaviors composing the job in question. The types of knowledge, skills or behaviors contemplated here do not include those which can be acquired in a brief orientation to the job.

2.4(2) Although any appropriate validation strategy may be used to develop such empirical evidence, the following minimum standards, as applicable, must be met in the research approach and in the presentation of results which constitute evidence of validity:

a. Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later, the sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question. This further assumes that the applicant sample is representative of the minority population available for the job or jobs in question in the local labor market. Where a validity study is conducted in which tests are administered to present employees, the sample must be representative of the minority groups currently included in the applicant population. If it is not technically feasible to include minority employees in validation studies conducted on the present work force, the conduct of a validation study without minority candidates does not relieve any person of his subsequent obligation for validation when inclusion of minority candidates becomes technically feasible.

b. Tests must be administered and scored under controlled and standardized conditions, with proper safeguards to protect the security of test scores and to insure that scores do not enter into any judgments of employee adequacy that are to be used as criterion measures. Copies of tests and test manuals, including instructions for administration, scoring, and interpretation of test results, that are privately developed and are not available through normal commercial channels must be included as a part of the validation evidence.

c. The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described; and, additionally, in the case of rating techniques, the appraisal form(s) and instructions to the rater(s) must be included as a part of the validation evidence. Such criteria may include measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used they must represent major or critical work behaviors as revealed by careful job analyses.

d. In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed, and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scores for reasons other than supervisors' prejudice, as, when as new employees, they have had less opportunity to learn job skills. The general point is that all criteria need to be examined to insure freedom from factors which would unfairly depress the scores of minority groups.

e. Differential validity. Data must be generated and results separately reported for minority and nonminority groups wherever technically feasible. Where a minority group is sufficiently large to constitute an identifiable factor in the local labor market, but validation data have not been developed and presented separately for that group, evidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these rules pending separate validation of the test for the minority group in question. See 2.8 (601A). A test which is differentially valid may be used in groups for which it is valid but not for those in which it is not valid. In this regard, where a test is valid for two groups but one group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups.

2.4(3) In assessing the utility of a test the following considerations will be applicable:

a. The relationship between the test and at least one relevant criterion must be statistically significant. This ordinarily means that the relationship should be sufficiently

*Typographical error corrected.

high as to have a probability of no more than 1 to 20 to have occurred by chance. However, the use of a single test as the sole selection device will be scrutinized closely when that test is valid against only one component of job performance.

b. In addition to statistical significance, the relationship between the test and criterion should have practical significance. The magnitude of the relationship needed for practical significance or usefulness is affected by several factors, including:

(1) The larger the proportion of applicants who are hired for or placed on the job, the higher the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few job vacancies are available;

(2) The larger the proportion of applicants who become satisfactory employees when not selected on the basis of the test, the higher the relationship needs to be between the test and a criterion of job success for the test to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few applicants turn out to be satisfactory;

(3) The smaller the economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified applicant, the greater the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when the former risks are relatively high.

240—2.5(601A) Presentation of validity evidence. The presentation of the results of a validation study must include graphical and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior. (See 2.4(3) concerning assessing utility of a test.) Average scores for all tests and criteria must be reported for all relevant subgroups, including minority and nonminority groups where differential validation is required. Whenever statistical adjustments are made in validity results for less than perfect reliability or for restriction of score range in the test or the criterion, or both, the supporting evidence from the validation study must be presented in detail. Furthermore, for each test that is to be established or continued as an operational employee selection instrument, as a result of the validation study, the minimum acceptable cutoff (passing) score on the test must be reported. It is expected that each operational cutoff score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted.

240—2.6(601A) Use of other validity studies. In cases where the validity of a test cannot be determined pursuant to 2.3(601A) and 2.4(601A) (e.g., the number of subjects is less than that required for a technically adequate validation study, or an appropriate criterion measure cannot be developed), evidence from validity studies conducted in other organizations, such as that reported in test manuals and professional literature, may be considered acceptable when: (1) The studies pertain to jobs which are comparable (i.e., have basically the same task elements), and (2) there are no major differences in contextual variables or sample composition which are likely to significantly affect validity. Any person citing evidence from other validity studies as evidence of test validity for his own jobs must substantiate in detail job comparability and must demonstrate the absence of contextual or sample differences cited in (1) and (2) of this rule.

240—2.7(601A) Assumption of validity.

2.7(1) Under no circumstances will the general reputation of a test, its author or its publisher, or casual reports of test utility be accepted in lieu of evidence of validity. Specifically ruled out are: Assumptions of validity based on test names or descriptive labels; all forms of promotional literature; data bearing on the frequency of a test's usage; testimonial statements of sellers, users, or consultants; and other nonempirical or anecdotal accounts of testing practices or testing outcomes.

7(2) Although professional supervision of testing activities may help greatly to insure t...nically sound and nondiscriminatory test usage, such involvement alone shall not be regarded as constituting satisfactory evidence of test validity.

240—2.8(601A) **Continued use of tests.** Under certain conditions, a person may be permitted to continue the use of a test which is not at the moment fully supported by the required evidence of validity. If, for example, determination of criterion-related validity in a specific setting is practicable and required but not yet obtained, the use of the test may continue: Provided: (1) The person can cite substantial evidence of validity as described in 2.6(601A); and (2) he has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required. It is expected also that the person may have to alter or suspend test cutoff scores so that score ranges broad enough to permit identification of criterion-related validity will be obtained.

240—2.9(601A) **Employment agencies and employment services.**

2.9(1) An employment service, including private employment agencies, state employment agencies, and the U.S. Training and Employment Service, as defined in section 701(c) of Title VII, Civil Rights Act of 1964 or 601A.2 of the Code, shall not make applicant or employee appraisals or referrals based on the results obtained from any psychological test or other selection standard not validated in accordance with these rules.

2.9(2) An employment agency or service which is requested by an employer or union to devise a testing program is required to follow the standards for test validation as set forth in these rules. An employment service is not relieved of its obligation herein because the test user did not request such validation or has requested the use of some lesser standard than is provided in these rules.

.9(3) Where an employment agency or service is requested only to administer a testing program which has been elsewhere devised, the employment agency or service shall request evidence of validation, as described in the rules in this chapter, before it administers the testing program or makes referral pursuant to the test results. The employment agency must furnish on request such evidence of validation. An employment agency or service will be expected to refuse to administer a test where the employer or union does not supply satisfactory evidence of validation. Reliance by the test user on the reputation of the test, its author, or the name of the test shall not be deemed sufficient evidence of validity. See 2.7(1). An employment agency or service may administer a testing program where the evidence of validity comports with the standards provided in 2.6(601A).

240—2.10(601A) **Disparate treatment.** The principle of disparate or unequal treatment ·st be distinguished from the concepts of test validation. A test or other employee ·ection standard—even though validated against job performance in accordance with the rules in this chapter—cannot be imposed upon any individual or class protected by Title VII, Civil Rights Act of 1964 or chapter 601A where other employees, applicants or members have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority or sex group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, no new test or other employee selection standard can be imposed upon a class of individuals protected by Title VII or chapter 601A who, but for prior discrimination, would have been granted the opportunity to qualify under less stringent ·ection standards previously in force.

240—2.11(601A) **Retesting.** Employers, unions, and employment agencies should provide an opportunity for retesting and reconsideration to earlier "failure" candidates who have

availed themselves of more training or experience. In particular, if any applicant or employee during the course of an interview or other employment procedure claims more education or experience, that individual should be retested.

240—2.12(601A) Other selection techniques. Selection techniques other than tests, as defined in 2.1(601A), may be improperly used so as to have the effect of discriminating against minority groups. Such techniques include, but are not restricted to, unscored or casual interviews and unscored application forms. Where there are data suggesting employment discrimination, the person may be called upon to present evidence concerning the validity of his unscored procedures as well as of any tests which may be used, the evidence of validity being of the same types referred to in 2.3(601A) and 2.4(601A). Data suggesting the possibility of discrimination exist, for example, when there are differential rates of applicant rejection from various minority and nonminority or sex groups for the same job or group of jobs or when there are disproportionate representations of minority and nonminority or sex groups among present employees in different types of jobs. If the person is unable or unwilling to perform such validation studies, he has the option of adjusting employment procedures so as to eliminate the conditions suggestive of employment discrimination.

240—2.13(601A) Affirmative action. Nothing in these rules shall be interpreted as diminishing a person's obligation under Title VII, Civil Rights Act of 1964, Executive Order 11246 as amended by Executive Order 11375, or chapter 601A to undertake affirmative action to ensure that applicants or employees are treated without regard to race, color, religion, sex, or national origin. Specifically, the use of tests which have been validated pursuant to these rules does not relieve employers, unions or employment agencies of their obligations to take positive action in affording employment and training to members of classes protected by Title VII and chapter 601A.

240—2.14(601A)* Remedial and/or affirmative action.

2.14(1) *Policy statement.* Employers and other persons subject to the Iowa Civil Rights Act (chapter 601A of the Code of Iowa) are required to maintain nondiscriminatory employment and personnel systems and therefore are obligated to comply with the statute without awaiting the action of any governmental agency. Thus, employers and other persons subject to the Act who, after a self-analysis, have concluded that there is a likelihood that they may be found in violation of the Act because of some aspect of their employment and personnel system, are required by the statute to take remedial and/or affirmative action to correct the situation. An employer or other person subject to the Act who has a reasonable basis for concluding that it might be held in violation of the Act and who take remedial and/or affirmative action reasonably calculated to avoid that result on the basis of such self-analysis does not, in the opinion of the commission, thereby violate the Act with respect to any employee or applicant for employment who is denied an employment opportunity as a result of such action. In the opinion of the commission, the lawfulness of such remedial and/or affirmative action program is not dependent upon an admission, or a finding, or evidence sufficient to prove that the employer or other person subject to the Act taking such action has violated the Act.

2.14(2) *Type of affirmative action covered.* In the opinion of the commission, an employer or other person subject to Executive Order #15 who has adopted an Affirmative Action Program pursuant to and in conformity with Executive Order #15 and federal and state regulations does not violate the Act by reason of its adherence to its Affirmative Action Program. Furthermore, for purposes of demonstrating to the commission that an employer or other person has reasonably concluded that it might be held in violation of the Act and that the remedial and/or affirmative action it has taken is reasonably calculated to avoid that result, the employer or other person may rely on an analysis which has been

*Amendment filed emergency 8/18/78 to overcome objection of Administrative Rules Committee filed 8/16/78 [See text of objection in IAB 9/6/78].

conducted in order to comply with Revised Order 4 or related orders issued by the Office of Federal Contract Compliance Programs under Executive Order 11246, as amended, or similar analysis required under federal, state, and local laws prohibiting employment discrimination.

2.14(3) *Use of goals and numerical remedies.* The remedial and/or affirmative action programs contemplated by these rules, whether taken by private employers or governmental employers or other persons covered by the Act, include the use of race, color, creed, sex, age, religion, disability, and ethnic-conscious goals and timetables, ratios, or other numerical remedies intended to remedy the prior discrimination against or exclusion of protected classes or to ensure that the employer's practices presently operate in a nondiscriminatory manner. Employers or other persons subject to the Act must be attentive to the effect of their employment practices in light of past discrimination by others. Griggs v. Duke Power, 401 U.S. 424 (1971). Such numerical remedies must be reasonable under the facts and circumstances which include any discrimination to be remedied and the relevant work force. Benefits under such remedial and/or affirmative action programs need not be restricted to identifiable victims of past discrimination by the employer or other persons subject to the Act. Specific remedial and/or affirmative measures may include but are not limited to, those described in the Equal Employment Opportunity Co-ordinating Council's "Policy Statement on Affirmative Action Programs for State and Local Government Agencies." (41 Federal Register 38814, September 13, 1976), which reads, in relevant part:

"2. Voluntary affirmative action to assure equal employment opportunity is appropriate at any stage of the employment process. The first step in the construction of any affirmative action plan should be an analysis of the emloyer's work force to determine whether percentages of sex, race, or ethnic groups in individual job classifications are substantially similar to the percentages of those groups available in the work force in the relevant job market who possess the basic job related qualifications.

"When substantial disparities are found through such analysis, each element of the overall selection process should be examined to determine which elements operate to exclude persons on the basis of sex, race, or ethnic group. Such elements include, but are not limited to, recruitment, testing, ranking, certification, interview, recommendations for selection, hiring, promotion, etc. The examination of each element of the selection process should at a minimum include a determination of its validity in predicting job performance.

"3. When an employer has reason to believe that its selection procedures have the exclusionary effect described in paragraph 2 above, it should initiate affirmative steps to remedy the situation. Such steps, which in design and execution may be race, color, sex or ethnic "conscious," include, but are not limited to, the following:

"The establishment of a long term goal and short range, interim goals and timetables for the specific job classifications, all of which should take into account the availability of basically qualified persons in the relevant job market;

"A recruitment program designed to attract qualified members of the group in question;

"A systematic effort to organize work and redesign jobs in ways that provide opportunities for persons lacking 'journeyman' level knowledge or skills to enter and, with appropriate training, to progress in a career field;

"Revamping selection instruments or procedures which have not yet been validated in order to reduce or eliminate exclusionary effects on particular groups in particular job classifications;

"The initiation of measures designed to assure that members of the affected group who are qualified to perform the job are included within the pool of persons from which the selecting official makes the selection;

"A systematic effort to provide career advancement training, both classroom and on-the-job, to employees locked into dead end jobs; and

"The establishment of a system for regularly monitoring the effectiveness of the particular affirmative action program, and procedures for making timely adjustments in this program where effectiveness is not demonstrated."

2.14(4) *Written opinions.* If during the investigation of a charge an employer or other person asserts that the action complained of was taken pursuant to a program such as those described in these rules, the investigating official shall determine whether such program conformed to the requirements stated in these rules for such a program. If the investigating official so finds, he or she will set forth the facts on which the findings are based and will issue a no probable cause finding on the complaint. If such employer or other person also asserts that the action complained of was taken in good faith, in conformity with and in reliance upon these rules, the investigating official shall determine whether such assertion is true. If the investigating official so finds, he or she will set forth the facts on which this finding is based and include such finding with the other findings described in this section in the no probable cause finding.

2.14(5) *Reliance.* The commission shall apply the foregoing principles where the challenged person's action is taken pursuant to any attempt to comply with the antidiscrimination requirements of any federal, state, or local government laws.

2.14(6) *Limitations of standards.* The specifications of remedial and/or affirmative action in these rules is intended only to identify certain types of actions which an employer or other person may take consistent with the Act to comply voluntarily but does not attempt to provide standards for determining whether such attempts to eliminate discrimination against minorities and women have been successful. Whether, in any given case, the employer who takes such remedial and/or affirmative action will have done enough to remedy discrimination against those protected by the Act will be a question of fact in each case.

240—2.15(601A) Employment practices in state government.

2.15(1) *Declaration of policy.* Equal opportunity and affirmative action toward its achievement, is the policy of all units of Iowa state government. This policy shall apply in all areas where the state funds are expended, in employment, public service, grants and financial assistance, and in state licensing and regulation. All policies, programs and activities of state government shall be periodically reviewed and revised to assure their fidelity to this policy.

2.15(2) *Affirmative action required.* All appointing authorities, and state agencies in the executive branch of government, shall abide by the requirements of Governor Robert D. Ray's Executive Order Number 15 and chapter 601A of the Iowa Code.

Each agency shall designate an equal opportunity officer to be responsible for affirmative action policies intra-agency. Each agency shall prepare an affirmative action plan for that department in accordance with the criteria set forth in rule 2.14(601A). All such plans shall be subject to the review and comment of the affirmative action director of the Iowa civil rights commission. The affirmative action director shall make every effort to achieve compliance with affirmative action requirements by informal conference, conciliation and persuasion. Where failure to comply with Executive Order Number 15 results, the commission may initiate complaints against the noncomplying agencies.

2.15(3) *Employment policies of state agencies.* Each appointing authority shall review the recruitment, appointment, assignment, upgrading and promotion policies and activities for state employees to correct policies that discriminate on the basis of race, color, religion, sex, age, national origin or physical or mental handicap. All appointing authorities shall hire and promote employees without discrimination. Special attention shall be given to the allocation of funds for on-the-job training, the parity of civil service classes doing similar work, and the training of supervisory personnel in equal opportunity principles and procedures. Annually each appointing authority shall review their EEO-4 reports and include in their budget presentation such necessary programs, goals and objectives, as shall improve the equal opportunity aspects of their department's employment policies. Each appointing authority shall make an annual report to the affirmative action director of the commission on persons hired, disciplined, terminated and vacancies occurring within their department.

2.15(4) *State services and facilities.* Every state agency shall render service to the citizens of this state without discrimination based on race, color, religion, sex, age, national origin or physical or mental handicap. No state facility shall be used in furtherance of any discriminatory practice nor shall any state agency become a party to any agreement, arrangement, or plan which has the effect of sanctioning such patterns or practices.

2.15(5) *State employment services.* All state agencies, which provide employment referral or placement services to public or private employers shall accept job orders, refer for employment, test, classify, counsel, and train only on a nondiscriminatory basis. They shall refuse to fill any job orders designed to exclude anyone because of race, color, religion, creed, sex, national origin, age or disability. All such agencies shall report to the civil rights commission any violations by state agencies and any private employers or unions which are known to persist in restrictive hiring practices.

2.15(6) *State contracts and subcontracts.* Every state contract for goods or services and for public works, including construction and repair of buildings, roads, bridges, and highways, shall contain a clause prohibiting discriminatory employment practices by contractors and subcontractors based on race, color, religion, creed, national origin, sex, age or disability. The nondiscrimination clause shall include a provision requiring state contractors and subcontractors to give written notice of their commitments under this clause to any labor union with which they have bargaining or other agreements. Such contractual provision shall be fully and effectively enforced and any breach of them shall be regarded as a material breach of the contract.

2.15(7) *State licensing and regulatory agencies.* No state department, board, commission, or agency shall grant, deny, or revoke a license on the grounds of race, color, religion, creed, national origin, sex, age or disability. License, as defined in section 17A.2(5) of the Code, includes the whole or a part of any agency permit, certificate, approval, registration, charter or similar form of permission required by statute. Any such licensee, or any applicant for a license issued by a state agency, who operates in an unlawful discriminatory manner, shall, when consistent with the legal authority and rules and regulations of the appropriate licensing or regulatory agency, be subject to disciplinary action by such agencies as provided by law, including the denial, revocation, or suspension of the license. In determining whether to apply sanctions or not, a final decision of discrimination certified to the licensing agency by the Iowa civil rights commission shall be binding upon the licensing agency.

2.15(8) *State financial assistance.* Race, color, religion, creed, national origin, sex, age, physical or mental disability shall not be considered as limiting factors in state administered programs involving the distribution of funds to qualified applicants for benefits authorized by law; nor shall state agencies provide grants, loans, or other financial assistance to public agencies, private institutions or organizations which engage in discriminatory practices.

2.15(9) *Reports.* All state agencies in the executive branch shall report annually to the Iowa Civil Rights Commission. Such reports shall cover both internal activities and relations with the public and with other state agencies and shall contain other information as may be specifically requested by the commission in order to enable it to compile the Governor's Annual Affirmative Action Report.

2.15(10) *Co-operation in investigations.* All state agencies shall co-operate fully with the Iowa civil rights commission and authorized federal agencies in their investigations of allegations of discrimination.

[Filed 9/15/71]

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CHAPTER 3
RULES ON DISCRIMINATION BECAUSE OF SEX

[Ch 4, IAC 7/1/75, renumbered Ch 3, IAC 3/22/78]
[Ch 3, IAC 10/20/75 and 4/5/76 rescinded IAC Supp. 3/22/78, effective 4/26/78; see Ch 1 for similar text]

240—3.1(601A) General principles. References to "employer" and "employers" in these rules state principles that are applicable not only to employers but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities, as defined in the Iowa Civil Rights Act, (section 601A.5 of the Code)*.

240—3.2(601A) Sex as a bona fide occupational qualification. The bona fide occupational qualification exception as to sex is strictly and narrowly construed. Labels—"men's jobs" and "women's jobs"—tend to deny employment opportunities unnecessarily to one sex or the other.

3.2(1) The following situations do not warrant the application of the bona fide occupational qualification exception:

a. The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

b. The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of nondiscrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

*601A.7 probably intended

c. The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers except as covered specifically in 4.2(2).

3.2(2) Where it is necessary for the purpose of authenticity or genuineness, sex is a bona fide occupational qualification, e.g., an actor or actress.

240—3.3(601A) Recruitment and advertising.

3.3(1) Employers engaged in recruiting activity must recruit employees of both sexes for all jobs unless sex is a bona fide occupational qualification.

3.3(2) Advertisement in newspapers and other media for employment must not express a sex preference unless sex is a bona fide occupational qualification for the job. The placement of an advertisement in columns headed "male" or "female" will be considered an expression of a preference, limitation, specification or discrimination based on sex.

240—3.4(601A) Employment agencies.

3.4(1) Section 601A.6(1) "*a*" and "*c*", specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. Private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

3.4(2) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency is not in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupational qualification is without substance and the agency makes and maintains a written record available to the commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

3.4(3) It is the responsibility of employment agencies to keep informed of opinions and decisions of the commission on sex discrimination.

240—3.5(601A) Pre-employment inquiries as to sex. A pre-employment inquiry may ask "male ......, female ...."; or "Mr. Mrs. Miss," provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

240—3.6(601A) Job policies and practices.

3.6(1) Written personnel policies relating to this subject area must expressly indicate that there shall be no discrimination against employees on account of sex. If the employer deals with a bargaining representative for his employees and there is a written agreement on conditions of employment, such agreement shall not be inconsistent with these guidelines.

3.6(2) Employees of both sexes shall have an equal opportunity to any available job that he or she is qualified to perform, unless sex is a bona fide occupational qualification.

3.6(3) No employer shall make any distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment. In the area of employer contributions for insurance, pensions, welfare programs and other similar "fringe benefits" the employer will not violate these guidelines if his contributions are the same for men and women or if the resulting benefits are equal.

3.6(4) Any distinction between married and unmarried persons of one sex that is not made between married and unmarried persons of the opposite sex will be considered to be a distinction made on the basis of sex. Similarly, an employer must not deny employment to

CHAPTER 4
DISCRIMINATION IN CREDIT

[Ch 5, IAC 7/1/75, renumbered Ch 4, IAC 3/22/78]

240—4.1(601A) Definitions.

4.1(1) *"Credit"* means an amount or limit to the extent of which a person may receive goods, services or money for payment in the future, and includes but is not limited to, loans for any purpose and in any amount, checking accounts, charge accounts, mortgages and other home financing, credit cards and credit ratings.

4.1(2) *"Credit institution"* means banks, savings and loan associations, finance companies, credit departments of all retail businesses, credit rating services, credit card issuers, credit bureaus, credit unions and all other loan, credit, financing and mortgaging institutions.

4.1(3) *"Credit card"* means a small card (as one issued by hotels, restaurants, stores, petroleum companies or banks) authorizing the person or company named or its agent to charge goods or services or borrow money.

240—4.2(601A) Practices prohibited.

4.2(1) The criteria used to evaluate applicants for credit and the standards necessary to be met by the successful applicants shall be the same regardless of the age, color, creed, national origin, race, religion, marital status, sex or physical disability of the applicant.

4.2(2) No credit institution shall require any information, reference or counter signature of any applicant for credit which would not be required of all applicants, regardless of their age, color, creed, national origin, race, religion, marital status, sex or physical disability.

4.2(3) It shall be an unlawful practice for any credit institution to discount or disregard the earnings or income of a spouse in computing family income.

4.2(4) It shall be an unlawful practice for any credit institution to refuse to loan money or extend credit to a woman solely because she is in the child-bearing years or solely because she is divorced, or solely because she is unmarried.

4.2(5) It shall be an unlawful practice for any credit institution to extinguish the established credit of any woman upon her marriage and to require that a new account be opened in the husband's name or either.

4.2(6) It shall be an unlawful practice for any credit institution to refuse to retain any records of credit transactions in the name of a married woman when she so requests in writing.

240—4.3(601A) Credit inquiries.

4.3(1) A credit application or credit interviewer may inquire as to age, disability, sex or marital status provided the inquiry is made in good faith for a nondiscriminatory purpose. Any inquiry which expresses directly or indirectly any limitation, specification, or discrimination as to age, disability, sex or marital status shall be unlawful.

4.3(2) The information required to be given by the applicant for credit should be limited to what is necessary for determining the applicant's financial conditions and prospects for repayment regardless of the applicant's age, color, creed, national origin, race, religion, marital status, sex or physical disability nor shall the consent of a spouse be required where the applicant is otherwise eligible for credit.

240—4.4(601A) Exception.

4.4(1) Cosignatures may be required of a married couple intending to establish a joint credit account with the company or business issuing the credit card.

4.4(2) The exception for cosignatures is limited, and the issuer should presume that the applicant is seeking a credit card in his or her own name regardless of the marital status of the applicant.

4.4(3) These rules shall not prohibit any party to a credit transaction from considering the application of Iowa law on dower, title, descent, and distribution to the particular case or from taking constructive action thereof.

[Filed September 6, 1974]

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CHAPTER 5
AGE DISCRIMINATION IN EMPLOYMENT

[Ch 6, IAC 7/1/75, renumbered Ch 5, IAC 3/22/78]

240—5.1(601A) Ages protected.

5.1(1) Any person who has reached eighteen years of age may not be excluded from an employment right because of an arbitrary age limitation and shall be an aggrieved party for the purposes of section 601A.14 of the Code regardless of whether such person is excluded by reason of excessive age or insufficient age and shall possess all the rights and remedies to such discrimination provided in section 601A.6.

5.1(2) No employer, employment agency, or labor organization shall set an arbitrary age limitation in relation to employment or membership except as otherwise provided by these rules or by the Code.

240—5.2(601A) Help wanted notices.

5.2(1) No newspaper or other publication published within the state of Iowa shall accept, publish, print or otherwise cause to be advertised any notice of an employment opportunity from an employer, employment agency, or labor organization containing any indication of a preference, limitation, or specification based upon age, except as provided in these rules, unless such newspaper or publication has first obtained from the employer, employment agency, or labor organization an affidavit indicating that the age requirement for an applicant is a bona fide occupational qualification.

5.2(2) Help wanted notices of advertisements shall not contain terms and phrases such as "young", "boy", "girl", "college student", "recent college graduate", "retired person", or others of a similar nature unless there is a bona fide occupational requirement for the position.

240—5.3(601A) Job applications for and other pre-employment inquiries.

5.3(1) An employer, employment agency or labor organization may make pre-employment inquiry regarding the age of an applicant provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to age shall be unlawful unless based upon a bona fide occupational qualification. The burden shall be on the employer, employment agency or labor organization to demonstrate that the direct or indirect pre-employment inquiry is based upon a bona fide occupational qualfication.

5.3(2) Nothing in the above shall be construed to prohibit any inquiry as to whether an applicant is over eighteen years of age.

5.3(3) Nothing in the above shall be construed to prohibit postemployment inquiries as to age where such inquiries serve legitimate record-keeping purposes.

240—5.4(601A) Bona fide occupational qualifications.

5.4(1) An employer, employment agency, or labor organization may take any action otherwise prohibited under these rules where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business.

5.4(2) The concept of the bona fide occupational qualification is narrow in scope and will not be applied to include the mere preference or convenience of the employer.

5.4(3) Age requirements set by federal or state statute or regulatory agency shall be considered to be bona fide occupational qualifications where such requirements are necessarily related to the work which the employee must perform.

5.4(4) A bona fide occupational qualification will also be recognized where there exist special, individual occupational circumstances as such as where actors are required for characterizations of individuals of a specified age or where persons are used to advertise or promote the sale of products designed for, and directed to, certain age groups.

240—5.5(601A) Bona fide apprenticeship programs. Where an age limit is placed upon entrance into an apprenticeship program, such limitation shall not be a violation of chapter 601A where the employer can demonstrate a legitimate economic interest in such limitation in terms of the length of the training period and the costs involved in providing the training. The age limit shall not be set any lower than reasonably necessary to enable the employer to recover the costs of training the employee and a reasonable profit.

240—5.6(601A) Employment benefits.

5.6(1) An employer is not required to provide the same pension, retirement, or insurance benefits to all employees where the cost thereof varies with the age of the individual employee. Business necessity or bona fide underwriting criteria shall be the only basis used by employers for providing different benefits to employees of different ages unless such benefits are provided under a retirement plan or benefit system not adopted as a mere subterfuge to evade the purposes of the Iowa civil rights Act.

5.6(2) The existence of a provision in a retirement plan stating a maximum eligibility age for entrance into a retirement plan shall not authorize rejecting from employment an applicant who is over the maximum eligibility age for the retirement plan.

240—5.7(601A) Retirement plans and benefit systems. These rules shall not be construed so as to prohibit an employer to retire an employee or to require an employer to hire back such employee following retirement or to hire an applicant for employment whose age is the retirement age under the employer's retirement plan or benefit system provided that such plan or system is not a mere subterfuge for the purpose of evading the provisions of the Iowa civil rights Act.

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CHAPTER 6
DISABILITY DISCRIMINATION IN EMPLOYMENT

[Ch 7, IAC 7/1/75, renumbered Ch 6, IAC 3/22/78]

240—6.1(601A) General definitions.

6.1(1) The term "*substantially handicapped person*" shall mean any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

6.1(2) The term "*physical or mental impairment*" means:

a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive;

genito-urinary; hemic and lymphatic; skin; and endocrine; or

b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

6.1(3) The term *"major life activities"* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

6.1(4) The term *"has a record of such an impairment"* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

6.1(5) The term *"is regarded as having an impairment"* means:

a. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

b. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

c. Has none of the impairments defined to be "physical or mental impairments," but is perceived as having such an impairment.

6.1(6) The term *"employer"*, as used herein, shall include any employer, labor organization, or employment agency insofar as their action or inaction may adversely affect employment opportunities, as defined in section 601A.2(5) of the Code.

240—6.2(601A) Assessment and placement.

6.2(1) If examinations or other assessments are required, examinations or other assessments should be directed towards determining whether an applicant for a job:

a. Has the physical and mental ability to perform the duties of the position. An individual applicant would have to identify the position for which he or she has applied.

b. Is physically and mentally qualified to do the work without adverse consequences such as creating a danger to life or health of fellow employees.

c. Is professionally competent or has the necessary skills or ability to become professionally competent to perform the duties and responsibilities which are required by the job.

6.2(2) Said examinations or other assessments should consider the degree to which the person has compensated for his limitations and the rehabilitation service he has received.

6.2(3) Physical standards for employment should be fair, reasonable, and adapted to the actual requirements of such employment. They shall be based on complete factual information concerning working conditions, hazards, and essential physical requirements of each job. Physical standards will not be used to arbitrarily eliminate the disabled person from consideration.

6.2(4) Where pre-employment tests are used, the opportunity will be provided applicants with disabilities to demonstrate pertinent knowledge, skills and abilities by testing methods adapted to their special circumstances.

6.2(5) Probationary trial periods in employment for entry-level positions which meet the criteria of business necessity may be instituted by the employer to prevent arbitrary elimination of the disabled.

6.2(6) Reasonable accommodation. An employer shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

a. Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

b. In determining pursuant to the first paragraph of this subrule whether an accommodation would impose an undue hardship on the operation of an employer's program, factors to be considered include:

(1) The overall size of the employer's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the employer's operation, including the composition and structure of the employer's workforce; and

(3) The nature and cost of the accommodation needed.

c. An employer may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

6.2(7) Occupational training and retraining programs, including but not limited to guidance programs, apprentice training programs, on-the-job training programs and executive training programs, shall not be conducted in such a manner as to discriminate against persons with physical or mental disabilities.

240—6.3(601A) Disabilities arising during employment. When an individual becomes disabled, from whatever cause, during a term of employment, the employer shall make every reasonable effort to continue the individual in the same position or to retain and

reassign the employee and to assist in his or her rehabilitation. No terms in this section shall be construed to mean that the employer must erect a training and skills center.

240—6.4(601A) Wages and benefits.

6.4(1) While employers may reengineer the conditions of work for the disabled person, the salary paid to said person shall be no lower than the lowest listed on the applicable wage grade schedule.

6.4(2) The wage schedule must be unrelated to the existence of physical or mental disabilities.

6.4(3) It shall be an unfair employment practice for an employer to discriminate between persons who are disabled and those who are not, with regard to fringe benefits, unless there is bona fide underwriting criteria.

6.4(4) A condition of disability shall not constitute a bona fide underwriting criteria in and of itself.

240—6.5(601A) Job policies.

6.5(1) Written personnel policies relating to this subject area must expressly indicate that there shall be no discrimination against employees on account of disability.

6.5(2) If the employer deals with a bargaining representative for his employees and there is a written agreement on conditions of employment, such agreement shall not be inconsistent with these guidelines.

240—6.6(601A) Recruitment and advertisement.

6.6(1) It shall be an unfair employment practice for any employer to print or circulate or cause to be printed or circulated any statement, advertisement or publication or to use any form of application pre-employment inquiry regarding mental or physical disability for prospective employment which is not a bona fide occupational qualification for employment and which directly or indirectly expresses any negative limitations, specifications, or discrimination as to persons with physical or mental disabilities. The burden shall be on the employer to demonstrate that the statement, advertisement, publication or inquiry is based upon a bona fide occupational qualification. This is subject, however, to the provisions of section 601A.6(1)"*c*".

6.6(2) It shall be an unfair employment practice to ask any question on the employment application form regarding a physical or mental disability unless the question is based upon a bona fide occupational qualification. The burden will be on the employer to demonstrate that the question is based upon a bona fide occupational qualification.

6.6(3) An employment interviewer may inquire as to a physical or mental disability provided the inquiry is made in good faith for a nondiscriminatory purpose.

240—6.7(601A) Bona fide occupational qualifications.

6.7(1) It shall be lawful for an employer, employment agency, or labor organization to take any action otherwise prohibited under these rules where mental or physical ability is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business.

6.7(2) The concept of the bona fide occupational qualification is narrow in scope and will not be applied to include the mere preference of convenience of the employer.

6.7(3) Physical or mental disability requirements set by federal or state statute or regulatory agency shall be considered to be bona fide occupational qualifications where such requirements are necessarily related to the work which the employee must perform.

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CHAPTER 7
DISCRIMINATION IN PUBLIC ACCOMMODATIONS

240—7.1(601A) Statement of purpose. The commission's purpose in adopting these rules is to provide guidelines on what actions or activities may produce a discriminatory impact in public accommodations.

240—7.2(601A) Definitions:

7.2(1) The term "*public accommodation*" shall refer to any place which is open to, accepts or solicits the patronage of the general public, including but not limited to inns, taverns, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants or eating houses, or any palce where food is sold for consumption on the premises, buffets, barrooms or any store, park or enclosure where spirituous or malt liquors are sold, ice cream parlors, confectioneries, soda fountains and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises, drug stores, dispensaries, clinics, hospitals, bathhouses, swimming pools, barber shops, beauty parlors, retail stores and establishments, theaters, motion picture houses, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks; fairs, bowling alleys, gymnasiums, shooting galleries, billiard and pool parlors, public libraries, kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses and all educational institutions under the supervision of this state, nonsectarian cemetaries, garages and all public conveyances operated on land or water or in the air as well as the stations, terminals and airports thereof, but shall not include any accommodations which are in their nature distinctly private. The examples cited are not to be considered as exclusive or restrictive.

7.2(2) Reserved.

240—7.3(601A) Discrimination prohibited. No person shall be discriminated against on the basis of race, creed, color, sex, national origin, religion or disability by any public accommodation by:

7.3(1) Providing any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to other members of the general public, except to reasonably accommodate a member of the protected classes who otherwise might be totally precluded from receiving a benefit, access to, or participation in a program.

7.3(2) Subjecting any individual to segregation or separate treatment in any matter related to his/her receipt of any disposition, service, financial aid, or benefit provided to other members of the general public.

7.3(3) Restricting an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit provided to other members of the general public.

7.3(4) Treating an individual differently from others in determining whether he/she satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function, or benefit available to other members of the general public.

7.3(5) Denying an individual an opportunity to participate in a program through the provision of services or otherwise afford her/him an opportunity to do so which is different from that afforded to other members of the general public.

[Filed 3/28/79, Notice 12/13/78—published 4/18/79, effective 5/23/79]

CHAPTER 8

Transferred to Ch 9, IAC 12/13/78

Reserved

CHAPTER 9
PROCEDURES FOR RULEMAKING AND DECLARATORY RULINGS

[Ch 8, IAC 3/22/78, renumbered Ch 9, IAC 12/13/78]

240—9.1(601A) Initiation of rulemaking procedures.

9.1(1) Any person may request the commission to adopt, amend, or request a rule by making such request in writing to the executive director clearly stating the intent, purposes, and general language of the desired rules.

9.1(2) The commission shall act upon such request within sixty days after its submission in accordance with section 17A.7 of the Code.

9.1(3) The commission may initiate rulemaking procedures upon its own motion in accordance with section 17A.4.

240—9.2(601A) Procedures for oral or written presentations.

9.2(1) Except where oral or written presentations are deemed unnecessary by the commission in accordance with section 17A.4(2), the commission shall allow for the submission of oral or witten presentations, or both prior to its adoption of any rules.

9.2(2) Interested persons shall have twenty days from the date of publication of notice in the Iowa Administrative Code to submit written requests for oral presentations or to submit with presentations.

9.2(3) Notice of date, time and place of oral presentations by requesting parties will be published by appropriate media at least twenty days in advance with specific notice to requesting parties given by certified mail.

9.2(4) Interested parties may be limited to submitting written presentations at the discretion of the commission except when oral presentations are required by section 17A.4(1)"*b*".

240—9.3(601A) Procedures for obtaining declaratory rulings.

9.3(1) Any person may petition the commission for a declaratory ruling when the lack of a ruling would substantially jeopardize petitioner's business, place petitioner in eminent peril, or have a substantial detrimental effect on the public interest.

9.3(2) The petition shall contain the name, address, and telephone number of the petitioner, the precise factual situation involved, the exact question to which an answer is desired, the rules, statute, or orders applicable, if known, and a suggested declaratory ruling.

9.3(3) The petitioner may submit briefs in support of the proposition raised, and if petitioner elects to submit briefs they are to be filed with the petition. The commission may require petitioner to submit additional information or briefs in its discretion or necessary to determine the question.

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b. The number of probable cause and no probable cause findings,
c. The number of cases successfully conciliated,
d. The number of cases taken to public hearing,
e. The average length of time spent investigating each case,
f. The cumulative remedies obtained for the previous twelve-month period and average remedy obtained per case,
g. An assessment of the quality of the agency's investigations,
h. The agency's standards to preserve quality investigations, and
i. The status of the agency's caseload.

10.3(3) *Rejection of application.* Where the executive director determines that an agency does not qualify as a referral agency, he/she shall so inform the agency in writing along with the reasons for the agency's rejection.

If the reasons for the agency's rejection are corrected, the agency will then be designated as a referral agency. The executive director's decision may be appealed to the commission at its subsequent regular meeting.

10.3(4) *Designation and contract.* Where the executive director determines that an agency is qualified as a referral agency, she/he will prepare a contract between the commission and the agency containing the terms on which cases will be referred. Upon execution of the contract, the executive director will designate the agency as a referral agency.

10.3(5) *Terms of the referral contract.* The referral contract shall be negotiated with the referral agency, but shall include the following:

a. Terms prohibiting a complainant who has filed with the commission from cross-filing with a referral agency and vice-versa.
b. Terms permitting the commission to refer complaints filed with it to a referral agency for processing and vice-versa.
c. Terms prohibiting the commission from processing a charge referred to and accepted by the referral agency and vice-versa.
d. Terms permitting the commission or a referral agency to reject a charge referred to it for processing.
e. Terms ending the contract after two years, subject to renegotiation, and
f. Any other terms mutually agreed upon.

240—10.4(601A) Precedure for obtaining deferral status.

10.4(1) *Application.* Any agency desiring to be designated as a deferral agency by the commission may send a letter of application to the executive director of the commission. Attached to the application must be a copy of the agency's enabling legislation or grant of jurisdiction, a list of its personnel and a statement indicating their permanent or part-time status, their functions, and a summary of the agency's prior efforts at preventing and eliminating discrination. The application must also explain how the agency is capable of obtaining remedies substantially similar to those available under the Iowa civil rights Act.

10.4(2) *Guidelines for designation.* The executive director will evaluate the applications of all agencies and may designate deferral agencies where the agencies conform to the following guidelines:

a. The agency should have available resources to enable it to investigate complaints to ensure processing within a reasonable period of time.
b. The agency's enabling legislation or grant of jurisdiction must permit it to obtain substantially the same remedies as are available under the Iowa civil rights Act,
c. The agency must be able to make a diligent effort to investigate and resolve the complaints filed with it, or
d. The agency is capable of obtaining remedies substantially similar to those available under the Iowa civil rights Act by informal means.

10.4(3) *Rejection of application.* Where the executive director determines that an agency does not qualify as a deferral agency, he/she shall so inform the agency in writing along with the reasons for the agency's rejection.

CHAPTER 10*
REFERRAL AND DEFERRAL AGENCIES

240—10.1(601A) Statement of purpose. It is the purpose of the commission, in adopting these rules, to promote the efficient enforcement of the Iowa civil rights Act of 1965, as amended. To secure this end, the commission will use referral and deferral agreements to encourage agencies with similar powers and jurisdiction to:

1. Develop procedures and remedies necessary to insure the protection of rights secured by the Iowa civil rights Act.
2. Increase the efficiency of their operations.
3. Co-operate more fully with the commission in the sharing of data and resources, and
4. Co-ordinate investigations and conciliations with the commission in order to eliminate needless duplication.

240—10.2(601A) Definitions.

10.2(1) *"Agency"* refers to any agency or municipal government established by ordinance for the purpose of eliminating discrimination on any basis protected by the Iowa civil rights Act, or any state or federal governmental unit with jurisdiction over allegations of discrimination that is capable of obtaining remedies similar to those obtainable by the commission.

10.2(2) *"Referral"* means the process by which the commission cross files a charge of discrimination with a referral agency, which extinguishes the legal ability of the commission to process said charge; provided, however, that the referral agency accepts the referred charge and that the commission has the reciprocal right to accept or reject charges cross-filed by the referral agency.

10.2(3) *"Referral agency"* means any agency of local government that has been awarded that status by contract with the commission.

10.2(4) *"Deferral"* refers to the process whereby the commission notifies an agency of local, state, or federal government that a complaint has been filed with the commission and that the commission will postpone its investigative activities for a period of sixty days while the deferral agency investigates and attempts to resolve the matter. Extensions of this time period may be granted by the commission or the executive director when just cause is shown by the agency for the time extension requested.

10.2(5) *"Deferral agency"* means any agency so designated by contract pursuant to these rules.

240—10.3(601A) Procedure for obtaining referral status.

10.3(1) *Guidelines for designation.* The executive director will evaluate the applications of agencies and may designate agencies as referral agencies where they conform to the following guidelines:

a. The agency should have professional staff to enable it to comprehensively investigate complaints and to ensure the processing of said charges expeditiously.

b. The ordinance or enabling legislation under which the agency is established must provide at a minimum the same rights and remedies to discrimination as available under the civil rights Act, and

c. The enabling legislation of the agency shall provide, at a minimum, that the agency may hold public hearings, issue cease and desist orders, and award damages to injured parties which shall include, but are not limited to, actual damages.

10.3(2) *Application.* Any agency desiring to be designated as a referral agency by the commission may send a letter of application to the executive director of the commission. Attached to the application must be a copy of the agency's enabling ordinance, a list of its investigatory personnel, the average number of hours worked by each per week, and a report for the previous twelve-month period detailing the following:

a. The number of cases filed with the agency,

*Emergency, pursuant to §17A.5(2)"*b*"(2) of the Code.

If the reasons for the agency's rejection are corrected, the agency will then be designated as a deferral agency. The executive director's decision may be appealed to the commission at its subsequent regular meeting.

10.4(4) *Designation and contract.* Where the executive director determines that an agency is qualified as a deferral agency, he/she will prepare a contract between the commission and the agency containing the terms on which cases will be deferred. After execution of the contract, the executive director will designate the agency as a deferral agency.

10.4(5) *Terms of the deferral contract.* The deferral contract shall include, subject to negotiations with the agency, the following:

a. The commission will agree to notify the deferral agency of all complaints filed with the commission which are within the deferral agency's jurisdiction, except where a complainant requests in written form that the deferral agency not be notified.

b. The deferral agency will agree to aid all complainants whose complaints come within the commission's jurisdiction in completing the commission's complaint forms as well as notarizing them and forwarding the fully executed forms to the commission where the necessity to file a formal complaint exists. If, however, a matter may be resolved informally more expeditiously the deferral agency will simply notify the commission by letter of the complaint and resolution obtained. Informally shall refer to complaints that can be resolved within ten days.

c. The commission will agree to postpone its investigation for at least sixty days of any complaint filed with a deferral agency unless otherwise agreed to by both parties. These waiver agreements will be made on an individual case basis.

d. The agency will agree not to disclose the filing of a complaint or confidential information pertaining to a complaint until such complaint has been officially set for public hearing.

e. The commission and the deferral agency shall share copies of all findings, case summaries, and conciliation agreements.

f. Where a complaint is on file with a deferral agency, the commission will allow the deferral agency access to the contents of the complainant's file provided that the deferral agency allows the commission like privileges and has not previously disclosed confidential information prior to public hearing.

g. Photocopying of materials from commission files for use by a deferral agency is solely at the discretion of the commission staff, but such photocopying will not be unreasonably denied. Where the commission copies from the agency's file, the agency shall be reasonably compensated for copying costs.

h. The commission will give substantial weight to the findings of a deferral agency where pertinent and relevant factual evidence exists to support those findings.

i. The commission will not necessarily be bound by the agency's conclusions of law.

j. Where a deferral agency reaches a finding of probable cause to support an allegation of discrimination the contract may permit the agency to pursue conciliation, or to refer the case back to the commission for conciliation. The contract may also permit an agency that has attempted conciliation to refer that case back to the commission for public hearing. In no case where a case has been referred back to the commission will it be referred back to the agency. Where a case is conciliated or a hearing is held by the agency or the commission, both will be bound by the final determination.

k. The period for which the contract will be in effect shall not exceed two years, subject to renegotiation.

l. The contract may contain such other terms as are agreed to by the parties.

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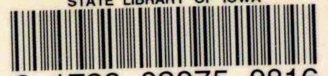
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