State of Iowa

1998

ACTS AND JOINT RESOLUTIONS

(Session Laws)

Enacted at the

1998 REGULAR SESSION

of the

Seventy-Seventh General Assembly

of the

State of Iowa

HELD AT DES MOINES, THE CAPITAL OF THE STATE
IN THE ONE HUNDRED FIFTY-SECOND YEAR OF THE STATE

REGULAR SESSION BEGUN ON THE TWELFTH DAY OF JANUARY
AND ENDED ON THE TWENTY-SECOND DAY OF APRIL, A.D. 1998

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by the
Legislative Service Bureau
GENERAL ASSEMBLY OF IOWA
Des Moines

PREFACE

CERTIFICATION

We, Diane E. Bolender, Director, Legislative Service Bureau, and Loanne M. Dodge, Iowa Code Editor, certify that, to the best of our knowledge, the Acts and Resolutions in this volume have been prepared from the original enrolled Acts and Resolutions on file in the office of the Secretary of State; are correct copies of those Acts and Resolutions; are published under the authority of the statutes of this state; and constitute the Acts and Resolutions of the 1998 Regular Session of the Seventy-seventh General Assembly of the State of Iowa.

STATUTES AS EVIDENCE

Iowa Code section 622.59 is as follows:

622.59 Printed copies of statutes. Printed copies of the statute laws of this or any other of the United States, or of Congress, or of any foreign government, purporting or proved to have been published under the authority thereof, or proved to be commonly admitted as evidence of the existing laws in the courts of such state or government, shall be admitted in the courts of this state as presumptive evidence of such laws.

EXPLANATORY NOTES

Temporary Code numbers. CODE NUMBERS ASSIGNED TO NEW SECTIONS AND SUBSECTIONS IN THE ACTS ARE TEMPORARY AND MAY BE CHANGED WHEN THE 1999 IOWA CODE IS PUBLISHED. Changes will be shown in the Tables of Disposition of Acts in the 1999 Iowa Code.

Typographic style. The Acts and Resolutions in this volume are printed as they appear on file in the office of the Secretary of State. No editorial corrections have been made. Underlined type indicates new material added to existing statutes; strike-through type indicates deleted material. Italics within an Act indicate material item vetoed by the Governor. Item vetoed text is also indicated by asterisks at the beginning and ending of the vetoed material. Asterisks may also indicate explanatory footnotes.

Effective dates. The Acts took effect on July 1, 1998, unless otherwise provided. See Iowa Code section 3.7. The date of enactment is the date an Act is approved by the Governor, which is shown at the end of each Act.

State mandates. Iowa Code section 25B.5 requires that for each enacted bill or joint resolution containing a state mandate (defined in section 25B.3), an estimate of additional local revenue expenditures required by the mandate must be filed with the Secretary of State. Section 2B.10(7) states that a notation of the filing of the estimate must be included in the session laws with the text of the bill or resolution. A dagger has been placed at the beginning of the enacting clause and a footnote included for each enrolled Act which requires the estimate.

Court Rules. Iowa Code section 602.4202 no longer requires that changes to Rules and Forms of the Supreme Court submitted to the Legislative Council be bound with the Acts of the General Assembly. See chapter 1115 herein. The official printed version of the Iowa Court Rules may be purchased from the Department of General Services and an unofficial version is available on the Internet (www.legis.state.ia.us).

Resolutions. Concurrent resolutions and Senate and House resolutions are generally not included. See bound Senate and House Journals for adopted resolutions.

Orders for legal publications should be addressed to the Department of General Services, Customer Service Center, Hoover State Office Building A-Level, Des Moines, Iowa 50319. Telephone 515-281-8796

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ELECTIVE OFFICERS

Name and Office	County from which originally chosen

GOVERNOR

TERRY E. BRANSTAD	Winnebago
Robert L. Rafferty, Executive Assistant	Scott

LIEUTENANT GOVERNOR

JOY CORNING	Black Hawk
Carol Zeigler, Administrative Assistant	Black Hawk
Jennifer Davis, Administrative Assistant	Webster

SECRETARY OF STATE

PAUL D. PATE	Linn
Monty Bertelli, Deputy Secretary of State	Linn
John Gilliland, Deputy, Administration	Marion
Carol Olson, Deputy, Elections	Polk

AUDITOR OF STATE

RICHARD D. JOHNSON	Polk
Warren G. Jenkins, Chief Deputy Auditor of State	Polk
Richard C. Fish, Deputy, Administration Division	Polk
Tami Kusian, Acting Deputy, Performance Audit Division	Polk
Andrew E. Nielsen, Deputy, Financial Audit Division	Polk

TREASURER OF STATE

MICHAEL L. FITZGERALD	Polk
Steven F. Miller, Deputy Treasurer	Polk
Stefanie G. Devin, Deputy Treasurer	Polk
Bret Mills, Deputy Treasurer	Polk
Karl Koch, Chief Finance Officer	Polk

SECRETARY OF AGRICULTURE

DALE M. COCHRAN	Webster
Shirley Danskin-White, Administrative Assistant	Polk
Mary Jane Olney, Administrative Division Director	Polk
Daryl Frey, Laboratory Division Director	Polk
Ronald Rowland, Regulatory Division Director	Polk
James Gulliford, Soil Conservation Division Director	Polk
Steve Ferguson, Agricultural Development Authority Director	Polk

ATTORNEY GENERAL

THOMAS J. MILLER	Polk
Tam Ormiston, Deputy Attorney General	Polk
Gordon Allen, Deputy Attorney General	Polk
Julie Pottorff, Deputy Attorney General	Polk
Douglas Marek, Deputy Attorney General	Story
Elizabeth Osenbaugh, Solicitor General	Polk
Eric Tabor, Chief of Staff	Jackson

GENERAL ASSEMBLY

"X" means First Extraordinary Session; "XX" means Second Extraordinary Session
Italicized county in District column denotes home county

SENATORS

Name and Residence	Occupation	Senatorial District	Former Legislative Service
Angelo, Jeff ..... Creston	Broadcaster	44th—Adams, Decatur, ... Page, Ringgold, Taylor, *Union*	77(1st)
Bartz, Merlin E. ..... Grafton	Farmer/Laborer	10th—Cerro Gordo, ... Mitchell, *Worth*	74, 74X, 74XX, 75, 76, 77(1st)
Behn, Jerry ..... Boone	Farmer	40th—*Boone*, Carroll, ... Greene	77(1st)
Black, Dennis H. ..... Grinnell	Conservationist	29th—*Jasper*, Mahaska, ... Marshall, Poweshiek	70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
*Black, James E. ..... Algona	Farmer/Business	8th—Hancock, Humboldt, .. *Kossuth*, Winnebago, Wright	77(1st)
Boettger, Nancy ..... Harlan	Director of Education ..... (Drop and Resource Development) Myrtue Memorial Hospital	41st—Audubon, Harrison, Pottawattamie, *Shelby*	76, 77(1st)
Borlaug, Allen ..... Protivin	Farm Owner/ ..... Licensed Insurance Agent	15th—*Chickasaw*, Floyd, ... Howard, Mitchell, Winneshiek	74, 74X, 74XX, 75, 76, 77(1st)
Connolly, Michael W. ..... Dubuque	Community Relations ..... Coordinator, Dubuque Community School District	18th—*Dubuque*	68, 69, 69X, 69XX, 70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Dearden, Dick L. ..... Des Moines	Job Developer, 5th ..... Judicial District	35th—*Polk*	76, 77(1st)
Deluhery, Patrick J. ..... Davenport	College Teacher	22nd—*Scott*	68, 69, 69X, 69XX, 70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Douglas, JoAnn ..... Adel	Farmer/Former ..... Teacher	39th—Adair, *Dallas*, ... Guthrie, Madison	76, 77(1st)
Drake, Richard F. ..... Muscatine	Farmer	24th—Johnson, Louisa, ... *Muscatine*, Scott	63, 64, 65, 66, 67, 67X, 68, 69, 69X, 69XX, 70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Dvorsky, Robert E. ..... Coralville	Job Developer, 6th ..... Judicial District, Department of Correctional Services	25th—*Johnson*, Linn	72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Fink, William (Bill) ..... Carlisle	Teacher	45th—Marion, *Warren*	75, 76, 77(1st)

* Resigned January 6, 1998

Name and Residence	Occupation	Senatorial District	Former Legislative Service
Flynn, Tom Epworth	Business Owner	17th—Delaware, *Dubuque*, Jackson	76, 77(1st)
Fraise, Eugene (Gene) Fort Madison	Farming	50th—Des Moines, *Lee*	71(2nd), 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Freeman, Mary Lou Alta		5th—*Buena Vista*, Cherokee, Clay, O'Brien, Plymouth, Pocahontas	75(2nd), 76, 77(1st)
*Gaskill, E. Thurman Corwith	Farmer	8th—*Hancock*, Humboldt, Kossuth, Winnebago, Wright	None
Gettings, Don E. Ottumwa	Retired, John Deere	47th—Jefferson, Van Buren, *Wapello*	67(2nd), 67X, 68, 69, 69X, 69XX, 70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Gronstal, Michael E. Council Bluffs		42nd—*Pottawattamie*	70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Halvorson, Rod Fort Dodge	Property Management	7th—Boone, Calhoun, Hamilton, *Webster*	68, 69, 69X, 69XX, 70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Hammond, Johnie Ames	Legislator	31st—*Story*	70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Hansen, Steven D. Sioux City	Consultant	1st—*Woodbury*	72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Harper, Patricia M. Waterloo	Retired Educator	13th—*Black Hawk*	72, 72X, 72XX, 73, 75, 76, 77(1st)
Hedge, H. Kay Fremont	Grain and Livestock Farmer	48th—Keokuk, *Mahaska*, Marion, Wapello, Washington	73, 74, 74X, 74XX, 75, 76, 77(1st)
Horn, Wally E. Cedar Rapids	Educator	27th—*Linn*	65, 66, 67, 67X, 68, 69, 69X, 69XX, 70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Iverson, Stewart E., Jr. Dows	Farmer	9th—Franklin, Hamilton, Hardin, *Wright*	73(2nd), 74, 74X, 74XX, 75, 76, 77(1st)
Jensen, John W. Plainfield	Farmer	11th—Black Hawk, *Bremer*, Butler, Grundy	68, 69, 69X, 69XX, 70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Judge, Patty Albia	Farmer/Mediator	46th—Appanoose, Clarke, Davis, Lucas, *Monroe*, Van Buren, Wayne	75, 76, 77(1st)
Kibbie, John P. Emmetsburg	Farmer	4th—Clay, Dickinson, Emmet, Kossuth, *Palo Alto*	59, 60, 60X, 61, 62, 73, 74, 74X, 74XX, 75, 76, 77(1st)
King, Steve Kiron	Earthmoving Contractor	6th—Crawford, Ida, Monona, *Sac*, Woodbury	77(1st)
Kramer, Mary West Des Moines	Insurance Executive	37th—*Polk*	74, 74X, 74XX, 75, 76, 77(1st)

* Elected in Special Election February 3, 1998

Name and Residence	Occupation	Senatorial District	Former Legislative Service
Lundby, Mary A. Marion		26th—*Linn*	72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Maddox, Gene Clive	Lawyer	38th—Dallas, *Polk*	75, 76, 77(1st)
McCoy, Matt Des Moines	Driver Development Manager	34th—*Polk*	75, 76, 77(1st)
McKean, Andy Anamosa	Lawyer/Bed and Breakfast Operator	28th—*Jones*, Linn	68, 69, 69X, 69XX, 70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
McKibben, Larry Marshalltown	Lawyer	32nd—*Marshall*, Story	77(1st)
McLaren, Derryl Farragut	Farmer	43rd—Cass, *Fremont*, Mills, Montgomery, Pottawattamie	74, 74X, 74XX, 75, 76, 77(1st)
Neuhauser, Mary Iowa City	Attorney (Currently not practicing)	23rd—*Johnson*	72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Palmer, William D. Ankeny	Insurance	33rd—*Polk*	61, 62, 63, 64, 65, 66, 67, 67X, 68, 69, 69X, 69XX, 70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Redfern, Donald B. Cedar Falls	Attorney	12th—*Black Hawk*	75(2nd), 76, 77(1st)
Redwine, John Sioux City	Physician	2nd—*Plymouth*, Woodbury	77(1st)
Rehberg, Kitty Rowley	Farmer	14th—Black Hawk, *Buchanan*, Delaware, Fayette	77(1st)
Rensink, Wilmer Sioux Center	Farmer	3rd—Lyon, O'Brien, Osceola, *Sioux*	70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Rife, Jack Durant	Farmer	20th—*Cedar*, Clinton, Jones, Scott	70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Rittmer, Sheldon De Witt	Farmer	19th—*Clinton*, Scott	74, 74X, 74XX, 75, 76, 77(1st)
Schuerer, Neal Amana	Restaurateur	30th—Benton, Black Hawk, *Iowa*, Tama	77(1st)
Szymoniak, Elaine Des Moines	Retired	36th—*Polk*	73, 74, 74X, 74XX, 75, 76, 77(1st)
Tinsman, Maggie Davenport	Agribusiness/ Social Worker	21st—*Scott*	73, 74, 74X, 74XX, 75, 76, 77(1st)
Vilsack, Tom Mount Pleasant	Lawyer	49th—Des Moines, *Henry*, Lee, Washington	75, 76, 77(1st)
Zieman, Lyle E. Postville	Retired Farmer/ Businessman	16th—*Allamakee*, Clayton, Fayette, Winneshiek	75, 76, 77(1st)

REPRESENTATIVES

Name and Residence	Occupation	Representative District	Former Legislative Service
Arnold, Richard ..... Russell	Farmer	91st—Appanoose, Clarke, .. *Lucas*, Wayne	76, 77(1st)
Barry, Donna M. ..... Dunlap	Farmer/Property ..... Manager	82nd—*Harrison*	76, 77(1st)
Bell, Paul A. ..... Newton	Police Lieutenant	57th—*Jasper*	75, 76, 77(1st)
Bernau, Wm. (Bill) ..... Ames	Legislator/Consultant	62nd—*Story*	74, 74X, 74XX, 75, 76, 77(1st)
Blodgett, Gary ..... Clear Lake	Retired Orthodontist	19th—*Cerro Gordo*	75, 76, 77(1st)
Boddicker, Dan ..... Tipton	Electronics Engineer	39th—*Cedar*, Clinton, ... Jones	75, 76, 77(1st)
Boggess, Effie Lee ..... Villisca	.....	87th—Adams, Page, *Taylor*	76, 77(1st)
Bradley, Clyde ..... Camanche	Retired U.S. Navy, ... Department of Defense	37th—*Clinton*, Scott	76, 77(1st)
Brand, William J. ..... Chelsea	Human Services ..... Professional	60th—Benton, Black Hawk, *Tama*	73, 74, 74X, 74XX, 75, 76, 77(1st)
Brauns, Barry D. ..... Muscatine	Fair Manager	47th—Johnson, Louisa, ... *Muscatine*	75, 76, 77(1st)
Brunkhorst, Bob ..... Waverly	Programmer Analyst	22nd—Black Hawk, ... *Bremer*	75, 76, 77(1st)
Bukta, Polly ..... Clinton	Teacher	38th—*Clinton*	77(1st)
Burnett, Cecelia ..... Ames	Consultant	61st—*Story*	76, 77(1st)
Carroll, Danny C. ..... Grinnell	Realtor/Farmer	58th—Jasper, Mahaska, ... Marshall, *Poweshiek*	76, 77(1st)
Cataldo, Michael J. ..... Des Moines	Vice President, Iowa ..... EPS Products	68th—*Polk*	75, 76, 77(1st)
Chapman, Kathleen H. .... Cedar Rapids	Lawyer	53rd—*Linn*	70, 71, 72, 72X, 72XX, 73, 74, 77(1st)
Chiodo, Frank J. ..... Des Moines	Small Business Manager	67th—*Polk*	77(1st)
Churchill, Steven W. ..... Johnston	Marketing Manager ..... Mid-America Group, Ltd.	76th—Dallas, *Polk*	75, 76, 77(1st)
Cohoon, Dennis M. ..... Burlington	Teacher	100th—*Des Moines*	72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Connors, John H. ..... Des Moines	Labor Arbitrator & ..... Retired Fire Captain	69th—*Polk*	65, 66, 67, 67X, 68, 69, 69X, 69XX, 70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Corbett, Ron J. ..... Cedar Rapids	Special Project Manager	52nd—*Linn*	72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Cormack, Michael ..... Fort Dodge	Substitute Teacher	13th—*Webster*	76, 77(1st)

Name and Residence	Occupation	Representative District	Former Legislative Service
Dinkla, Dwight ..... Guthrie Center	Attorney	78th—Adair, *Guthrie*, ... Madison	75, 76, 77(1st)
Dix, Bill ..... Shell Rock	Farmer	21st—*Butler*, Grundy	77(1st)
Doderer, Minnette ..... Iowa City	Legislator	45th—*Johnson*	60X, 61, 62, 63, 64, 65, 66, 67, 67X, 69, 69X, 69XX, 70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Dolecheck, Cecil ..... Kellerton	Farmer	88th—Decatur, *Ringgold*, ... Taylor, Union	77(1st)
Dotzler, William A., Jr.... Waterloo	Machine Operator/ ..... Labor Representative	26th—*Black Hawk*	77(1st)
Drake, Jack ..... Lewis	Farmer	81st—Audubon, ... *Pottawattamie*, Shelby	75, 76, 77(1st)
Drees, James ..... Manning	Retired	80th—*Carroll*, Greene	76, 77(1st)
Eddie, Russell J. ..... Storm Lake	Retired Farmer	10th—*Buena Vista*, Clay, ... Pocahontas	72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Falck, Steven L. ..... Stanley	Real Estate Appraiser	28th—Buchanan, *Fayette*...	77(1st)
Fallon, Ed ..... Des Moines	Legislator	70th—*Polk*	75, 76, 77(1st)
Foege, Romaine H. ..... Mount Vernon	Social Worker	50th—Johnson, *Linn*	77(1st)
Ford, Wayne W. ..... Des Moines	Executive Director ..... Human Services	71st—*Polk*	77(1st)
Frevert, Marcella R. ..... Emmetsburg	Educator	8th—Clay, Kossuth, ... *Palo Alto*	77(1st)
Garman, Teresa ..... Ames	Farmer	63rd—Marshall, *Story*	72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Gipp, Chuck ..... Decorah	Dairy Farmer	31st—Allamakee, ... *Winneshiek*	74, 74X, 74XX, 75, 76, 77(1st)
Greig, John M. ..... Estherville	Farmer	7th—Dickinson, *Emmet*, ... Palo Alto	75, 76, 77(1st)
Greiner, Sandra H. ..... Keota	Farmer	96th—Keokuk, Mahaska, ... Wapello, *Washington*	75, 76, 77(1st)
Gries, Donald ..... Charter Oak	Retired School ..... Administrator	12th—*Crawford*, Monona, Woodbury	75, 76, 77(1st)
Grundberg, Betty ..... Des Moines	Renovation and Property .... Management	73rd—*Polk*	75, 76, 77(1st)
Hahn, James F. ..... Muscatine	Real Estate/Property ..... Management	48th—*Muscatine*, Scott	74, 74X, 74XX, 75, 76, 77(1st)
Hansen, Brad ..... Carter Lake	Health Administrator	83rd—*Pottawattamie*	77(1st)
Heaton, David E. ..... Mount Pleasant	Restaurant Owner	97th—Des Moines, *Henry*, Washington	76, 77(1st)
Holmes, Danny J. ..... Walcott	Accountant	40th—*Scott*	77(1st)

Name and Residence	Occupation	Representative District	Former Legislative Service
Holveck, Jack Des Moines	Attorney	72nd—*Polk*	70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Houser, Hubert M. Carson	Farmer	85th—Fremont, Mills, *Pottawattamie*	75, 76, 77(1st)
Huseman, Daniel A. Aurelia	Farmer	9th—Buena Vista, *Cherokee*, O'Brien, Plymouth	76, 77(1st)
Huser, Geri Altoona	Social Worker	66th—*Polk*	77(1st)
Jacobs, Elizabeth West Des Moines	Assistant Director, Corporate Relations, Principal Financial Group	74th—*Polk*	76, 77(1st)
Jenkins, G. Willard Waterloo	Engineer	24th—*Black Hawk*	77(1st)
Jochum, Pam Dubuque	Loras College	35th—*Dubuque*	75, 76, 77(1st)
Kinzer, Ron Davenport	Retired Journeyman Iron Worker	44th—*Scott*	77(1st)
Klemme, Ralph Le Mars	Farmer	4th—*Plymouth*, Woodbury	75, 76, 77(1st)
Koenigs, Deo A. St. Ansgar	Farmer	29th—Floyd, *Mitchell*	70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Kreiman, Keith A. Bloomfield	Attorney	92nd—Appanoose, *Davis*, Monroe, Van Buren	75, 76, 77(1st)
Kremer, Joseph M. Jesup	Retired Farmer	27th—Black Hawk, *Buchanan*, Delaware	71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 76, 77(1st)
Lamberti, Jeffrey M. Ankeny	Attorney	65th—*Polk*	76, 77(1st)
Larkin, Richard L. Fort Madison	Correctional Counselor	99th—Des Moines, *Lee*	75, 76, 77(1st)
Larson, Charles W., Jr. Cedar Rapids	Assistant Jones County Attorney	55th—*Linn*	75, 76, 77(1st)
Lord, David G. Perry	Self-Employed	77th—*Dallas*, Madison	76, 77(1st)
Martin, Mona Davenport	Partner, The Robert Martin Co.	43rd—*Scott*	75, 76, 77(1st)
Mascher, Mary Iowa City	Teacher	46th—*Johnson*	76, 77(1st)
May, Dennis Kensett	Farmer	20th—Cerro Gordo, Mitchell, *Worth*	72, 72X, 72XX, 73, 75, 76, 77(1st)
Mertz, Dolores M. Ottosen	Self-Employer, Farmer/Legislator	15th—Humboldt, *Kossuth*	73, 74, 74X, 74XX, 75, 76, 77(1st)
Metcalf, Janet Des Moines	Legislator	75th—*Polk*	71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Meyer, Jim Odebolt	Farmer/Agribusinessman	11th—Ida, *Sac*, Woodbury	75, 76, 77(1st)

Name and Residence	Occupation	Representative District	Former Legislative Service
Millage, David A. ..... Bettendorf	Attorney	41st—*Scott*	74, 74X, 74XX, 75, 76, 77(1st)
Moreland, Michael J. ..... Ottumwa	Attorney	93rd—*Wapello*	75, 76, 77(1st)
Mundie, Norman ..... Fort Dodge	Retired Farmer	14th—Boone, Calhoun, ... Hamilton, *Webster*	75, 76, 77(1st)
Murphy, Patrick J. ..... Dubuque	Self-Employed	36th—*Dubuque*	73(2nd), 74, 74X, 74XX, 75, 76, 77(1st)
Myers, Richard E. ..... Iowa City	Business Owner	49th—*Johnson*	75(2nd), 76, 77(1st)
Nelson, Beverly J. ..... Marshalltown	Executive Vice President, .. Iowa Valley Community College District	64th—*Marshall*	76, 77(1st)
O'Brien, Michael J. ..... Boone	Teacher	79th—*Boone*, Greene	75, 76, 77(1st)
Osterhaus, Robert J. ..... Maquoketa	Pharmacist	34th—Dubuque, *Jackson*	76(2nd), 77(1st)
Rants, Christopher ..... Sioux City	Pierce and Associates	3rd—*Woodbury*	75, 76, 77(1st)
Rayhons, Henry ..... Garner	Farmer	16th—*Hancock*, ... Winnebago, Wright	77(1st)
Reynolds-Knight, Rebecca Bonaparte	Nurse/Political Activist	94th—Jefferson, ... *Van Buren*, Wapello	77(1st)
Richardson, Steve ..... Indianola	Teacher	89th—*Warren*	77(1st)
Scherrman, Paul ..... Farley	Vice President, ... J. P. Scherrman, Inc.	33rd—Delaware, *Dubuque*	77(1st)
Schrader, David F. ..... Monroe	Small Business Owner/ ..... Operator, Legislator	90th—*Marion*, Warren	72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Shoultz, Don ..... Waterloo	Job Training Consultant	25th—*Black Hawk*	70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Siegrist, Brent ..... Council Bluffs	Educator	84th—*Pottawattamie*	71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Sukup, Steven E. ..... Dougherty	Engineer	18th—*Franklin*, Hardin	76, 77(1st)
Taylor, Todd ..... Cedar Rapids	Staff Representative, ... AFSCME	54th—*Linn*	76(2nd), 77(1st)
Teig, Russell W. ..... Jewell	Farmer	17th—Franklin, *Hamilton*, Hardin, Wright	76, 77(1st)
Thomas, Roger ..... Elkader	Farmer	32nd—Allamakee, ... *Clayton*, Fayette	77(1st)
Thomson, Rosemary R. .... Marion	.....	51st—*Linn*	76, 77(1st)
Tyrrell, Phil ..... North English	Independent Insurance ..... Agent	59th—Benton, *Iowa*	68, 69, 69X, 69XX, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)

Name and Residence	Occupation	Representative District	Former Legislative Service
Vande Hoef, Richard ..... Harris	Retired Farmer	6th—Lyon, O'Brien, ... *Osceola*, Sioux	69, 69X, 69XX, 70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Van Fossen, James ..... Davenport	Service Representative, ... Gas & Electric Utility	42nd—*Scott*	76, 77(1st)
Van Maanen, Harold ..... Pella	Retired Farmer	95th—Mahaska, *Marion*	68, 69, 69X, 69XX, 70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Veenstra, Kenneth ..... Orange City	Insurance Agent	5th—*Sioux*	76, 77(1st)
Warnstadt, Steve ..... Sioux City	Consultant	2nd—*Woodbury*	76, 77(1st)
Weidman, Dick ..... Griswold	Funeral Home Employee	86th—*Cass*, Montgomery, Pottawattamie	74, 74X, 74XX, 75, 76, 77(1st)
Weigel, Keith ..... New Hampton	Certified Financial ..... Planner	30th—*Chickasaw*, Howard, Winneshiek	75, 76, 77(1st)
Welter, Jerry J. ..... Monticello	Farmer	56th—*Jones*, Linn	75, 76, 77(1st)
Whitead, Wesley E. ..... Sioux City	Heavy Equipment Repair	1st—*Woodbury*	77(1st)
Wise, Philip ..... Keokuk	Teacher	98th—Henry, *Lee*	72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77(1st)
Witt, William G. ..... Cedar Falls	Photojournalist	23rd—*Black Hawk*	75, 76, 77(1st)

JUDICIAL DEPARTMENT

JUSTICES OF THE SUPREME COURT

(Justices listed according to seniority)

Name	Office Address	Term Ending
David Harris	Jefferson	December 31, 1998
Arthur A. McGiverin, C.J.	Des Moines and Ottumwa	December 31, 2004
Jerry L. Larson	Harlan	December 31, 2004
James H. Carter	Cedar Rapids	December 31, 2000
Louis A. Lavorato	Des Moines	December 31, 2004
Linda K. Neuman	Davenport	December 31, 2004
Bruce M. Snell Jr.	Ida Grove	December 31, 2004
James H. Andreasen	Algona	December 31, 1998
Marsha K. Ternus	Des Moines	December 31, 2002

JUDGES OF THE COURT OF APPEALS

(Judges listed according to seniority)

Rosemary Shaw Sackett	Spencer	December 31, 2002
Mark S. Cady, C.J.	Fort Dodge	December 31, 2002
Terry L. Huitink	Ireton	December 31, 2002
Michael J. Streit	Chariton	December 31, 1998
Gayle Nelson Vogel	Knoxville	December 31, 1998
Robert E. Mahan	Waterloo	December 31, 1998

CONGRESSIONAL DELEGATION AND DISTRICT OFFICES

UNITED STATES SENATORS

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(202) 224-3254

733 Federal Building
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Suite 370
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Cedar Rapids, Iowa 52401
(319) 365-4504

131 East 4th Street
314 B Federal Building
Davenport, Iowa 52801
(319) 322-1338

110 Federal Building
320 6th Street
Sioux City, Iowa 51101
(712) 252-1550

315 Federal Building
350 West 6th Street
Dubuque, Iowa 52001
(319) 582-2130

Senator Charles Grassley (R)
135 Hart Senate Office Building
Washington, D.C. 20510-1501
(202) 224-3744

721 Federal Building
210 Walnut Street
Des Moines, Iowa 50309
(515) 284-4890

210 Waterloo Building
531 Commercial Street
Waterloo, Iowa 50701
(319) 232-6657

206 Federal Building
101 First Street, SE
Cedar Rapids, Iowa 52401
(319) 363-6832

103 Federal Courthouse Building
320 6th Street
Sioux City, Iowa 51101
(712) 233-1860

116 Federal Building
131 East 4th Street
Davenport, Iowa 52801
(319) 322-4331

307 Federal Building
8 South 6th Street
Council Bluffs, Iowa 51501
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UNITED STATES REPRESENTATIVES

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209 West 4th Street
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Second District

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CONDITION OF STATE TREASURY

June 30, 1997

	Balance July 1, 1996	Total Receipts and Transfers	Total Available	Total Disbursements and Transfers	Balance June 30, 1997
General Fund	$ 513,909,075	$ 6,477,265,695	$ 6,991,174,770	$ 6,344,725,677	$ 646,449,093
Special Revenue Fund	411,174,925	1,832,969,511	2,244,144,436	1,814,133,499	430,010,937
Capitol Projects Fund	46,170,855	150,009,651	196,180,506	81,892,367	114,288,139
Debt Service Fund	10,740,902	1,355,665	12,096,567	1,655,456	10,441,111
Enterprise Fund	58,992,340	277,285,751	336,278,091	287,738,203	48,539,888
Internal Service Fund	85,890,417	302,902,553	388,792,970	321,946,810	66,846,160
Expendable Trust Fund	34,838,791	214,666,130	249,504,921	218,673,878	30,831,043
Nonexpendable Trust Fund	10,565,084	65,067	10,630,151	0	10,630,151
Pension Fund	8,333,803,578	1,460,450,868	9,794,254,446	403,191,623	9,391,062,823
Trust and Agency Fund	118,993,497	2,726,517,828	2,845,511,325	2,686,170,037	159,341,288
Totals	$9,625,079,464	$13,443,488,719	$23,068,568,183	$12,160,127,550	$10,908,440,633

Balance July 1, 1996	$ 9,625,079,464
Receipts and Transfers	13,443,488,719
Total Available	23,068,568,183
Disbursements and Transfers	12,160,127,550
Balance June 30, 1997	$10,908,440,633

DEPARTMENT OF REVENUE AND FINANCE

March 31, 1998

ANALYSIS BY CHAPTERS

1998 REGULAR SESSION

For Conversion Tables of Senate and House Files and Joint Resolutions to chapters of the 1998 Acts, see page 914

1998 Regular Session

of the

Seventy-Seventh General Assembly

of the

State of Iowa

CHAPTER 1001

REVITALIZE IOWA'S SOUND ECONOMY FUND — TRANSFER OF FUNDS

S.F. 2022

AN ACT relating to the authority of the state transportation commission to temporarily transfer revitalize Iowa's sound economy (RISE) funds to the primary road fund and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 315.3, subsection 3, Code 1997, is amended to read as follows:

3. ~~The~~ If the state transportation commission receives and files a letter from the director of transportation certifying that federal funding is not forthcoming due to the failure of the United States Congress to pass and the president of the United States to approve legislation providing long-term federal transportation funding to the state of Iowa, the commission may authorize the temporary transfer of funds ~~between the department's share of~~ from the RISE fund ~~under section 315.4 and~~ to the primary road fund ~~in an amount not to exceed forty million dollars at one time~~. Transferred funds shall be repaid ~~not later than July 1, 1993~~ to the RISE fund within three months of transfer. The commission shall manage the RISE fund to ensure that funds will be available to meet contract obligations on approved RISE projects.

Sec. 2. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved February 3, 1998

CHAPTER 1002

BOARD OF PODIATRY EXAMINERS

S.F. 2029

AN ACT relating to the composition of the board of podiatry examiners.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 147.14, subsection 1, Code 1997, is amended to read as follows:

1. For ~~podiatry,~~ barbering, and social work, three members each, licensed to practice the profession for which the board conducts examinations, and two members who are not licensed to practice the profession for which the board conducts examinations and who shall represent the general public. A quorum shall consist of a majority of the members of the board.

Sec. 2. Section 147.14, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. For podiatry examiners, five members licensed to practice podiatry and two members who are not licensed to practice podiatry and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

Approved February 16, 1998

CHAPTER 1003

IMPLEMENTS OF HUSBANDRY

S.F. 2081

AN ACT regulating implements of husbandry.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321.453, Code 1997, is amended to read as follows:

321.453 EXCEPTIONS.

The provisions of this chapter governing size, weight, and load, and the permit requirements of chapter 321E do not apply to fire apparatus, ~~to~~ road maintenance equipment owned by or under lease to any state or local authority, ~~to~~ implements of husbandry temporarily moved upon a highway, ~~to~~ implements of husbandry moved from farm site to farm site or between the retail seller and a farm purchaser ~~within a one hundred mile radius from the retail seller's place of business~~, ~~to~~ implements of husbandry moved between any site and the site of an agricultural exposition or a fair administered pursuant to chapter 173 or 174, indivisible implements of husbandry temporarily moved between the place of manufacture and a retail seller or a farm purchaser, ~~to~~ implements of husbandry received and moved by a retail seller of implements of husbandry in exchange for ~~an~~ a purchased implement ~~purchased~~, or ~~to~~ implements of husbandry moved for repairs, except on any part of the interstate highway system. A vehicle, carrying an implement of husbandry, which is exempted from the permit requirements under this section shall be equipped with an amber flashing light under section 321.423, shall be equipped with warning flags on that portion of the vehicle which protrudes into oncoming traffic, and shall only operate from thirty minutes prior to sunrise to thirty minutes following sunset.

Approved February 19, 1998

CHAPTER 1004

ANHYDROUS AMMONIA

S.F. 2082

AN ACT regulating anhydrous ammonia by prohibiting tampering with related equipment and the unauthorized possession and transportation of containers and receptacles used to store anhydrous ammonia, providing enhanced penalties, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 200.14, subsection 1, unnumbered paragraph 3, Code 1997, is amended to read as follows:

1A. ~~All anhydrous~~ Anhydrous ammonia equipment shall be installed and maintained in a safe operating condition and in conformity with ~~the~~ rules ~~and regulations of~~ adopted by the secretary ~~of agriculture~~. A person shall not intentionally tamper with anhydrous equipment. Tampering occurs when a person who is not authorized by the owner of anhydrous ammonia equipment uses the equipment in violation of a provision of this chapter, including a rule adopted by the secretary. ~~No~~ A person, ~~firm or corporation, other than the owner and those authorized by the owner to do so,~~ shall not in any manner or for any purpose sell, fill, refill, deliver, ~~or~~ permit to be delivered, or use ~~in any manner any~~ an anhydrous ammonia container or receptacle, including for the storage of any gas, or compound ~~for any other purpose whatsoever~~, unless the person owns the container or receptacle or is authorized to do so by the owner. A person shall not possess or transport anhydrous ammonia in a container or receptacle which is not authorized by the secretary to hold anhydrous ammonia.

Sec. 2. Section 200.18, subsection 2, Code 1997, is amended to read as follows:

2. ~~Any~~ A person violating ~~any provision of~~ this chapter or ~~the~~ rules ~~and regulations issued thereunder~~ adopted by the secretary pursuant to this chapter shall be guilty of a simple misdemeanor. In addition to the imposition of the simple misdemeanor penalty, a person violating section 200.14 shall be subject to a civil penalty of not more than one thousand five hundred dollars, if the person does any of the following:

a. Intentionally tampers with anhydrous ammonia equipment.

b. Possesses or transports anhydrous ammonia in a container or receptacle which is not authorized to hold anhydrous ammonia according to rules adopted by the secretary.

A person tampering with anhydrous ammonia equipment in violation of section 200.14 shall not have a cause of action against the owner of the equipment, any person responsible for the installation and maintenance of the equipment, or the person lawfully selling the anhydrous ammonia for damages arising out of the tampering.

Sec. 3. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved February 19, 1998

CHAPTER 1005

SCHOOL FINANCE — ALLOWABLE GROWTH

S.F. 2094

AN ACT relating to the establishment of the state percent of growth for purposes of the state school foundation program, and providing an applicability date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 257.8, subsection 1, Code 1997, is amended to read as follows:

1. STATE PERCENT OF GROWTH. The state percent of growth for the budget ~~years~~ year beginning ~~July 1, 1997, and~~ July 1, ~~1998~~ 1999, is three ~~and one-half~~ percent. The state percent of growth for each subsequent budget year shall be established by statute which shall be enacted within thirty days of the submission in the year preceding the base year of the governor's budget under section 8.21. The establishment of the state percent of growth for a budget year shall be the only subject matter of the bill which enacts the state percent of growth for a budget year.

Sec. 2. APPLICABILITY DATE. This Act is applicable for computing state aid under the state school foundation program for the school budget year beginning July 1, 1999.

Approved February 19, 1998

CHAPTER 1006

VETERINARY TREATMENT OF RACEHORSES

S.F. 2121

AN ACT regulating veterinary practice and procedures, by providing for the treatment of horses, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 99D.25A, subsections 6 through 8, Code Supplement 1997, are amended to read as follows:

6. Once a horse has been permitted the use of lasix, ~~it~~ the horse must be treated with lasix in the horse's stall, unless the commission provides that a horse must be brought to the detention barn for treatment ~~not less than four hours prior to scheduled post time for the race in which it is entered to start~~. After the lasix treatment, the commission, by rule, may authorize the release of the horse from the horse's stall or detention barn before the scheduled post time. If a horse is brought to the detention barn late, the commission shall assess a civil penalty of one hundred dollars against the trainer.

7. A horse entered to race with lasix must be treated at least four hours prior to post time. The lasix shall be administered intravenously by a veterinarian employed by the owner or trainer of the horse ~~under the visual supervision of the commission veterinarian~~. The commission shall adopt rules to ensure that lasix is administered as provided in this section. The commission shall require that the practicing veterinarian ~~must deposit with the commission veterinarian at the detention barn an unopened supply of lasix and sterile hypodermic needles and syringes to be used for the administrations~~ deliver an affidavit signed by the veterinarian which certifies information regarding the treatment of the horse. The affidavit must be delivered to a commission veterinarian within twenty minutes following the treat-

ment. The statement must at least include the name of the practicing veterinarian, the tattoo number of the horse, the location of the barn and stall where the treatment occurred, the race number of the horse, the name of the trainer, and the time that the lasix was administered. Lasix shall only be administered in a dose level of two hundred fifty milligrams. The commission veterinarian shall extract a test sample of the horse's blood, urine, or saliva to determine whether the horse was improperly drugged after the race is run.

8. A person found within or in the immediate vicinity of the detention barn or horse stall who is in possession of unauthorized drugs or hypodermic needles or who is not authorized to possess drugs or hypodermic needles shall, in addition to any other penalties, be barred from entry into any racetrack in Iowa and any occupational license the person holds shall be revoked.

Sec. 2. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved February 26, 1998

CHAPTER 1007

ATTEMPTED MURDER — MANDATORY SERVICE OF SENTENCE

H.F. 2002

AN ACT to provide that persons convicted of attempted murder serve at least eighty-five percent of the sentence imposed and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 902.12, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. Attempted murder in violation of section 707.11.

Sec. 2. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved February 27, 1998

CHAPTER 1008

STATE FIRE MARSHAL

S.F. 2182

AN ACT relating to the state fire marshal, including the installation of automatic fire extinguishing systems in new construction.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 100.39, unnumbered paragraph 1, Code 1997, is amended to read as follows:

All buildings ~~that are~~ approved for construction~~,~~ after ~~August 15, 1975~~ July 1, 1998, that exceed four stories in height, or ~~sixty-five~~ seventy-five feet above grade, shall require the installation of an approved automatic fire extinguishing system designed and installed in conformity with rules promulgated by the state fire marshal pursuant to this chapter.

Sec. 2. Section 101.2, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

101.2 SCOPE OF RULES.

Except as otherwise provided in this chapter, the rules shall be in substantial compliance with the standards of the national fire protection association relating to flammable liquids and liquefied petroleum gases.

Sec. 3. Section 101.12, Code 1997, is amended to read as follows:

101.12 ABOVEGROUND PETROLEUM TANKS AUTHORIZED.

Rules of the state fire marshal ~~shall permit~~ permitting installation of aboveground petroleum storage tanks for retail motor vehicle fuel outlets ~~as permitted by the latest edition of the~~ shall be in substantial compliance with the applicable standards of the national fire protection association ~~rule 30A~~, and shall be subject to the approval of the governing body of the local governmental subdivision with jurisdiction over the site of the outlet.

Sec. 4. Section 100.32, Code 1997, is repealed.

Approved March 2, 1998

CHAPTER 1009

PARTIAL-BIRTH ABORTIONS

S.F. 2073

AN ACT prohibiting the performance of partial-birth abortions relative to a human fetus, establishing a cause of action for violation of the prohibition, and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 707.8A PARTIAL-BIRTH ABORTION PROHIBITED — EXCEPTIONS — PENALTIES.

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

a. "Abortion" means abortion as defined in section 146.1.

b. "Fetus" means a human fetus.

c. "Partial-birth abortion" means an abortion in which a person partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

d. "Vaginally delivers a living fetus before killing the fetus" means deliberately and intentionally delivering into the vagina a living fetus or a substantial portion of a living fetus for the purpose of performing a procedure the person knows will kill the fetus, and then killing the fetus.

2. A person shall not knowingly perform or attempt to perform a partial-birth abortion. This prohibition shall not apply to a partial-birth abortion that is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury.

3. This section shall not be construed to create a right to an abortion.

4. a. The mother on whom a partial-birth abortion is performed, the father of the fetus, or

if the mother is less than eighteen years of age or unmarried at the time of the partial-birth abortion, a maternal grandparent of the fetus, may bring an action against a person violating subsection 2 to obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the partial-birth abortion.

b. In an action brought under this subsection, appropriate relief may include any of the following:

(1) Statutory damages which are equal to three times the cost of the partial-birth abortion.

(2) Compensatory damages for all injuries, psychological and physical, resulting from violation of subsection 2.

5. A person who violates subsection 2 is guilty of a class "C" felony.

6. A mother upon whom a partial-birth abortion is performed shall not be prosecuted for violation of subsection 2 or for conspiracy to violate subsection 2.

7. a. A licensed physician subject to the authority of the state board of medical examiners who is accused of a violation of subsection 2 may seek a hearing before the board on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury.

b. The board's findings concerning the physician's conduct are admissible at the criminal trial of the physician. Upon a motion of the physician, the court shall delay the beginning of the trial for not more than thirty days to permit the hearing before the board of medical examiners to take place.

Approved March 4, 1998

CHAPTER 1010

DENTAL HYGIENE COMMITTEE

S.F. 2075

AN ACT relating to the creation of a dental hygiene committee within the board of dental examiners.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 147.14, subsection 4, Code 1997, is amended to read as follows:

4. For dental examiners, five members shall be licensed to practice dentistry, two members shall be licensed to practice dental hygiene and two members not licensed to practice dentistry or dental hygiene and who shall represent the general public. A majority of the members of the board shall constitute a quorum. No member of the dental faculty of the school of dentistry at the state University of Iowa shall be eligible to be appointed. Beginning January 1, 2000, persons appointed to the board as dental hygienist members shall not be employed by or receive any form of remuneration from a dental or dental hygiene educational institution. The two dental hygienist board members and one dentist board member shall constitute a dental hygiene committee of the board as provided in section 153.33A.

Sec. 2. NEW SECTION. 153.33A DENTAL HYGIENE COMMITTEE.

1. A three-member dental hygiene committee of the board of dental examiners is created, consisting of the two dental hygienist members of the board and one dentist member of the board. The dentist member of the committee must have supervised and worked in collaboration with a dental hygienist for a period of at least three years immediately preceding elec-

tion to the committee. The dentist member shall be elected to the committee annually by a majority vote of board members.

2. The committee shall have the authority to adopt recommendations regarding the practice, discipline, education, examination, and licensure of dental hygienists, subject to subsection 3, and shall carry out duties as assigned by the board. The committee shall have no regulatory or disciplinary authority with regard to dentists, dental assistants, dental lab technicians, or any other auxiliary dental personnel.

3. The board shall ratify recommendations of the committee at the first meeting of the board following adoption of the recommendations by the committee, or at a meeting of the board specifically called for the purpose of board review and ratification of committee recommendations. The board shall decline to ratify committee recommendations only if the board makes a specific finding that a recommendation exceeds the jurisdiction or expands the scope of the committee beyond the authority granted in subsection 2, creates an undue financial impact on the board, or is not supported by the record. The board shall pay the necessary expenses of the committee and of the board in implementing committee recommendations ratified by the board.

4. This section shall not be construed as impacting or changing the scope of practice of the profession of dental hygiene or authorizing the independent practice of dental hygiene.

Approved March 4, 1998

CHAPTER 1011

EMPLOYEE DRUG TESTING

H.F. 299

AN ACT concerning drug and alcohol testing of private sector employees and prospective employees and providing remedies and an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 730.5, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

730.5 PRIVATE SECTOR DRUG-FREE WORKPLACES.

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

a. "Alcohol" means ethanol, isopropanol, or methanol.

b. "Drug" means a substance considered a controlled substance and included in schedule I, II, III, IV, or V under the federal Controlled Substances Act, 21 U.S.C. § 801 et seq.

c. "Employee" means a person in the service of an employer in this state and includes the employer, and any chief executive officer, president, vice president, supervisor, manager, and officer of the employer who is actively involved in the day-to-day operations of the business.

d. "Employer" means a person, firm, company, corporation, labor organization, or employment agency, which has one or more full-time employees employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, in this state. "Employer" does not include the state, a political subdivision of the state, including a city, county, or school district, the United States, the United States postal service, or a Native-American tribe.

e. "Good faith" means reasonable reliance on facts, or that which is held out to be factual,

without the intent to be deceived, and without reckless, malicious, or negligent disregard for the truth.

f. "Medical review officer" means a licensed physician, osteopathic physician, chiropractor, nurse practitioner, or physician assistant authorized to practice in any state of the United States, who is responsible for receiving laboratory results generated by an employer's drug or alcohol testing program, and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with the individual's medical history and any other relevant biomedical information.

g. "Prospective employee" means a person who has made application, whether written or oral, to an employer to become an employee.

h. "Reasonable suspicion drug or alcohol testing" means drug or alcohol testing based upon evidence that an employee is using or has used alcohol or other drugs in violation of the employer's written policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. For purposes of this paragraph, facts and inferences may be based upon, but not limited to, any of the following:

(1) Observable phenomena while at work such as direct observation of alcohol or drug use or abuse or of the physical symptoms or manifestations of being impaired due to alcohol or other drug use.

(2) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.

(3) A report of alcohol or other drug use provided by a reliable and credible source.

(4) Evidence that an individual has tampered with any drug or alcohol test during the individual's employment with the current employer.

(5) Evidence that an employee has caused an accident while at work which resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.

(6) Evidence that an employee has manufactured, sold, distributed, solicited, possessed, used, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

i. "Safety-sensitive position" means a job wherein an accident could cause loss of human life, serious bodily injury, or significant property or environmental damage, including a job with duties that include immediate supervision of a person in a job that meets the requirement of this paragraph.

j. "Sample" means such sample from the human body capable of revealing the presence of alcohol or other drugs, or their metabolites. However, sample does not mean blood except as authorized pursuant to subsection 7, paragraph "l".

k. "Unannounced drug or alcohol testing" means testing for the purposes of detecting drugs or alcohol which is conducted on a periodic basis, without advance notice of the test to employees, other than employees whose duties include responsibility for administration of the employer's drug or alcohol testing program, subject to testing prior to the day of testing, and without individualized suspicion. The selection of employees to be tested from the pool of employees subject to testing shall be done based on a neutral and objective selection process by an entity independent from the employer and shall be made by a computer-based random number generator that is matched with employees' social security numbers, payroll identification numbers, or other comparable identifying numbers in which each member of the employee population subject to testing has an equal chance of selection for initial testing, regardless of whether the employee has been selected or tested previously. The random selection process shall be conducted through a computer program that records each selection attempt by date, time, and employee number.

2. APPLICABILITY. This section does not apply to drug or alcohol tests conducted on employees required to be tested pursuant to federal statutes, federal regulations, or orders issued pursuant to federal law. In addition, an employer, through its written policy, may

exclude from the pools of employees subject to unannounced drug or alcohol testing pursuant to subsection 8, paragraph "a", employee populations required to be tested as described in this subsection.

3. TESTING OPTIONAL. This section does not require or create a legal duty on an employer to conduct drug or alcohol testing and the requirements of this section shall not be construed to encourage, discourage, restrict, limit, prohibit, or require such testing. In addition, an employer may implement and require drug or alcohol testing at some but not all of the work sites of the employer and the requirements of this section shall only apply to the employer and employees who are at the work sites where drug or alcohol testing pursuant to this section has been implemented. A cause of action shall not arise in favor of any person against an employer or agent of an employer based on the failure of the employer to establish a program or policy on substance abuse prevention or to implement any component of testing as permitted by this section.

4. TESTING AS CONDITION OF EMPLOYMENT — REQUIREMENTS. To the extent provided in subsection 8, an employer may test employees and prospective employees for the presence of drugs or alcohol as a condition of continued employment or hiring. An employer shall adhere to the requirements of this section concerning the conduct of such testing and the use and disposition of the results of such testing.

5. COLLECTION OF SAMPLES. In conducting drug or alcohol testing, an employer may require the collection of samples from its employees and prospective employees, and may require presentation of reliable individual identification from the person being tested to the person collecting the samples. Collection of a sample shall be in conformance with the requirements of this section. The employer may designate the type of sample to be used for this testing.

6. SCHEDULING OF TESTS.

a. Drug or alcohol testing of employees conducted by an employer shall normally occur during, or immediately before or after, a regular work period. The time required for such testing by an employer shall be deemed work time for the purposes of compensation and benefits for employees.

b. An employer shall pay all actual costs for drug or alcohol testing of employees and prospective employees required by the employer.

c. An employer shall provide transportation or pay reasonable transportation costs to employees if drug or alcohol sample collection is conducted at a location other than the employee's normal work site.

7. TESTING PROCEDURES. All sample collection and testing for drugs or alcohol under this section shall be performed in accordance with the following conditions:

a. The collection of samples shall be performed under sanitary conditions and with regard for the privacy of the individual from whom the specimen is being obtained and in a manner reasonably calculated to preclude contamination or substitution of the specimen.

b. Sample collection for testing of current employees shall be performed so that the specimen is split into two components at the time of collection in the presence of the individual from whom the sample or specimen is collected. The second portion of the specimen or sample shall be of sufficient quantity to permit a second, independent confirmatory test as provided in paragraph "i". If the specimen is urine, the sample shall be split such that the primary sample contains at least thirty milliliters and the secondary sample contains at least fifteen milliliters. Both portions of the sample shall be forwarded to the laboratory conducting the initial confirmatory testing. In addition to any requirements for storage of the initial sample that may be imposed upon the laboratory as a condition for certification or approval, the laboratory shall store the second portion of any sample until receipt of a confirmed negative test result or for a period of at least forty-five calendar days following the completion of the initial confirmatory testing, if the first portion yielded a confirmed positive test result.

c. Sample collections shall be documented, and the procedure for documentation shall include the following:

(1) Samples shall be labeled so as to reasonably preclude the possibility of misidentification of the person tested in relation to the test result provided, and samples shall be handled and tracked in a manner such that control and accountability are maintained from initial collection to each stage in handling, testing, and storage, through final disposition.

(2) An employee or prospective employee shall be provided an opportunity to provide any information which may be considered relevant to the test, including identification of prescription or nonprescription drugs currently or recently used, or other relevant medical information. To assist an employee or prospective employee in providing the information described in this subparagraph, the employer shall provide an employee or prospective employee with a list of the drugs to be tested.

d. Sample collection, storage, and transportation to the place of testing shall be performed so as to reasonably preclude the possibility of sample contamination, adulteration, or misidentification.

e. All confirmatory drug testing shall be conducted at a laboratory certified by the United States department of health and human services' substance abuse and mental health services administration or approved under rules adopted by the Iowa department of public health.

f. Drug or alcohol testing shall include confirmation of any initial positive test results. For drug or alcohol testing, confirmation shall be by use of a different chemical process than was used in the initial screen for drugs or alcohol. The confirmatory drug or alcohol test shall be a chromatographic technique such as gas chromatography or mass spectrometry, or another comparably reliable analytical method. An employer may take adverse employment action, including refusal to hire a prospective employee, based on a confirmed positive drug or alcohol test.

g. A medical review officer shall, prior to the results being reported to an employer, review and interpret any confirmed positive test results, including both quantitative and qualitative test results, to ensure that the chain of custody is complete and sufficient on its face and that any information provided by the individual pursuant to paragraph "c", subparagraph (2), is considered.

h. In conducting drug or alcohol testing pursuant to this section, the laboratory, the medical review officer, and the employer shall ensure, to the extent feasible, that the testing only measure, and the records concerning the testing only show or make use of information regarding, alcohol or drugs in the body.

i. (1) If a confirmed positive drug or alcohol test for a current employee is reported to the employer by the medical review officer, the employer shall notify the employee in writing by certified mail, return receipt requested, of the results of the test, the employee's right to request and obtain a confirmatory test of the second sample collected pursuant to paragraph "b" at an approved laboratory of the employee's choice, and the fee payable by the employee to the employer for reimbursement of expenses concerning the test. The fee charged an employee shall be an amount that represents the costs associated with conducting the second confirmatory test, which shall be consistent with the employer's cost for conducting the initial confirmatory test on an employee's sample. If the employee, in person or by certified mail, return receipt requested, requests a second confirmatory test, identifies an approved laboratory to conduct the test, and pays the employer the fee for the test within seven days from the date the employer mails by certified mail, return receipt requested, the written notice to the employee of the employee's right to request a test, a second confirmatory test shall be conducted at the laboratory chosen by the employee. The results of the second confirmatory test shall be reported to the medical review officer who reviewed the initial confirmatory test results and the medical review officer shall review the results and issue a report to the employer on whether the results of the second confirmatory test confirmed the initial confirmatory test as to the presence of a specific drug or alcohol. If the results of the second test do not confirm the results of the initial confirmatory test, the employer shall reimburse the employee for the fee paid by the employee for the second test

and the initial confirmatory test shall not be considered a confirmed positive drug or alcohol test for purposes of taking disciplinary action pursuant to subsection 10.

(2) If a confirmed positive drug or alcohol test for a prospective employee is reported to the employer by the medical review officer, the employer shall notify the prospective employee in writing of the results of the test, of the name and address of the medical review officer who made the report, and of the prospective employee's right to request records under subsection 13.

j. A laboratory conducting testing under this section shall dispose of all samples for which a negative test result was reported to an employer within five working days after issuance of the negative test result report.

k. Except as necessary to conduct drug or alcohol testing pursuant to this section and to submit the report required by subsection 16, a laboratory or other medical facility shall only report to an employer or outside entity information relating to the results of a drug or alcohol test conducted pursuant to this section concerning the determination of whether the tested individual has engaged in conduct prohibited by the employer's written policy with regard to alcohol or drug use.

l. Notwithstanding the provisions of this subsection, an employer may rely and take action upon the results of any blood test for drugs or alcohol made on any employee involved in an accident at work if the test is administered by or at the direction of the person providing treatment or care to the employee without request or suggestion by the employer that a test be conducted, and the employer has lawfully obtained the results of the test. For purposes of this paragraph, an employer shall not be deemed to have requested or required a test in conjunction with the provision of medical treatment following a workplace accident by providing information concerning the circumstance of the accident.

8. DRUG OR ALCOHOL TESTING. Employers may conduct drug or alcohol testing as provided in this subsection:

a. Employers may conduct unannounced drug or alcohol testing of employees who are selected from any of the following pools of employees:

(1) The entire employee population at a particular work site of the employer except for employees who are not scheduled to be at work at the time the testing is conducted because of the status of the employees or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.

(2) The entire full-time active employee population at a particular work site except for employees who are not scheduled to be at work at the time the testing is to be conducted because of the status of the employee, or who have been excused from work pursuant to the employer's working policy.

(3) All employees at a particular work site who are in a pool of employees in a safety-sensitive position and who are scheduled to be at work at the time testing is conducted, other than employees who are not scheduled to be at work at the time the testing is to be conducted or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.

b. Employers may conduct drug or alcohol testing of employees during, and after completion of, drug or alcohol rehabilitation.

c. Employers may conduct reasonable suspicion drug or alcohol testing.

d. Employers may conduct drug or alcohol testing of prospective employees.

e. Employers may conduct drug or alcohol testing as required by federal law or regulation or by law enforcement.

f. Employers may conduct drug or alcohol testing in investigating accidents in the workplace in which the accident resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.

9. WRITTEN POLICY AND OTHER TESTING REQUIREMENTS.

a. Drug or alcohol testing or retesting by an employer shall be carried out within the terms of a written policy which has been provided to every employee subject to testing, and is available for review by employees and prospective employees.

b. The employer's written policy shall provide uniform requirements for what disciplinary or rehabilitative actions an employer shall take against an employee or prospective employee upon receipt of a confirmed positive drug or alcohol test result or upon the refusal of the employee or prospective employee to provide a testing sample. The policy shall provide that any action taken against an employee or prospective employee shall be based only on the results of the drug or alcohol test. The written policy shall also provide that if rehabilitation is required pursuant to paragraph "g", the employer shall not take adverse employment action against the employee so long as the employee complies with the requirements of rehabilitation and successfully completes rehabilitation.

c. Employers shall establish an awareness program to inform employees of the dangers of drug and alcohol use in the workplace and comply with the following requirements in order to conduct drug or alcohol testing under this section:

(1) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

(2) If an employer does not have an employee assistance program, the employer must maintain a resource file of employee assistance services providers, alcohol and other drug abuse programs certified by the Iowa department of public health, mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file. In addition, the employer shall post in conspicuous places a listing of multiple employee assistance providers in the area.

d. An employee or prospective employee whose drug or alcohol test results are confirmed as positive in accordance with this section shall not, by virtue of those results alone, be considered as a person with a disability for purposes of any state or local law or regulation.

e. If the written policy provides for alcohol testing, the employer shall establish in the written policy a standard for alcohol concentration which shall be deemed to violate the policy. The standard for alcohol concentration shall not be less than .04, expressed in terms of grams of alcohol per two hundred ten liters of breath, or its equivalent.

f. An employee of an employer who is designated by the employer as being in a safety-sensitive position shall be placed in only one pool of safety-sensitive employees subject to drug or alcohol testing pursuant to subsection 8, paragraph "a", subparagraph (3). An employer may have more than one pool of safety-sensitive employees subject to drug or alcohol testing pursuant to subsection 8, paragraph "a", subparagraph (3), but shall not include an employee in more than one safety-sensitive pool.

g. Upon receipt of a confirmed positive alcohol test which indicates an alcohol concentration greater than the concentration level established by the employer pursuant to this section but less than the concentration level in section 321J.2 for operating while under the influence of alcohol, and if the employer has at least fifty employees, and if the employee has been employed by the employer for at least twelve of the preceding eighteen months, and if rehabilitation is agreed upon by the employee, and if the employee has not previously violated the employer's substance abuse prevention policy pursuant to this section, the written policy shall provide for the rehabilitation of the employee pursuant to subsection 10, paragraph "a", subparagraph (1), and the apportionment of the costs of rehabilitation as provided by this paragraph.

(1) If the employer has an employee benefit plan, the costs of rehabilitation shall be apportioned as provided under the employee benefit plan.

(2) If no employee benefit plan exists and the employee has coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned as provided by the health care plan with any costs not covered by the plan apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than two thousand dollars toward the costs not covered by the employee's health care plan.

(3) If no employee benefit plan exists and the employee does not have coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than two thousand dollars towards the cost of rehabilitation under this subparagraph.

Rehabilitation required pursuant to this paragraph shall not preclude an employer from taking any adverse employment action against the employee during the rehabilitation based on the employee's failure to comply with any requirements of the rehabilitation, including any action by the employee to invalidate a test sample provided by the employee pursuant to the rehabilitation.

h. In order to conduct drug or alcohol testing under this section, an employer shall require supervisory personnel of the employer involved with drug or alcohol testing under this section to attend a minimum of two hours of initial training and to attend, on an annual basis thereafter, a minimum of one hour of subsequent training. The training shall include, but is not limited to, information concerning the recognition of evidence of employee alcohol and other drug abuse, the documentation and corroboration of employee alcohol and other drug abuse, and the referral of employees who abuse alcohol or other drugs to the employee assistance program or to the resource file of employee assistance services providers.

10. DISCIPLINARY PROCEDURES.

a. Upon receipt of a confirmed positive drug or alcohol test result which indicates a violation of the employer's written policy, or upon the refusal of an employee or prospective employee to provide a testing sample, an employer may use that test result or test refusal as a valid basis for disciplinary or rehabilitative actions pursuant to the requirements of the employer's written policy and the requirements of this section, which may include, among other actions, the following:

(1) A requirement that the employee enroll in an employer-provided or approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, participation in and successful completion of which may be a condition of continued employment, and the costs of which may or may not be covered by the employer's health plan or policies.

(2) Suspension of the employee, with or without pay, for a designated period of time.

(3) Termination of employment.

(4) Refusal to hire a prospective employee.

(5) Other adverse employment action in conformance with the employer's written policy and procedures, including any relevant collective bargaining agreement provisions.

b. Following a drug or alcohol test, but prior to receipt of the final results of the drug or alcohol test, an employer may suspend a current employee, with or without pay, pending the outcome of the test. An employee who has been suspended shall be reinstated by the employer, with back pay, and interest on such amount at eighteen percent per annum compounded annually, if applicable, if the result of the test is not a confirmed positive drug or alcohol test which indicates a violation of the employer's written policy.

11. EMPLOYER IMMUNITY. A cause of action shall not arise against an employer who has established a policy and initiated a testing program in accordance with the testing and policy safeguards provided for under this section, for any of the following:

a. Testing or taking action based on the results of a positive drug or alcohol test result,

indicating the presence of drugs or alcohol, in good faith, or on the refusal of an employee or prospective employee to submit to a drug or alcohol test.

b. Failure to test for drugs or alcohol, or failure to test for a specific drug or controlled substance.

c. Failure to test for, or if tested for, failure to detect, any specific drug or other controlled substance.

d. Termination or suspension of any substance abuse prevention or testing program or policy.

e. Any action taken related to a false negative drug or alcohol test result.

12. EMPLOYER LIABILITY — FALSE POSITIVE TEST RESULTS.

a. Except as otherwise provided in paragraph "b", a cause of action shall not arise against an employer who has established a program of drug or alcohol testing in accordance with this section, unless all of the following conditions exist:

(1) The employer's action was based on a false positive test result.

(2) The employer knew or clearly should have known that the test result was in error and ignored the correct test result because of reckless, malicious, or negligent disregard for the truth, or the willful intent to deceive or to be deceived.

b. A cause of action for defamation, libel, slander, or damage to reputation shall not arise against an employer establishing a program of drug or alcohol testing in accordance with this section unless all of the following apply:

(1) The employer discloses the test results to a person other than the employer, an authorized employee, agent, or representative of the employer, the tested employee or the tested applicant for employment, an authorized substance abuse treatment program or employee assistance program, or an authorized agent or representative of the tested employee or applicant.

(2) The test results disclosed incorrectly indicate the presence of alcohol or drugs.

(3) The employer negligently discloses the results.

c. In any cause of action based upon a false positive test result, all of the following conditions apply:

(1) The results of a drug or alcohol test conducted in compliance with this section are presumed to be valid.

(2) An employer shall not be liable for monetary damages if the employer's reliance on the false positive test result was reasonable and in good faith.

13. CONFIDENTIALITY OF RESULTS — EXCEPTION.

a. All communications received by an employer relevant to employee or prospective employee drug or alcohol test results, or otherwise received through the employer's drug or alcohol testing program, are confidential communications and shall not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except as otherwise provided or authorized by this section.

b. An employee, or a prospective employee, who is the subject of a drug or alcohol test conducted under this section pursuant to an employer's written policy and for whom a confirmed positive test result is reported shall, upon written request, have access to any records relating to the employee's drug or alcohol test, including records of the laboratory where the testing was conducted and any records relating to the results of any relevant certification or review by a medical review officer. However, a prospective employee shall be entitled to records under this paragraph only if the prospective employee requests the records within fifteen calendar days from the date the employer provided the prospective employee written notice of the results of a drug or alcohol test as provided in subsection 7, paragraph "i", subparagraph (2).

c. Except as provided by this section and as necessary to conduct drug or alcohol testing under this section and to file a report pursuant to subsection 16, a laboratory and a medical review officer conducting drug or alcohol testing under this section shall not use or disclose to any person any personally identifiable information regarding such testing, including the names of individuals tested, even if unaccompanied by the results of the test.

d. An employer may use and disclose information concerning the results of a drug or

alcohol test conducted pursuant to this section under any of the following circumstances:

(1) In an arbitration proceeding pursuant to a collective bargaining agreement, or an administrative agency proceeding or judicial proceeding under workers' compensation laws or unemployment compensation laws or under common or statutory laws where action taken by the employer based on the test is relevant or is challenged.

(2) To any federal agency or other unit of the federal government as required under federal law, regulation or order, or in accordance with compliance requirements of a federal government contract.

(3) To any agency of this state authorized to license individuals if the employee tested is licensed by that agency and the rules of that agency require such disclosure.

(4) To a union representing the employee if such disclosure would be required by federal labor laws.

(5) To a substance abuse evaluation or treatment facility or professional for the purpose of evaluation or treatment of the employee.

However, positive test results from an employer drug or alcohol testing program shall not be used as evidence in any criminal action against the employee or prospective employee tested.

14. CIVIL PENALTIES — JURISDICTION.

a. Any laboratory or medical review officer which discloses information in violation of the provisions of subsection 7, paragraph "h" or "k", or any employer who, through the selection process described in subsection 1, paragraph "k", improperly targets or exempts employees subject to unannounced drug or alcohol testing, shall be subject to a civil penalty of one thousand dollars for each violation. The attorney general or the attorney general's designee may maintain a civil action to enforce this subsection. Any civil penalty recovered shall be deposited in the general fund of the state.

b. A laboratory or medical review officer involved in the conducting of a drug or alcohol test pursuant to this section shall be deemed to have the necessary contact with this state for the purpose of subjecting the laboratory or medical review officer to the jurisdiction of the courts of this state.

15. CIVIL REMEDIES. This section may be enforced through a civil action.

a. A person who violates this section or who aids in the violation of this section, is liable to an aggrieved employee or prospective employee for affirmative relief including reinstatement or hiring, with or without back pay, or any other equitable relief as the court deems appropriate including attorney fees and court costs.

b. When a person commits, is committing, or proposes to commit, an act in violation of this section, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or prospective employee, the county attorney, or the attorney general.

In an action brought under this subsection alleging that an employer has required or requested a drug or alcohol test in violation of this section, the employer has the burden of proving that the requirements of this section were met.

16. REPORTS. A laboratory doing business for an employer who conducts drug or alcohol tests pursuant to this section shall file an annual report with the Iowa department of public health by March 1 of each year concerning the number of drug or alcohol tests conducted on employees who work in this state pursuant to this section, the number of positive and negative results of the tests, during the previous calendar year. In addition, the laboratory shall include in its annual report the specific basis for each test as authorized in subsection 8, the type of drug or drugs which were found in the positive drug tests, and all significant available demographic factors relating to the positive test pool.

Sec. 2. EFFECTIVE DATE. This Act takes effect on the thirtieth day following enactment.

Approved March 17, 1998

CHAPTER 1012

REGULATION OF MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

H.F. 2189

AN ACT relating to the exemption of certain multiple employer welfare arrangements from regulation by the insurance division and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. 1994 Iowa Acts, chapter 1038, section 3, as amended by 1995 Iowa Acts, chapter 33, section 1, 1996 Iowa Acts, chapter 1024, section 1, and 1997 Iowa Acts, chapter 67, section 2, is amended to read as follows:

SEC. 3. REPEAL. This Act is repealed effective July 1, ~~1998~~ 2001.

Sec. 2. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved March 17, 1998

CHAPTER 1013

PUBLIC UTILITIES — COST REVIEWS

H.F. 2331

AN ACT relating to utility cost reviews associated with a rate-regulated public utility's procurement of natural gas or fuel for use in generating electricity.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 476.6, subsections 15 and 16, Code 1997, are amended to read as follows:

15. NATURAL GAS SUPPLY AND COST REVIEW. The board shall periodically~~, but not less than annually,~~ conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's natural gas procurement and contracting practices. The natural gas supply and cost review shall be conducted as a contested case pursuant to chapter 17A.

Under procedures established by the board, each rate-regulated public utility furnishing gas shall periodically file a complete natural gas procurement plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future twelve-month period specified by the board. ~~The plan shall describe all major contracts and gas supply arrangements entered into by the utility for obtaining gas during the specified twelve-month period. The description of the major contracts and arrangements shall include the price of gas, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the board. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in the plan, an explanation of the legal and regulatory actions taken by the utility to minimize the cost of gas purchased by the utility, and such other information as the board may require.~~ The utilities shall file information as the board deems appropriate.

During the natural gas supply and cost review, the board shall evaluate the reasonableness and prudence of the gas procurement plan. ~~In evaluating the gas procurement plan, the~~

~~board shall consider the volume, cost, and reliability of the major alternative gas supplies available to the utility; the cost of alternative fuels available to the utility's customers; the availability of gas in storage; the appropriate legal and regulatory actions which the utility could take to minimize the cost of purchased gas; the gas procurement practices of the utility; and other relevant factors.~~ If a utility is not taking all reasonable actions to minimize its purchase gas costs, consistent with assuring an adequate long-term supply of natural gas, the board shall not allow the utility to recover from its customers purchase gas costs in excess of those costs that would be incurred under reasonable and prudent policies and practices.

16. ~~ANNUAL ELECTRIC~~ ELECTRIC ENERGY SUPPLY AND COST REVIEW. The board shall periodically conduct ~~an annual~~ a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's procurement and contracting practices related to the acquisition of fuel for use in generating electricity. The evaluation may review the reasonableness and prudence of actions taken by a rate-regulated public utility to comply with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549. The proceeding shall be conducted as a contested case pursuant to chapter 17A. Under procedures established by the board, the utility shall file information as the board deems appropriate. If a utility is not taking all reasonable actions to minimize its fuel and allowance transaction costs, the board shall not allow the utility to recover from its customers fuel and allowance transaction costs in excess of those costs that would be or would have been incurred under reasonable and prudent policies and practices.

Approved March 17, 1998

CHAPTER 1014

FOREIGN INVESTMENTS BY INSURANCE COMPANIES

S.F. 2279

AN ACT relating to authorized investments by insurance companies in obligations of foreign governments and foreign corporations.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 511.8, subsection 19, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Bonds or other evidences of indebtedness, not to include currency, issued, assumed, or guaranteed by a foreign government other than Canada, or by a corporation incorporated under the laws of a foreign government other than Canada. ~~Any such~~ Such governmental obligations must be valid, legally authorized and issued, and on the date of acquisition have predominantly investment qualities and characteristics as provided by rule. ~~Any such~~ Such corporate obligations must meet the qualifications established in subsection 5 ~~of this section~~ for bonds and other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States or Canada. Foreign investments authorized by this subsection are not eligible in excess of ~~two~~ ten percent of the legal reserve of the life insurance company or association. Investments in obligations of a foreign government other than Canada are not eligible in excess of two percent of the legal reserve in the securities of foreign governments of any one foreign nation. Investments in a corporation incorporated under the laws of a foreign government other than Canada are not

eligible in excess of two percent of the legal reserve in the securities of any one foreign corporation.

Sec. 2. Section 515.35, subsection 4, paragraph i, Code Supplement 1997, is amended to read as follows:

i. FOREIGN INVESTMENTS. Obligations of and investments in foreign countries, as follows:

(1) A company may acquire and hold other investments in foreign countries that are required to be held as a condition of doing business in those countries, so long as such investments are of substantially the same types as those eligible for investment under this section.

(2) A company ~~may~~ shall not invest ~~not~~ more than two percent of its admitted assets ~~in the obligations of foreign governments, corporations, or business trusts, or~~ in the stocks or stock equivalents of foreign corporations or business trusts, other than the stocks or stock equivalents of foreign corporations or business trusts incorporated or formed under the laws of Canada, and then only if the ~~obligations,~~ stocks~~,~~ or stock equivalents of such foreign corporations or business trusts are regularly traded on the New York, London, Paris, Zurich, Hong Kong, Toronto, or Tokyo stock exchange, or a similar exchange approved by the commissioner by rule or order.

(3) A company may invest in the obligations of a foreign government other than Canada or of a corporation incorporated under the laws of a foreign government other than Canada. Any such governmental obligation must be valid, legally authorized and issued, and on the date of acquisition have predominantly investment qualities and characteristics as provided by rule. Any such corporate obligation must on the date of acquisition have investment qualities and characteristics, and must not have speculative elements which are predominant, as provided by rule. A company shall not invest more than two percent of its admitted assets in the obligations of a foreign government other than Canada. A company shall not invest more than two percent of its admitted assets in the obligations of a corporation incorporated under the laws of a foreign government other than a corporation incorporated under the laws of Canada.

(4) A company shall not invest more than ten percent of its admitted assets in foreign investments pursuant to this paragraph.

Approved March 19, 1998

CHAPTER 1015

ANATOMICAL GIFTS — HOSPITAL REIMBURSEMENT GRANTS — ANNUAL DONATION AND COMPLIANCE REPORT

S.F. 2285

AN ACT relating to anatomical gifts by modifying certain qualification requirements for hospital reimbursement grants and requiring submission of an annual donation and compliance report.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 142C.15, subsection 4, paragraphs b and c, Code 1997, are amended to read as follows:

b. Not more than thirty percent of the moneys in the fund annually may be expended in

the form of grants to hospitals for reimbursement for costs directly related to the development of in-hospital anatomical gift public awareness projects, anatomical gift referral protocols, and associated administrative expenses. As a condition of receiving a grant, a hospital shall demonstrate, through documentation, that the hospital, during the previous calendar year, properly complied with in-hospital anatomical gift request protocols for ~~at least eighty percent of~~ all deaths occurring in the hospital at a percentage rate which places the hospital in the upper fifty percent of all protocol compliance rates for hospitals submitting documentation for cost reimbursement under this section.

c. Not more than fifty percent of the moneys in the fund annually may be expended in the form of grants to hospitals which perform heart, lung, liver, pancreas, or kidney transplants. As a condition of receiving a grant, a hospital shall demonstrate, through documentation, that the hospital, during the previous calendar year, properly complied with in-hospital anatomical gift request protocols for ~~at least eighty percent of~~ all deaths occurring in the hospital at a percentage rate which places the hospital in the upper fifty percent of all protocol compliance rates for hospitals submitting documentation for cost reimbursement under this section. The hospital shall submit an application on behalf of a patient requiring a transplant in the amount of the costs associated with the following, if funds are not available from any other third-party payor:

(1) The costs of the organ transplantation procedure.

(2) The costs of post-transplantation drug or other therapy.

(3) Other transplantation costs including but not limited to food, lodging, and transportation.

Sec. 2. NEW SECTION. 142C.17 ANNUAL DONATION AND COMPLIANCE REPORT.

The Iowa department of public health, in conjunction with any statewide organ procurement organization in Iowa, shall prepare and submit a report to the general assembly on or before January 1 each year regarding organ donation rates and voluntary compliance efforts with hospital organ and tissue donation protocols by physicians, hospitals, and other health systems organizations. The report shall contain the following:

1. An evaluation of organ procurement efforts in the state, including statistics regarding organ and tissue donation activity as of September 30 of the preceding year.

2. Efforts by any statewide organ procurement organization in Iowa, and related parties, to increase organ and tissue donation and consent rates.

3. Voluntary compliance efforts with hospital organ and tissue donation protocols by physicians, hospitals, and health systems organizations and the results of those efforts.

4. Annual contribution levels to the anatomical gift public awareness and transplantation fund created in section 142C.15, and any distributions made from the fund.

5. Efforts and ideas for increasing public awareness of the option of organ and tissue donation.

6. Additional information deemed relevant by the department in assessing the status and progress of organ and tissue donation efforts in the state.

Approved March 19, 1998

CHAPTER 1016

COMPENSATION FOR INDIGENT DEFENSE

S.F. 2090

AN ACT relating to compensation for the legal defense of indigent persons in prison disciplinary postconviction cases and providing an effective date and for retroactive applicability.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 822.5, subsection 2, Code 1997, is amended to read as follows:

2. If an applicant confined in a state institution seeks relief under section 822.2, subsection 6, and the court finds in favor of the applicant, or when relief is denied and costs and expenses referred to in subsection 1 cannot be collected from the applicant, these costs and expenses ~~initially~~ shall be paid by the ~~county in which the application was filed~~ state public defender from the indigent defense fund in accordance with the procedures applicable in section 815.7. ~~The facts of payment and the proceedings on which it is based, with a statement of the amount of costs and expenses incurred, shall be submitted to the county in a timely manner with approval in writing by the presiding or district judge appended to the statement or endorsed on it, and shall be certified by the clerk of the district court under seal to the state executive council. The executive council shall review the proceedings and authorize reimbursement for the costs and expenses or for that part which the executive council finds justified, and shall notify the director of revenue and finance to draw a warrant to the county treasurer on the state general fund for the amount authorized.~~

Sec. 2. REIMBURSEMENT TO COUNTIES. Counties which paid claims to attorneys pursuant to court order under section 822.5, subsection 2, prior to the effective date of this Act, but which were not fully reimbursed by the executive council, may file claims with the state appeal board pursuant to chapter 25 for any difference between the amount paid pursuant to court order and the amount reimbursed by the executive council. The state appeal board shall reimburse the counties for any amount paid pursuant to court order and not fully reimbursed by the executive council.

Sec. 3. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY. This Act, being deemed of immediate importance, takes effect upon enactment and applies retroactively to any claims for costs and expenses which are or were approved by a presiding or district judge on or before the effective date of this Act.

Approved March 31, 1998

CHAPTER 1017

STATE RECORDS MANAGEMENT

S.F. 2183

AN ACT relating to a transfer of the records management duties of the department of general services to the department of cultural affairs and making conforming changes.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 7E.5, subsection 1, paragraphs c and m, Code 1997, are amended to read as follows:

c. The department of general services, created in section 18.2, which has primary responsibility for property ~~and records~~ management, risk management, purchasing, printing, and data processing.

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

Sec. 2. Section 303.2, subsection 2, paragraph d, Code 1997, is amended to read as follows:

d. Administer the state archives ~~of the state as defined in section~~ and records program in accordance with sections 303.12 through 303.15, and 304.6.

Sec. 3. Section 304.3, subsections 2 and 8, Code 1997, are amended to read as follows:

2. The director of the department of cultural affairs, who shall act as secretary of the commission.

8. The director of the department of general services ~~who shall act as secretary of the commission~~.

Sec. 4. Section 304.6, Code 1997, is amended to read as follows:

304.6 ADMINISTRATION — POWERS AND DUTIES.

The primary agency responsible for providing administrative personnel and services for the commission is the department of ~~general services~~ cultural affairs. The purchase, rental or lease of equipment and supplies for record storage or preservation by agencies is subject to the approval of the commission except as otherwise provided by law. The commission shall review all record storage systems and installations of agencies and recommend any changes necessary to assure maximum efficiency and economic use of equipment and procedures, including but not limited to, the type of equipment, methods and procedures for filing and retrieval of records, and the location of equipment. The commission has the authority to examine all forms, records and other papers in the possession, constructive possession, or control of state agencies for the purpose of carrying out the goals of this chapter. The commission shall annually review the effectiveness of the forms management program and the forms management practices of individual state agencies, and maintain records that indicate dollar savings and the number of forms eliminated, simplified, or standardized through forms management. The commission shall review forms and may reject forms that are not neutral in regard to gender, race, religion, or national origin or that request information on gender, race, religion, or national origin when there is an inadequate state interest in obtaining that information for the purpose of that form. The commission shall file an annual report on the forms management program with the general assembly and the governor. The commission shall perform any act necessary and proper to carry out its duties.

Sec. 5. Section 304.10, Code 1997, is amended to read as follows:

304.10 ~~ADMINISTRATOR~~ STATE ARCHIVIST OF THE HISTORICAL DIVISION OF THE DEPARTMENT OF CULTURAL AFFAIRS — DUTIES TO COMMISSION.

All lists and schedules submitted to the commission shall be referred to the ~~administrator~~ state archivist of the historical division of the department of cultural affairs, who shall determine whether the records proposed for disposal have value to other agencies of the state or have research or historical value. The ~~administrator~~ state archivist shall submit the lists and schedules with recommendations in writing to the commission and the final disposition of the records shall be according to the orders of the commission.

Approved March 31, 1998

CHAPTER 1018

SOLID WASTE TONNAGE FEES — EXEMPTIONS FOR CERTAIN DISPOSAL FACILITIES

S.F. 2184

AN ACT relating to the disposal of cement kiln dust at tonnage fee exempt solid waste disposal facilities.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 455B.310, subsection 3, Code 1997, is amended to read as follows:

3. Solid waste disposal facilities with special provisions which limit the site to disposal of construction and demolition waste, landscape waste, coal combustion waste, cement kiln dust, foundry sand, and solid waste materials approved by the department for lining or capping, or for construction berms, dikes, or roads in a sanitary disposal project or sanitary landfill are exempt from the tonnage fees imposed under this section. However, solid waste disposal facilities under this subsection are subject to the fees imposed pursuant to section 455B.105, subsection 11, paragraph "a". Notwithstanding the provisions of section 455B.105, subsection 11, paragraph "b", the fees collected pursuant to this subsection shall be used by the department for the regulation of these solid waste disposal facilities.

Approved March 31, 1998

CHAPTER 1019

JUVENILE JUSTICE — RUNAWAYS

S.F. 2220

AN ACT relating to the definition of a chronic runaway.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 232.2, subsection 6A, Code Supplement 1997, is amended to read as follows:

6A. "Chronic runaway" means a child who is reported to law enforcement as a runaway more than once in any ~~month~~ thirty-day period or three or more times in any year.

Approved March 31, 1998

CHAPTER 1020

COUNTIES — ISSUANCE OF MARRIAGE LICENSES, BIRTH REGISTRATION FEES

S.F. 2367

AN ACT relating to county vital statistics by providing for the issuance of marriage licenses and eliminating the fee for county birth registrations.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 331.605, subsection 5, paragraph b, Code 1997, is amended by striking the paragraph.

Sec. 2. Section 331.605, subsection 6, Code 1997, is amended to read as follows:

6. For filing an application for the license to marry, thirty dollars. For issuing an application for an order of the district court authorizing the ~~issuance~~ validation of a license to marry before the expiration of three days from the date of ~~filing the application for~~ issuance of the license, five dollars. The district court shall authorize the ~~issuance~~ early validation of a marriage license without the payment of any fees imposed in this subsection upon showing that the applicant is unable to pay the fees.

Sec. 3. Section 595.4, unnumbered paragraphs 2 and 3, Code Supplement 1997, are amended to read as follows:

~~After expiration of three days from the date of filing the application by the parties~~ Upon receipt of a verified application, the county registrar ~~shall~~ may issue the license which shall not become valid until the expiration of three days after the date of issuance of the license. If the license has not been issued within six months from the date of the application, the application is void.

A license to marry may be ~~issued~~ validated prior to the expiration of three days from the date of ~~filing the application for~~ issuance of the license in cases of emergency or extraordinary circumstances. An order authorizing the ~~issuance~~ validation of a license may be granted by a judge of the district court under conditions of emergency or extraordinary circumstances upon application of the parties filed with the county registrar. No order may be granted unless the parties have filed an application for a marriage license in a county within the judicial district. An application for an order shall be made on forms furnished by the county registrar at the same time the application for the license to marry is made. After examining the application for the marriage license and issuing the license, the county registrar shall refer the parties to a judge of the district court for action on the application for an order authorizing the ~~issuance~~ validation of a marriage license prior to expiration of three days from the date of ~~filing the application for~~ issuance of the license. The judge shall, if satisfied as to the existence of an emergency or extraordinary circumstances, grant an order authorizing the ~~issuance~~ validation of a license to marry prior to the expiration of three days from the date of ~~filing the application for~~ issuance of the license to marry. The county registrar shall ~~issue~~ validate a license to marry upon presentation by the parties of the order authorizing a license to be ~~issued~~ validated. A fee of five dollars shall be paid to the county registrar at the time the application for the order is made, which fee is in addition to the fee prescribed by law for the issuance of a marriage license.

Approved March 31, 1998

CHAPTER 1021

STALKING AND HARASSMENT — CRIMINAL HISTORY DATA AND NO-CONTACT ORDERS

S.F. 2373

AN ACT relating to certain crimes against persons, by permitting the retention as criminal history data of acquittals, dismissals, or adjudications based on mental condition if the charge involved injury to another, by providing for the collection and dissemination of information on the offense of stalking, by providing for the application of enhanced stalking penalties for persons who are the subject of certain restraining or protective orders and providing for the issuance of no-contact orders against persons who are arrested for the crimes of harassment or stalking and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 692.2, subsection 1, paragraph b, Code 1997, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (6) Records of acquittals or dismissals by reason of insanity and records of adjudications of mental incompetence to stand trial in cases in which physical or mental injury or an attempt to commit physical or mental injury to another was alleged shall not be disseminated to persons or agencies other than criminal or juvenile justice agencies or persons employed in or by those agencies.

Sec. 2. Section 692.17, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Criminal history data in a computer data storage system shall not include arrest or disposition data or custody or adjudication data after the person has been acquitted or the charges dismissed, except that records of acquittals or dismissals by reason of insanity and records of adjudications of mental incompetence to stand trial in cases in which physical or mental injury or an attempt to commit physical or mental injury to another was alleged may be included. Criminal history data shall not include custody or adjudication data after the juvenile has reached twenty-one years of age, unless the juvenile was convicted of or pled guilty to a serious or aggravated misdemeanor or felony between age eighteen and age twenty-one.

Sec. 3. NEW SECTION. 692.22 STALKING INFORMATION.

Criminal or juvenile justice agencies, as defined in section 692.1, shall collect and maintain information on incidents involving stalking, as defined in section 708.11, and shall provide the information to the department of public safety in the manner prescribed by the department of public safety.

The department of public safety may compile statistics and issue reports on stalking in Iowa, provided individual identifying details of the stalking are deleted. The statistics and reports may include nonidentifying information on the personal characteristics of perpetrators and victims. The department of public safety may request the cooperation of the department of justice in compiling the statistics and issuing the reports. The department of public safety may provide nonidentifying information on individual incidents of stalking to persons conducting bona fide research, including but not limited to personnel of the department of justice.

Sec. 4. Section 708.11, subsection 3, paragraph b, subparagraph (1), Code 1997, is amended to read as follows:

(1) The person commits stalking ~~in violation of~~ while subject to restrictions contained in a criminal or civil protective order or injunction, or any other court order which prohibits contact between the person and the victim, or while subject to restrictions contained in a criminal or civil protective order or injunction or other court order which prohibits contact

between the person and another person against whom the person has committed a public offense.

Sec. 5. NEW SECTION. 910A.11A HARASSMENT AND NO-CONTACT.

1. When a person arrested for harassment in violation of section 708.7 or stalking in violation of section 708.11, is brought before a magistrate for initial appearance under section 804.21, 804.22, or 804.24, and the magistrate finds probable cause to believe that a violation of section 708.7 or 708.11 has occurred and that the presence of or contact with the defendant poses a threat to the safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, the magistrate shall enter an order which shall require the defendant to have no contact with the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, and to refrain from harassing the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, in addition to any other conditions of release determined and imposed by the magistrate under section 811.2. A no-contact order requiring the defendant to have no contact with the alleged victim's children shall prevail over any existing order which may be in conflict with the no-contact order.

The court order shall contain the court's directives restricting the defendant from having contact with the victim, persons residing with the victim, or the victim's immediate family. The order shall state whether a person is to be taken into custody by a peace officer for a violation of the terms stated in the order.

2. The clerk of the district court or other person designated by the court shall provide a copy of this order to the victim pursuant to this chapter. The order has force and effect until it is modified or terminated by subsequent court action in a contempt proceeding or the criminal or juvenile court action and is reviewable in the manner prescribed in section 811.2. Upon final disposition of the criminal or juvenile court action, the court shall make a determination whether the no-contact order should be modified or terminated. If a defendant is convicted for, receives a deferred judgment for, or pleads guilty to a violation of section 708.7 or 708.11, the court shall modify the no-contact order issued by the magistrate to provide that the no-contact order shall continue in effect for a period of five years from the date that the judgment is entered or the deferred judgment is granted, regardless of whether the defendant is placed on probation. Upon the filing of an affidavit by the victim which states that the defendant continues to pose a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family within ninety days prior to the expiration of the modified no-contact order, the court shall modify and extend the no-contact order for an additional period of five years, unless the court finds that the defendant no longer poses a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family. The number of modifications extending the no-contact order permitted by this subsection is not limited.

The clerk of the district court shall also provide notice and copies of the no-contact order to the applicable law enforcement agencies and the twenty-four hour dispatcher for the law enforcement agencies, in the same manner as provided for protective orders under section 236.5. The clerk shall provide notice and copies of modifications or vacations of these orders in the same manner.

3. If a peace officer has probable cause to believe that a person has violated a no-contact order issued under this section, the peace officer shall take the person into custody and shall take the person without unnecessary delay before the nearest or most accessible magistrate in the judicial district in which the person was taken into custody.

4. Violation of a no-contact order issued under this section, including modified no-contact orders, is punishable by summary contempt proceedings. A hearing in a contempt proceeding brought pursuant to this section shall be held not less than five and not more than fifteen days after the issuance of a rule to show cause, as set by the court. If held in contempt for violation of a no-contact order or a modified no-contact order, the defendant shall be confined in the county jail for a minimum of seven days. A jail sentence imposed pursuant to

this paragraph shall be served on consecutive days. No portion of the mandatory minimum term of confinement imposed by this section shall be deferred or suspended. A deferred judgment, deferred sentence, or suspended sentence shall not be entered for violation of a no-contact order or a modified no-contact order, and the court shall not impose a fine in lieu of the minimum sentence, although a fine may be imposed in addition to the minimum sentence.

5. This section shall not be construed to limit a pretrial release order issued pursuant to chapter 811.

Approved March 31, 1998

CHAPTER 1022

PERSONNEL FILES — FEES FOR EMPLOYEE COPIES

H.F. 58

AN ACT relating to fees charged by an employer for copies of items in an employee's personnel file.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 91B.1, subsection 3, Code 1997, is amended to read as follows:

3. An employer may charge a reasonable fee for each page of a copy made by the employer for an employee of an item in the employee's personnel file~~, except that the total amount charged for all copies made cannot exceed five dollars~~. For purposes of this subsection, "reasonable fee" means an amount equivalent to an amount charged per page for copies made by a commercial copying business.

Approved March 31, 1998

CHAPTER 1023

STATE FLAG DAY

H.F. 2146

AN ACT establishing Iowa State Flag Day.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 1C.11 IOWA STATE FLAG DAY.

The governor of this state is hereby requested and authorized to issue annually a proclamation designating the twenty-ninth day of March as "Iowa State Flag Day" and to urge that schools, civic organizations, governmental departments, and all citizens and groups display the Iowa state flag on that day and to reflect on and consider the heritage of the state flag.

Approved March 31, 1998

CHAPTER 1024

PAYMENT OF COUNTY MEDICAL EXAMINERS' FEES AND EXPENSES

H.F. 2246

AN ACT relating to the collection and payment of fees and expenses of county medical examiners.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 331.802, subsection 2, Code 1997, is amended to read as follows:

2. If a person's death affects the public interest, the county medical examiner shall conduct a preliminary investigation of the cause and manner of death, prepare a written report of the findings, promptly submit the full report to the state medical examiner on forms prescribed for that purpose, and submit a copy of the report to the county attorney. For each preliminary investigation and the preparation and submission of the required reports, the county medical examiner shall receive from the county of appointment a fee determined by the board plus the examiner's actual expenses. The fee and expenses paid by the county of appointment shall be ~~paid~~ reimbursed to the county of appointment by the county of the person's residence. However, if the person's death is caused by a defendant for whom a judgment of conviction and sentence is rendered under section 707.2, 707.3, 707.4, 707.5, or 707.6A, the county of the person's residence may recover from the defendant the fee and expenses. The fee and expenses of the county medical examiner who performs an autopsy or conducts an investigation of a person who dies after being brought into this state for emergency medical treatment by or at the direction of an out-of-state law enforcement officer or public authority shall be paid by the state. A claim for payment shall be filed with the Iowa department of public health.

Approved March 31, 1998

CHAPTER 1025

DRAINAGE DISTRICT IMPROVEMENTS IN PROTECTED WETLANDS

H.F. 2317

AN ACT relating to drainage districts, by providing for the maintenance, repair, or replacement of improvements within drainage districts.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 456B.13, subsection 3, Code 1997, is amended to read as follows:

3. This section does not ~~prevent a~~ prohibit any of the following:

a. A landowner ~~from~~ utilizing the bed of a protected wetland for pasture or cropland if there is no construction of dikes, ditches, tile lines, or buildings and the agricultural use does not result in drainage.

b. A person maintaining, repairing, or replacing an improvement to a drainage district as provided in chapter 468, as long as the improvement continues to serve the drainage district and the functions of the improvement are not expanded beyond the scope of functions as designed prior to the maintenance, repair, or replacement.

Approved March 31, 1998

CHAPTER 1026

STATUTORY ELEMENTS OF ASSAULT

H.F. 2324

AN ACT relating to the statutory elements of certain forms of assault.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 708.2, subsection 2, Code 1997, is amended to read as follows:

2. A person who commits an assault, as defined in section 708.1, ~~without the intent to inflict a serious injury upon another,~~ and who causes bodily injury or ~~disabling~~ mental illness, is guilty of a serious misdemeanor.

Sec. 2. Section 708.3A, subsection 3, Code 1997, is amended to read as follows:

3. A person who commits an assault, as defined in section 708.1, against a peace officer, health care provider, or fire fighter, whether paid or volunteer, who knows that the person against whom the assault is committed is a peace officer, health care provider, or fire fighter, and who causes bodily injury or ~~disabling~~ mental illness, is guilty of an aggravated misdemeanor.

Approved March 31, 1998

CHAPTER 1027

VOLUNTEER HEALTH CARE PROVIDER PROGRAM — INCLUSION OF DENTAL AND CERTAIN MEDICAL SERVICES

H.F. 2340

AN ACT relating to the inclusion of dentists and certain other medical specialists in the volunteer health care provider program.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 135.24, subsection 1, Code 1997, is amended to read as follows:

1. The director shall establish within the department a program to provide to eligible hospitals, clinics, or other health care facilities, health care referral programs, or charitable organizations, free medical <u>and dental</u> services given on a voluntary basis by health care providers. A participating health care provider shall register with the department and obtain from the department a list of eligible, participating hospitals, clinics, or other health care facilities, health care referral programs, or charitable organizations.

Sec. 2. Section 135.24, subsection 2, paragraphs a and b, Code 1997, are amended to read as follows:

a. Procedures for registration of health care providers deemed qualified by the board of medical examiners, the board of physician assistant examiners, <u>the board of dental examiners,</u> and the board of nursing.

b. Criteria for and identification of hospitals, clinics, or other health care facilities, health care referral programs, or charitable organizations, eligible to participate in the provision of free medical <u>or dental</u> services through the volunteer health care provider program. A health

care facility, a health care referral program, a charitable organization, or a health care provider participating in the program shall not bill or charge a patient for any health care provider service provided under the volunteer health care provider program.

Sec. 3. Section 135.24, subsection 2, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. Identification of the medical services to be provided under the program. The medical services provided shall include obstetrical and gynecological medical services.

Sec. 4. Section 135.24, subsection 3, paragraph b, Code 1997, is amended to read as follows:

b. Provided medical or dental services through a hospital, clinic, or other health care facility, health care referral program, or charitable organization listed as eligible and participating by the department pursuant to subsection 1.

Sec. 5. Section 135.24, subsection 4, Code 1997, is amended to read as follows:

4. For the purposes of this section, "charitable organization" means a charitable organization within the meaning of section 501(c)(3) of the Internal Revenue Code which has as its primary purpose the sponsorship or support of programs designed to improve the quality, awareness, and availability of medical or dental services to children and to serve as a funding mechanism for provision of medical or dental services, including but not limited to immunizations, to children in this state.

Sec. 6. Section 135.24, subsection 5, Code 1997, is amended to read as follows:

5. For the purposes of this section, "health care provider" means a physician licensed under chapter 148, 150, or 150A, a physician assistant licensed and practicing under a supervising physician pursuant to chapter 148C, a licensed practical nurse, ~~or~~ a registered nurse, or a dentist licensed to practice under chapter 153.

Approved March 31, 1998

CHAPTER 1028

MOTOR VEHICLES EXEMPT FROM REGISTRATION FEES — DISTINGUISHING REGISTRATION PLATES EXEMPTION

H.F. 2353

AN ACT relating to exemptions from distinguishing registration plates for motor vehicles.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321.19, subsection 1, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

The department shall furnish, on application, free of charge, distinguishing plates for vehicles thus exempted, which plates except plates on Iowa highway safety patrol vehicles shall bear the word "official" and the department shall keep a separate record. Registration plates issued for Iowa highway safety patrol vehicles, except unmarked patrol vehicles, shall bear two red stars on a yellow background, one before and one following the registration number on the plate, which registration number shall be the officer's badge number. Registration plates issued for a county sheriff's patrol vehicles shall display one seven-pointed

gold star followed by the letter "S" and the call number of the vehicle. However, the director of general services or the director of transportation may order the issuance of regular registration plates for any exempted vehicle used by peace officers in the enforcement of the law, persons enforcing chapter 124 and other laws relating to controlled substances, persons in the department of justice, the alcoholic beverages division of the department of commerce, the department of inspections and appeals, and the department of revenue and finance, who are regularly assigned to conduct investigations which cannot reasonably be conducted with a vehicle displaying "official" state registration plates, ~~and~~ persons in the lottery division of the department of revenue and finance whose regularly assigned duties relating to security or the carrying of lottery tickets cannot reasonably be conducted with a vehicle displaying "official" registration plates, and persons in the department of economic development who are regularly assigned duties relating to existing industry expansion or business attraction. For purposes of sale of exempted vehicles, the exempted governmental body, upon the sale of the exempted vehicle, may issue for in-transit purposes a pasteboard card bearing the words "Vehicle in Transit", the name of the official body from which the vehicle was purchased, together with the date of the purchase plainly marked in at least one-inch letters, and other information required by the department. The in-transit card is valid for use only within forty-eight hours after the purchase date as indicated on the bill of sale which shall be carried by the driver.

Approved March 31, 1998

CHAPTER 1029

INCOMPETENCY OF MOTOR VEHICLE OPERATORS — OPTOMETRISTS' REPORTS

H.F. 2412

AN ACT relating to optometrists' reports to the department of transportation concerning a person's ability to operate a motor vehicle.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321.186, unnumbered paragraph 4, Code 1997, is amended to read as follows:

A physician licensed under chapter 148, 150, or 150A, or an optometrist licensed under chapter 154, may report to the department the identity of a person who has been diagnosed as having a physical or mental condition which would render the person physically or mentally incompetent to operate a motor vehicle in a safe manner. The physician or optometrist shall make reasonable efforts to notify the person who is the subject of the report, in writing. The written notification shall state the nature of the disclosure and the reason for the disclosure. A physician or optometrist making a report under this section shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report. A physician or optometrist has no duty to make a report or to warn third parties with regard to any knowledge concerning a person's mental or physical competency to operate a motor vehicle in a safe manner. Any report received by the department from a physician or optometrist under this section shall be kept confidential. Information regulated by chapter 141 shall be subject to the provisions of sections 141.23 and 141.24.

Approved March 31, 1998

CHAPTER 1030

CORN PROMOTION BOARD AND FUND — STATE ASSESSMENT ON CORN

S.F. 2119

AN ACT relating to the corn promotion board, by increasing the ceiling on the state assessment of corn subject to a special referendum and authorizing the receipt of rents, royalties, and license fees by the board.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 185C.21, subsection 2, Code 1997, is amended to read as follows:

2. Upon request of the board, the secretary shall call a special referendum for producers to vote on whether to authorize an increase in the state assessment above one-quarter of one cent per bushel, notwithstanding subsection 1. The special referendum shall be conducted as provided in this chapter for referendum elections. However, the special referendum shall not affect the existence or length of the promotional order in effect. If a majority of the producers voting in the special referendum approve the increase, the board may increase the assessment to the amount approved in the special referendum. However, a state assessment shall not exceed ~~one-half of~~ one cent per bushel of corn marketed in this state.

Sec. 2. Section 185C.26, Code 1997, is amended to read as follows:

185C.26 DEPOSIT OF MONEYS.

State assessments collected by the board from a sale of corn shall be deposited in the office of the treasurer of state in a special fund known as the corn promotion fund. The fund may include any gifts, rents, royalties, license fees, or a federal or state grant received by the board. Moneys collected, deposited in the fund, and transferred to the board as provided in this chapter, shall be subject to audit by the auditor of state. The department of revenue and finance shall transfer moneys from the fund to the board for deposit into an account established by the board in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the board. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open. From moneys collected, the board shall first pay all the direct and indirect costs incurred by the secretary and the costs of referendums, elections, and other expenses incurred in the administration of this chapter, before moneys may be expended for the purpose of market development.

Approved April 1, 1998

CHAPTER 1031

CONSUMER CREDIT CODE — TRUTH IN LENDING ACT DEFINITION

S.F. 2162

AN ACT relating to the definition of the federal Truth in Lending Act in the Iowa consumer credit code.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 537.1302, Code 1997, is amended to read as follows:

537.1302 DEFINITION — TRUTH IN LENDING ACT.

As used in this chapter, "Truth in Lending Act" means Title 1 of the Consumer Credit Protection Act, in subchapter 1 of 15 U.S.C. chapter 41, as amended to and including January 1, ~~1995~~ 1998, and includes regulations issued pursuant to that Act prior to January 1, ~~1995~~ 1998.

Approved April 1, 1998

CHAPTER 1032

AGRICULTURAL CODE PROVISIONS UPDATE

S.F. 2174

AN ACT relating to agriculture by amending and eliminating provisions to reflect current practices, and transferring provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 159.6, subsection 7, Code 1997, is amended by striking the subsection.

Sec. 2. Section 159.6, subsection 9, Code 1997, is amended to read as follows:

9. State aid received by certain associations as provided in chapters 176 through ~~183~~ 182, 186, and 352.

Sec. 3. Section 159.20, subsection 5, Code 1997, is amended to read as follows:

5. Accumulate and diffuse information concerning the marketing of agricultural commodities in cooperation with persons, agencies, or the federal government. ~~The department shall establish an agricultural commodity informational data base.~~

Sec. 4. Section 172A.6, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The license and financial responsibility provisions of this chapter shall not apply to any person who is licensed by the secretary as provided in chapter 137A, ~~171~~ or 172 and who purchases livestock for slaughter valued at less than an average daily value of two thousand five hundred dollars during the preceding twelve months or such part thereof as the person was purchasing livestock. Said licensees are made subject to this chapter as to the regulatory and penal provisions hereof. All other provisions of this chapter shall apply to said dealers or brokers.

Sec. 5. Section 173.3, Code 1997, is amended to read as follows:

173.3 CERTIFICATION OF STATE AID ASSOCIATIONS.

On or before November 15 of each year, the secretary of agriculture shall certify to the secretary of the state fair board the names of the various associations and societies which have qualified for state aid under the provisions of chapters 176 through 178, ~~180 through 183~~ 181, 182, 186, and 352, and which are entitled to representation in the convention as provided in section 173.2.

Sec. 6. Section 190.2, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The department may establish and publish standards for foods when such standards are not fixed by law, ~~but the same~~. The standards shall conform with ~~those proclaimed~~ stan-

dards for foods adopted by ~~the secretary of agriculture of~~ federal agencies including, but not limited to, the United States department of agriculture.

Sec. 7. Section 198.9, subsection 3, unnumbered paragraph 3, Code 1997, is amended by striking the paragraph.

Sec. 8. Section 331.507, subsection 3, Code 1997, is amended by striking the subsection.

Sec. 9. Chapters 171, 180, 183, and 190A, Code 1997, are repealed.

Sec. 10. Sections 159.12, 159.18, 159.34, 160.11, 160.16, 172.5, 213.4, 213.5, 213.6, and 352.13, Code 1997, are repealed.

Sec. 11. DIRECTIONS TO THE CODE EDITOR. The Code editor shall transfer the provisions of chapter 196A to or near chapter 184.

Approved April 1, 1998

CHAPTER 1033

BANKS — OFFICES IN MUNICIPAL CORPORATIONS AND URBAN COMPLEXES

S.F. 2189

AN ACT relating to the number of bank offices which may be established by a bank within a municipal corporation or urban complex.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 524.1202, subsections 2 and 3, Code 1997, are amended to read as follows:

2. a. A state bank may establish any number of bank offices within the municipal corporation or urban complex in which the principal place of business of the bank is located, ~~subject to the following conditions and limitations:~~

~~(1) If the municipal corporation or urban complex has a population of one hundred thousand or less according to the most recent federal census, the state bank shall not establish more than four bank offices.~~

~~(2) If the municipal corporation or urban complex has a population of more than one hundred thousand but not more than two hundred thousand according to the most recent federal census, the state bank shall not establish more than five bank offices.~~

~~(3) If the municipal corporation or urban complex has a population of more than two hundred thousand according to the most recent federal census, the state bank shall not establish more than six bank offices.~~

b. For purposes of this subsection, "urban complex" means the geographic area bounded by the corporate limits of two or more municipal corporations, each of which being contiguous to or cornering upon at least one of the other municipal corporations within the complex. A state bank located in a municipal corporation or urban complex which is located on a boundary of this state and contiguous to a municipal corporation in another state may have one bank office in addition to the number of bank offices permitted by paragraph "a"; provided that nothing contained in this paragraph authorizes a state bank to establish a bank office outside of the boundaries of this state.

c. One such facility located in the proximity of a state bank's principal place of business

may be found by the superintendent to be an integral part of the principal place of business, and not a bank office within the meaning of this section. ~~This paragraph does not authorize more than one facility to be found to be an integral part of a bank's principal place of business.~~

d. One such facility located in the proximity of a state bank's office may be found by the superintendent to be an integral part of the bank office and not a bank office within the meaning of this section. ~~This paragraph does not authorize more than one facility to be found to be an integral part of a bank office.~~

3. Notwithstanding subsection 1, if the assets of a state or national bank in existence on January 1, 1989, are transferred to a different state or national bank in the state which is located in the same county or a county contiguous to or cornering upon the county in which the principal place of business of the acquired bank is located, the resulting or acquiring bank may convert to and operate as its bank office any one or more of the business locations occupied as the principal place of business or as a bank office of the bank whose assets are so acquired. The limitations on bank office locations contained in unnumbered paragraph 1 of this section~~, and the limitation on the number of bank offices within the municipality or urban complex of the resulting or acquiring bank contained in subsection 2 shall be~~ are applicable to any bank office otherwise authorized by this subsection. A bank office established under the authority of this subsection is subject to the approval of the superintendent~~,~~ and shall be operated in accordance with this chapter relating to the operation of bank offices, and may be augmented by an integral facility when approved under subsection 2, paragraph "d".

Sec. 2. Section 524.1213, subsection 3, paragraph d, Code Supplement 1997, is amended to read as follows:

d. May establish any number of additional bank offices within the municipal corporation or urban complex in which a united community bank office referred to in paragraph "b" is located~~, provided that the number of bank offices of the resulting bank within that municipal corporation or urban complex, including bank offices retained under paragraph "c" and bank offices established under the authority of this paragraph, but excluding the united community bank office, shall not exceed the maximum number of bank offices permitted by section 524.1202, subsection 2, paragraph "a", for a bank located within that municipal corporation or urban complex~~.

Sec. 3. Section 524.1213, subsection 12, Code Supplement 1997, is amended by striking the subsection.

Approved April 1, 1998

CHAPTER 1034

MOTOR VEHICLE DAMAGE DISCLOSURE STATEMENTS

S.F. 2192

AN ACT relating to motor vehicle damage disclosure statements.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321.69, subsections 2 and 3, Code Supplement 1997, are amended to read as follows:

2. The damage disclosure statement required by this section shall, at a minimum, state the total retail dollar amount of all damage to the vehicle during the period of the transferor's ownership of the vehicle and whether the transferor knows if the vehicle was titled as a salvage or flood vehicle in this or any other state prior to the transferor's ownership of the vehicle. For the purposes of this section, "damage" refers to damage to the vehicle caused by fire, vandalism, collision, weather, falling objects, submersion in water, or flood, where the cost of repair is ~~three~~ five thousand dollars or more per incident, but does not include normal wear and tear, glass damage, mechanical repairs or electrical repairs that have not been caused by fire, vandalism, collision, weather, falling objects, submersion in water, or flood. "Damage" does not include the cost of repairing, replacing, or reinstalling tires, lights, batteries, windshields, windows, a sound system, or an inflatable restraint system. A determination of the amount of damage to a vehicle shall be based on estimates of the retail cost of repairing the vehicle, including labor, parts, and other materials, if the vehicle has not been repaired or on the actual retail cost of repair, including labor, parts, and other materials, if the vehicle has been repaired. Only individual incidents in which the retail cost of repairs is ~~three~~ five thousand dollars or more are required to be disclosed by this section. If the vehicle has incurred damage of ~~three~~ five thousand dollars or more per incident in more than one incident, the damage amounts must be combined and disclosed as the total of all separate incidents.

3. The damage disclosure statement shall be provided by the transferor to the transferee at or before the time of sale. However, if the transferor has a salvage certificate of title for the vehicle, the transferor is not required to disclose under this section the total retail cost of repairs to the vehicle during the period of the transferor's ownership of the vehicle. If the transferor is not a resident of this state the transferee shall not be required to submit a damage disclosure statement from the transferor with the transferee's application for title unless the state of the transferor's residence requires a damage disclosure statement. However, the transferee shall submit a damage disclosure statement with the transferee's application for title indicating whether a salvage or rebuilt title had ever existed for the vehicle, whether the vehicle had incurred prior damage of ~~three~~ five thousand dollars or more per incident, and the year, make, and vehicle identification number of the motor vehicle. The transferee shall not be required to indicate whether the vehicle had incurred prior damage of ~~three~~ five thousand dollars or more per incident under this subsection if the transferor's certificate of title is from another state and if it indicates that the vehicle is salvaged and not rebuilt or is another state's salvage certificate of title.

Approved April 1, 1998

CHAPTER 1035

DEPARTMENT OF TRANSPORTATION RECORDS — RELEASE TO GOVERNMENTAL EMPLOYEES

S.F. 2267

AN ACT concerning the release of information by the department of transportation to governmental employees.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321.11, unnumbered paragraph 3, Code Supplement 1997, is amended to read as follows:

Notwithstanding other provisions of this section to the contrary, the department shall not release personal information to a person, other than to an officer or employee of a law enforcement agency, an employee of a federal or state agency or political subdivision in the performance of the employee's official duties, a contract employee of the department of inspections and appeals in the conduct of an investigation, or a licensed private investigation agency or a licensed security service or a licensed employee of either, if the information is requested by the presentation of a registration plate number. ~~However,~~ In addition, an officer or employee of a law enforcement agency may release the name, address, and telephone number of a motor vehicle registrant to a person requesting the information by the presentation of a registration plate number if the officer or employee of the law enforcement agency believes that the release of the information is necessary ~~to prevent an unlawful act~~ in the performance of the officer's or employee's duties. ~~A person seeking the information shall state in writing the nature of the unlawful act that the person is attempting to prevent.~~

Approved April 1, 1998

CHAPTER 1036

BANK REGULATION AND OPERATION

S.F. 2301

AN ACT relating to the operation and regulation of banks and making technical corrections.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 524.912, Code 1997, is amended to read as follows:

524.912 CUSTOMER SHALL BE FREE TO OBTAIN OWN INSURANCE AND LOAN.

In any case in which any kind of insurance is required by the state bank as a condition for lending money or in connection with any other transaction, the customer shall be free to obtain such insurance from a source of the customer's selection. In the case of a sale of shares of stock, bonds, or other securities, or real property by an officer or employee, which is authorized by the board of directors of a state bank in the manner provided for in ~~subsection 3 of~~ section 524.710, subsection 1, paragraph "b", the purchaser shall be free to obtain ~~any~~ a loan for the purchase ~~thereof~~ of such stock, bonds, or other securities, or real property from a lender of the purchaser's selection.

Sec. 2. Section 524.1002, subsection 5, Code 1997, is amended to read as follows:

5. Unless otherwise authorized by the instrument creating the relationship, court order, or the laws of this state, a state bank, as fiduciary, shall not, directly or indirectly, sell any asset to the state bank for its own account, or to an officer, director, or employee, nor purchase from the state bank, or an officer, director, or employee, any asset or any security issued by the state bank except, in the case of a state bank, any of the following:

a. Investments in which a state bank may invest without limitation pursuant to section 524.901, subsection ~~1,~~ 3.

b. Assets purchased by the state bank pursuant to an agreement whereby the state bank is bound to sell, and the state bank as fiduciary is bound to buy, at a date not more than one year from the date of acquisition by the state bank, such assets at a price agreed upon at the time of acquisition by the state bank~~, or~~.

c. Any asset sold to the state bank for its own account or purchased in a fiduciary capacity from the state bank with the prior approval of the superintendent.

Sec. 3. NEW SECTION. 524.1206 IDENTIFICATION OF LEGALLY CHARTERED NAME OF BANK — REQUIRED USE OF NAME.

A state or national bank, at its locations in this state, shall identify its principal place of business, any bank office, or any bank branch in a manner which includes its legally chartered name or a reasonable variation of such name. The legally chartered name of the state or national bank shall be used in all legal documents of such bank.

Sec. 4. Section 524.1405, subsection 2, paragraph f, Code 1997, is amended to read as follows:

f. The shares of each party to the merger that are to be converted into shares, obligations, or other securities of the surviving party or any other corporation or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under ~~division XIII of this chapter~~ section 524.1406.

Sec. 5. Section 524.1409, Code 1997, is amended to read as follows:

524.1409 ~~AUTHORITY FOR~~ CONVERSION OF NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION INTO STATE BANK.

A national bank ~~may~~ or federal savings association, subject to the provisions of this chapter, may convert into a state bank upon authorization by and compliance with the laws of the United States, adoption of a plan of conversion by the affirmative vote of at least a majority of its directors and the holders of two-thirds of each class of its shares at a meeting held upon not less than ten days' notice to all shareholders, and upon approval of the superintendent.

Sec. 6. Section 524.1410, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A national bank or federal savings association shall make an application to the superintendent for approval of the conversion in a manner prescribed by the superintendent and shall deliver to the superintendent, when available:

Sec. 7. Section 524.1411, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The articles of conversion shall be signed by two duly authorized officers of the national bank or federal savings association and shall contain all of the following:

Sec. 8. Section 524.1411, subsection 1, Code 1997, is amended to read as follows:

1. The name of the national bank or federal savings association and the name of the resulting state bank.

Sec. 9. Section 524.1412, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Within thirty days after the application for conversion has been accepted for processing, the national bank or federal savings association shall publish a notice of the delivery of the articles of conversion to the superintendent once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the national bank or federal savings association has its principal place of business, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the national bank or federal savings association has its principal place of business. The notice shall set forth all of the following:

Sec. 10. Section 524.1412, subsection 1, Code 1997, is amended to read as follows:

1. The name of the national bank or federal savings association and the name of the resulting state bank.

Sec. 11. Section 524.1413, Code 1997, is amended to read as follows:

524.1413 APPROVAL OF CONVERSION BY SUPERINTENDENT.

1. Upon acceptance for processing of an application for approval of a conversion, the superintendent shall conduct such investigation as the superintendent deems necessary to ascertain the following:

~~1.~~ a. The articles of conversion and supporting items satisfy the requirements of this chapter.

~~2.~~ b. The plan adequately protects the interests of depositors.

~~3.~~ c. The requirements for a conversion under all applicable laws have been satisfied and the resulting state bank would satisfy the requirements of this chapter applicable to it.

~~4.~~ d. The resulting state bank will possess an adequate capital structure.

2. Within ninety days after the application has been accepted for processing, the superintendent shall approve or disapprove the application on the basis of the investigation. As a condition of receiving the decision of the superintendent with respect to the application, the national bank or federal savings association shall reimburse the superintendent for all expenses incurred in connection with the application. The superintendent shall give the national bank or federal savings association written notice of the decision and, in the event of disapproval, a statement of the reasons for the decision. If the superintendent approves the application, the superintendent shall deliver the articles of conversion, with the superintendent's approval indicated on the articles of conversion, to the secretary of state. The decision of the superintendent shall be subject to judicial review pursuant to chapter 17A. Notwithstanding the terms of the Iowa administrative procedure Act, chapter 17A, a petition for judicial review must be filed within thirty days after the superintendent notifies the national bank or federal savings association of the superintendent's decision.

Sec. 12. Section 524.1415, Code 1997, is amended to read as follows:

524.1415 EFFECT OF FILING OF ARTICLES OF CONVERSION WITH SECRETARY OF STATE.

1. The conversion is effective upon the filing of the articles of conversion with the secretary of state, or at any later date and time as specified in the articles of conversion. The acknowledgment of filing is conclusive evidence of the performance of all conditions required by this chapter for conversion of a national bank or federal savings association into a state bank, except as against the state.

2. When a conversion becomes effective, the existence of the national bank or federal savings association shall continue in the resulting state bank which shall have all the property, rights, powers, and duties of the national bank or federal savings association, except that the resulting state bank shall have only the authority to engage in such business and exercise such powers as it would have, and shall be subject to the same prohibitions and limitations to which it would be subject, upon original incorporation under this chapter. The articles of incorporation of the resulting state bank shall be the provisions stated in the articles of conversion.

3. No liability of the national bank or federal savings association, or of ~~its~~ the national bank's or federal savings association's shareholders, directors, or officers ~~shall be~~ is affected~~, nor shall any~~ by the conversion. A lien on any property of the national bank ~~be~~ or federal savings association is not impaired by the conversion. ~~Any~~ A claim existing or action pending by or against the national bank or federal savings association may be prosecuted to judgment as if the conversion had not taken place, or the resulting state bank may be substituted in its place.

4. The title to all real estate and other property owned by the converting national bank or federal savings association is vested in the resulting state bank without reversion or impairment.

Sec. 13. Section 524.1416, Code 1997, is amended to read as follows:

524.1416 AUTHORITY FOR CONVERSION OF STATE BANK INTO NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION.

1. A state bank may convert into a national bank or federal savings association upon authorization by and compliance with the laws of the United States, and adoption of a plan of conversion by the affirmative vote of at least a majority of its directors and the holders of two-thirds of each class of its shares at a meeting held upon not less than ten days' notice to all shareholders. The authority of a state bank to convert into a national bank or federal savings association shall be subject to the condition that at the time of the transaction, the laws of the United States shall authorize a national bank or federal savings association located in this state, without approval by the comptroller of the currency of the United States or director of the office of thrift supervision, as applicable, to convert into a state bank under limitations and conditions no more restrictive than those contained in this section and section 524.1417 with respect to conversion of a state bank into a national bank or federal savings association.

2. A state bank which converts into a national bank or federal savings association shall notify the superintendent of the proposed conversion, provide such evidence of the adoption of the plan as the superintendent may request, notify the superintendent of any abandonment or disapproval of the plan, file with the superintendent and with the secretary of state a certificate of the approval of the conversion by the comptroller of the currency of the United States or director of the office of thrift supervision, as applicable, and the date upon which such conversion is to become effective.

Sec. 14. Section 524.1417, Code 1997, is amended to read as follows:

524.1417 RIGHTS OF DISSENTING SHAREHOLDER OF CONVERTING STATE OR NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION.

1. A shareholder of a state bank which converts into a national bank or federal savings association who objects to the plan of conversion is entitled to the rights and remedies of a dissenting shareholder as provided in chapter 490, division XIII.

2. If a shareholder of a national bank or federal savings association, which converts into a state bank, objects to the plan of conversion and complies with the requirements of applicable laws of the United States, the resulting state bank is liable for the value of the shareholder's shares as determined in accordance with such laws of the United States.

Sec. 15. Section 524.1418, Code 1997, is amended to read as follows:

524.1418 SUCCESSION TO FIDUCIARY ACCOUNTS AND APPOINTMENTS - APPLICATION FOR APPOINTMENT OF NEW FIDUCIARY.

The provisions of section 524.1009 apply to a resulting state or national bank or federal savings association after a conversion with the same effect as though the state or national bank or federal savings association were a party to a plan of merger, and the conversion were a merger, within the provisions of that section.

Sec. 16. Section 524.1601, subsection 1, paragraph d, Code 1997, is amended to read as follows:

d. The amount of profit, fees or other compensation received, upon conviction of a violation of ~~subsection 3 of~~ section 524.710, subsection 1, paragraph "b".

Approved April 1, 1998

CHAPTER 1037

LAND SURVEYORS — DEFINITION OF PRACTICE

S.F. 2319

AN ACT revising the definition of the practice of land surveying.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 542B.2, subsection 5, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

5. a. The practice of "land surveying" includes providing professional services such as consultation, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location of property lines or boundaries, and the utilization, development, and interpretation of these facts into an orderly survey, plat, or map. The practice of land surveying includes, but is not limited to, the following:

(1) Locating, relocating, establishing, reestablishing, setting, or resetting of permanent monumentation for any property line or boundary of any tract or parcel of land. Setting permanent monuments constitutes an improvement to real property.

(2) Making any survey for the division or subdivision of any tract or parcel of land.

(3) Determination, by the use of the principles of land surveying, of the position for any permanent survey monument or reference point, or setting, resetting, or replacing any survey monument or reference point excluding the responsibility of engineers pursuant to section 314.8.

(4) Creating and writing metes and bounds descriptions as defined in section 354.2.

(5) Geodetic surveying for determination of the size and shape of the earth both horizontally and vertically for the precise positioning of permanent land survey monuments on the earth utilizing angular and linear measurements through spatially oriented spherical geometry.

(6) Creation, preparation, or modification of electronic or computerized data, including land information systems and geographical information systems, relative to the performance of the activities identified in subparagraphs (1) through (5).

b. This subsection does not prohibit a professional engineer from practicing any aspect of the practice of engineering. A land surveyor is not prohibited from performing engineering surveys as defined in the practice of engineering.

c. A person is construed to be engaged in or offering to be engaged in the practice of land surveying if the person does any of the following:

(1) Engages in land surveying.

(2) Makes a representation by verbal claim, sign, advertisement, letterhead, card, or other manner that the person is a land surveyor.

(3) Uses any title which implies that the person is a land surveyor or that the person is licensed under this chapter.

(4) Holds the person's self out as able to perform, or who does perform, any service or work included in the practice of land surveying.

Approved April 1, 1998

CHAPTER 1038

IOWA EGG COUNCIL — ASSESSMENT ON EGGS SOLD

S.F. 2340

AN ACT relating to the Iowa egg council and to an assessment on the sale of eggs for support of the council.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 196A.1, subsections 3 and 5, Code 1997, are amended to read as follows:

3. "Egg ~~by-product~~ product" means a product produced in whole or in part from eggs or spent fowl.

5. "Market development" means ~~research and educational~~ programs which are directed toward any of the following:

a. Better and more efficient production, marketing, and utilization of eggs or egg ~~by-products produced for resale~~ products.

b. ~~Better methods, including, but not limited to, public relations and other promotion techniques, for the~~ The maintenance of present markets and ~~for~~ the development of new or larger ~~domestic or foreign~~ markets ~~and~~ for the sale of eggs or egg ~~by-products~~ products.

c. Prevention, modification, or elimination of trade barriers which obstruct the free flow of eggs or egg ~~by-products to market~~ products in commerce.

Sec. 2. Section 196A.1, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4A. "Eligible voter" means a producer who is qualified to vote in a referendum conducted under this chapter according to the requirements of section 196A.4 or 196A.4A.

Sec. 3. Section 196A.4, subsection 3, Code 1997, is amended to read as follows:

3. a. Each producer who signs a statement certifying that the producer is a bona fide producer shall be an eligible voter under this section. An eligible voter is entitled to cast one vote in each referendum conducted under this section.

b. At the close of the referendum, the secretary shall count and tabulate the ballots cast.

(1) If a majority of eligible voters ~~favor~~ approve establishing an Iowa egg council and imposing an assessment, a council shall be established, and an assessment shall be imposed commencing not more than sixty days following the referendum as determined by the council and shall continue ~~for a period of five years unless extended as provided in section 196A.4C~~ until eligible voters voting in a referendum held pursuant to section 196A.4C vote to abolish the council and terminate the imposition of the assessment.

(2) If a majority of the voters do not ~~favor~~ approve establishing the council and imposing the assessment, the council shall not be established and an assessment shall not be imposed until another referendum is held under this chapter and a majority of the eligible voters approve establishing a council and imposing the assessment. If a referendum should fail, another referendum shall not be held within one hundred eighty days.

Sec. 4. Section 196A.4A, unnumbered paragraph 1, Code 1997, is amended to read as follows:

~~If approved by a majority of voters at a referendum as provided in this chapter, an~~ The council shall establish an assessment amount ~~set by the council at not more than five cents~~ for each thirty dozen eggs produced in this state. The assessment shall be imposed on ~~the~~ a producer at the time of delivery to a purchaser who ~~will~~ shall deduct the assessment from the price paid to ~~the~~ a producer at the time of sale. The assessment shall not be refundable. The assessment is due to be paid to the council within thirty days following each calendar quarter, as provided by the council.

Sec. 5. Section 196A.4C, Code 1997, is amended to read as follows:

196A.4C REFERENDUMS CONDUCTED ~~DURING THE TENURE OF~~ TO ABOLISH THE COUNCIL AND TERMINATE IMPOSITION OF THE ASSESSMENT.

1. A referendum ~~shall be conducted as follows:~~ may be called to abolish the council and terminate the imposition of the assessment.

~~a. A referendum to extend the imposition of the assessment imposed pursuant to section 196A.4 shall be held every five years in the year prior to the expiration of the assessment in force.~~

~~b.~~ The secretary shall call, and the department shall conduct, ~~a~~ the referendum upon the department's receipt of a petition ~~which is signed by at least twenty producers~~ requesting ~~a referendum to determine whether to terminate the council and the imposition of the assessment~~ the referendum. The petition must be signed by at least twenty eligible voters or fifty percent of all eligible voters whichever is greater. In order to be an eligible voter under this section, a producer must have paid an assessment in the year of the referendum. The referendum shall be conducted within sixty days following receipt of the petition. The petitioners shall guarantee payment of the cost of the referendum by providing evidence of financial security as required by the department.

2. The following procedures shall apply to a referendum conducted pursuant to this section:

a. The department shall ~~give~~ publish a notice of the referendum ~~on the question whether to continue the council and the assessment by publishing the notice~~ for a period of not less than five days in at least one newspaper of general circulation in the state. The notice shall state the voting places, period of time for voting, and other information deemed necessary by the department. A referendum shall not be commenced until five days after the last date of publication.

b. Upon signing a statement certifying to the secretary that ~~a person~~ the producer is ~~a bona fide producer~~ an eligible voter, ~~the person~~ a producer is entitled to one vote in each referendum conducted pursuant to this section. The department may conduct the referendum by mail, electronic means, or a general meeting of eligible voters. The department shall conduct the referendum and count and tabulate the ballots filed during the referendum within thirty days following the close of the referendum.

(1) If a majority of the total number of ~~producers voting~~ eligible voters who vote in the referendum ~~approves~~ approve the continuation of the council and the imposition of the assessment ~~as provided in the referendum~~, the council ~~shall remain in existence~~ and the imposition of the assessment shall ~~be levied~~ continue as provided in this chapter.

(2) If a majority of the total number of ~~producers voting~~ eligible voters who vote in the referendum held pursuant to this section do not approve continuing the council and the imposition of the assessment ~~as provided in the referendum~~, the secretary shall terminate the collection of the assessment on the first day of the year for which the referendum was to continue. The secretary shall terminate the activities of the council in an orderly manner as soon as practicable after the determination. An additional referendum may be held as provided in section 196A.4. However, the subsequent referendum shall not be held within one hundred eighty days.

Sec. 6. Section 196A.5, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The Iowa egg council established under this chapter shall be composed of seven ~~producers~~ members. Each ~~council~~ member must be a natural person who is a resident of this state and a producer or an officer, equity owner, or employee of a producer. A producer shall not be represented more than once on the council. Two persons shall represent large producers, two persons shall represent medium producers, and three persons shall represent small producers. The council shall adopt rules pursuant to chapter 17A establishing classifications for large, medium, and small producers. The following persons or their designees shall serve as ex officio nonvoting members:

Sec. 7. Section 196A.5B, subsections 1 and 3, Code 1997, are amended to read as follows:

1. The council shall appoint a committee to nominate candidates to stand for election to the council. The council may require that the committee nominate candidates to be appointed by the council to fill a vacancy in a position for the unexpired term of a member. ~~The committee shall be comprised of five producers, including the chairperson of the council who shall serve as the chairperson of the nominating committee. The nominating committee shall include at least one member of the council whose term is next to expire. The committee shall also include at least one producer who is classified as a large producer, if a member whose term is to expire represents large producers; at least one producer who is classified as a medium producer, if a member whose term is to expire represents medium producers; and at least one producer who is classified as a small producer, if a member whose term is to expire represents small producers.~~

3. ~~A~~ The council shall provide a notice of an election for members of the council ~~shall be provided by the council by publication in a newspaper of general circulation in the state and in any other reasonable manner required by the council~~ by any means deemed reasonable by the council. The notice shall include the period of time for voting, voting places, and any other information determined necessary by the council.

Sec. 8. Section 196A.11, Code 1997, is amended to read as follows:

196A.11 DUTIES OF COUNCIL.

The Iowa egg council shall do all of the following:

1. ~~Provide methods, including, but not limited to public relations and other promotion techniques, for the maintenance of present markets. However, the council shall not impose any marketing order or similar restriction.~~ Promote all of the following:

a. The increased utilization of eggs and egg products.

b. Health benefits associated with the consumption of eggs or egg products.

c. Economic benefits associated with the production and processing of eggs or egg products.

d. The safe use and consumption of eggs and egg products.

2. ~~Assist in other~~ Provide for market development.

3. Administer elections for members of the council and provide for the appointment of persons to fill vacancies occurring on the council, as provided in section 196A.5B. The department may assist the council in administering an election, upon request to the secretary by the council.

4. Perform ~~all acts necessary~~ any other function the council deems necessary to ~~effectuate~~ carry out the provisions of this chapter.

Sec. 9. Section 196A.12, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The Iowa egg council may do all of the following:

Sec. 10. Section 196A.12, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 5. Receive gifts, rents, royalties, license fees or other moneys for deposit in the Iowa egg fund as provided in section 196A.17.

Sec. 11. Section 196A.13, Code 1997, is amended to read as follows:

196A.13 PROHIBITED ACTIONS.

The Iowa egg council shall not do any of the following:

1. Become a dues-paying member of any organization, including but not limited to a firm, association, or corporation, regardless of whether the organization is public or private. However, ~~upon approval by the council,~~ the council may become a dues-paying member of an organization carrying out a purpose related to the increased consumption and utilization of eggs or egg ~~by-products~~ products.

2. Provide direct or indirect financial support to or for the benefit of any other person~~, except as provided in subsection 1 or for~~. However, the council may do any of the following:

a. Provide support to an organization carrying out a purpose related to the increased consumption and utilization of eggs or egg products.

b. Execute contracts for services related to ~~research, promotional, or public relations programs, or for the~~ carrying out the duties of the council as provided in section 196A.11.

c. Pay for administrative expenses of the council.

3. Act, directly or indirectly, in any capacity in marketing or making contracts for the marketing of eggs or egg ~~by-products~~ products.

4. Act, directly or indirectly, in any capacity in selling or contracting for the selling of eggs, egg products, or ~~egg by-product~~ equipment used in the manufacturing of egg products.

5. a. Make any contribution of council moneys, either directly or indirectly, to any political party or organization or in support of a political candidate for public office~~, or make~~.

b. Make payments to a political candidate including but not limited to a member of Congress or the general assembly for honorariums, speeches, or for any other purposes above actual and necessary expenses.

Sec. 12. Section 196A.19, unnumbered paragraph 2, Code 1997, is amended to read as follows:

Moneys collected, deposited in the fund, and transferred to the council as provided in this chapter are subject to audit by the auditor of state. The moneys transferred to the council shall be used by the council first for the payment of collection expenses, second for payment of the costs and expenses arising in connection with conducting referendums, and third ~~for market development~~ to carry out the duties of the council as provided in section 196A.11. Moneys remaining after ~~a~~ the council is abolished and the imposition of an assessment is terminated pursuant to a referendum ~~is held when a majority of the voters do not favor extending the assessment~~ conducted pursuant to section 196A.4C shall continue to be expended in accordance with this chapter until exhausted.

Sec. 13. TRANSFER. The Code editor shall transfer chapter 196A to or near chapter 184 and shall renumber the chapter's sections to enhance the chapter's readability.

Sec. 14. Section 196A.25, Code 1997, is repealed.

Approved April 1, 1998

CHAPTER 1039

STATE EMPLOYEE DEFERRED COMPENSATION TRUST FUND

S.F. 2350

AN ACT establishing a state employee deferred compensation trust fund.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 19A.12C IOWA STATE EMPLOYEE DEFERRED COMPENSATION TRUST FUND.

1. There is hereby created in the office of the treasurer of state a special fund, separate and apart from all other public moneys or funds of this state, to be known as the "Iowa State Employee Deferred Compensation Trust Fund", hereafter called the "fund". The fund shall consist of all moneys deposited in the fund pursuant to this section, any other assets that

must be held in trust for the exclusive benefit of participants in the state's deferred compensation program as required by section 457 of the federal Internal Revenue Code, and interest and earnings thereon, and shall be used for the exclusive benefit of participants in a deferred compensation program established by the state under section 509A.12.

2. The director is the trustee of the fund and shall administer the fund. Any loss to the fund shall be charged against the fund and the director shall not be personally liable for such loss. In addition, the director is the trustee of any trusts referenced in section 457(g) of the federal Internal Revenue Code. Any loss to the trusts shall be charged against the trusts and the director shall not be personally liable for such loss.

3. By January 1, 1999, any compensation or portion of compensation reduced by a participant in conjunction with a deferred compensation program established by the state under section 509A.12 and any earnings or income thereon shall be held in trust and used for the exclusive benefit of the participant or the participant's beneficiary as provided by section 457 of the federal Internal Revenue Code.

4. For purposes of this section, custodial accounts, annuity contracts, and any other contracts referenced in section 457(g) of the federal Internal Revenue Code shall be treated as trusts for purposes of section 457 of the federal Internal Revenue Code.

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

Approved April 1, 1998

CHAPTER 1040

SOIL AND WATER CONSERVATION PRACTICES — FINANCIAL INCENTIVES — COST-SHARE MONEYS

S.F. 2324

AN ACT relating to the allocation of cost-share moneys as financial incentives to encourage summer construction of permanent soil and water conservation practices.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 161A.73, subsection 2, paragraph b, Code 1997, is amended to read as follows:

b. The allocation of cost-share moneys as financial incentives to encourage summer construction of permanent soil and water conservation practices. The practices must be constructed on or after June 1 but not later than ~~August~~ September 15. The commissioners may also provide for the payment of moneys on a prorated basis to compensate persons for the production loss on an area disturbed by construction, according to rules which shall be adopted by the division. The commissioners shall not allocate cost-share moneys to support summer construction during a fiscal year in which applications for cost-share moneys required to establish permanent soil and water conservation practices, other than established by summer construction, equal the total amount available to support the nonsummer construction practices. The financial incentives shall not exceed sixty percent of the estimated cost of establishing the practice as determined by the commissioners, or sixty percent of the actual cost of establishing the practice, whichever is less.

Approved April 2, 1998

CHAPTER 1041

HEPATITIS TYPE B IMMUNIZATIONS

S.F. 2341

AN ACT relating to hepatitis type B immunizations of children and providing an applicability provision and an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 139.9, subsection 2, Code 1997, is amended to read as follows:

2. a. A person shall not be enrolled in any licensed child care center, elementary or secondary school in Iowa without evidence of adequate immunization against diphtheria, pertussis, tetanus, poliomyelitis, rubeola, and rubella.

b. Evidence of adequate immunization against haemophilus influenza b shall be required prior to enrollment in any licensed child care center.

c. Evidence of hepatitis type B immunization shall be required of a child born on or after July 1, 1994, prior to enrollment in school in kindergarten or in any grade.

d. Immunizations shall be provided according to recommendations provided by the Iowa department of public health subject to the provisions of subsections 3 and 4.

Sec. 2. HEPATITIS TYPE B — PLAN. The Iowa department of public health shall develop a plan for protecting Iowans against hepatitis type B and requiring that minor children be adequately immunized against hepatitis type B. The plan shall incorporate the health and religious exemptions in section 139.9, subsections 3 and 4. The plan shall be submitted to the governor and general assembly by October 1, 1998.

Sec. 3. RULES — APPLICABILITY. Section 1 of this Act, requiring evidence of hepatitis type B immunization, shall first be applicable to enrollments for the 1999-2000 school year. The Iowa department of public health shall adopt rules on or before October 1, 1998, to implement the provisions of section 1 of this Act.

Sec. 4. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 2, 1998

CHAPTER 1042

ASSISTIVE DEVICES

H.F. 530

AN ACT concerning assistive devices by requiring a warranty, and providing for replacement of assistive devices and consumer remedies.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 216E.1 DEFINITIONS.

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

1. "Assistive device" means any item, piece of equipment, or product system which is purchased, or whose transfer is accepted in this state, and which is used to increase, maintain, or improve the functional capabilities of individuals with disabilities concerning a

major life activity as defined in section 225C.46. "Assistive device" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "Assistive device" does not mean any device for which a certificate of title is issued by the state department of transportation but does mean any item, piece of equipment, or product system otherwise meeting the definition of "assistive device" that is incorporated, attached, or included as a modification in or to such a certificated device.

2. "Assistive device dealer" means a person who is in the business of selling assistive devices.

3. "Assistive device lessor" means a person who leases assistive devices to consumers, or who holds the lessor's rights, under a written lease.

4. "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of shipping, sales tax, and of obtaining an alternative assistive device.

5. "Consumer" means any one of the following:

a. The purchaser of an assistive device, if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale.

b. A person to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the assistive device.

c. A person who may enforce the warranty.

d. A person who leases an assistive device from an assistive device lessor under a written lease.

6. "Demonstrator" means an assistive device used primarily for the purpose of demonstration to the public.

7. "Early termination costs" means any expense or obligation that an assistive device lessor incurs as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive device to the manufacturer. "Early termination cost" includes a penalty for prepayment under a finance arrangement.

8. "Early termination savings" means any expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive device to a manufacturer which shall include an interest charge that the assistive device lessor would have paid to finance the assistive device or, if the assistive device lessor does not finance the assistive device, the difference between the total payments remaining for the period of the lease term remaining after the early termination and the present value of those remaining payments at the date of the early termination.

9. "Loaner" means an assistive device, provided free of charge to the consumer, for use by the consumer, that need not be new or be identical to, or have functional capabilities equal to or greater than, those of the original assistive device, but that meets all of the following conditions:

a. The loaner is in good working order.

b. The loaner performs, at a minimum, the most essential functions of the original assistive device, in light of the disabilities of the consumer.

c. Any differences between the loaner and the original assistive device do not create a threat to the consumer's health or safety.

10. "Manufacturer" means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, a factory branch, distributor branch, and any warrantors of the assistive device, but does not include an assistive device dealer or assistive device lessor.

11. "Nonconformity" means any defect, malfunction, or condition which substantially impairs the use, value, or safety of an assistive device or any of its component parts, but does not include a condition, defect, or malfunction that is the result of abuse, neglect, or unauthorized modification or alteration of the assistive device by the consumer.

12. "Reasonable attempt to repair" means any of the following occurring within the terms of an express warranty applicable to a new assistive device or within one year after first delivery of the assistive device to a consumer, whichever is sooner:

a. The manufacturer, assistive device lessor, or any of the manufacturer's authorized assistive device dealers accept return of the new assistive device for repair at least two times.

b. The manufacturer, assistive device lessor, or any of the manufacturer's authorized assistive device dealers place the assistive device out of service for an aggregate of at least thirty cumulative days because of warranty nonconformities.

Sec. 2. NEW SECTION. 216E.2 EXPRESS WARRANTIES.

1. A manufacturer or assistive device lessor who sells or leases an assistive device to a consumer, either directly or through an assistive device dealer, shall furnish the consumer with an express warranty for the assistive device, warranting the assistive device to be free of any nonconformity. The duration of the express warranty shall be not less than one year after first delivery of the assistive device to the consumer. If a manufacturer fails to furnish an express warranty as required by this section, the assistive device shall be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this section.

2. An express warranty does not take effect until the consumer takes possession of the new assistive device.

Sec. 3. NEW SECTION. 216E.3 ASSISTIVE DEVICE REPLACEMENT OR REFUND.

1. If an assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor, or any of the manufacturer's authorized assistive device dealers, and makes the assistive device available for repair before one year after first delivery of the device to the consumer or within the period of the express warranty if the warranty is longer than one year, a reasonable attempt to repair the nonconformity shall be made.

2. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirements of either paragraph "a" or "b" upon the request of a consumer.

a. The manufacturer shall provide for a refund by doing one of the following:

(1) If the assistive device was purchased by the consumer, accept return of the assistive device and refund to the consumer and to any holder of perfected security interest in the consumer's assistive device, as the holder's interest may appear, the full purchase price plus any finance charge paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use.

(2) If the assistive device was leased by the consumer, accept return of the assistive device, refund to the assistive device lessor and to any holder of a perfected security interest in the assistive device, as the holder's interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use. The manufacturer shall have a cause of action against the dealer or lessor for reimbursement of any amount that the manufacturer pays to a consumer which exceeds the net price received by the manufacturer for the assistive device.

b. The manufacturer shall provide a comparable new assistive device or offer a refund to the consumer if the consumer does any one of the following:

(1) Offers to transfer possession of the assistive device to the manufacturer. No later than thirty days after that offer, the manufacturer shall provide the consumer with the comparable new assistive device or a refund. When the manufacturer provides the new assistive device or refund, the consumer shall return the assistive device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.

(2) Offers to return the assistive device to the manufacturer. No later than thirty days

after the offer, the manufacturer shall provide a refund to the consumer. When the manufacturer provides a refund, the consumer shall return the assistive device having the nonconformity to the manufacturer.

(3) Offers to transfer possession of a leased assistive device to the manufacturer. No later than thirty days after the offer, the manufacturer shall provide a refund to the assistive device lessor. When the manufacturer provides the refund, the assistive device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

3. Under the provisions of this section, the current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device lessor's early termination costs and the value of the assistive device at the lease expiration date if the lease sets forth that value, less the assistive device lessor's early termination savings.

4. Under the provisions of this section, a reasonable allowance for use shall not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, assistive device lessor, or assistive device dealer.

5. A person shall not enforce a lease against a consumer after the consumer receives a refund.

Sec. 4. NEW SECTION. 216E.4 MANUFACTURER'S DUTY TO PROVIDE REIMBURSEMENT OR A LOANER FOR TEMPORARY REPLACEMENT OF ASSISTIVE DEVICES — PENALTIES.

1. Whenever an assistive device covered by a manufacturer's express warranty is tendered by a consumer to the dealer from whom the assistive device was purchased or exchanged for the repair of any defect, malfunction, or nonconformity to which the warranty is applicable, the manufacturer shall provide the consumer, at the consumer's choice, for the duration of the repair period, either a rental assistive device reimbursement of up to twenty dollars per day, or a loaner, without cost to the consumer, if a loaner is reasonably available or obtainable by the manufacturer, assistive device lessor, or assistive device dealer, if any of the following applies:

a. The repair period exceeds ten working days, including the day on which the device is tendered to the manufacturer or an assistive device dealer designated by the manufacturer for repairs. If the assistive device dealer does not tender the assistive device to the manufacturer in a timely enough manner for the manufacturer to make the repairs within ten days, the manufacturer shall have a cause of action against the assistive device dealer for reimbursement of any penalties that the manufacturer must pay.

b. The nonconformity is the same for which the assistive device has been tendered to the assistive device dealer for repair on at least two previous occasions.

2. The provisions of this section regarding a manufacturer's duty shall apply for the period of the applicable express warranty, or until the date any repair required by the warranty is completed and the assistive device is returned to the consumer with the nonconformity eliminated, whichever is later, even if the assistive device is returned after the end of the warranty period.

Sec. 5. NEW SECTION. 216E.5 NONCONFORMITY DISCLOSURE REQUIREMENT.

An assistive device returned by a consumer or assistive device lessor in this state or any other state for nonconformity shall not be sold or leased again in this state unless full written disclosure of the reason for return is made to any prospective buyer or lessee by the manufacturer, assistive device dealer, or assistive device lessor.

Sec. 6. NEW SECTION. 216E.6 REMEDIES.

1. This chapter shall not limit rights or remedies available to a consumer under any other law.

2. Any waiver of rights by a consumer under this chapter is void.

3. In addition to pursuing any other remedy, a consumer may bring an action to recover any damages caused by a violation of this chapter. The court shall award a consumer who prevails in such an action no more than three times the amount of any pecuniary loss, together with costs and reasonable attorney fees, and any equitable relief that the court determines is appropriate.

Sec. 7. NEW SECTION. 216E.7 EXEMPTIONS.

This chapter does not apply to a hearing aid sold, leased, or transferred to a consumer by an audiologist licensed under chapter 147, or a hearing aid dealer licensed under chapter 154A, if the audiologist or dealer provides either an express warranty for the hearing aid or provides for service and replacement of the hearing aid.

Approved April 2, 1998

CHAPTER 1043

AQUIFER STORAGE AND RECOVERY — PERMITS

H.F. 2292

AN ACT relating to permits for aquifer storage and recovery and making penalties applicable.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 455B.261, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 0A. "Aquifer" means a water-bearing geologic formation which is capable of yielding a usable quantity of water to a well or spring and which transports and stores groundwater.

NEW SUBSECTION. 0B. "Aquifer storage and recovery" means the injection and storage of treated water in an aquifer through a permitted well during times when treated water is available, and withdrawal of the treated water from the same aquifer through the same well during times when treated water is needed.

Sec. 2. Section 455B.261, subsections 10 and 11, Code 1997, are amended to read as follows:

10. "Permit" means a written authorization issued by the department to a permittee which authorizes diversion, storage, including storage of treated water in an aquifer, or withdrawal of water limited as to quantity, time, place, and rate in accordance with this part or authorizes construction, use, or maintenance of a structure, dam, obstruction, deposit, or excavation in a floodway or flood plain in accordance with the principles and policies of protecting life and property from floods as specified in this part.

11. "Permittee" means a person who obtains a permit from the department authorizing the person to take possession by diversion, storage in an aquifer, or otherwise and to use and apply an allotted quantity of water for a designated beneficial use, and who makes actual use of the water for that purpose or a person who obtains a permit from the department authorizing construction, use, or maintenance of a structure, dam, obstruction, deposit, or excavation in a floodway or flood plain for a designated purpose.

Sec. 3. Section 455B.265, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Permits for aquifer storage and recovery shall be granted for a period of twenty years or the life of the project, whichever is less, unless revoked by the department. The department shall adopt rules pursuant to chapter 17A relating to information an applicant for a permit shall submit to the department. At a minimum, the information shall include engineering, investigation, and evaluation information requisite to assure protection of the groundwater resource, and assurances that an aquifer storage and recovery site shall not unreasonably restrict other uses of the aquifer. Upon application and prior to the termination date specified in the original permit or a subsequent renewal permit, a renewal permit may be issued by the department for an additional period of twenty years. The department shall not authorize withdrawals of treated water from an aquifer storage and recovery site by anyone other than the permittee during the period of the original permit and each subsequent renewal permit. Treated water injected into an aquifer covered by a permit issued pursuant to this subsection is the property of the permittee.

Sec. 4. Section 455B.269, Code 1997, is amended to read as follows:

455B.269 TAKING WATER PROHIBITED.

1. A person shall not take water from a natural watercourse, underground basin or watercourse, drainage ditch, or settling basin within this state for any purpose other than a nonregulated use except in compliance with the sections of this part which relate to the withdrawal, diversion, or storage of water. However, existing uses may be continued during the period of the pendency of an application for a permit.

2. A person, other than the aquifer storage and recovery permittee, shall not take treated water from a permitted aquifer storage and recovery site within this state.

Approved April 2, 1998

CHAPTER 1044

PHYSICAL EXERCISE CLUBS — DEFINITION

H.F. 2429

AN ACT relating to the regulation of physical exercise clubs.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 552.1, subsection 3, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. A facility owned and operated on a not-for-profit basis by a person or a contractor of a person that is operated solely for the purpose of serving employees of the person, whether currently employed or retired, and family members of employees.

Approved April 2, 1998

CHAPTER 1045

ENTREPRENEURS WITH DISABILITIES TECHNICAL ASSISTANCE PROGRAM

H.F. 2435

AN ACT relating to the entrepreneurs with disabilities program.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 15.241, Code 1997, is amended to read as follows:

15.241 IOWA "SELF-EMPLOYMENT LOAN PROGRAM".

1. A "self-employment loan program account" is established within the strategic investment fund created in section 15.313 to provide funding for the self-employment loan program which is to be conducted in coordination with the job training partnership program and other programs administered under section 15.108, subsection 6, paragraph "c". The department may contract with local community action agencies or other local entities in administering the program, and shall work with the department of workforce development and the department of human services in developing the program. The department shall cooperate with the division of vocational rehabilitation under the department of education to implement a business development initiative for entrepreneurs with disabilities.

The self-employment loan program shall administer a low-interest loan program to provide loans to low-income persons and persons with disabilities for the purpose of establishing or expanding small business ventures. The terms of the loans shall be determined by the department, but shall not be in excess of ten thousand dollars to any single applicant or at a rate to exceed five percent simple interest per annum. The department shall maintain records of all loans approved and the effectiveness of those loans in establishing or expanding small business ventures.

The department may provide grants of not more than five thousand dollars under the program, if the grants are used to secure additional financing from private sources. The department may provide a service fee to financial institutions for administering loans provided under this section.

Payments of interest, recaptures of awards, and repayments of moneys loaned under this program shall be deposited into the strategic investment fund. Receipts from loans or grants under the business development initiative for entrepreneurs with disabilities program may be maintained in a separate account within the fund.

2. a. The department shall implement and administer an entrepreneurs with disabilities technical assistance program designed to provide only technical assistance to a qualified business under this subsection.

b. A business qualifies for assistance under this program if the business is fifty-one percent or more owned, operated, and actively managed by one or more persons with a disability and is located in this state, operated for profit, and has a gross income of less than three million dollars computed as an average of the three preceding years. "Disability" means disability as defined in section 15.102.

c. A person shall not be required to be a client of the division of vocational rehabilitation services or the department for the blind in order to qualify for assistance under this program.

d. The department shall adopt rules as necessary for the administration of the program.

Approved April 2, 1998

CHAPTER 1046

REGULATION OF COMMERCIAL FEED

H.F. 2438

AN ACT relating to the regulation of commercial feed.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 198.3, subsection 3, Code 1997, is amended to read as follows:

3. "Commercial feed" means all materials ~~except~~ or a combination of materials which are distributed or intended for distribution for use as feed or for mixing in feed, unless such materials are specifically exempted. Unmixed whole seeds ~~unmixed or~~ and physically altered entire unmixed seeds, when such whole or physically altered seeds are not chemically changed or are not adulterated within the meaning of section 198.7, subsection 1, ~~which~~ are ~~distributed for use as feed or for mixing in feed~~ exempt. The secretary by rule may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances when such commodities, compounds or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of section 198.7, subsection 1.

Sec. 2. Section 198.4, subsection 1, unnumbered paragraph 1, Code 1997, is amended by striking the paragraph and inserting in lieu thereof the following:

This section shall apply to any person:

a. Who manufactures a commercial feed within the state.

b. Who distributes a commercial feed in or into the state.

c. Whose name appears on the label of a commercial feed as guarantor.

The person shall obtain a license, for each facility which distributes in or into the state, authorizing the person to manufacture or distribute commercial feed before the person engages in such activity. Any person who makes only retail sales of commercial feed which bears labeling or other approved indication that the commercial feed is from a licensed manufacturer, guarantor, or distributor who has assumed full responsibility for the tonnage inspection fee due under section 198.9 is not required to obtain a license.

Approved April 2, 1998

CHAPTER 1047

DESIGNATION OF JUDICIAL DEPARTMENT AS JUDICIAL BRANCH

H.F. 2456

AN ACT changing the designation of the judiciary in the Code from the judicial department to the judicial branch.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 4.1, subsection 5, Code 1997, is amended to read as follows:

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

Sec. 2. Section 8.23, unnumbered paragraph 2, Code 1997, is amended to read as follows:

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

Sec. 3. Section 8.44, unnumbered paragraph 2, Code 1997, is amended to read as follows:

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

Sec. 4. Section 8D.2, subsection 5, Code 1997, is amended to read as follows:

5. "Public agency" means a state agency, an institution under the control of the board of regents, the judicial ~~department~~ branch as provided in section 8D.13, subsection 17, a school corporation, a city library, a regional library as provided in chapter 256, a county library as provided in chapter 336, or a judicial district department of correctional services established in section 905.2, to the extent provided in section 8D.13, subsection 15, an agency of the federal government, or a United States post office which receives a federal grant for pilot and demonstration projects.

Sec. 5. Section 8D.9, subsection 1, Code 1997, is amended to read as follows:

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

Sec. 6. Section 8D.13, subsection 2, paragraph c, Code Supplement 1997, is amended to read as follows:

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

Sec. 7. Section 8D.13, subsection 5, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

The state shall lease all fiberoptic cable facilities or facilities with DS-3 capacity for Part III connections for which state funding is provided. The state shall lease all fiberoptic cable facilities or facilities with DS-3 or DS-1 capacity for the judicial ~~department~~ branch, judicial district department of correctional services, and state agency connections for which state

funding is provided. Such facilities shall be leased from qualified providers. The state shall not own such facilities, except for those facilities owned by the state as of January 1, 1994.

Sec. 8. Section 8D.13, subsection 17, Code Supplement 1997, is amended to read as follows:

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

Sec. 9. Section 11.5A, Code 1997, is amended to read as follows:

11.5A AUDIT COSTS.

When requested by the auditor of state, the department of management shall transfer from any unappropriated funds in the state treasury an amount not exceeding the expenses and prorated salary costs already paid to perform examinations of state executive agencies and the offices of the judicial ~~department~~ branch, and federal financial assistance, as defined in Pub. L. No. 98-502, received by all other departments for which payments by agencies have not been made. Upon payment by the departments, the auditor of state shall credit the payments to the state treasury.

Sec. 10. Section 11.5B, subsection 11, Code 1997, is amended to read as follows:

11. Offices of the clerks of the district court of the judicial ~~department~~ branch.

Sec. 11. Section 17A.2, subsection 1, Code 1997, is amended to read as follows:

1. "Agency" means each board, commission, department, officer or other administrative office or unit of the state. "Agency" does not mean the general assembly, the judicial ~~department~~ branch or any of its components, the office of consumer advocate, the governor or a political subdivision of the state or its offices and units. Unless provided otherwise by statute, no less than two-thirds of the members eligible to vote of a multimember agency constitute a quorum authorized to act in the name of the agency.

Sec. 12. Section 20.4, subsection 7, Code 1997, is amended to read as follows:

7. Judicial officers, and confidential, professional, or supervisory employees of the judicial ~~department~~ branch.

Sec. 13. Section 46.5A, Code 1997, is amended to read as follows:

46.5A JUDICIAL NOMINATING COMMISSION EXPENSES.

Members of the state judicial nominating commission and the district judicial nominating commissions are entitled to be reimbursed for actual and necessary expenses incurred in the performance of their duties as commissioners for each day spent attending commission meetings or training sessions called by the chairperson. Expenses shall be paid from funds appropriated to the judicial ~~department~~ branch for this purpose.

Sec. 14. Section 68B.2, subsection 25, Code 1997, is amended to read as follows:

25. "State employee" means a person who is not an official and is a paid employee of the state of Iowa and does not include an independent contractor, an employee of the judicial ~~department~~ branch who is not an employee of the office of attorney general, an employee of the general assembly, an employee of a political subdivision of the state, or an employee of any agricultural commodity promotional board, if the board is subject to a producer referendum.

Sec. 15. Section 68B.39, Code 1997, is amended to read as follows:

68B.39 SUPREME COURT RULES.

The supreme court of this state shall prescribe rules by January 1, 1993, establishing a code of ethics for officials and employees of the judicial ~~department~~ branch of this state, and the immediate family members of the officials and employees. Rules prescribed under this

paragraph shall include provisions relating to the receipt or acceptance of gifts and honoraria, interests in public contracts, services against the state, and financial disclosure which are substantially similar to the requirements of this chapter.

The supreme court of this state shall also prescribe rules which relate to activities by officials and employees of the judicial ~~department~~ branch which constitute conflicts of interest.

Sec. 16. Section 135L.2, subsection 2, paragraph a, Code Supplement 1997, is amended to read as follows:

a. The video shall be available through the state and local offices of the Iowa department of public health, the department of human services, and the judicial ~~department~~ branch and through the office of each licensed physician who performs abortions.

Sec. 17. Section 135L.3, subsection 3, paragraph j, Code Supplement 1997, is amended to read as follows:

j. If the court denies the petition for waiver of notification and if the decision is not appealed or all appeals are exhausted, the court shall advise the pregnant minor that, upon the request of the pregnant minor, the court will appoint a licensed marital and family therapist to assist the pregnant minor in addressing any intrafamilial problems. All costs of services provided by a court-appointed licensed marital and family therapist shall be paid by the court through the expenditure of funds appropriated to the judicial ~~department~~ branch.

Sec. 18. Section 216A.136, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The division shall maintain an Iowa statistical analysis center for the purpose of coordinating with data resource agencies to provide data and analytical information to federal, state, and local governments, and assist agencies in the use of criminal and juvenile justice data. Notwithstanding any other provision of state law, unless prohibited by federal law or regulation, the division shall be granted access, for purposes of research and evaluation, to criminal history records, official juvenile court records, juvenile court social records, and any other data collected or under control of the board of parole, department of corrections, district departments of correctional services, department of human services, judicial ~~department~~ branch, and department of public safety. However, intelligence data and peace officer investigative reports maintained by the department of public safety shall not be considered data for the purposes of this section. Any record, data, or information obtained by the division under this section and the division itself is subject to the federal and state confidentiality laws and regulations which are applicable to the original record, data, or information obtained by the division and to the original custodian of the record, data, or information. The access shall include but is not limited to all of the following:

Sec. 19. Section 216A.138, subsection 2, Code Supplement 1997, is amended to read as follows:

2. The department of human services, department of corrections, judicial ~~department~~ branch, department of public safety, department of education, local school districts, and other state agencies and political subdivisions shall cooperate with the division in the development of the plan.

Sec. 20. Section 225C.4, subsection 1, paragraph n, Code 1997, is amended to read as follows:

n. Provide consultation and technical assistance to patients' advocates appointed pursuant to section 229.19, in cooperation with the judicial ~~department~~ branch and the care review committees appointed for health care facilities pursuant to section 135C.25.

Sec. 21. Section 232.2, subsection 9, Code Supplement 1997, is amended to read as follows:

9. "Court appointed special advocate" means a person duly certified by the judicial ~~department~~ branch for participation in the court appointed special advocate program and appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party or is called as a witness or relating to any dispositional order involving the child resulting from such proceeding.

Sec. 22. Section 232.143, subsection 1, Code 1997, is amended to read as follows:

1. A statewide expenditure target for children in group foster care placements in a fiscal year, which placements are a charge upon or are paid for by the state, shall be established annually in an appropriation bill by the general assembly. The department and the judicial ~~department~~ branch shall jointly develop a formula for allocating a portion of the statewide expenditure target established by the general assembly to each of the department's regions. The formula shall be based upon the region's proportion of the state population of children and of the statewide usage of group foster care in the previous five completed fiscal years and other indicators of need. The expenditure amount determined in accordance with the formula shall be the group foster care budget target for that region. A region may exceed its budget target for group foster care by not more than five percent in a fiscal year, provided the overall funding allocated by the department for all child welfare services in the region is not exceeded.

Sec. 23. Section 232A.2, Code 1997, is amended to read as follows:

232A.2 PROGRAM CREATED.

A juvenile victim restitution program is created which shall be funded through moneys appropriated by the general assembly to the ~~department~~ judicial branch. The primary purpose of the program is to provide funds to compensate victims for losses due to the delinquent acts of juveniles.

Upon completion of a district's plan, the ~~department~~ judicial branch shall provide funds in conformance with the procedures and policies of the state. The ~~department~~ judicial branch shall reclaim any portion of an initial allocation to a judicial district that is unencumbered on December 31 of any year. The ~~department~~ judicial branch shall immediately reallocate the reclaimed funds to those judicial districts from which funds were not reclaimed in the manner provided in this section for the original allocation. Any portion of an amount allocated that remains unencumbered on June 30 of any year shall revert to the general fund of the state.

Sec. 24. Section 232A.3, Code 1997, is amended to read as follows:

232A.3 REPORTS REQUIRED.

Each judicial district shall submit a report of the progress and financial status of its juvenile victim restitution program to the ~~department~~ judicial branch on a quarterly basis. The ~~department~~ judicial branch shall prepare and submit annually a report on the progress and financial status of the programs to the general assembly no later than March 15.

Sec. 25. Section 237.3, subsection 8, Code Supplement 1997, is amended to read as follows:

8. The department, in consultation with the judicial ~~department~~ branch, the division of criminal and juvenile justice planning of the department of human rights, residential treatment providers, the foster care provider association, and other parties which may be affected, shall review the licensing rules pertaining to residential treatment facilities, and examine whether the rules allow the facilities to accept and provide effective treatment to juveniles with serious problems who might not otherwise be placed in those facilities.

Sec. 26. Section 237.18, subsection 6, unnumbered paragraph 2, Code 1997, is amended to read as follows:

The state board shall make recommendations to the general assembly, the department, to child-placing agencies, the governor, the supreme court, the chief judge of each judicial

district, and to the judicial ~~department~~ branch. The recommendations shall include, but are not limited to, identification of systemic problems in the foster care and the juvenile justice systems, specific proposals for improvements that assist the systems in being more cost-effective and better able to protect the best interests of children, and necessary changes relating to the data collected and the annual report made under subsection 2, paragraph "b".

Sec. 27. Section 261.2, subsection 14, Code 1997, is amended to read as follows:

14. Develop and implement, in cooperation with the department of human services and the judicial ~~department~~ branch, a program to assist juveniles who are sixteen years of age or older and who have a case permanency plan under chapter 232 or 237 or are otherwise under the jurisdiction of chapter 232 in applying for federal and state aid available for higher education.

Sec. 28. Section 321J.3, subsection 3, Code Supplement 1997, is amended to read as follows:

3. The state department of transportation, in cooperation with the judicial ~~department~~ branch, shall adopt rules, pursuant to the procedure in section 125.33, regarding the assignment of persons ordered under section 321J.17 to submit to substance abuse evaluation and treatment. The rules shall be applicable only to persons other than those committed to the custody of the director of the department of corrections under section 321J.2. The rules shall be consistent with the practices and procedures of the judicial ~~department~~ branch in sentencing persons to substance abuse evaluation and treatment under section 321J.2. The rules shall include the requirement that the treatment programs utilized by a person pursuant to an order of the department meet the licensure standards of the division of substance abuse for the department of public health. The rules shall also include provisions for payment of costs by the offenders, including insurance reimbursement on behalf of offenders, or other forms of funding, and shall also address reporting requirements of the facility, consistent with the provisions of sections 125.84 and 125.86. The department shall be entitled to treatment information contained in reports to the department, notwithstanding any provision of chapter 125 that would restrict department access to treatment information and records.

Sec. 29. Section 321J.24, subsection 9, Code Supplement 1997, is amended to read as follows:

9. The chief judge of the judicial district shall determine fees to be paid by participants in the program. The judicial ~~department~~ branch shall use the fees to pay all costs associated with the program. The court shall either require the participant to pay the fee in order to participate in the program, or may waive the fee or collect a lesser amount upon a showing of cause.

Sec. 30. Section 421.17, subsection 25, paragraph f, Code Supplement 1997, is amended to read as follows:

f. The department shall set off the debt, plus a fee established by rule to reflect the cost of processing, against the debtor's income tax refund or rebate. The department shall transfer ninety percent of the amount set off to the treasurer of state for deposit in the general fund of the state. The remaining ten percent shall be remitted to the judicial ~~department~~ branch and used to defray the costs of this procedure. If the debtor gives timely written notice of intent to contest the amount of the claim, the department shall hold the refund or rebate until final determination of the correct amount of the claim.

Sec. 31. Section 602.1101, subsection 5, Code 1997, is amended to read as follows:

5. "Court employee" or "employee of the judicial ~~department~~ branch" means an officer or employee of the judicial ~~department~~ branch except a judicial officer.

Sec. 32. Section 602.1101, subsection 6, Code 1997, is amended by striking the subsection.

Sec. 33. Section 602.1102, Code 1997, is amended to read as follows:

602.1102 JUDICIAL ~~DEPARTMENT~~ BRANCH.

The judicial ~~department~~ branch consists of all of the following:

1. The supreme court.
2. The court of appeals.
3. The district court.
4. The clerks of all of the courts of this state.
5. Juvenile court officers.
6. Court reporters.
7. All other court employees.

Sec. 34. Section 602.1201, Code 1997, is amended to read as follows:

602.1201 SUPERVISION AND ADMINISTRATION.

The supreme court has supervisory and administrative control over the ~~department~~ judicial branch and over all judicial officers and court employees.

Sec. 35. Section 602.1202, Code 1997, is amended to read as follows:

602.1202 JUDICIAL COUNCIL.

A judicial council is established, consisting of the chief judges of the judicial districts, the chief judge of the court of appeals, and the chief justice who shall be the chairperson. The council shall convene not less than twice each year at times and places as ordered by the chief justice. The council shall advise the supreme court with respect to the supervision and administration of the ~~department~~ judicial branch.

Sec. 36. Section 602.1203, Code 1997, is amended to read as follows:

602.1203 PERSONNEL CONFERENCES.

The chief justice may order conferences of judicial officers or court employees on matters relating to the administration of justice or the affairs of the ~~department~~ judicial branch. For judges and other court employees who handle cases involving children and family law, the chief justice shall require regular training concerning mental or emotional disorders which may afflict children and the impact children with such disorders have upon their families.

Sec. 37. Section 602.1204, Code 1997, is amended to read as follows:

602.1204 PROCEDURES FOR ~~DEPARTMENT~~ JUDICIAL BRANCH.

1. The supreme court shall prescribe procedures for the orderly and efficient supervision and administration of the ~~department~~ judicial branch. These procedures shall be executed by the chief justice.

2. The state court administrator may issue directives relating to the management of the ~~department~~ judicial branch. The subject matters of these directives shall include, but need not be limited to, fiscal procedures, the judicial retirement system, and the collection and reporting of statistical and other data. The directives shall provide for an affirmative action plan which shall be based upon guidelines provided by the Iowa state civil rights commission. In addition, when establishing salaries and benefits the state court administrator shall not discriminate in the employment or pay between employees on the basis of gender by paying wages to employees at a rate less than the rate at which wages are paid to employees of the opposite gender for work of comparable worth. As used in this section "comparable worth" means the value of work as measured by the composite of the skill, effort, responsibility, and working conditions normally required in the performance of work.

3. The supreme court shall compile and publish all procedures and directives relating to the supervision and administration of the internal affairs of the ~~department~~ judicial branch, and shall distribute a copy of the compilation and all amendments to each operating component of the ~~department~~ judicial branch. Copies also shall be distributed to agencies referred to in section 18.97 upon request.

4. The supreme court shall accept bids for the printing of court forms from both public and

private enterprises and shall attempt to contract with both public and private enterprises for a reasonable portion of the court forms.

Sec. 38. Section 602.1207, Code 1997, is amended to read as follows:

602.1207 REPORT OF THE CONDITION OF THE JUDICIAL ~~DEPARTMENT~~ BRANCH.

The chief justice shall communicate the condition of the ~~department~~ judicial branch by message to each general assembly, and may recommend matters the chief justice deems appropriate.

Sec. 39. Section 602.1208, subsection 2, Code 1997, is amended to read as follows:

2. The state court administrator is the principal administrative officer of the judicial ~~department~~ branch, subject to the immediate direction and supervision of the chief justice.

Sec. 40. Section 602.1209, subsections 1, 2, 3, 6, 7, and 8, Code 1997, are amended to read as follows:

1. Manage the judicial ~~department~~ branch.

2. Administer funds appropriated to the ~~department~~ judicial branch.

3. Authorize the filling of vacant court-employee positions, review the qualifications of each person to be employed within the ~~department~~ judicial branch, and assure that affirmative action goals are being met by the ~~department~~ judicial branch. The state court administrator shall not approve the employment of a person when either the proposed terms and conditions of employment or the qualifications of the individual do not satisfy personnel policies of the ~~department~~ judicial branch. The administrator shall implement the comparable worth directives issued under section 602.1204, subsection 2 in all court employment decisions.

6. Collect and compile information and statistical data, and submit reports relating to judicial business, including juvenile court activities and other matters relating to the ~~department~~ judicial branch.

7. Formulate and submit recommendations for improvement of the judicial system, with reference to the structure of the ~~department~~ judicial branch and its organization and methods of operation, the selection, compensation, number, and tenure of judicial officers and court employees, and other matters as directed by the chief justice or the supreme court.

8. Call conferences of district court administrators as necessary in the administration of the ~~department~~ judicial branch.

Sec. 41. Section 602.1214, subsections 3 and 5, Code 1997, are amended to read as follows:

3. The district court administrator shall assist the state court administrator in the implementation of policies of the ~~department~~ judicial branch and in the performance of the duties of the state court administrator.

5. The district court administrator shall comply with policies of the ~~department~~ judicial branch and the judicial district.

Sec. 42. Section 602.1215, subsections 3 and 4, Code 1997, are amended to read as follows:

3. The clerk of the district court shall assist the state court administrator and the district court administrator in carrying out the rules, directives, and procedures of the ~~department~~ judicial branch and the judicial district.

4. The clerk of the district court shall comply with rules, directives, and procedures of the ~~department~~ judicial branch and the judicial district.

Sec. 43. Section 602.1217, subsections 3 and 4, Code 1997, are amended to read as follows:

3. The chief juvenile court officer, in addition to performing the duties of a juvenile court officer, shall supervise juvenile court officers and administer juvenile court services within

the judicial district in accordance with law and with the rules, directives, and procedures of the ~~department~~ judicial branch and the judicial district.

4. The chief juvenile court officer shall assist the state court administrator and the district court administrator in implementing rules, directives, and procedures of the ~~department~~ judicial branch and the judicial district.

Sec. 44. Section 602.1218, Code 1997, is amended to read as follows:

602.1218 REMOVAL FOR CAUSE.

Inefficiency, insubordination, incompetence, failure to perform assigned duties, inadequacy in performance of assigned duties, narcotics addiction, dishonesty, unrehabilitated alcoholism, negligence, conduct which adversely affects the performance of the individual or of the ~~department~~ judicial branch, conduct unbecoming a public employee, misconduct, or any other just and good cause constitutes cause for removal.

Sec. 45. Section 602.1301, Code 1997, is amended to read as follows:

602.1301 BUDGET AND FISCAL PROCEDURES.

1. The supreme court shall prepare an annual operating budget for the ~~department~~ judicial branch, and shall submit a budget request to the general assembly for the fiscal period for which the general assembly is appropriating funds.

2. a. As early as possible, but not later than December 1, the supreme court shall submit to the legislative fiscal bureau the annual budget request and detailed supporting information for the judicial ~~department~~ branch. The submission shall be designed to assist the legislative fiscal bureau in its preparation for legislative consideration of the budget request. The information submitted shall contain and be arranged in a format substantially similar to the format specified by the director of management and used by all departments and establishments in transmitting to the director estimates of their expenditure requirements pursuant to section 8.23, except the estimates of expenditure requirements shall be based upon one hundred percent of funding for the current fiscal year accounted for by program, and using the same line item definitions of expenditures as used for the current fiscal year's budget request, and the remainder of the estimate of expenditure requirements prioritized by program. The supreme court shall also make use of the department of management's automated budget system when submitting information to the director of management to assist the director in the transmittal of information as required under section 8.35A. The supreme court shall budget and track expenditures by the following separate organization codes:

(1) Iowa court information system.
(2) Appellate courts.
(3) Central administration.
(4) District court administration.
(5) Judges and magistrates.
(6) Court reporters.
(7) Juvenile court officers.
(8) District court clerks.
(9) Jury and witness fees.

b. Before December 1, the supreme court shall submit to the director of management an estimate of the total expenditure requirements of the judicial ~~department~~ branch. The director of management shall submit this estimate received from the supreme court to the governor for inclusion without change in the governor's proposed budget for the succeeding fiscal year. The estimate shall also be submitted to the chairpersons of the committees on appropriations.

3. The state court administrator shall prescribe the procedures to be used by the operating components of the ~~department~~ judicial branch with respect to the following:

a. The preparation, submission, review, and revision of budget requests.
b. The allocation and disbursement of funds appropriated to the ~~department~~ judicial branch.

c. The purchase of forms, supplies, equipment, and other property.

d. Other matters relating to fiscal administration.

4. The state court administrator shall prescribe practices and procedures for the accounting and internal auditing of funds of the ~~department~~ judicial branch, including uniform practices and procedures to be used by judicial officers and court employees with respect to all funds, regardless of source.

Sec. 46. Section 602.1302, Code 1997, is amended to read as follows:

602.1302 STATE FUNDING.

1. Except as otherwise provided by sections 602.1303 and 602.1304 or other applicable law, the expenses of operating and maintaining the ~~department~~ judicial branch shall be paid out of the general fund of the state from funds appropriated by the general assembly for the ~~department~~ judicial branch. State funding shall be phased in as provided in section 602.11101.

2. The supreme court may accept federal funds to be used in the operation of the ~~department~~ judicial branch, but shall not expend any of these funds except pursuant to appropriation of the funds by the general assembly.

3. A revolving fund is created in the state treasury for the payment of jury and witness fees and mileage by the ~~department~~ judicial branch. The ~~department~~ judicial branch shall deposit any reimbursements to the state for the payment of jury and witness fees and mileage in the revolving fund. Notwithstanding section 8.33, unencumbered and unobligated receipts in the revolving fund at the end of a fiscal year do not revert to the general fund of the state. The ~~department~~ judicial branch shall on or before February 1 file a financial accounting of the moneys in the revolving fund with the legislative fiscal bureau. The accounting shall include an estimate of disbursements from the revolving fund for the remainder of the fiscal year and for the next fiscal year.

4. The ~~department~~ judicial branch shall reimburse counties for the costs of witness and mileage fees and for attorney fees paid pursuant to section 232.141, subsection 1.

Sec. 47. Section 602.1304, subsection 2, paragraph c, Code Supplement 1997, is amended to read as follows:

c. Moneys in the collections fund shall be used by the judicial ~~department~~ branch for the Iowa court information system; records management equipment, services, and projects; other technological improvements; electronic legal research equipment, systems, and projects; and the study, development, and implementation of other innovations and projects that would improve the administration of justice. The moneys in the collection fund may also be used for capital improvements necessitated by the installation of or connection with the Iowa court information system, the Iowa communications network, and other technological improvements approved by the ~~department~~ judicial branch.

Sec. 48. Section 602.1401, subsections 1, 2, and 3, Code 1997, are amended to read as follows:

1. The supreme court shall establish, and may amend, a personnel system and a pay plan for court employees. The personnel system shall include a designation by position title, classification, and function of each position or class of positions within the ~~department~~ judicial branch. Reasonable efforts shall be made to accommodate the individual staffing and management practices of the respective clerks of the district court. The personnel system, in the employment of court employees, shall not discriminate on the basis of race, creed, color, sex, national origin, religion, physical disability, or political party preference. The supreme court, in establishing the personnel system, shall implement the comparable worth directives issued by the state court administrator under section 602.1204, subsection 2. The personnel system shall include the prohibitions against sexual harassment of full-time, part-time, and temporary employees set out in section 19B.12, and shall include a grievance

procedure for discriminatory harassment. The personnel system shall develop and distribute at the time of hiring or orientation, a guide that describes for employees the applicable sexual harassment prohibitions and grievance, violation, and disposition procedures. This subsection does not supersede the remedies provided under chapter 216.

2. The supreme court shall compile and publish all documents that establish the personnel system, and shall distribute a copy of the compilation and all amendments to each operating component of the ~~department~~ judicial branch.

3. The state court administrator is the public employer of judicial ~~department~~ branch employees for purposes of chapter 20, relating to public employment relations.

For purposes of chapter 20, the certified representative, which on July 1, 1983 represents employees who become judicial ~~department~~ branch employees as a result of 1983 Iowa Acts, chapter 186, shall remain the certified representative when the employees become judicial ~~department~~ branch employees and thereafter, unless the public employee organization is decertified in an election held under section 20.15 or amended or absorbed into another certified organization pursuant to chapter 20. Collective bargaining negotiations shall be conducted on a statewide basis and the certified employee organizations which engage in bargaining shall negotiate on a statewide basis, although bargaining units shall be organized by judicial district. The public employment relations board shall adopt rules pursuant to chapter 17A to implement this subsection.

Sec. 49. Section 602.1402, Code 1997, is amended to read as follows:

602.1402 PERSONNEL CONTROL.

The employment of court employees within an operating component of the judicial ~~department~~ branch is subject to prior authorization by the supreme court, and to approval by the state court administrator under section 602.1209.

Sec. 50. Section 602.1502, subsection 1, Code 1997, is amended to read as follows:

1. The supreme court shall set the compensation of the state court administrator. The salaries of other employees of the judicial ~~department~~ branch shall be set pursuant to the ~~department's~~ judicial branch's pay plan established under section 602.1401.

Sec. 51. Section 602.1510, Code 1997, is amended to read as follows:

602.1510 BOND EXPENSE.

The cost of a bond that is required of a judicial officer or court employee in the discharge of duties shall be paid by the ~~department~~ judicial branch.

Sec. 52. Section 602.1610, subsection 2, Code 1997, is amended to read as follows:

2. The mandatory retirement age for employees of the judicial ~~department~~ branch is as provided in section 97B.46.

Sec. 53. Section 602.2101, Code 1997, is amended to read as follows:

602.2101 AUTHORITY.

The supreme court may retire, discipline, or remove a judicial officer from office or may discipline or remove an employee of the judicial ~~department~~ branch for cause as provided in this part.

Sec. 54. Section 602.2103, Code 1997, is amended to read as follows:

602.2103 OPERATION OF COMMISSION.

A quorum of the commission is four members. Only those commission members that are present at commission meetings or hearings may vote. An application by the commission to the supreme court to retire, discipline, or remove a judicial officer, or discipline or remove an employee of the judicial ~~department~~ branch, or an action by the commission which affects the final disposition of a complaint, requires the affirmative vote of at least four commission members. Notwithstanding chapter 21 and chapter 22, all records, papers, proceedings, meetings, and hearings of the commission are confidential, but if the commission applies to the supreme court to retire, discipline, or remove a judicial officer, or to discipline or remove

an employee of the judicial ~~department~~ branch, the application and all of the records and papers in that proceeding are public documents.

Sec. 55. Section 602.2104, Code 1997, is amended to read as follows:

602.2104 PROCEDURE BEFORE COMMISSION.

1. Charges before the commission shall be in writing but may be simple and informal. The commission shall investigate each charge as indicated by its gravity. If the charge is groundless, it shall be dismissed by the commission. If the charge appears to be substantiated but does not warrant application to the supreme court, the commission may dispose of it informally by conference with or communication to the judicial officer or employee of the judicial ~~department~~ branch involved. If the charge appears to be substantiated and if proved would warrant application to the supreme court, notice shall be given to the judicial officer and a hearing shall be held before the commission. The commission may employ investigative personnel, in addition to the executive secretary, as it deems necessary. The commission may also employ or contract for the employment of legal counsel.

2. In case of a hearing before the commission, written notice of the charge and of the time and place of hearing shall be mailed to a judicial officer or an employee of the judicial ~~department~~ branch at the person's residence at least twenty days prior to the time set for hearing. Hearing shall be held in the county where the judicial officer or employee of the judicial ~~department~~ branch resides unless the commission and the judicial officer or employee of the judicial ~~department~~ branch agree to a different location. The judicial officer shall continue to perform judicial duties during the pendency of the charge and the employee shall continue to perform the employee's assigned duties, unless otherwise ordered by the commission. The attorney general shall prosecute the charge before the commission on behalf of the state. A judicial officer or employee of the judicial ~~department~~ branch may defend and has the right to participate in person and by counsel, to cross-examine, to be confronted by the witnesses, and to present evidence in accordance with the rules of civil procedure. A complete record shall be made of the evidence by a court reporter. In accordance with its findings on the evidence, the commission shall dismiss the charge or make application to the supreme court to retire, discipline, or remove the judicial officer or to discipline or remove an employee of the judicial ~~department~~ branch.

3. The commission has subpoena power, which may be used in conducting investigations and during the hearing process. A person who disobeys the commission's subpoena or who refuses to testify or produce documents as required by a commission subpoena may be punished for contempt in the district court for the county in which the hearing is being held or the investigation is being conducted. Costs related to investigations and to the appearance of witnesses subpoenaed by the designated prosecutor shall be paid by the commission. Commission subpoenas may be issued as follows:

a. During an investigation, subpoenas shall be issued by the commission, at the request of the person designated to conduct the investigation, to compel the appearance of persons or the production of documents before the person who is designated to conduct the investigation. The person designated to conduct the investigation shall administer the required oath.

b. During the hearing process, subpoenas shall be issued by the commission at the request of the designated prosecutor or the judicial officer or employee of the judicial ~~department~~ branch.

Sec. 56. Section 602.2106, subsections 1, 2, and 3, Code 1997, are amended to read as follows:

1. If the commission submits an application to the supreme court to retire, discipline, or remove a judicial officer or to discipline or remove an employee of the judicial ~~department~~ branch, the commission shall promptly file in the supreme court a transcript of the hearing before the commission. The statutes and rules relative to proceedings in appeals of equity suits apply.

2. The attorney general shall prosecute the proceedings in the supreme court on behalf of the state, and the judicial officer or employee of the judicial ~~department~~ branch may defend in person and by counsel.

3. Upon application by the commission, the supreme court may do any of the following:

a. Retire the judicial officer for permanent physical or mental disability which substantially interferes with the performance of judicial duties.

b. Discipline or remove the judicial officer for persistent failure to perform duties, habitual intemperance, willful misconduct in office, conduct which brings judicial office into disrepute, or substantial violation of the canons of judicial ethics. Discipline may include suspension without pay for a definite period of time not to exceed twelve months.

c. Discipline or remove an employee of the judicial ~~department~~ branch for conduct which violates the code of ethics prescribed by the supreme court for court employees.

Sec. 57. Section 602.5205, subsection 2, Code 1997, is amended to read as follows:

2. Offices may be provided for court of appeals judges or employees at any place other than the seat of state government with the approval of the supreme court within the funds available to the judicial ~~department~~ branch.

Sec. 58. Section 602.6301, Code 1997, is amended to read as follows:

602.6301 NUMBER AND APPORTIONMENT OF DISTRICT ASSOCIATE JUDGES.

There shall be one district associate judge in counties having a population, according to the most recent federal decennial census, of more than thirty-five thousand and less than eighty thousand; two in counties having a population of eighty thousand or more and less than one hundred twenty-five thousand; three in counties having a population of one hundred twenty-five thousand or more and less than two hundred thousand; four in counties having a population of two hundred thousand or more and less than two hundred thirty-five thousand; five in counties having a population of two hundred thirty-five thousand or more and less than two hundred seventy thousand; six in counties having a population of two hundred seventy thousand or more and less than three hundred five thousand; and seven in counties having a population of three hundred five thousand or more. However, a county shall not lose a district associate judgeship solely because of a reduction in the county's population. If the formula provided in this section results in the allocation of an additional district associate judgeship to a county, implementation of the allocation shall be subject to prior approval of the supreme court and availability of funds to the judicial ~~department~~ branch. A district associate judge appointed pursuant to section 602.6302 or 602.6303 shall not be counted for purposes of this section.

Sec. 59. Section 602.7203, Code 1997, is amended to read as follows:

602.7203 JUVENILE VICTIM RESTITUTION.

The ~~department~~ judicial branch shall administer the juvenile victim restitution program created in chapter 232A.

Sec. 60. Section 602.8107, subsection 5, Code Supplement 1997, is amended to read as follows:

5. If a county attorney does not file the notice and list of cases required in section 331.756, subsection 5, the judicial ~~department~~ branch may assign cases to the centralized collection unit of the department of revenue and finance or its designee to collect debts owed to the clerk of the district court.

The department of revenue and finance may impose a fee established by rule to reflect the cost of processing which shall be added to the debt owed to the clerk of the district court. Any amounts collected by the unit will first be applied to the processing fee. The remaining amounts shall be remitted to the clerk of the district court for the county in which the debt is owed. The judicial ~~department~~ branch may prescribe rules to implement this section. These rules may provide for remittance of processing fees to the department of revenue and finance or its designee.

Satisfaction of the outstanding obligation occurs only when all fees or charges and the outstanding obligation are paid in full. Payment of the outstanding obligation only shall not be considered payment in full for satisfaction purposes.

The department of revenue and finance or its collection designee shall file with the clerk of the district court a notice of the satisfaction of each obligation to the full extent of the moneys collected in satisfaction of the obligation. The clerk of the district court shall record the notice and enter a satisfaction for the amounts collected.

Sec. 61. Section 602.8108, subsection 4, paragraph a, Code 1997, is amended to read as follows:

a. Eighty percent shall be used to enhance the ability of the judicial ~~department~~ branch to process cases more quickly and efficiently, to electronically transmit information to state government, local governments, law enforcement agencies, and the public, and to improve public access to the court system. Moneys in this paragraph shall not be used for the Iowa court information system.

Sec. 62. Section 602.9206, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Section 602.1612 does not apply to a senior judge but does apply to a retired senior judge. During the tenure of a senior judge, if the judge is able to serve, the judge may be assigned by the supreme court to temporary judicial duties on courts of this state without salary for an aggregate of thirteen weeks out of each twelve-month period, and for additional weeks with the judge's consent. A senior judge shall not be assigned to judicial duties on the supreme court unless the judge has been appointed to serve on the supreme court prior to retirement. While serving on temporary assignment, a senior judge has and may exercise all of the authority of the office to which the judge is assigned, shall continue to be paid the judge's annuity as senior judge, shall be reimbursed for the judge's actual expenses to the extent expenses of a district judge are reimbursable under section 602.1509, may, if permitted by the assignment order, appoint a temporary court reporter, who shall be paid the remuneration and reimbursement for actual expenses provided by law for a reporter in the court to which the senior judge is assigned, and, if assigned to the court of appeals or the supreme court, shall be given the assistance of a law clerk and a secretary designated by the court administrator of the judicial ~~department~~ branch from the court administrator's staff. Each order of temporary assignment shall be filed with the clerks of court at the places where the senior judge is to serve.

Sec. 63. Section 602.11101, subsection 5, unnumbered paragraph 2, Code 1997, is amended to read as follows:

Until July 1, 1986 the county shall remain responsible for the compensation of and operating costs for court employees not presently designated for state financing and for miscellaneous costs of the judicial ~~department~~ branch related to furnishings, supplies, and equipment purchased, leased, or maintained for the use of judicial officers, referees, and their staff. Effective July 1, 1986 the state shall assume the responsibility for the compensation of and operating costs for court employees presently designated for state financing and for miscellaneous costs of the judicial ~~department~~ branch related to furnishings, supplies, and equipment purchased, leased, or maintained for the use of judicial officers, referees, and their staff. However, the county shall at all times remain responsible for the provision of suitable courtrooms, offices, and other physical facilities pursuant to section 602.1303, subsection 1, including paint, wall covering, and fixtures in the facilities.

Sec. 64. Section 602.11101, subsection 6, Code 1997, is amended to read as follows:

6. The state shall assume the responsibility for the costs of indigent defense on July 1, 1987. However, an attorney appointed to represent an indigent person pursuant to section 331.777 is not a court employee, as defined in section 602.1101, subsection 5, and the judicial ~~department~~ branch does not have supervisory power over personnel of public defender offices established pursuant to section 331.776.

Sec. 65. Section 602.11107, subsection 1, Code 1997, is amended to read as follows:

1. Commencing on the date when each category of employees becomes state employees as a result of this Act, public property referred to in subsection 2 that on the day prior to that date is in the custody of a person or agency referred to in subsection 3 shall not become property of the judicial ~~department~~ branch but shall be devoted for the use of the judicial ~~department~~ branch in its course of business. The judicial ~~department~~ branch shall only be responsible for maintenance contracts or contracts for purchase entered into by the judicial ~~department~~ branch. Upon replacement of the property by the judicial ~~department~~ branch, the property shall revert to the use of the appropriate county. However, if the property is personal property of a historical nature, the property shall not become property of the judicial ~~department~~ branch, and the county shall make the property available to the judicial ~~department~~ branch for the ~~department's~~ judicial branch's use within the county courthouse until the court no longer wishes to use the property, at which time the property shall revert to the use of the appropriate county.

Sec. 66. Section 805.6, subsection 3, Code 1997, is amended to read as follows:

3. Supplies of the uniform citation and complaint for municipal corporations and county agencies shall be paid for out of the budget of the municipal corporation or county receiving the fine resulting from use of the citation and complaint. Supplies of the uniform citation and complaint form used by other agencies shall be paid for out of the budget of the agency concerned and not out of the budget of the judicial ~~department~~ branch.

Sec. 67. Section 232A.1, Code 1997, is repealed.

Sec. 68. DIRECTIVE TO CODE EDITOR.

1. The Code editor is directed to substitute the words "judicial branch" for the words "judicial department" when there appears to be no doubt as to the intent to refer to the judicial department.

2. The Code editor is directed to substitute the words "judicial branch" for the word "department", in chapters 232A and 602 when there appears to be no doubt as to the intent to refer to the judicial department.

Approved April 2, 1998

CHAPTER 1048

DRAINAGE DISTRICT REPAIRS AND IMPROVEMENTS — PERIOD FOR FINANCING

H.F. 2492

AN ACT relating to drainage districts, by extending the period for financing repairs and improvements.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 468.127, unnumbered paragraph 2, Code 1997, is amended to read as follows:

If the board deems that the costs of the repairs or improvements will create assessments against the lands in the district greater than should be borne in one year, it may levy the same at one time and provide for the payment of said costs and assessments in the manner

provided in sections 468.57 through 468.61; provided that assessments may be collected in ~~less~~ not more than ~~ten~~ twenty installments as the board may determine.

Approved April 2, 1998

CHAPTER 1049

UNDERGROUND FACILITIES — STATEWIDE NOTIFICATION CENTER — NOTICE OF EXCAVATION

H.F. 2502

AN ACT relating to the statewide notification center and providing for alternative staff and the information requirements associated with the notice of an excavation.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 480.3, subsection 1, paragraph a, Code 1997, is amended to read as follows:

a. A statewide notification center is established and shall be organized as a nonprofit corporation pursuant to chapter 504A. The center shall be governed by a board of directors which shall represent and be elected by operators, excavators, and other persons who participate in the center. The board ~~shall~~, with input from all interested parties, shall determine the operating procedures and technology needed for a single statewide notification center, and establish a notification process ~~and~~. In addition, the board shall either establish a competitive bidding procedure to select a vendor to provide the notification service or retain sufficient and necessary staff to provide the notification service. ~~The~~ If a vendor is selected, terms of the agreement for the notification service may be modified from time to time by the board, and the agreement shall be reviewed, with an opportunity to receive new bids, no less frequently than every three years. If the board retains staff to provide the notification service, the board, at the board's discretion, may review the notification service at any time and make a determination to use the competitive bidding procedure to select a vendor.

Sec. 2. Section 480.4, subsection 1, Code 1997, is amended to read as follows:

1. a. Except as otherwise provided in this section, prior to any excavation, an excavator shall contact the notification center and provide notice of the planned excavation. This notice must be given at least forty-eight hours prior to the commencement of the excavation, excluding Saturdays, Sundays, and legal holidays. The notification center shall establish a toll-free telephone number to allow excavators to provide the notice required pursuant to this subsection.

b. A notice provided pursuant to this subsection for a location within a city shall ~~be verbal and~~ include the following information:

~~a. The name of the person providing the notice.~~

~~b. The precise location of the proposed area of excavation, including the range, township, section, and quarter section, if known.~~

(1) A street address or block and lot numbers, or both, of the proposed area of excavation.

~~c.~~ (2) The name and address of the excavator.

~~d.~~ (3) The excavator's telephone number.

~~e.~~ (4) The type and extent of the proposed excavation.

~~f.~~ (5) Whether the discharge of explosives is anticipated.

~~g.~~ (6) The date and time when excavation is scheduled to begin.

(7) Approximate location of the excavation on the property.

(8) If known, the name of the housing development and property owner.

c. A notice provided pursuant to this subsection for a location outside a city shall include the following information:

(1) The name of the county, township, range, and section.

(2) The name and address of the excavator.

(3) The excavator's telephone number.

(4) The type and extent of the proposed excavation.

(5) Whether the discharge of explosives is anticipated.

(6) The date and time when excavation is scheduled to begin.

(7) Approximate location of the excavation on the property.

(8) If known, the quarter section, E911 address and global positioning system coordinate, name of property owner, name of housing development with street address or block and lot numbers, or both.

d. For purposes of the requirements of this section, an excavation commences the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

Approved April 2, 1998

CHAPTER 1050

MARITAL AND FAMILY THERAPY AND MENTAL HEALTH COUNSELING — LICENSURE — BOARD OF BEHAVIORAL SCIENCE EXAMINERS

H.F. 2516

AN ACT providing for mandatory licensure for marital and family therapists and mental health counselors, establishing transition provisions, removing frequency requirements regarding board of behavioral science examiners' meetings, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 147.2, Code 1997, is amended to read as follows:

A person shall not engage in the practice of medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, chiropractic, physical therapy, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, occupational therapy, respiratory care, pharmacy, cosmetology, barbering, social work, dietetics, marital and family therapy or mental health counseling, or mortuary science or shall not practice as a physician assistant as defined in the following chapters of this subtitle, unless the person has obtained from the department a license for that purpose.

Sec. 2. Section 154D.3, subsection 5, Code 1997, is amended by striking the subsection.

Sec. 3. Section 154D.4, Code 1997, is amended to read as follows:

154D.4 EXEMPTIONS.

1. This chapter and chapter 147 do not prevent qualified members of other professions, including but not limited to nurses, psychologists, social workers, physicians, physician assistants, attorneys-at-law, or members of the clergy, from providing or advertising that

they provide services of a marital and family therapy or mental health counseling nature consistent with the accepted standards of their respective professions, but these persons shall not use a title or description denoting that they are licensed marital and family therapists or licensed mental health counselors.

2. The licensure requirements of this chapter and chapter 147 do not apply to the following:

a. Students whose activities are conducted within a course of professional education in marital and family therapy or mental health counseling.

b. A person who practices marital and family therapy or mental health counseling under the supervision of a person licensed under this chapter as part of a clinical experience as described in section 154D.2, subsection 1, paragraph "b", or section 154D.2, subsection 2, paragraph "b".

c. The provision of children, family, or mental health services through the department of human services or juvenile court, or agencies contracting with the department of human services or juvenile court, by persons who do not represent themselves to be either a marital and family therapist or a mental health counselor.

Sec. 4. NEW SECTION. 154D.6 TRANSITION PROVISIONS.

1. An applicant for a license to practice marital and family therapy or mental health counseling, applying prior to July 1, 2000, shall not be required respectively to meet the examination requirement contained in section 154D.2, subsection 1, paragraph "c", or subsection 2, paragraph "c", if one of the following is met:

a. The applicant meets the requirements contained in section 154D.2, subsection 1, paragraphs "a" and "b", or subsection 2, paragraphs "a" and "b", respectively.

b. The applicant meets the requirements contained in section 154D.2, subsection 1, paragraph "a", or subsection 2, paragraph "a", and has four thousand hours of employment experience in the practice of marital and family therapy or mental health counseling, respectively.

2. Penalty fees otherwise incurred pursuant to section 147.10, and continuing education requirements applicable to the period prior to license reinstatement, shall be waived by the board for any previously licensed marital and family therapist or mental health counselor whose license has lapsed prior to July 1, 1998. Applicants with a lapsed license applying for reinstatement shall be required to complete a reinstatement application and pay a renewal fee and reinstatement fee pursuant to section 147.11 and section 147.80, subsections 21 and 22.

3. The department of public health may retain any renewal fees generated by this Act which exceed the department's revenue projections for fee generation relating to marital and family therapy and mental health counseling under chapters 147 and 154D established prior to the enactment of this Act, during the fiscal year beginning July 1, 1998, and ending June 30, 1999. The department may use the retained fees to pay any administrative expenses directly resulting from the provisions of this Act.

Sec. 5. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 2, 1998

CHAPTER 1051

EMPLOYMENT SECURITY ADMINISTRATIVE CONTRIBUTION SURCHARGE SUNSET PROVISION

S.F. 2112

AN ACT concerning the sunset provision relating to the employment security administrative contribution surcharge and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 96.7, subsection 12, paragraph d, Code 1997, is amended to read as follows:

d. This subsection is repealed July 1, ~~1998~~ 2001, and the repeal is applicable to contribution rates for calendar year ~~1999~~ 2002 and subsequent calendar years.

Sec. 2. EFFECTIVE DATE. This Act takes effect June 30, 1998.

Approved April 6, 1998

CHAPTER 1052

INFORMATION REQUIRED IN AFFIDAVITS OF CANDIDACY FOR PUBLIC OFFICE

S.F. 2153

AN ACT relating to affidavits of candidacy filed by candidates for public office.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 43.18, subsection 9, Code 1997, is amended to read as follows:

9. A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted~~, and never pardoned,~~ of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

Sec. 2. Section 43.67, subsection 9, Code 1997, is amended to read as follows:

9. A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted~~, and never pardoned,~~ of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

Sec. 3. Section 44.3, subsection 2, paragraph i, Code 1997, is amended to read as follows:

i. A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted~~, and never pardoned,~~ of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

Sec. 4. Section 45.3, subsection 9, Code 1997, is amended to read as follows:

9. A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted~~, and never pardoned,~~ of a felony or other infamous

crime and the candidate's rights have not been restored by the governor or by the president of the United States.

Sec. 5. Section 161A.5, subsection 3, unnumbered paragraph 1, Code 1997, is amended to read as follows:

At each general election a successor shall be chosen for each commissioner whose term will expire in the succeeding January. Nomination of candidates for the office of commissioner shall be made by petition in accordance with chapter 45, except that each candidate's nominating petition shall be signed by at least twenty-five eligible electors of the district. The petition form shall be furnished by the county commissioner of elections. Every candidate shall file with the nomination papers an affidavit stating the candidate's name, the candidate's residence, that the person is a candidate and is eligible for the office of commissioner, and that if elected the candidate will qualify for the office. The affidavit shall also state that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted~~, and never pardoned,~~ of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

Sec. 6. Section 277.4, unnumbered paragraph 3, Code Supplement 1997, is amended to read as follows:

Signers of nomination petitions shall include their addresses and the date of signing, and must reside in the same director district as the candidate if directors are elected by the voters of a director district, rather than at-large. A person may sign nomination petitions for more than one candidate for the same office, and the signature is not invalid solely because the person signed nomination petitions for one or more other candidates for the office. The petition shall be filed with the affidavit of the candidate being nominated, stating the candidate's name, place of residence, that such person is a candidate and is eligible for the office the candidate seeks, and that if elected the candidate will qualify for the office. The affidavit shall also state that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted~~, and never pardoned,~~ of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

Sec. 7. Section 376.4, unnumbered paragraph 4, Code Supplement 1997, is amended to read as follows:

The petition must include the affidavit of the individual for whom it is filed, stating the individual's name, the individual's residence, that the individual is a candidate and eligible for the office, and that if elected the individual will qualify for the office. The affidavit shall also state that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted~~, and never pardoned,~~ of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

Approved April 6, 1998

CHAPTER 1053

REGULATION OF MASSAGE THERAPISTS AND ATHLETIC TRAINERS

S.F. 2269

AN ACT providing for the conversion of the existing advisory boards for athletic training and massage therapy into full regulatory examining boards.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 135.11, subsections 11 and 13, Code Supplement 1997, are amended to read as follows:

11. Enforce the law relative to chapter 146 and "Health-related Professions," Title IV, subtitle 3, excluding ~~chapters 152D and~~ chapter 155.

13. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of chapters 125~~, 152D,~~ and 155, and Title IV, subtitle 2, excluding chapters 142B, 145B, and 146 and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

Sec. 2. Section 147.1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

For the purpose of this and the following chapters of this subtitle~~, excluding chapters 152C and 152D~~:

Sec. 3. Section 147.1, subsections 3 and 6, Code 1997, are amended to read as follows:

3. "Licensed" or "certified" when applied to a physician and surgeon, podiatric physician, osteopath, osteopathic physician and surgeon, physician assistant, psychologist or associate psychologist, chiropractor, nurse, dentist, dental hygienist, optometrist, speech pathologist, audiologist, pharmacist, physical therapist, occupational therapist, respiratory care practitioner, practitioner of cosmetology arts and sciences, practitioner of barbering, funeral director, dietitian, marital and family therapist, mental health counselor, ~~or~~ social worker, massage therapist, or athletic trainer means a person licensed under this subtitle~~, excluding chapters 152C and 152D~~.

6. "Profession" means medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, practice as a physician assistant, psychology, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, respiratory care, cosmetology arts and sciences, barbering, mortuary science, marital and family therapy, mental health counseling, social work, ~~or~~ dietetics, massage therapy, or athletic training.

Sec. 4. Section 147.3, Code 1997, is amended to read as follows:

147.3 QUALIFICATIONS.

An applicant for a license to practice a profession under this subtitle~~, excluding chapters 152C and 152D,~~ is not ineligible because of age, citizenship, sex, race, religion, marital status or national origin, although the application form may require citizenship information. A board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of the profession for which the applicant requests to be licensed. Character references may be required, but shall not be obtained from licensed members of the profession.

Sec. 5. Section 147.6, Code 1997, is amended to read as follows:

147.6 CERTIFICATE PRESUMPTIVE EVIDENCE.

Every license issued under this subtitle~~, excluding chapters 152C and 152D,~~ shall be presumptive evidence of the right of the holder to practice in this state the profession therein specified.

Sec. 6. Section 147.7, Code 1997, is amended to read as follows:

147.7 DISPLAY OF LICENSE.

Every person licensed under this subtitle~~, excluding chapters 152C and 152D,~~ to practice a profession shall keep the license publicly displayed in the primary place in which the person practices.

Sec. 7. Section 147.9, Code 1997, is amended to read as follows:

147.9 CHANGE OF RESIDENCE.

When any person licensed to practice a profession under this subtitle~~, excluding chapters 152C and 152D,~~ changes a residence or place of practice the person shall notify the department.

Sec. 8. Section 147.12, unnumbered paragraph 1, Code 1997, is amended to read as follows:

For the purpose of giving examinations to applicants for licenses to practice the professions for which licenses are required by this subtitle, ~~excluding chapters 152C and 152D,~~ the governor shall appoint, subject to confirmation by the senate, a board of examiners for each of the professions. The board members shall not be required to be members of professional societies or associations composed of members of their professions.

Sec. 9. Section 147.13, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 19. For massage therapists, massage therapy examiners.

NEW SUBSECTION. 20. For athletic trainers, athletic training examiners.

Sec. 10. Section 147.14, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 17. For massage therapists, four members licensed to practice massage therapy and three members who are not licensed to practice massage therapy and who shall represent the general public. A majority of the members of the board constitutes a quorum.

NEW SUBSECTION. 18. For athletic trainers, three members licensed to practice athletic training, three members licensed to practice medicine and surgery, and one member not licensed to practice athletic training or medicine and surgery and who shall represent the general public. A majority of the members of the board constitutes a quorum.

Sec. 11. Section 147.30, Code 1997, is amended to read as follows:

147.30 TIME AND PLACE OF EXAMINATIONS.

The department shall give public notice of the time and place of all examinations to be held under this subtitle~~, excluding chapters 152C and 152D~~. Such notice shall be given in such manner as the department may deem expedient and in ample time to allow all candidates to comply with the provisions of this subtitle~~, excluding chapters 152C and 152D~~.

Sec. 12. Section 147.34, Code 1997, is amended to read as follows:

147.34 EXAMINATIONS.

Examinations for each profession licensed under this subtitle~~, excluding chapters 152C and 152D,~~ shall be conducted at least one time per year at such time as the department may fix in cooperation with each examining board. Examinations may be given at the state university of Iowa at the close of each school year for professions regulated by this subtitle~~, excluding chapters 152C and 152D,~~ and examinations may be given at other schools located in the state at which any of the professions regulated by this subtitle~~, excluding chapters 152C and 152D,~~ are taught. At least one session of each examining board shall be held annually at the seat of government and the locations of other sessions shall be determined by the examining board, unless otherwise ordered by the department. Applicants who fail to pass the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, applicants shall be allowed to take the examination at the discretion of the

board. Examinations may be given by an examining board which are prepared and scored by persons outside the state, and examining boards may contract for such services. An examining board may make an agreement with examining boards in other states for administering a uniform examination. An applicant who has failed an examination may request in writing information from the examining board concerning the examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the examining board administers a uniform, standardized examination, the examining board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the examining board.

Sec. 13. Section 147.41, subsection 2, Code 1997, is amended to read as follows:

2. The subjects to be covered by such examination and the subjects to be covered by the final examination to be taken by such applicant after the completion of the professional course and prior to the issuance of the license, but the subjects covered in the partial and final examinations shall be the same as those specified in this subtitle~~, excluding chapters 152C and 152D,~~ for the regular examination.

Sec. 14. Section 147.44, Code 1997, is amended to read as follows:

147.44 AGREEMENTS.

For the purpose of recognizing licenses which have been issued in other states to practice any profession for which a license is required by this subtitle, ~~excluding chapters 152C and 152D,~~ the department shall enter into a reciprocal agreement with every state which is certified to it by the proper examining board under the provisions of section 147.45 and with which this state does not have an existing agreement at the time of such certification.

Sec. 15. Section 147.46, subsection 1, Code 1997, is amended to read as follows:

1. PROTECTION TO LICENSEES OF THIS STATE. When the laws of any state or the rules of the authorities of said state place any requirement or disability upon any person licensed in this state to practice any profession regulated by this subtitle, ~~excluding chapters 152C and 152D,~~ which affects the right of said person to be licensed or to practice the person's profession in said state, then the same requirement or disability shall be placed upon any person licensed in said state when applying for a license to practice in this state.

Sec. 16. Section 147.52, Code 1997, is amended to read as follows:

147.52 RECIPROCITY.

When the laws of any state or the rules of the authorities of said state place any requirement or disability upon any person holding a diploma or certificate from any college in this state in which one of the professions regulated by this subtitle~~, excluding chapters 152C and 152D,~~ is taught, which affects the right of said person to be licensed in said state, the same requirement or disability shall be placed upon any person holding a diploma from a similar college situated therein, when applying for a license to practice in this state.

Sec. 17. Section 147.72, Code 1997, is amended to read as follows:

147.72 PROFESSIONAL TITLES AND ABBREVIATIONS.

Any person licensed to practice a profession under this subtitle~~, excluding chapters 152C and 152D,~~ may append to the person's name any recognized title or abbreviation, which the person is entitled to use, to designate the person's particular profession, but no other person shall assume or use such title or abbreviation, and no licensee shall advertise in such a manner as to lead the public to believe that the licensee is engaged in the practice of any other profession than the one which the licensee is licensed to practice.

Sec. 18. Section 147.73, subsection 1, Code 1997, is amended to read as follows:

1. As authorizing any person licensed to practice a profession under this subtitle~~, excluding chapters 152C and 152D,~~ to use or assume any degree or abbreviation of the same unless such degree has been conferred upon said person by an institution of learning accredited by

the appropriate board herein created, together with the director of public health, or by some recognized state or national accredited agency.

Sec. 19. Section 147.74, Code 1997, is amended by adding the following new subsection:
NEW SUBSECTION. 19A. An athletic trainer licensed under chapter 152D and this chapter may use the title "licensed athletic trainer" after the person's name.

Sec. 20. Section 147.80, Code 1997, is amended by adding the following new subsections:
NEW SUBSECTION. 25A. License to practice massage therapy, license to practice massage therapy under a reciprocal license, or renewal of a license to practice massage therapy.
NEW SUBSECTION. 25B. License to practice athletic training, license to practice athletic training under a reciprocal license, or renewal of a license to practice athletic training.

Sec. 21. Section 147.83, Code 1997, is amended to read as follows:
147.83 INJUNCTION.
Any person engaging in any business or in the practice of any profession for which a license is required by this subtitle~~, excluding chapters 152C and 152D,~~ without such license may be restrained by permanent injunction.

Sec. 22. Section 147.86, Code 1997, is amended to read as follows:
147.86 PENALTIES.
Any person violating any provision of this or the following chapters of this subtitle, ~~excluding chapters 152C and 152D,~~ except insofar as the provisions apply or relate to or affect the practice of pharmacy, or where a specific penalty is otherwise provided, shall be guilty of a serious misdemeanor.

Sec. 23. Section 147.87, Code 1997, is amended to read as follows:
147.87 ENFORCEMENT.
The department shall enforce the provisions of this and the following chapters of this subtitle~~, excluding chapters 152C and 152D,~~ and for that purpose may request the department of inspections and appeals to make necessary investigations. Every licensee and member of an examining board shall furnish the department or the department of inspections and appeals such evidence as the member or licensee may have relative to any alleged violation which is being investigated.

Sec. 24. Section 147.88, Code 1997, is amended to read as follows:
147.88 INSPECTIONS.
The department of inspections and appeals may perform inspections as required by this subtitle, ~~excluding chapters 152C and 152D,~~ except for the board of medical examiners, board of pharmacy examiners, board of nursing, and the board of dental examiners. The department of inspections and appeals shall employ personnel related to the inspection functions.

Sec. 25. Section 147.90, Code 1997, is amended to read as follows:
147.90 RULES AND FORMS.
The Iowa department of public health and the department of inspections and appeals shall each establish the necessary rules and forms for carrying out the duties imposed upon it by this subtitle~~, excluding chapters 152C and 152D~~.

Sec. 26. Section 147.92, Code 1997, is amended to read as follows:
147.92 ATTORNEY GENERAL.
Upon request of the department the attorney general shall institute in the name of the state the proper proceedings against any person charged by the department with violating any provision of this or the following chapters of this subtitle~~, excluding chapters 152C and 152D~~.

Sec. 27. Section 147.93, Code 1997, is amended to read as follows:

147.93 PRIMA FACIE EVIDENCE.

The opening of an office or place of business for the practice of any profession for which a license is required by this subtitle, ~~excluding chapters 152C and 152D,~~ the announcing to the public in any way the intention to practice any such profession, the use of any professional degree or designation, or of any sign, card, circular, device, or advertisement, as a practitioner of any such profession, or as a person skilled in the same, shall be prima facie evidence of engaging in the practice of such profession.

Sec. 28. Section 147.111, Code 1997, is amended to read as follows:

147.111 REPORT OF TREATMENT OF WOUNDS AND OTHER INJURIES.

Any person licensed under the provisions of this subtitle~~, excluding chapters 152C and 152D,~~ who shall administer any treatment to any person suffering a gunshot or stab wound or other serious bodily injury, as defined in section 702.18, which appears to have been received in connection with the commission of a criminal offense, or to whom an application is made for treatment of any nature because of any such gunshot or stab wound or other serious injury, as defined in section 702.18, shall at once but not later than twelve hours thereafter, report that fact to the law enforcement agency within whose jurisdiction the treatment was administered or an application therefor was made, or if ascertainable, to the law enforcement agency in whose jurisdiction the gunshot or stab wound or other serious bodily injury occurred, stating the name of such person, the person's residence if ascertainable, and giving a brief description of the gunshot or stab wound or other serious bodily injury. Any provision of law or rule of evidence relative to confidential communications is suspended insofar as the provisions of this section are concerned.

Sec. 29. Section 152C.1, subsection 1, Code 1997, is amended to read as follows:

1. "Board" means the ~~massage therapy advisory board established in section 152C.2~~ board of examiners for massage therapy created under chapter 147.

Sec. 30. Section 152C.1, subsection 2, Code 1997, is amended by striking the subsection.

Sec. 31. Section 152C.3, subsection 1, Code 1997, is amended to read as follows:

1. The ~~department~~ board shall adopt rules pursuant to chapter 17A establishing a procedure for licensing of massage therapists. License requirements shall include the following:

a. Completion of a curriculum of massage education at a school approved by the ~~department~~ board which requires for admission a diploma from an accredited high school or the equivalent and requires completion of at least five hundred hours of supervised academic instruction. However, educational requirements under this paragraph are subject to reduction by the ~~department~~ board if, after public notice and hearing, the ~~department~~ board determines that the welfare of the public may be adequately protected with fewer hours of education.

b. Passage of an examination given or approved by the ~~department~~ board.

c. Payment of a reasonable fee required by the ~~department~~ board which shall compensate and be retained by the ~~department~~ board for the costs of administering this chapter.

Sec. 32. Section 152C.3, subsection 2, paragraph a, Code 1997, is amended to read as follows:

a. Requirements regarding completion of at least twelve hours of continuing education annually regarding subjects concerning massage and related techniques or the health and safety of the public, subject to reduction by the ~~department~~ board if, after public notice and hearing, the ~~department~~ board determines that the welfare of the public may be adequately protected with fewer hours.

Sec. 33. Section 152C.3, subsection 3, Code 1997, is amended by striking the subsection.

Sec. 34. Section 152C.4, Code 1997, is amended to read as follows:

152C.4 EMPLOYMENT OF PERSON NOT LICENSED — CIVIL PENALTY.

A person as defined in section 4.1, who employs to provide services to other persons a person who is not licensed pursuant to this chapter, shall not use the initials "L.M.T." or the words "licensed massage therapist", "massage therapist", "masseur", or "masseuse", or any other words or titles which imply or represent that the person employed practices massage therapy. A person who violates this section is subject to imposition, at the discretion of the board, of a civil penalty not to exceed one thousand dollars. Each violation of this section is a separate offense. Each day a violation of this section occurs after citation by the board is a separate offense. The ~~department~~ board may inspect any facility which advertises or offers services purporting to be delivered by massage therapists.

Sec. 35. Section 152C.7, Code 1997, is amended to read as follows:

152C.7 SUSPENSION AND REVOCATION OF LICENSES.

The ~~department~~ board may suspend, revoke, or impose probationary conditions upon a license issued pursuant to rules adopted in accordance with section 152C.3.

Sec. 36. Section 152D.1, subsection 1, Code 1997, is amended to read as follows:

1. "Board" means the ~~athletic trainer advisory board established pursuant to this chapter~~ board of examiners for athletic training created under chapter 147.

Sec. 37. Section 152D.1, subsection 2, Code 1997, is amended by striking the subsection.

Sec. 38. Section 152D.3, subsection 1, paragraphs a and b, Code 1997, are amended to read as follows:

a. Graduation from an accredited college or university and compliance with the minimum athletic training curriculum requirements established by the ~~department in consultation with the~~ board.

b. Successful completion of an examination prepared or selected by the ~~department in consultation with the~~ board.

Sec. 39. Section 152D.5, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The ~~department in consultation with the~~ board shall:

Sec. 40. Section 152D.6, Code 1997, is amended to read as follows:

152D.6 LICENSE SUSPENSION AND REVOCATION.

A license issued by the ~~department~~ board under the provisions of this chapter may be suspended or revoked, or renewal denied by the ~~department~~ board, for violation of any provision of this chapter or section 147.55, section 272C.10, or rules adopted by the ~~department~~ board.

Sec. 41. Section 272C.1, subsection 6, paragraph ab, Code 1997, is amended to read as follows:

ab. The ~~Iowa department of public health~~ board of examiners for athletic training in licensing athletic trainers pursuant to chapter 152D.

Sec. 42. Section 272C.1, subsection 6, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. ac. The board of examiners for massage therapy in licensing massage therapists pursuant to chapter 152C.

Sec. 43. Sections 152C.2 and 152D.7, Code 1997, are repealed.

Approved April 6, 1998

CHAPTER 1054

PROFESSIONAL ENGINEERS — REQUIREMENTS FOR LICENSURE

S.F. 2310

AN ACT relating to professional engineering licensure requirements for applicants with certain educational qualifications.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 542B.14, subsection 1, paragraph a, Code 1997, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (4) For applicants who obtained an associate of science degree or a more advanced degree between July 1, 1983, and June 30, 1988, in lieu of compliance with subparagraph (1), the board shall only require compliance with the provisions of subparagraph (3) with regard to areas of study and practical experience. Applicants qualifying under this subparagraph must meet the requirements of paragraph "b", by June 30, 2001.

Approved April 6, 1998

CHAPTER 1055

TELECOMMUNICATIONS AND ELECTRIC CABLING REVOLVING FUND AND ART RESTORATION AND PRESERVATION REVOLVING FUND

S.F. 2356

AN ACT relating to revolving funds to be administered by the department of general services and providing for funding for the revolving funds.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 18.12, subsection 8, paragraph a, Code 1997, is amended to read as follows:

a. The director may dispose of unfit or unnecessary personal property by sale. Proceeds from the sale of personal property shall be deposited in the general fund of the state. However, in lieu of depositing in the general fund of the state, the director may deposit the receipts from the sale of personal property located on the state capitol complex, except receipts from the sale of motor vehicles or printing equipment, in the art restoration and preservation revolving fund created in section 18.16B.

Sec. 2. NEW SECTION. 18.16A TELECOMMUNICATIONS AND ELECTRIC CABLING REVOLVING FUND.

A telecommunications and electric cabling revolving fund is created in the state treasury. The revolving fund shall be administered by the department and shall consist of moneys appropriated by the general assembly and any other moneys obtained or accepted by the department for deposit in the revolving fund. The proceeds of the revolving fund shall be used by the department for purposes as may be necessary to provide for appropriate telecommunications and electric cabling, planning cabling layouts, and locating, relocating, installing, or removing telecommunications and electric cable including peripheral equipment on the state capitol complex. The department shall submit an annual report not later

than January 31, to the members of the general assembly and the legislative fiscal bureau, of the activities and expenditures funded from the revolving fund during the preceding fiscal year. Section 8.33 does not apply to any moneys in the revolving fund and, notwithstanding section 12C.7, subsection 2, earnings or interest on moneys deposited in the revolving fund shall be credited to the revolving fund.

Sec. 3. NEW SECTION. 18.16B ART RESTORATION AND PRESERVATION REVOLVING FUND.

An art restoration and preservation revolving fund is created in the state treasury. The revolving fund shall be administered by the department and shall consist of any moneys appropriated by the general assembly, the receipts from the sale of certain personal property located on the state capitol complex, and any other moneys obtained or accepted by the department for deposit in the revolving fund. The proceeds of the revolving fund shall be used as determined by the department for the restoration, preservation, rehabilitation, or enhancement of art and artifacts of historical or cultural significance or artistic value located in public areas of the state capitol building. The department shall submit an annual report not later than January 31, to the members of the general assembly and the legislative fiscal bureau, of the activities and expenditures funded from the revolving fund during the preceding fiscal year. Section 8.33 does not apply to any moneys in the revolving fund and, notwithstanding section 12C.7, subsection 2, earnings or interest on moneys deposited in the revolving fund shall be credited to the revolving fund.

Approved April 6, 1998

CHAPTER 1056

INFECTIOUS AND CONTAGIOUS DISEASES AMONG LIVESTOCK

S.F. 2371

AN ACT relating to infectious and contagious diseases affecting livestock and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 163.6 SLAUGHTER FACILITIES — BLOOD SAMPLES.

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

a. "Department" means the department of agriculture and land stewardship or the United States department of agriculture.

b. "Slaughtering establishment" means a person engaged in the business of slaughtering animals, if the person is an establishment subject to the provisions of chapter 189A which slaughters animals for meat food products as defined in section 189A.2.

2. The department may require that samples of blood be collected from animals at a slaughtering establishment in order to determine if the animals are infected with an infectious or contagious disease, according to rules adopted by the department of agriculture and land stewardship. Upon approval by the department, the collection shall be performed by either of the following:

a. A slaughtering establishment under an agreement executed by the department and the slaughtering establishment.

b. A person authorized by the department.

An authorized person collecting samples shall have access to areas where the animals are confined in order to collect blood samples. The department shall notify the slaughtering establishment in writing that samples of blood must be collected for analysis. The notice shall be provided in a manner required by the department.

3. In carrying out this section, a person authorized by the department to collect blood samples from animals as provided in this section shall have the right to enter and remain on the premises of the slaughtering establishment in the same manner and on the same terms as a meat inspector authorized by the department, including the right to access facilities routinely available to employees of the slaughtering establishment such as toilet and lavatory facilities, lockers, cafeterias, areas reserved for work breaks or dining, and storage facilities. The slaughtering establishment shall provide a secure area for the permanent storage of equipment used to collect blood, an area reserved for collecting the blood, including the storage of blood during the collection, and a refrigerated area used to store blood samples prior to analysis. The area reserved for collecting the blood shall be adjacent to the area where the animals are killed, unless the authorized person and the slaughtering establishment select another area. The department is not required to compensate a slaughtering establishment for allowing a person authorized by the department to carry out this section.

4. A person violating this section or a rule adopted pursuant to this section shall be subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars. Moneys collected in civil penalties shall be deposited in the general fund of the state.

Sec. 2. Section 163.30, subsection 5, unnumbered paragraph 3, Code Supplement 1997, is amended to read as follows:

However, registered swine for exhibition or breeding purposes which can be individually identified by an ear notch or tattoo or other method approved by the department are excepted from this identification requirement. In addition, native Iowa swine moved from farm to farm ~~may~~ shall be excepted from the identification requirement if the ~~seller and purchaser sign a statement providing that feeder pigs will not be commingled for a period of thirty days and such fact is stated on the health certificate~~ owner transferring possession of the feeder pigs executes a written agreement with the person taking possession of the feeder pigs. The agreement shall provide that the feeder pigs shall not be commingled with other swine for a period of thirty days. The owner transferring possession shall be responsible for making certain that the agreement is executed and for providing a copy of the agreement to the person taking possession.

Sec. 3. Section 166D.5, subsection 2, unnumbered paragraph 1, Code 1997, is amended to read as follows:

When the department determines that a majority of herds within a program area have been tested and a majority of herds reveal a noninfection rate of ~~ninety~~ eighty percent or greater, the following shall apply:

Sec. 4. Section 166D.7, subsection 1, paragraph a, Code 1997, is amended to read as follows:

a. The herd shall be certified when all breeding swine have reacted negatively to a test. The herd must have been free from infection for thirty days prior to testing. At least ninety percent of swine in the herd must have been on the premises as a part of the herd for at least sixty days prior to testing, or swine in the herd must have been moved directly from another qualified negative herd. To remain certified, the herd must be retested and recertified as provided by the department. The herd shall be recertified when ~~either of the following occurs:~~

~~(1) Each eighty to one hundred five days at least twenty-five percent of the herd's breeding swine react negatively to a test.~~

~~(2)~~ ~~Each~~ each month the greater of five head of swine or at least ten percent of the herd's breeding swine react negatively to a test.

Sec. 5. Section 166D.8, subsection 1, Code 1997, is amended to read as follows:

1. a. A herd cleanup plan may include any or a combination of the following:

~~a.~~ (1) The segregation of progeny with restricted movement. The herd cleanup plan must include the location of the premises that will receive the progeny. The receiving premises shall be quarantined.

~~b.~~ (2) The test and removal of infected swine from the herd.

~~c.~~ (3) Depopulation.

b. Notwithstanding paragraph "a", breeding swine in an infected herd shall be tested and the infected breeding swine shall be removed from the infected herd in accordance with procedures and by dates established by rules adopted by the department.

Sec. 6. Section 166D.8, subsection 2, paragraphs a and c, Code 1997, are amended to read as follows:

a. There must have been no clinical signs of pseudorabies during the past ~~six months~~ thirty days.

c. An approved ~~pseudorabies eradication~~ feeder pig cooperator herd plan must be implemented. ~~However, swine from a feeder pig cooperator herd may be moved within Iowa without individual tests as feeder pigs of unknown origin.~~ The feeder pig cooperator herd plan must include the location of the premises that will receive the progeny. The receiving premises shall be quarantined.

Sec. 7. Section 166D.9, subsection 4, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

~~Herds~~ A herd removed from quarantine under this subsection shall be tested by statistical sampling one year later, unless an epidemiologist determines that the herd must be tested earlier.

Sec. 8. Section 166D.10, subsection 1, paragraph c, Code Supplement 1997, is amended to read as follows:

c. A person ~~transferring~~ transfers ownership of all or part of a herd, if the herd remains on the same premises. However, the herd must be tested by statistical sampling. If any part of the herd is subsequently moved or relocated, the swine ~~that are~~ must be moved or relocated ~~must be accompanied by a certificate of inspection, or an official health certificate or veterinarian certificate as provided in section 163.30, unless the swine are moved to slaughter~~ in accordance with this section and sections 166D.7, 166D.8, and 166D.9.

Sec. 9. Section 166D.10, subsection 2, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

Swine that are moved shall be individually identified as provided in section 163.30, which may include requirements for affixing ear tags to swine. However, native Iowa feeder pigs moved from farm to farm within the state shall ~~not~~ be ~~subject to~~ exempted from the identification requirements of this subsection, if the owner transferring possession of the feeder pigs executes a written agreement with the person taking possession of the feeder pigs. The agreement shall provide that the feeder pigs ~~will~~ shall not be commingled with other swine for a period of thirty days. The owner transferring possession shall ~~provide~~ be responsible for making certain that the agreement is executed and for providing a copy of the agreement to the person taking possession ~~of the feeder pigs~~.

Sec. 10. Section 166D.10, subsection 6, Code Supplement 1997, is amended to read as follows:

6. In addition to other applicable requirements of this section, feeder swine moved from a location outside of this state to a location within this state shall be vaccinated, if the feeder swine are moved into a county where the department determines that more than three percent of all herds in the county are infected herds. The feeder swine shall be vaccinated with a differentiable vaccine according to procedures established by rules adopted by the

department. However, this subsection shall not require vaccination if the feeder swine originate from a qualified negative herd or a qualified differentiable negative herd and are introduced to a qualified negative herd or a qualified differentiable negative herd.

Sec. 11. Section 166D.12, subsection 4, paragraph a, Code 1997, is amended to read as follows:

a. Other species of livestock must ~~not~~ be ~~held~~ kept separate and apart from swine from known infected herds at the concentration point.

Sec. 12. Section 166D.13, subsection 1, Code 1997, is amended to read as follows:

1. Swine from ~~a quarantined~~ an infected herd shall not be displayed or shown at any exhibition.

Approved April 6, 1998

CHAPTER 1057

INSURANCE COMPANIES — REGULATION AND OPERATION — MISCELLANEOUS PROVISIONS

S.F. 2397

AN ACT relating to the operation and regulation of certain insurance companies, miscellaneous provisions relating to small group health care coverage, the ability of certain insurers to bring an action in certain instances, and the elimination of countersigning resident agent provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 432.13 STATUTE OF LIMITATIONS.

Within five years after the tax return is filed or within five years after the tax return became due, whichever is later, the commissioner of insurance shall examine the return and determine the tax. An assessment or a claim for credit must be made within five calendar years after the annual tax filing is made. For a five-year period preceding the current calendar year, a company may apply for a credit, or the commissioner may make an assessment, as appropriate. The period of examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

Sec. 2. Section 507C.32, Code 1997, is amended to read as follows:

507C.32 REINSURER'S LIABILITY.

1. Notwithstanding a provision in the reinsurance contract or other agreement, the amount recoverable by the liquidator from reinsurers shall not be reduced as a result of delinquency proceedings. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when ~~the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation~~ either of the following applies:

a. The contract or other written agreement specifically provides for another payee of the reinsurance in the event of the insolvency of the ceding insurer.

b. The assuming insurer, with the consent of the direct insured, has assumed the policy

obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to the payees.

Sec. 3. Section 508.5, subsection 1, Code 1997, is amended to read as follows:

1. A stock life insurance company shall not be authorized to transact business under this chapter with less than ~~two~~ five million ~~five hundred thousand~~ dollars ~~capital stock fully paid for in cash and two million five hundred thousand dollars~~ of capital and surplus paid in cash or invested as provided by law. A stock life insurance company shall not increase its capital stock unless the amount of the increase is fully paid in cash. ~~The stock shall be divided into shares of not less than one dollar par value each.~~ A stock life insurance company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum capital and surplus requirements mandated by this section.

Sec. 4. NEW SECTION. 508.31A FUNDING AGREEMENTS.

1. A life insurance company organized under this chapter may issue funding agreements. The issuance of a funding agreement under this section is deemed to be doing insurance business. For purposes of this section, "funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies. A funding agreement does not constitute life insurance, an annuity, or other insurance authorized by section 508.29, and does not constitute a security as defined in section 502.102.

2. a. Funding agreements may be issued to the following:

(1) A person authorized by a state or foreign country to engage in an insurance business or a subsidiary of such business.

(2) A person for the purpose of funding any of the following:

(a) Benefits under an employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., maintained in the United States or in a foreign country.

(b) Activities of an organization exempt from taxation pursuant to section 501c of the Internal Revenue Code, or any similar organization in any foreign country.

(c) A program of the United States government, another state government or political subdivision of such state, or of a foreign country, or any agency or instrumentality of any such government, political subdivision, or foreign country.

(d) An agreement providing for periodic payments in satisfaction of a claim.

(e) A program of an institution which has assets in excess of twenty-five million dollars.

b. A funding agreement shall be for a total amount of not less than one million dollars.

c. An amount under a funding agreement shall not be guaranteed or credited except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of funding agreements of a given class. Such funding agreements shall not provide for payments to or by the insurer based on mortality or morbidity contingencies.

d. Amounts paid to the insurer pursuant to a funding agreement, and proceeds applied under optional modes of settlement, may be allocated by the insurer to one or more separate accounts pursuant to section 508A.1.

3. A funding agreement is a class 3 claim under section 507C.42, subsection 3.

4. The commissioner may adopt rules to implement funding agreements.

Sec. 5. Section 508A.1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A domestic life insurance company organized under chapter 508 may establish one or more separate accounts, and may allocate ~~thereto~~ to such accounts amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities, and benefits incidental ~~thereto~~ to such life insurance or annuities, payable in fixed or variable amounts or both, and may hold and accumulate funds pursuant to funding agreements, subject to the following:

Sec. 6. Section 508C.3, subsection 3, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. i. A funding agreement under section 508.31A.

Sec. 7. Section 508C.5, subsection 13, Code 1997, is amended to read as follows:

13. "Unallocated annuity contract" means a guaranteed investment contract, deposit administration contract, ~~unallocated funding agreement,~~ or any other annuity contract which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such a contract or certificate.

Sec. 8. Section 513B.2, subsection 8, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. l. A short-term limited duration policy.

Sec. 9. Section 515.8, subsection 1, Code 1997, is amended to read as follows:

1. An insurance company other than a life insurance company shall not be incorporated to transact business upon the stock plan with less than ~~two~~ five million ~~five hundred thousand~~ dollars of capital and surplus, the entire amount of which shall be fully paid up in cash and invested as provided by law. An insurance company other than a life insurance company shall not increase its capital stock unless the amount of the increase is fully paid up in cash. ~~The stock shall be divided into shares of not less than one dollar each.~~ An insurance company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum capital and surplus requirements mandated by this section.

Sec. 10. NEW SECTION. 515A.15B APPLICANTS UNABLE TO PROCURE INSURANCE THROUGH ORDINARY METHODS.

An agreement among licensed insurers to offer workers' compensation insurance for applicants unable to procure workers' compensation insurance through ordinary methods shall be administered by a rating organization licensed under this chapter.

Sec. 11. Section 515E.7, Code 1997, is amended to read as follows:

515E.7 PURCHASING GROUPS EXEMPTIONS.

A purchasing group which meets the criteria established under the federal Act is exempt from any law of this state relating to the creation of groups for the purchase of insurance, the prohibition of group purchasing, ~~the countersignature requirement as provided in sections 515.22 and 515.52,~~ or any law that would discriminate against a purchasing group or its members. An insurer is exempt from any law of this state which prohibits providing, or offering to provide, to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters. A purchasing group is subject to all other applicable laws.

Sec. 12. NEW SECTION. 516A.5 TOLLING OF STATUTE.

Commencement of an action by an insured under a provision included in an automobile liability or motor vehicle liability insurance policy pursuant to section 516A.1 tolls the statute of limitations for purposes of the insurer's subrogated cause of action against a party, as defined in section 668.2. Section 668.8 is also applicable to an action commenced as described in this section.

Sec. 13. Sections 515.10, 515.22, 515.52 through 515.61, and 515E.6, Code 1997, are repealed.

Approved April 6, 1998

CHAPTER 1058

NONRESIDENT MOTOR VEHICLE DEALERS — DISPLAY OF NEW MOTOR TRUCKS AT QUALIFIED EVENTS

H.F. 2392

AN ACT relating to permitting the display of new motor trucks by nonresident motor vehicle dealers at qualified events in this state, establishing a fee, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 322.5, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. A nonresident motor vehicle dealer, who is authorized by a written contract with a manufacturer or distributor of new motor trucks to sell at retail such new motor trucks, may display motor trucks within this state at qualified events approved by the department. The dealer must obtain a temporary permit from the department. An application for a temporary permit shall be made upon a form provided by the department and shall be accompanied by a ten dollar permit fee. Permits shall be issued for a period not to exceed fourteen days. The department shall issue a temporary permit under this subsection only if the qualified event for which the permit is issued meets all of the following conditions:

a. The sale of motor vehicles is not allowed during the qualified event.

b. The qualified event is conducted in a controlled area and is not open to the public generally.

c. The qualified event generally promotes the motor truck industry.

d. The qualified event is conducted within the area of responsibility that is specified in the motor vehicle dealer's contract with the manufacturer or distributor.

A temporary permit shall not be issued under this subsection unless the state in which the nonresident motor vehicle dealer is licensed extends by reciprocity similar privileges to a motor vehicle dealer licensed by this state.

Sec. 2. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 6, 1998

CHAPTER 1059

FIRST DEGREE BURGLARY — SEXUAL ABUSE AS POSSIBLE ELEMENT

H.F. 2402

AN ACT to amend the crime of burglary in the first degree to include commission of sexual abuse as a possible element of the offense.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 713.3, Code 1997, is amended to read as follows:

713.3 BURGLARY IN THE FIRST DEGREE.

1. A person commits burglary in the first degree if, while perpetrating a burglary in or upon an occupied structure in which one or more persons are present, ~~the~~ any of the following circumstances apply:

a. The person has possession of an explosive or incendiary device or material~~, or~~.
b. The person has possession of a dangerous weapon~~, or~~.
c. The person intentionally or recklessly inflicts bodily injury on any person.
d. The person performs or participates in a sex act with any person which would constitute sexual abuse under section 709.1.
2. Burglary in the first degree is a class "B" felony.

Approved April 6, 1998

CHAPTER 1060

WORKERS' COMPENSATION COVERAGE FOR COMMUNITY COLLEGE STUDENTS IN SCHOOL-TO-WORK PROGRAMS

H.F. 2443

AN ACT relating to state workers' compensation coverage for students at a community college participating in school-to-work programs.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 85.61, subsection 2, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

"Employer" also includes and applies to an eligible postsecondary institution as defined in section 261C.3, subsection 1, a school corporation, or an accredited nonpublic school if a student enrolled in the eligible postsecondary institution, school corporation, or accredited nonpublic school is providing unpaid services under a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "a" through "f". However, if ~~such~~ a student participating in a school-to-work program is participating in open enrollment under section 282.18, "employer" means the receiving district. "Employer" also includes and applies to a community college as defined in section 260C.2, if a student enrolled in the community college is providing unpaid services under a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "a" through "f", and that is offered by the community college pursuant to a contractual agreement with a school corporation or accredited nonpublic school to provide the program. If a student participating in a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "a" through "f", is paid for services provided under the program, "employer" means any entity otherwise defined as an employer under this subsection which pays the student for providing services under the program.

Sec. 2. Section 85.61, subsection 11, unnumbered paragraph 5, Code Supplement 1997, is amended to read as follows:

"Worker" or "employee" includes a student enrolled in a public school corporation or accredited nonpublic school who is participating in a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "a" through "f". "Worker" or "employee" also includes a student enrolled in a community college as defined in section 260C.2, who is participating in a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "a" through "f" and that is offered by the community college pursuant to a

contractual agreement with a school corporation or accredited nonpublic school to provide the program.

Approved April 6, 1998

CHAPTER 1061

WORKERS' COMPENSATION — DIVISION AND COMMISSIONER NAME CHANGE — COMPENSATION DURING HEALING PERIOD

H.F. 2465

AN ACT relating to workers' compensation by changing the name of the division and personnel responsible, providing for the commencement of compensation during a healing period, and providing for reporting requirements.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 84A.1, subsections 2 and 3, Code 1997, are amended to read as follows:

2. The chief executive officer of the department is the director who shall be appointed by the governor, subject to confirmation by the senate under the confirmation procedures of section 2.32. The director shall serve at the pleasure of the governor. The governor shall set the salary of the director within the applicable salary range established by the general assembly. The director shall be selected solely on the ability to administer the duties and functions granted to the director and the department and shall devote full time to the duties of the director. If the office of director becomes vacant, the vacancy shall be filled in the same manner as the original appointment was made.

The director of the department shall, subject to the requirements of section 84A.1B, prepare, administer, and control the budget of the department and its divisions and shall approve the employment of all personnel of the department and its divisions.

The director shall direct the administrative and compliance functions and control the docket of the division of ~~industrial services~~ workers' compensation.

3. The department shall include the division of labor services, the division of ~~industrial services~~ workers' compensation, and other divisions as appropriate.

Sec. 2. Section 84A.5, subsections 4 and 5, Code 1997, are amended to read as follows:

4. The division of ~~industrial services~~ workers' compensation is responsible for the administration of the laws of this state relating to workers' compensation under chapters 85, 85A, 85B, 86, and 87. The executive head of the division is the ~~industrial~~ workers' compensation commissioner, appointed pursuant to section 86.1.

5. The director shall form a coordinating committee composed of the director, the labor commissioner, the ~~industrial~~ workers' compensation commissioner, and other administrators. The committee shall monitor federal compliance issues relating to coordination of functions among the divisions.

Sec. 3. Section 85.26, subsection 2, Code 1997, is amended to read as follows:

2. An award for payments or an agreement for settlement provided by section 86.13 for benefits under this chapter or chapter 85A or 85B, where the amount has not been commuted, may be reviewed upon commencement of reopening proceedings by the employer or the employee within three years from the date of the last payment of weekly benefits made

under the award or agreement. If an award for payments or agreement for settlement as provided by section 86.13 for benefits under this chapter or chapter 85A or 85B has been made and the amount has not been commuted, or if a denial of liability is not filed with the ~~industrial~~ workers' compensation commissioner and notice of the denial is not mailed to the employee, ~~on forms prescribed~~ in the form and manner required by the commissioner, within six months of the commencement of weekly compensation benefits, the commissioner may at any time upon proper application make a determination and appropriate order concerning the entitlement of an employee to benefits provided for in section 85.27. The failure to file a denial of liability does not constitute an admission of liability under this chapter or chapter 85A, 85B, or 86.

Sec. 4. Section 85.34, subsection 1, Code Supplement 1997, is amended to read as follows:

1. HEALING PERIOD. If an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the ~~date of~~ first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

Sec. 5. Section 86.9, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The director of the department of workforce development, in consultation with the commissioner, shall, at the time provided by law, make an annual report to the governor setting forth in appropriate form the business and expense of the division of ~~industrial services~~ workers' compensation for the preceding year, the number of claims processed by the division and the disposition of the claims, and other matters pertaining to the division which are of public interest, together with recommendations for change or amendment of the laws in this chapter and chapters 85, 85A, 85B, and 87, and the recommendations, if any, shall be transmitted by the governor to the first general assembly in session after the report is filed.

Sec. 6. Section 86.11, Code 1997, is amended to read as follows:

86.11 REPORTS OF INJURIES.

Every employer shall hereafter keep a record of all injuries, fatal or otherwise, alleged by an employee to have been sustained in the course of the employee's employment and resulting in incapacity for a longer period than one day. If the injury results only in temporary disability, causing incapacity for a longer period than three days except as provided in section 86.36 then within four days thereafter, not counting Sundays and legal holidays, the employer or insurance carrier having had notice or knowledge of the occurrence of such injury and resulting disability, shall file a ~~written~~ report with the ~~industrial~~ workers' compensation commissioner ~~on forms to be procured from~~ in the form and manner required by the commissioner ~~for that purpose~~. If such injury to the employee results in permanent total disability, permanent partial disability or death, then the employer or insurance carrier upon notice or knowledge of the occurrence of the employment injury, shall file a report with the ~~industrial~~ workers' compensation commissioner, within four days after having notice or knowledge of the permanent injury to the employee or the employee's death. The report to the ~~industrial~~ workers' compensation commissioner of injury shall be without prejudice to the employer or insurance carrier and shall not be admitted in evidence or used in any trial or hearing before any court, the ~~industrial~~ workers' compensation commissioner or a deputy ~~industrial~~ workers' compensation commissioner except as to the notice under section 85.23.

Sec. 7. Section 86.13, unnumbered paragraph 1, Code 1997, is amended to read as follows:

If an employer or insurance carrier pays weekly compensation benefits to an employee, the employer or insurance carrier shall file with the ~~industrial~~ workers' compensation commissioner ~~on forms prescribed~~ in the form and manner required by the ~~industrial~~ workers' compensation commissioner a notice of the commencement of the payments. The payments establish conclusively that the employer and insurance carrier have notice of the injury for which benefits are claimed but the payments do not constitute an admission of liability under this chapter or chapter 85, 85A, or 85B.

Sec. 8. Section 86.44, unnumbered paragraph 2, Code 1997, is amended to read as follows:

For purposes of this section, "mediator" means a chief deputy ~~industrial~~ workers' compensation commissioner or deputy ~~industrial~~ workers' compensation commissioner acting in the capacity to resolve a dispute pursuant to this chapter or chapter 85, 85A, or 85B, or an employee of the division of ~~industrial services~~ workers' compensation involved during any stage of a process to resolve a dispute.

Sec. 9. Section 96.6, subsection 4, Code 1997, is amended to read as follows:

4. EFFECT OF DETERMINATION. A finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the department, administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of ~~industrial services~~ workers' compensation, other state agency, arbitrator, court, or judge of this state or the United States.

Sec. 10. Section 912.3, subsection 4, Code 1997, is amended to read as follows:

4. Request from the department of human services, the department of workforce development and its division of ~~industrial services~~ workers' compensation, the department of public safety, the county sheriff departments, the municipal police departments, the county attorneys, or other public authorities or agencies reasonable assistance or data necessary to administer the crime victim compensation program.

Sec. 11. AMENDMENTS CHANGING TERMINOLOGY — DIRECTIVES TO CODE EDITOR. Sections 84A.5, 85.3, 85.21, 85.22, 85.26, 85.27, 85.35, 85.43, 85.45, 85.47, 85.48, 85.49, 85.53, 85.55, 85.59, 85.62, 85.66, 85.67, 85.70, 85A.7, 85A.15, 85A.19, 85A.20, 85A.21, 85A.22, 85A.24, 85A.25, 85A.27, 85B.5, 85B.13, 85B.15, 86.1, 86.2, 86.3, 86.4, 86.10, 86.11, 86.12, 86.13, 86.17, 86.19, 86.24, 86.26, 86.27, 86.29, 86.38, 86.39, 86.41, 86.42, 86.43, 86.44, 87.1, 87.5, 87.6, 87.7, 87.11, 87.16, 87.17, 87.19, 87.20, 216A.73, and 331.324, Code 1997, and sections 85.34, 85.61, 87.22, and 515B.5, Code Supplement 1997, are amended by striking from the sections the words "industrial commissioner" and inserting in lieu thereof the words "workers' compensation commissioner".

Approved April 6, 1998

CHAPTER 1062

MEDIATION CONFIDENTIALITY

H.F. 2478

AN ACT relating to confidentiality in the mediation process.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 679C.1 DEFINITIONS.

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

1. "Mediation" means a process in which an impartial person facilitates the resolution of a dispute by promoting voluntary agreement of the parties to the dispute. In a mediation, the decision-making authority rests with the parties. A mediation commences at the time of initial contact with a mediator or mediation program and includes all contacts between the mediator or a mediation program and any party until such time as a resolution is reached by the parties or the mediation process concludes.

2. "Mediation communication" means any communication or behavior in connection with a mediation by or between any party, mediator, mediation program, or any other person present during a mediation.

3. "Mediation document" means any written material, including copies of written material, prepared for the purpose of or in the course of, or pursuant to, a mediation, including, but not limited to, memoranda, notes, files, records, and work product of a mediator, mediation program, or party, except that a "mediation document" shall not include either of the following:

a. An agreement by the parties which specifies that the mediation documents may be disclosed or enforced.

b. Summary records of a mediation program necessary to evaluate or monitor the performance of the program.

4. "Mediation program" means a plan or organization through which mediators and mediations may be provided.

5. "Mediator" means an impartial person who facilitates the resolution of a dispute between parties in the mediation process.

6. "Party" means a mediation participant other than the mediator and may be a person, public officer, corporation, association, or other organization or entity, either public or private.

Sec. 2. NEW SECTION. 679C.2 CONFIDENTIALITY.

If a mediation is conducted pursuant to a court order, a court-connected mediation program, a written agreement between the parties, or a provision of law, all mediation communications and mediation documents are privileged and confidential and not subject to disclosure in any judicial or administrative proceeding except under any of the following circumstances:

1. When all parties to a mediation agree, in writing, to disclosure.

2. When a written agreement by the parties to mediate permits disclosure.

3. When disclosure is required by statute.

4. When a mediation communication or mediation document provides evidence of an ongoing or future criminal activity.

5. When a mediation communication or mediation document provides evidence of child abuse as defined in section 232.68, subsection 2.

6. When a mediation communication or mediation document is relevant to the legal claims of a party against a mediator or mediation program arising out of a breach of the legal obligations of the mediator or mediation program.

7. When a mediation communication or mediation document is relevant to determining

the existence of an agreement that resulted from the mediation or is relevant to the enforcement of such an agreement.

Sec. 3. NEW SECTION. 679C.3 MEDIATOR PRIVILEGE.

If a mediation is conducted pursuant to a court order, a court-connected mediation program, a written agreement between the parties, or a provision of law, a mediator or a representative of a mediation program shall not testify about a mediation communication or mediation document in any judicial or administrative proceeding except under any of the following circumstances:

1. When all parties and the mediator agree, in writing, to disclosure.
2. When disclosure is required by statute.
3. When a mediation communication or mediation document provides evidence of an ongoing or future criminal activity.
4. When a mediation communication or mediation document provides evidence of child abuse as defined in section 232.68, subsection 2.
5. When a mediation communication or mediation document is relevant to the legal claims of a party against a mediator or mediation program arising out of a breach of the legal obligations of the mediator or mediation program.
6. Provided all parties agree to disclosure, when a mediation communication or mediation document is relevant to determining the existence of an agreement that resulted from the mediation or is relevant to the enforcement of such an agreement.

Sec. 4. NEW SECTION. 679C.4 MEDIATOR IMMUNITY.

A mediator or a mediation program shall not be liable for civil damages for a statement, decision, or omission made in the process of mediation unless the act or omission by the mediator or mediation program is made in bad faith, with malicious purpose, or in a manner exhibiting willful or wanton disregard of human rights, safety, or property. This section shall apply to mediation conducted before the industrial commissioner and mediation conducted pursuant to chapter 216.

Sec. 5. NEW SECTION. 679C.5 EXCLUSIONS.

Mediation conducted pursuant to sections 20.20 and 20.31 shall not be subject to this chapter. Except as provided in section 679C.4, mediation conducted before the industrial commissioner shall not be subject to this chapter. Except as provided in section 679C.4 and except for mediation conducted pursuant to chapter* 216.15B, mediation conducted pursuant to chapter 216 shall not be subject to this chapter.

Sec. 6. Section 13.14, Code 1997, is amended to read as follows:

13.14 FARM MEDIATION SERVICE — CONFIDENTIALITY.

1. Meetings of the farm mediation service are closed meetings and are not subject to chapter 21.

~~2. Verbal or written information relating to the mediation process and transmitted between a party to a dispute and the farm mediation service, including a mediator or the mediation staff, or any other person present during any stage of the mediation process conducted by the service, whether reflected in notes, memoranda, or other work products in the case files, is a confidential communication. Mediators and staff members shall not be examined in any judicial or administrative proceeding regarding confidential communications and are not subject to judicial or administrative process requiring the disclosure of confidential communications.~~

~~3~~ 2. Confidentiality is also protected as provided in section ~~654A.13~~ 679C.2.

Sec. 7. NEW SECTION. 20.31 MEDIATOR PRIVILEGE.

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

a. "Mediation" means a process in which an impartial person attempts to facilitate the resolution of a dispute by promoting voluntary agreement of the parties to the dispute.

* The word "section" probably intended

Mediation shall be deemed to commence upon the mediator's receipt of notice of assignment and shall be deemed to conclude when the dispute is resolved.

b. "Mediator" means a member or employee of the board or any other person appointed or requested by the board to assist parties in resolving disputes involving collective bargaining impasses, contested cases, other agency cases, or contract grievances.

2. A mediator shall not be required to testify in any judicial, administrative, or grievance proceeding regarding any matters occurring in the course of a mediation, including any verbal or written communication or behavior, other than facts relating exclusively to the timing or scheduling of mediation. A mediator shall not be required to produce or disclose any documents, including notes, memoranda, or other work product, relating to mediation, other than documents relating exclusively to the timing or scheduling of mediation. This subsection shall not apply in any of the following circumstances:

a. The testimony, production, or disclosure is required by statute.

b. The testimony, production, or disclosure provides evidence of an ongoing or future criminal activity.

c. The testimony, production, or disclosure provides evidence of child abuse as defined in section 232.68, subsection 2.

Sec. 8. Section 22.7, subsection 20, Code Supplement 1997, is amended by striking the subsection.

Sec. 9. Section 22.7, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 38. Mediation documents as defined in section 679C.1, except written mediation agreements that resulted from a mediation which are signed on behalf of a governing body. However, confidentiality of mediation documents resulting from mediation conducted pursuant to chapter 216 shall be governed by chapter 216.

Sec. 10. Section 216.15B, Code 1997, is amended to read as follows:

216.15B MEDIATION — CONFIDENTIALITY.

1. For the purposes of this section, "mediator" shall be the person designated in writing by the commission to conduct mediation of a complaint filed under this chapter. The written designation must specifically refer to this section.

~~2. All verbal or written information relating to the subject matter of a mediation agreement and transmitted between either the complainant or the respondent and a mediator to resolve a complaint filed under this chapter, whether reflected in notes, memoranda, or other work products, is a confidential communication except as otherwise expressly provided in this chapter. Mediators involved in a mediation under this section shall not be examined in any judicial or administrative proceeding regarding the confidential communications and are not subject to judicial or administrative process requiring the disclosure of the confidential communications. If a written confidential communication is kept by the mediator it must be kept in a mediation file which is maintained separately from the case file. The confidential communications may not be included in the commission's case file unless the person providing the information consents to its inclusion in the case file. The mediation file is not part of the file made available to the parties upon the commission's receipt of a right to sue letter. Information maintained in the mediation file and not included in the case file shall not be considered when making a recommendation or decision regarding screening, probable cause, or any issue in a contested case.~~

~~3. A mediator who has reason to believe that a complainant or respondent has given perjured evidence concerning a confidential communication is not barred by this section from disclosing the basis for this belief to any party to a cause in which the alleged perjury occurs or to the appropriate authorities, including testifying concerning the relevant confidential communications. If a dispute regarding the existence of a mediation agreement exists, the terms of the mediation agreement, or the conduct of the mediation process itself, the mediator may be examined regarding relevant confidential communications.~~

2. If mediation is conducted pursuant to this section, the confidentiality of all mediation communications and mediation documents is protected as provided in section 679C.2.

Sec. 11. Section 654A.13, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

654A.13 CONFIDENTIALITY.

If mediation is conducted pursuant to this chapter, the confidentiality of all mediation communications and mediation documents is protected as provided in section 679C.2.

Sec. 12. Section 679.12, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

679.12 CONFIDENTIALITY.

If mediation is conducted pursuant to this chapter, the confidentiality of all mediation communications and mediation documents is protected as provided in section 679C.2.

Approved April 6, 1998

CHAPTER 1063

SALES AND USE TAXES AND EXEMPTIONS RELATING TO COMPUTERS, MACHINERY, AND EQUIPMENT

S.F. 2288

AN ACT relating to the sales and use tax on optional service or warranty contracts and to the sales and use tax exemption on certain computers, equipment, machinery, and fuel, relating to the definition of manufacturer for purposes of the exemption, and providing a retroactive applicability date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 422.43, subsection 6, Code Supplement 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If the optional service or warranty contract is a computer software maintenance or support service contract and there is no separately stated fee for the taxable personal property or for the nontaxable service, the tax of five percent imposed by this subsection shall be imposed on fifty percent of the gross receipts from the sale of such contract. If the contract provides for technical support services only, no tax shall be imposed under this subsection. The provisions of this subsection also apply to the tax imposed by chapter 423.

Sec. 2. Section 422.45, subsection 27, paragraph b, Code Supplement 1997, is amended to read as follows:

b. The gross receipts from the sale of fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, ~~directly and primarily used in processing by a manufacturer~~ consumed by computers, machinery, or equipment used in an exempt manner described in paragraph "a", subparagraph (1), (2), (3), (5), or (6).

Sec. 3. Section 422.45, subsection 27, paragraph c, Code Supplement 1997, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (4) Vehicles subject to registration, except vehicles subject to registration which are directly and primarily used in recycling or reprocessing of waste products.

Sec. 4. Section 422.45, subsection 27, paragraph d, subparagraph (4), Code Supplement 1997, is amended to read as follows:

(4) "Manufacturer" means as defined in section 428.20, but also includes contract manufacturers. A contract manufacturer is a manufacturer that otherwise falls within the definition of manufacturer under section 428.20, except that a contract manufacturer does not sell the tangible personal property the contract manufacturer processes on behalf of other manufacturers. A business engaged in activities subsequent to the extractive process of quarrying or mining, such as crushing, washing, sizing, or blending of aggregate materials, is a manufacturer with respect to these activities.

Sec. 5. Section 422.45, subsection 27, paragraph d, Code Supplement 1997, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (6) "Receipt or producing of raw materials" means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, the receipt or producing of raw materials is deemed to occur immediately following the severance of the raw materials from the real estate.

Sec. 6. RETROACTIVE APPLICABILITY DATE. Sections 2, 3, and 5 of this Act are retroactively effective July 1, 1997, for sales and taxable uses occurring on or after that date.

Approved April 9, 1998

CHAPTER 1064

ADOPTION OF DECEASED PERSONS AND INTERNATIONAL ADOPTIONS

S.F. 2338

AN ACT relating to adoptions including the process for adoption of a deceased person and relating to the entities responsible for assisting in international adoptions and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 600.12A DEATH OF PERSON TO BE ADOPTED — PROCESS FOR FINAL ADOPTION DECREE.

1. If the person to be adopted dies following the filing of an adoption petition pursuant to section 600.3, but prior to issuance of a final adoption decree pursuant to section 600.13, the court may waive any investigations and reports required pursuant to section 600.8 that remain uncompleted, waive the minimum residence requirements pursuant to section 600.10, proceed to the adoption hearing, and issue a final adoption decree, unless any person to whom notice is to be provided pursuant to section 600.11 objects to the adoption.

2. A final adoption decree issued pursuant to this section terminates any parental rights existing prior to the time of its issuance and establishes the parent-child relationship between the adoption petitioner and the person adopted. However, the final adoption decree does not confer any rights on the adoption petitioner to the estate of the adopted person and does not confer any rights on the adopted person to the estate of the adoption petitioner.

Sec. 2. Section 600.15, Code 1997, is amended to read as follows:

600.15 FOREIGN AND INTERNATIONAL ADOPTIONS.

1. a. A decree establishing a parent-child relationship by adoption which is issued pur-

suant to due process of law by a court of any other jurisdiction in the United States shall be recognized in this state.

b. A decree terminating a parent-child relationship which is issued pursuant to due process of law by a court of any other jurisdiction in the United States shall be recognized in this state.

c. A document approved by the immigration and naturalization service of the United States department of justice shall be accepted ~~by the department of human services~~ in this state as evidence of termination of parental rights in a jurisdiction outside the United States and recognized in this state.

2. If an adoption has occurred in the minor person's country of origin, a further adoption must occur in the state where the adopting parents reside in accordance with the adoption laws of that state.

3. ~~The department~~ A licensed child placing agency as defined in section 238.2, a person making an independent placement as defined in section 600A.2, or an investigator may provide necessary assistance to an eligible citizen of Iowa who desires to, in accordance with the immigration laws of the United States, make an international adoption. ~~For any such assistance the department may charge a fee which does not exceed the reasonable cost of services rendered and which is based on a sliding scale relating to the investigated person's ability to pay.~~

~~4. Any rules of the department relating to placement of a minor child for adoption which are more restrictive than comparable rules of agencies making international placements and laws of the United States shall not be enforced by the department in an international adoption.~~

Sec. 3. EFFECTIVE DATE. Section 1, creating section 600.12A, being deemed of immediate importance, takes effect upon enactment.

Approved April 9, 1998

CHAPTER 1065

UNDERGROUND STORAGE TANKS — NO FURTHER ACTION FUND

H.F. 2339

AN ACT relating to limits on coverage of the remedial account of the Iowa comprehensive petroleum underground storage tank fund, the minimum copayment provisions in regard to the remedial account, and creating a no further action fund.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 455G.3, subsection 3, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. To establish a no further action fund for the purposes stated in section 455G.22.

Sec. 2. Section 455G.6, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 17. Allocate moneys from the Iowa comprehensive petroleum underground storage tank fund to the no further action fund.

Sec. 3. Section 455G.9, subsection 1, paragraph a, subparagraph (1), unnumbered paragraph 1, Code 1997, is amended to read as follows:

Corrective action for an eligible release reported to the department of natural resources on or after July 1, 1987, but prior to May 5, 1989. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release ~~for a small business~~ under this subparagraph, the remedial program shall pay in accordance with subsection 4. ~~For all other claims under this subparagraph, the remedial program shall pay the lesser of fifty thousand dollars of the total costs of corrective action for that release or total corrective action costs for that release as determined under subsection 4.~~ For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

Sec. 4. Section 455G.9, subsection 1, paragraph a, subparagraph (3),* Code 1997, is amended to read as follows:

(3) Corrective action for an eligible release reported to the department of natural resources on or after January 1, 1984, but prior to July 1, 1987. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release ~~for a small business~~ under this subparagraph, the remedial program shall pay in accordance with subsection 4. ~~For all other claims under this subparagraph, the remedial program shall pay the lesser of fifty thousand dollars of the total costs of corrective action for that release or total corrective action costs for that release as determined under subsection 4.~~ For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

Sec. 5. Section 455G.9, subsection 4, Code 1997, is amended to read as follows:

4. Minimum copayment schedule.

~~a.~~ An owner or operator ~~who reports a release to the department of natural resources after May 5, 1989, and on or before October 26, 1990,~~ shall be required to pay ~~the following copayment amounts:~~

~~(1) If the owner or operator has a net worth of one hundred thousand dollars or less and owns no more than one site, the owner or operator shall pay no more than eighteen percent of the total costs of corrective action for that release. For purposes of this subparagraph, "net worth" means the fair market value of the site, which shall include an adjustment for anticipated benefits under this section.~~

~~(2) If a site's total anticipated expenses are not reserved for more than, or actual expenses do not exceed, eighty thousand dollars, the owner or operator shall pay~~ the greater of five thousand dollars or eighteen percent of the first eighty thousand dollars of the total costs of corrective action for that release.

~~(3)~~ If a site's ~~total anticipated expenses are reserved for more than, or~~ actual expenses exceed, eighty thousand dollars, the ~~owner or operator shall pay the amount as designated in subparagraph (2) plus thirty-five percent of the total costs of the corrective action for that release which exceed eighty thousand dollars.~~

~~b.~~ ~~The~~ remedial account shall pay the remainder, as required by federal regulations, of the total costs of the corrective action for that release, not to exceed one million dollars, except that a county shall not be required to pay a copayment in connection with a release situated on property acquired in connection with delinquent taxes, as provided in subsection 1, paragraph "d", unless subsequent to acquisition the county actively operates a tank on the property for purposes other than risk assessment, risk management, or tank closure.

Sec. 6. Section 455G.21, subsection 2, paragraph a, Code 1997, is amended to read as follows:

a. Five million dollars per year shall be allocated to the innocent landowners fund which shall be established as a separate fund in the state treasury under the control of the board. The innocent landowners fund shall also include any moneys recovered pursuant to cost recovery enforcement under section 455G.13. Notwithstanding section 455G.1, subsection 2, benefits for the costs of corrective action shall be provided to the owner of a petroleum-contaminated property, who is not otherwise eligible to receive benefits under section 455G.9. An owner of a petroleum-contaminated property shall be eligible for payment of total corrective action costs subject to copayment requirements under section 455G.9,

* Subparagraph (3), unnumbered paragraph 1 probably intended

subsection ~~4, paragraph "a", subparagraphs (1) and (2)~~. The board may adopt rules conditioning receipt of benefits under this paragraph to those petroleum-contaminated properties which present a higher degree of risk to the public health and safety or the environment and may adopt rules providing for denial of benefits under this paragraph to a person who did not make a good faith attempt to comply with the provisions of this chapter. This paragraph does not confer a legal right to an owner of petroleum-contaminated property for receipt of benefits under this paragraph.

Sec. 7. NEW SECTION. 455G.22 NO FURTHER ACTION FUND.

1. A no further action fund is created as a separate fund in the state treasury under the control of and administered by the board. Notwithstanding section 8.33, moneys remaining in the no further action fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain in the no further action fund. The no further action fund shall include the following:

a. Ten million dollars allocated to the fund on July 1, 1998, from the Iowa comprehensive petroleum underground storage tank fund created under section 455G.3.

b. Notwithstanding section 12C.7, interest earned by the no further action fund or other moneys specifically allocated to the no further action fund.

2. From the moneys in the fund, up to one hundred thousand dollars per site may be used to reimburse the department for corrective action as directed by the department under the following conditions:

a. The corrective action is in response to high risk conditions caused by a release for which the department has issued a no further action certificate under section 455B.474.

b. The no further action certificate was issued after January 31, 1997.

c. The department determines the high risk conditions are not caused by a release which occurred after the issuance of the no further action certificate.

3. Moneys in the no further action fund shall not be used for the purposes of bonding or providing security for bonding under this chapter.

4. This section does not confer a legal right to an owner or operator of petroleum contaminated property or any other person for receipt of benefits under this section.

5. Any funds remaining in the no further action fund on June 30, 2006, which are not held in reserve for a claim submitted pursuant to this section, and any funds which remain on June 30, 2008, shall be credited to the road use tax fund.

Approved April 9, 1998

CHAPTER 1066

CHILD AND FAMILY SERVICES — ELECTRONIC BENEFITS TRANSFER PROGRAM

H.F. 2468

AN ACT establishing an electronic benefits transfer program in the department of human services.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 234.12A ELECTRONIC BENEFITS TRANSFER PROGRAM.

1. The department of human services may establish an electronic benefits transfer program utilizing electronic funds transfer systems. The program, if established, shall at a minimum provide for all of the following:

a. A retailer shall not be required to make cash disbursements or to provide, purchase, or upgrade electronic funds transfer system equipment as a condition of participation in the program.

b. A retailer providing electronic funds transfer system equipment for transactions pursuant to the program shall be reimbursed fifteen cents for each approved transaction pursuant to the program utilizing the retailer's equipment.

c. A retailer that provides electronic funds transfer system equipment for transactions pursuant to the program and who makes cash disbursements pursuant to the program utilizing the retailer's equipment shall be paid a fee of fifteen cents by the department for each cash disbursement transaction by the retailer.

2. A point-of-sale terminal which is used only for purchases from a retailer by electronic benefits transfer utilizing electronic funds transfer systems is not a satellite terminal as defined in section 527.2.

Approved April 9, 1998

CHAPTER 1067

CRIMES RELATING TO RAILROAD PROPERTY

H.F. 2482

AN ACT relating to certain criminal acts committed on or against the property of railway corporations and providing and applying penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 716.7, subsection 2, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. Entering or remaining upon or in railway property without lawful authority or without the consent of the railway corporation which owns, leases, or operates the railway property. This paragraph does not apply to passage over a railroad right-of-way, other than a track, railroad roadbed, viaduct, bridge, trestle, or railroad yard, by an unarmed person if the person has not been notified or requested to abstain from entering on to the right-of-way or to vacate the right-of-way and the passage over the right-of-way does not interfere with the operation of the railroad.

Sec. 2. Section 716.7, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 5. For purposes of this section, "railway property" means all tangible real and personal property owned, leased, or operated by a railway corporation with the exception of any administrative building or offices of the railway corporation.

For purposes of this section, "railway corporation" means a corporation, company, or person owning, leasing, or operating any railroad in whole or in part within this state.

NEW SUBSECTION. 6. This section shall not apply to the following persons:

a. Representatives of the state department of transportation, the federal railroad administration, or the national transportation safety board who enter or remain upon or in railway property while engaged in the performance of official duties.

b. Employees of a railway corporation who enter or remain upon or in railway property while acting in the course of employment.

c. Any person who is engaged in the operation of a lawful business on railway station grounds or in the railway depot.

Sec. 3. NEW SECTION. 716.9 STOWAWAYS.

A person commits the simple misdemeanor offense of stowing away, when, without lawful authority or the consent of a railway corporation, the person does either of the following:

1. Rides on the outside of a train or train component.

2. Rides on the inside of a train or train component which is not a passenger car.

Sec. 4. NEW SECTION. 716.10 RAILROAD VANDALISM.

1. A person commits railroad vandalism when the person does any of the following:

a. Shoots, fires, or otherwise discharges a firearm or other device at a train or train component.

b. Launches, releases, propels, casts, or directs a projectile, missile, or other device at a train or train component.

c. Intentionally throws or drops an object on or onto a train or train component.

d. Intentionally places or drops an object on or onto a railroad track.

e. Without the consent of the railway corporation, takes, removes, defaces, alters, or obscures any of the following:

(1) A railroad signal.

(2) A train control system.

(3) A train dispatching system.

(4) A warning signal.

(5) A highway-railroad grade crossing signal or gate.

(6) A railroad sign, placard, or marker.

f. Without the consent of the railway corporation, removes parts or appurtenances from, damages, impairs, disables, interferes with the operation of, or renders inoperable any of the following:

(1) A railroad signal.

(2) A train control system.

(3) A train dispatching system.

(4) A warning signal.

(5) A highway-railroad grade crossing signal or gate.

(6) A railroad sign, placard, or marker.

g. Without the consent of the railway corporation, taking, removing, disabling, tampering, changing, or altering a part or component of any operating mechanism or safety device of any train or train component.

h. Without the consent of the railway corporation, takes, removes, tampers, changes, alters, or interferes with any of the following:

(1) A railroad roadbed.

(2) A railroad rail.

(3) A railroad tie.

(4) A railroad frog.

(5) A railroad sleeper.

(6) A railroad switch.

(7) A railroad viaduct.

(8) A railroad bridge.

(9) A railroad trestle.

(10) A railroad culvert.

(11) A railroad embankment.

(12) Any other structure or appliance which pertains or is appurtenant to a railroad.

2. a. A person commits railroad vandalism in the first degree if the person intentionally commits railroad vandalism which results in the death of any person. Railroad vandalism in the first degree is a class "B" felony. However, notwithstanding section 902.9, subsection 1, the maximum sentence for a person convicted under this section shall be a period of confinement of not more than fifty years.

b. A person commits railroad vandalism in the second degree if the person intentionally commits railroad vandalism which results in serious injury to any person. Railroad vandalism in the second degree is a class "B" felony.

c. A person commits railroad vandalism in the third degree if the person intentionally commits railroad vandalism which results in bodily injury to any person or results in property damage which costs more than ten thousand dollars to replace, repair, or restore. Railroad vandalism in the third degree is a class "C" felony.

d. A person commits railroad vandalism in the fourth degree if the person intentionally commits railroad vandalism which results in property damage which costs ten thousand dollars or less but more than one thousand dollars to replace, repair, or restore. Railroad vandalism in the fourth degree is a class "D" felony.

e. A person commits railroad vandalism in the fifth degree if the person intentionally commits railroad vandalism which results in property damage which costs more than five hundred dollars but does not exceed one thousand dollars to replace, repair, or restore. Railroad vandalism in the fifth degree is an aggravated misdemeanor.

f. A person commits railroad vandalism in the sixth degree if the person intentionally commits railroad vandalism which results in property damage which costs more than one hundred dollars but does not exceed five hundred dollars to replace, repair, or restore. Railroad vandalism in the sixth degree is a serious misdemeanor.

g. A person commits railroad vandalism in the seventh degree if the person intentionally commits railroad vandalism which results in property damage which costs one hundred dollars or less to replace, repair, or restore. Railroad vandalism in the seventh degree is a simple misdemeanor.

3. For purposes of this section, "railway corporation" means a corporation, company, or person owning, leasing, or operating any railroad in whole or in part within the state.

For purposes of this section, "train component" means any locomotive, engine, tender, railroad car, passenger car, freight car, box car, tank car, hopper car, flatbed, container, work equipment, rail-mounted equipment, or any other railroad rolling stock.

For purposes of this section, "train" means a series of two or more train components which are coupled together in a line.

Approved April 9, 1998

CHAPTER 1068

UNDERGROUND STORAGE TANK INSURANCE FUND AND BOARD

H.F. 2490

AN ACT relating to the administration of the insurance account of the comprehensive petroleum underground storage tank fund, creating an underground storage tank insurance board, an underground storage tank insurance fund, and transferring assets and liabilities of the insurance account of the comprehensive petroleum underground storage tank fund.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 455G.2, subsection 4, Code 1997, is amended to read as follows:

4. "Claimant" means an owner or operator who has received assistance under the remedial account or who has coverage under the insurance ~~account~~ fund with respect to a release, or an installer or inspector who has coverage under the insurance ~~account~~ fund.

Sec. 2. Section 455G.2, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 12A. "Insurance board" means the Iowa underground storage tank insurance board created under section 455G.11.

Sec. 3. Section 455G.3, subsection 3, paragraph c, Code 1997, is amended to read as follows:

c. To establish an insurance ~~account~~ fund for insurable underground storage tank risks within the state as provided by section 455G.11.

Sec. 4. Section 455G.3, subsection 4, Code 1997, is amended to read as follows:

4. The state, the general fund of the state, or any other fund of the state, other than the Iowa comprehensive petroleum underground storage tank fund, is not liable for a claim or cause of action in connection with a tank not owned or operated by the state, or agency of the state. All expenses incurred by the fund shall be payable solely from the fund and no liability or obligation shall be imposed upon the state. The liability of the fund is limited to the extent of coverage provided by the account or fund under which a claim is submitted, subject to the terms and conditions of that coverage. The liability of the fund is further limited by the moneys made available to the fund, and no remedy shall be ordered which would require the fund to exceed its then current funding limitations to satisfy an award or which would restrict the availability of moneys for higher priority sites. The state is not liable for a claim presented against the fund.

Sec. 5. Section 455G.4, subsection 3, Code 1997, is amended to read as follows:

3. RULES AND EMERGENCY RULES.

a. The board shall adopt rules regarding its practice and procedures, develop underwriting standards, establish premiums for insurance ~~account~~ fund coverage and risk factors, procedures for investigating and settling claims made against the fund, determine appropriate deductibles or retentions in coverages or benefits offered, and otherwise implement and administer this chapter.

b. The board may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement this subsection for one year after May 5, 1989.

c. Rules necessary for the implementation and collection of the environmental protection charge shall be adopted on or before June 1, 1989.

d. Rules necessary for the implementation and collection of insurance ~~account~~ fund premiums shall be adopted prior to offering insurance to an owner or operator of a petroleum underground storage tank or other person.

e. Rules related to the establishment of the insurance ~~account~~ fund and the terms and conditions of coverage shall be adopted as soon as practicable to permit owners and operators to meet their applicable compliance date with federal financial responsibility regulations.

f. Rules to facilitate and encourage the use of community remediation whenever possible shall be adopted.

g. The board shall adopt rules relating to appeal procedures which shall require the administrator to deliver notice of appeal to the affected parties within fifteen days of receipt of notice, require that the hearing be held within one hundred eighty days of the filing of the petition unless good cause is shown for the delay, and require that a final decision be issued no later than one hundred twenty days following the close of the hearing. The time restrictions in this paragraph may be waived by mutual agreement of the parties.

Sec. 6. Section 455G.8, subsection 4, Code 1997, is amended to read as follows:

4. INSURANCE PREMIUMS. Insurance premium income as provided by section 455G.11 shall be credited to the insurance ~~account~~ fund.

Sec. 7. Section 455G.11, subsections 1 through 6, Code 1997, are amended to read as follows:

0A. UNDERGROUND STORAGE TANK INSURANCE FUND.

a. An Iowa underground storage tank insurance fund is created as a separate fund in the state treasury on the effective date of this Act consisting of all moneys held in the insurance account of the comprehensive petroleum underground storage tank fund.

Notwithstanding section 8.33, moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the underground storage tank insurance fund. Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund in addition to any other income specifically allocated to the underground storage tank insurance fund.

b. Amounts in the underground storage tank insurance fund shall not be subject to appropriation for any purpose by the general assembly, but shall be used only for the purposes set forth in this section. The treasurer of state shall act as custodian of the fund and disperse moneys contained in it as directed by the board. The treasurer of state is authorized to invest the moneys deposited in the fund at the discretion of the board. The income from such investments shall be credited to and deposited in the fund. The fund shall be administered by the board which shall make expenditures from the fund consistent with the purposes of the programs provided for in this chapter without further appropriation.

c. No later than July 1, 2004, all moneys in the fund shall be transferred to the insurance board when restructured as an independent nonprofit entity organized to provide an allowable mechanism to demonstrate financial responsibility as required in 40 C.F.R. pts. 280 and 281, owned and operated by insureds, as determined by the comprehensive petroleum underground storage tank fund board.

0B. UNDERGROUND STORAGE TANK INSURANCE BOARD.

a. An underground storage tank insurance board is established and shall consist of the following members:

(1) The treasurer of state or the treasurer of state's designee serving for a two-year term. The treasurer of state or the treasurer of state's designee shall serve as a nonvoting member of the insurance board.

(2) The auditor of state or the auditor of state's designee serving for a three-year term. The auditor of state or the auditor of state's designee shall serve as a nonvoting member of the insurance board.

(3) A representative of a governmental subdivision which owns an underground storage tank system which is insured through the insurance account and was insured through the insurance account of the comprehensive petroleum underground storage tank fund beginning on or before October 26, 1990, appointed by the governor and serving a six-year term.

(4) Two owners or operators appointed by the governor who have been petroleum systems insureds through the insurance account and were insured through the insurance account of the comprehensive petroleum underground storage tank fund on or before October 26, 1990. The insurance board members appointed under this subparagraph shall serve a term of six years and shall be eligible to serve subsequent terms pursuant to paragraph "b".

b. After the initial terms served by the insurance board members designated in paragraph "a", subparagraphs (1), (2), (3), and (4), all subsequent insurance board members shall be a part of and elected by the population of private insureds who have been petroleum systems insureds through the underground storage tank insurance fund and were insured through the insurance account of the comprehensive petroleum underground storage tank fund. The subsequent insurance board members elected pursuant to this paragraph shall serve for three-year terms and are eligible to serve an unlimited number of terms.

c. Members of the insurance board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties within the limits of the moneys appropriated to the insurance board or made available to the fund.

d. Members of the insurance board shall elect a voting chairperson from among the members who are privately insured owners and operators.

0C. RECOMMENDATIONS FOR RESTRUCTURING. Prior to the restructuring of the

insurance board as an independent nonprofit entity, the insurance board shall provide recommendations to the comprehensive petroleum underground storage tank fund board relating to all of the following:

a. Relating to rules, practices, procedures, underwriting criteria, premium determinations, organizational structure, procedures for investigating and settling claims, determining appropriate deductibles, benefits offered, and otherwise implementing and administering the underground storage tank insurance fund.

b. Confirming that the insurance board has established a process to independently provide the following:

(1) Long-term insurability based upon competitive rates for insureds who are in compliance with technical regulatory requirements.

(2) Elimination of any lapse in coverage between state insurance coverage and private insurance coverage.

(3) Ease in transition from state underwriting criteria, application process, claims handling, and premium determinations.

(4) Participation of insureds in establishing underwriting, application, claims, and premium determinations.

(5) Continued approval as an acceptable financial assurance mechanism as required in 40 C.F.R. pts. 280 and 281.

c. Determining a date specific upon which all assets and liabilities of the insurance fund will be transferred to the insurance board as an independent nonprofit entity organized to provide an allowable mechanism to provide financial responsibility as required by 40 C.F.R. pts. 280 and 281, owned and operated by insureds, on or before July 1, 2004.

0D. TRANSFER OF INSURANCE BOARD MONEYS.

a. If the insurance board dissolves or ceases to function as an acceptable financial assurance mechanism as required in 40 C.F.R. pts. 280 and 281, any unencumbered and unobligated moneys transferred to the insurance board pursuant to subsection 0A, paragraph "c", shall be transferred to the comprehensive petroleum underground storage tank fund, or if the comprehensive petroleum underground storage tank fund is no longer in existence, the unencumbered and unobligated moneys shall be transferred to the general fund of the state.

b. If a person or persons purchase the ownership rights of the assets of the underground storage tank insurance board, any unencumbered and unobligated moneys transferred to the insurance board pursuant to subsection 0A, paragraph "c", shall be transferred to the comprehensive petroleum underground storage tank fund, or if the comprehensive petroleum underground storage tank fund is no longer in existence, the unencumbered and unobligated moneys shall be transferred to the general fund of the state.

1. INSURANCE ~~ACCOUNT~~ FUND AS A FINANCIAL ASSURANCE MECHANISM. The insurance ~~account~~ fund shall offer financial assurance for a qualified owner or operator under the terms and conditions provided for under this section. Coverage may be provided to the owner or the operator, or to each separately. The board is not required to resolve whether the owner or operator, or both are responsible for a release under the terms of any agreement between the owner and operator.

The source of funds for the insurance ~~account~~ fund shall be from the following:

a. Moneys allocated to the board or moneys allocated to the account by the board according to the fund budget approved by the board.

b. Moneys collected as an insurance premium including service fees, if any, and investment income attributed to the account by the board.

2. LIMITS OF COVERAGE AVAILABLE. An owner or operator required to maintain proof of financial responsibility may purchase coverage up to the federally required levels for that owner or operator subject to the terms and conditions under this section and those adopted by the board.

3. ELIGIBILITY OF OWNERS AND OPERATORS FOR INSURANCE ACCOUNT COVERAGE. An owner or operator, subject to underwriting requirements and such terms

and conditions deemed necessary and convenient by the board, may purchase insurance coverage from the insurance ~~account~~ fund to provide proof of financial responsibility provided that a tank to be insured satisfies one of the following conditions:

a. Satisfies performance standards for new underground storage tank systems as specified by the federal environmental protection agency in 40 C.F.R. § 280.20, as amended through January 1, 1989.

b. Has satisfied on or before the date of the application standards for upgraded underground storage tank systems as specified by the federal environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989.

~~c. The applicant certifies in writing to the board that the tank to be insured will be brought into compliance with either paragraph "a" or "b", on or before December 22, 1998, provided that prior to the provision of insurance account coverage, the tank site tests release free. An owner or operator who fails to comply as certified to the board on or before December 22, 1998, shall not insure that tank through the insurance account unless and until the tank satisfies the requirements of paragraph "a" or "b". An owner or operator who fails to comply with either paragraph "a" or "b" by October 26, 1993, or who fails to enter into a contract on or before October 26, 1993, which, upon completion, will bring the owner or operator into compliance with either paragraph "a" or "b" by December 22, 1998, may be eligible for financial assurance under this section but shall be subject to an additional surcharge of eight hundred dollars per tank in addition to payment of a premium that is equal to two times the cost of the premium required under subsection 4, paragraph "g", per insured time period.~~

~~d. The applicant either:~~

~~(1) Is maintaining financial responsibility pursuant to current or previously applicable federal or state financial responsibility requirements on petroleum underground storage tanks within the state.~~

~~(2) Complies with the applicable following date for financial responsibility:~~

~~(a) On or before April 26, 1990, for a petroleum marketing firm owning at least thirteen, but no more than ninety-nine petroleum underground storage tanks.~~

~~(b) On or before October 26, 1990, for an owner or operator not described in subparagraph subdivision (a), and not currently or previously required to maintain financial responsibility by federal or state law on tanks within the state.~~

~~4. ACTUARIALLY SOUND PREMIUMS BASED ON RISK FACTOR ADJUSTMENTS AFTER FIVE YEARS. The annual premium for insurance coverage shall be:~~

~~a. For the year July 1, 1989, through June 30, 1990, one hundred dollars per tank.~~

~~b. For the year July 1, 1990, through June 30, 1991, one hundred fifty dollars per tank.~~

~~c. For the year July 1, 1991, through June 30, 1992, two hundred dollars per tank.~~

~~d. For the year July 1, 1992, through June 30, 1993, two hundred fifty dollars per tank.~~

~~e. For the year July 1, 1993, through June 30, 1994, in accordance with the following:~~

~~(1) For a tank satisfying subsection 3, paragraph "a" or "b", three hundred dollars per tank.~~

~~(2) For a tank qualifying under subsection 3, paragraph "c", six hundred dollars per tank.~~

~~f. For the period from July 1, 1994, through December 31, 1994, in accordance with the following:~~

~~(1) For a tank satisfying subsection 3, paragraph "a" or "b", three hundred fifty dollars per tank.~~

~~(2) For a tank qualifying under subsection 3, paragraph "c", seven hundred dollars per tank.~~

c. Is in compliance with all technical requirements of the department.

4. INSURANCE ACCOUNT PREMIUMS.

~~g. For subsequent time periods, an~~ An owner or operator applying for coverage shall pay an annually adjusted insurance premium for coverage by the insurance ~~account~~ fund. The board may only approve fund coverage through the payment of a premium established on an

actuarially sound basis. Risk factors shall be taken into account in establishing premiums. It is the intent of the general assembly that an actuarially sound premium reflect the risk to the insurance ~~account~~ fund presented by the insured. Risk factor adjustments should reflect the range of risk presented by the variety of tank systems, monitoring systems, and risk management practices in the general insurable tank population. Premium adjustments for risk factors should at minimum take into account lifetime costs of a tank and monitoring system and insurance ~~account~~ fund premiums for that tank system so as to provide a positive economic incentive to the owner or operator to install the more environmentally safe option so as to reduce the exposure of the insurance ~~account~~ fund to loss. Actuarially sound is not limited in its meaning to fund premium revenue equaling or exceeding fund expenditures for the general tank population.

~~Tanks receiving financial assurance pursuant to subsection 3, paragraph "c", shall not be included in the general tank population for purposes of determining actuarially sound premiums under this paragraph.~~

If coverage is purchased for any part of a year the purchaser shall pay the full annual premium.

~~h.~~ The insurance ~~account~~ fund may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered.

5. FUTURE REPEAL. The future repeal of this section shall not terminate the following obligations or authorities necessary to administer the obligations until these obligations are satisfied:

a. The payment of claims filed prior to the effective date of any future repeal, against the insurance ~~account~~ fund until moneys in the ~~account~~ fund are exhausted. Upon exhaustion of the moneys in the ~~account~~ fund, any remaining claims shall be invalid.

b. The resolution of a cost recovery action filed prior to the effective date of the repeal.

6. INSTALLER'S AND INSPECTOR'S INSURANCE COVERAGE.

a. COVERAGE. The board ~~shall~~ may offer insurance coverage under the ~~fund's~~ insurance ~~account~~ fund to installers and inspectors of certified underground storage tank installations within the state for an environmental hazard arising in connection with a certified installation as provided in this subsection. Coverage shall be limited to environmental hazard coverage for both corrective action and third-party liability for a certified tank installation within the state in connection with a release from that tank.

b. ANNUAL PREMIUMS. The annual premium shall be:

(1) For the year July 1, 1991, through June 30, 1992, two hundred dollars per insured tank.

(2) For the year July 1, 1992, through June 30, 1993, two hundred fifty dollars per insured tank.

(3) For the year July 1, 1993, through June 30, 1994, three hundred dollars per insured tank.

(4) For the period from July 1, 1994, through December 31, 1994, three hundred fifty dollars per insured tank.

(5) For subsequent time periods, installers and inspectors shall pay an annually adjusted insurance premium to maintain coverage on each tank previously installed or newly insured by the insurance ~~account~~ fund. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis. The premium paid shall be fully earned and is not subject to refund or cancellation. If coverage is purchased for any part of a year the purchaser shall pay the full annual premium.

(6) The board may offer coverage at rates based on sales if the qualifying installer or inspector cannot be rated on a per tank basis, or if the work the installer or inspector performs involves more than tank installation. The rates to develop premiums shall be based on the premium charged per tank under subparagraphs (1), (2), (3), and (4).

c. LIMITS OF COVERAGE AVAILABLE. Installers and inspectors may purchase coverage up to one million dollars per occurrence and two million dollars aggregate, subject to the terms and conditions under this section and those adopted by the board.

d. DEDUCTIBLE. The insurance ~~account~~ fund may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered.

e. EXCESS COVERAGE. Installers and inspectors may purchase excess coverage of up to five million dollars upon such terms and conditions as determined by the board.

f. CERTIFICATION OF TANK INSTALLATIONS. The board shall adopt certification rules requiring certification of a new tank installation as a precondition to offering insurance to an owner or operator or an installer or inspector. The board shall set in the rule the effective date for the certification requirement. Certification rules shall at minimum require that an installation be personally inspected by an independent licensed engineer, local fire marshal, state fire marshal's designee, or other person who is unaffiliated with the tank owner, operator, installer or inspector, who is qualified and authorized by the board to perform the required inspection and that the tank and installation of the tank comply with applicable technical standards and manufacturer's instructions and warranty conditions. An inspector may be an owner or operator of a tank, or an employee of an owner, operator, or installer.

g. The board may cease offering insurance coverage under this subsection if the board determines that competitive private market alternatives exist.

Sec. 8. Section 455G.11, subsection 8, Code 1997, is amended to read as follows:

8. ACCOUNT EXPENDITURES. Moneys in the insurance ~~account~~ fund may be expended to take corrective action for and to compensate a third party for damages, including but not limited to payment of a judgment for bodily injury or property damage caused by a release from a tank, where coverage has been provided to the owner or operator from the insurance ~~account~~ fund, up to the limits of coverage extended. A personal injury is not a compensable third-party liability damage.

Sec. 9. Section 455G.11, subsection 10, Code 1997, is amended by striking the subsection.

Sec. 10. Section 455G.11, subsection 11, Code 1997, is amended to read as follows:

~~11.~~ 10. LIMITATIONS ON THIRD-PARTY LIABILITY. To the extent that coverage under this section includes third-party liability, third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

Sec. 11. Section 455G.11, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 11. The board may cease offering insurance coverage under this subsection if the board determines that competitive private market alternatives exist and if the board determines that all of the following conditions are met:

a. Long-term insurability based upon competitive rates for insureds who are in compliance with technical regulatory requirements.

b. Elimination of any lapse in coverage between state insurance coverage and private insurance coverage.

c. Ease in transition from state underwriting criteria, application process, claims handling, and premium determinations.

d. Participation of insureds in establishing underwriting, application, claims, and premium determinations.

e. Continued approval as an acceptable financial assurance mechanism as required in 40 C.F.R. pts. 280 and 281.

Sec. 12. Section 455G.13, subsection 2, paragraph b, Code 1997, is amended to read as follows:

b. An owner or operator's liability for a release for which coverage is admitted under the insurance ~~account~~ fund shall not exceed the amount of the deductible.

Sec. 13. Section 455G.13, subsection 12, Code 1997, is amended to read as follows:

12. RECOVERY OR SUBROGATION — INSTALLERS AND INSPECTORS. Notwithstanding any other provision contained in this chapter, the board or a person insured under the insurance ~~account~~ fund has no right of recovery or right of subrogation against an installer or an inspector insured by the fund for the tank giving rise to the liability other than for recovery of any deductibles paid.

Sec. 14. Section 455G.14, Code 1997, is amended to read as follows:

455G.14 FUND NOT SUBJECT TO REGULATION.

The fund, including but not limited to insurance coverage offered by the insurance ~~account~~ fund, is not subject to regulation under chapter 502 or title XIII, subtitle 1.

Approved April 9, 1998

CHAPTER 1069

MEDICAL ASSISTANCE REIMBURSEMENT FOR CERTAIN PROVIDERS

H.F. 2523

AN ACT relating to the reimbursement of certain providers of services under the medical assistance program.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 249A.18 COST-BASED REIMBURSEMENT - RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CLINICS.

Rural health clinics and federally qualified health clinics shall receive cost-based reimbursement for the provision of services to recipients of medical assistance, subject to limitations and exclusions based on federal law and regulations as determined by the director.

Approved April 9, 1998

CHAPTER 1070

CHILD CUSTODY AND VISITATION — MISCELLANEOUS PROVISIONS

H.F. 677

AN ACT relating to child custody and visitation including the consideration of parent's criminal history in the awarding of visitation rights and including an exception from mandatory participation in a course by parties to an action involving child custody or visitation.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 598.19A, subsection 1, Code 1997, is amended to read as follows:

1. The court shall order the parties to any action which involves the issues of child custody or visitation ~~shall~~ to participate in a court-approved course to educate and sensitize the

parties to the needs of any child or party during and subsequent to the proceeding within forty-five days of the service of notice and petition for the action or within forty-five days of the service of notice and application for modification of an order. Participation in the course may be waived or delayed by the court for good cause including, but not limited to, a default by any of the parties or a showing that the parties have previously participated in a court-approved course or its equivalent. Participation in the course is not required if the proceeding involves termination of parental rights of any of the parties. A final decree shall not be granted or a final order shall not be entered until the parties have complied with this section.

Sec. 2. NEW SECTION. 598.41A VISITATION — HISTORY OF CRIMINAL OFFENSES AGAINST A MINOR.

Notwithstanding section 598.41, the court shall consider in the award of visitation rights to a parent of a child, the criminal history of the parent if the parent has been convicted of a criminal offense against a minor, a sexually violent offense against a minor, or sexual exploitation of a minor. As used in this section, "criminal offense against a minor", "sexually violent offense", and "sexual exploitation" mean as defined in section 692A.1.

Approved April 10, 1998

CHAPTER 1071

DRUG ABUSE RESISTANCE EDUCATION SURCHARGE

H.F. 2337

AN ACT concerning the method for imposition of the drug abuse resistance education surcharge.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 602.8102, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 135A. Assess the drug abuse resistance education surcharge as provided by section 911.2.

Sec. 2. Section 911.2, unnumbered paragraph 1, Code 1997, is amended to read as follows:

When a court imposes a fine or forfeiture for a violation of a state law, or of a city or county ordinance except an ordinance regulating the parking of motor vehicles, the court shall assess an additional penalty in the form of a surcharge equal to thirty percent of the fine or forfeiture imposed. An additional drug abuse resistance education surcharge of five dollars shall be assessed by the clerk of the district court if the violation arose out of a violation of an offense provided for in chapter 321J or chapter 124, division IV. In the event of multiple offenses, the surcharge shall be based upon the total amount of fines or forfeitures imposed for all offenses. When a fine or forfeiture is suspended in whole or in part, the surcharge shall be reduced in proportion to the amount suspended.

Approved April 10, 1998

CHAPTER 1072

ITEMS DEEMED NUISANCES

S.F. 2015

AN ACT to remove cottonwood trees and cotton-bearing poplar trees in cities from a list of items deemed to be nuisances.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 657.2, subsection 8, Code 1997, is amended by striking the subsection.

Approved April 10, 1998

CHAPTER 1073

DRIVER AND MOTOR VEHICLE LICENSING, REPORTING, AND REGISTRATION

S.F. 2113

AN ACT relating to driver and motor vehicle licensing, reporting, and registration.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321.1, subsection 11, paragraph b, Code Supplement 1997, is amended to read as follows:

b. "Commercial driver's license" means a ~~motor vehicle~~ driver's license valid for the operation of a commercial motor vehicle.

Sec. 2. Section 321.1, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 20A. "Driver's license" means any license or permit issued to a person to operate a motor vehicle on the highways of this state, including but not limited to a temporary restricted or temporary license and an instruction, chauffeur's instruction, commercial driver's instruction, temporary restricted, or temporary permit.

For purposes of license suspension, revocation, bar, disqualification, cancellation, or denial under this chapter and chapters 321A, 321C, and 321J, "driver's license" includes any privilege to operate a motor vehicle.

Sec. 3. Section 321.1, subsection 21, Code Supplement 1997, is amended to read as follows:

21. "Endorsement" means an authorization to a person's ~~motor vehicle~~ driver's license required to permit the person to operate certain types of motor vehicles or to transport certain types or quantities of hazardous materials.

Sec. 4. Section 321.1, subsection 43, Code Supplement 1997, is amended by striking the subsection.

Sec. 5. Section 321.23, subsection 1, Code Supplement 1997, is amended to read as follows:

1. If the vehicle to be registered is a specially constructed, reconstructed, remanufactured, or foreign vehicle, such fact shall be stated in the application. A fee of ten dollars shall be

paid by the person making the application upon issuance of a certificate of title by the county treasurer. With reference to every specially constructed or reconstructed motor vehicle subject to registration the application shall be accompanied by a statement from the department authorizing the motor vehicle to be titled and registered in this state. The department shall cause a physical inspection to be made of all specially constructed or reconstructed motor vehicles, upon application for a certificate of title by the owner, to determine whether the motor vehicle ~~is in a safe operating condition~~ complies with the definition of specially constructed motor vehicle or reconstructed motor vehicle in this chapter and to determine that the integral component parts are properly identified and that the rightful ownership is established before issuing the owner the authority to have the motor vehicle registered and titled. The purpose of the physical inspection under this section is not to determine whether the motor vehicle is in a condition safe to operate. With reference to every foreign vehicle which has been registered outside of this state, the owner shall surrender to the treasurer all registration plates, registration cards, and certificates of title, or, if the vehicle to be registered is from a nontitle state, the evidence of foreign registration and ownership as may be prescribed by the department except as provided in subsection 2.

Sec. 6. Section 321.265, Code 1997, is amended to read as follows:

321.265 STRIKING FIXTURES UPON A HIGHWAY.

The driver of a vehicle involved in an accident resulting in damage to property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner, a peace officer, or person in charge of the damaged property of the damage and shall inform the person of the driver's name and address and the registration number of the vehicle causing the damage and shall, upon request and if available, exhibit the driver's ~~motor vehicle~~ license of the driver of the vehicle and shall report the accident when and as required in section 321.266.

Sec. 7. Section 321.271, unnumbered paragraph 1, Code 1997, is amended to read as follows:

All accident reports filed by a driver of a vehicle involved in an accident as required under section 321.266 shall be in writing. The report shall be without prejudice to the individual so reporting and shall be for the confidential use of the department, except that upon the request of any person involved in the accident, the person's insurance company or its agent, or the attorney for such person, the department shall disclose the identity and address of ~~the person~~ other persons involved in the accident and may disclose the name of the insurance companies with whom the other persons have liability insurance. The department, upon written request of the person making the report, shall provide the person with a copy of that person's report. The written report filed with the department shall not be admissible in or used in evidence in any civil or criminal case arising out of the facts on which the report is based.

Sec. 8. Section 321.492, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

A peace officer is authorized to stop a vehicle to require exhibition of the driver's ~~motor vehicle~~ license of the driver, to serve a summons or memorandum of traffic violation, to inspect the condition of the vehicle, to inspect the vehicle with reference to size, weight, cargo, log book, bills of lading or other manifest of employment, tires, and safety equipment, or to inspect the registration certificate, the compensation certificate, travel order, or permit of the vehicle.

Sec. 9. Sections 18.138, 123.48, 124B.3, subsection 2, paragraph "a", 172B.1, 172B.3, 172B.5, 321.1A, 321.46, 321.174, 321.177, 321.180, 321.180A, 321.181, 321.182, 321.184, 321.186, 321.186A, 321.188, 321.191, 321.193, 321.194, 321.195, 321.196, 321.198, 321.199, 321.201, 321.205, 321.206, 321.208, 321.210A, 321.211, 321.212, 321.213, 321.213A, 321.215, 321.216, 321.216A, 321.220, 321.223, 321.234A, 321.247, 321.261, 321.263, 321.485, 321.556, 321A.1, 321A.17, 321G.9, 321G.20, 321G.24, 321J.1, 321J.2A, 321J.8, 805.9, and 901.5, Code

1997, and sections 22.7, 232.52, 312.2,* 321.20, 321.174A, 321.189, 321.190, 321.210B, 321.216B, 321.218, 321.218A, 321.491, 321.492, 321.555, 321A.32,** 321A.32A, 321E.34, 321J.2, 321J.4, 321J.4B, 321J.9, 321J.12, 321J.13, 321J.17, 321J.20, 321J.21, 321J.25, 321L.3, 707.6A, 805.8, and 805.16, Code Supplement 1997, are amended by striking from the sections the words "motor vehicle license" and inserting in lieu thereof the words "driver's license".

Sec. 10. Sections 321.182, 321.187, 321.188, 321.191, 321.195, and 321.216A, Code 1997, and sections 321.179, 321.189A, and 602.8102, Code Supplement 1997, are amended by striking from the sections the words "motor vehicle licenses" and inserting in lieu thereof the words "driver's licenses".

Sec. 11. Section 321.176, Code 1997, and section 321.179, Code Supplement 1997, are amended by striking from the sections the words "motor vehicle licensing" and inserting in lieu thereof the words "driver's licensing".

Sec. 12. CODE EDITOR DIRECTIONS. The Code editor shall correct any remaining references in the Code or in Acts enacted by the Seventy-seventh General Assembly to reflect the terminology change made in this Act from motor vehicle license to driver's license.

Approved April 10, 1998

CHAPTER 1074

SUBSTANTIVE CODE CORRECTIONS

S.F. 2136

AN ACT relating to statutory corrections which may adjust language to reflect current practices, insert earlier omissions, delete redundancies and inaccuracies, delete temporary language, resolve inconsistencies and conflicts, update ongoing provisions, or remove ambiguities, and providing effective and retroactive applicability dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 19A.3, subsection 13, Code Supplement 1997, is amended to read as follows:

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

Sec. 2. Section 29A.79, unnumbered paragraph 2, Code 1997, is amended to read as follows:

The Iowa national guard shall be requested to provide the emergency helicopter ambulance service from its available staffed helicopters when the plan is implemented on order of the governor at the request of the Iowa ~~highway safety~~ state patrol, or the administrative heads of the hospitals located in Iowa, unless the Iowa national guard does not have a staffed helicopter available or is in active service under the armed forces of the United States.

Sec. 3. Section 80.4, Code 1997, is amended to read as follows:

80.4 ~~HIGHWAY~~ IOWA STATE PATROL.

The Iowa ~~highway safety~~ state patrol is established in the department of public safety. The patrol shall be under the direction of the commissioner of public safety.

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* Section 312.2 did not appear in 1997 Code Supplement; Code 1997 probably intended

** Terminology does not appear in §321A.32

Sec. 4. Section 80.6, Code 1997, is amended to read as follows:

80.6 IMPERSONATING OFFICER — UNIFORM.

Any person who impersonates a member of the Iowa ~~safety~~ state patrol or other officer or employee of the department, or wears a uniform likely to be confused with the official uniform of any such officer, with intent to deceive anyone, shall be guilty of a simple misdemeanor.

Sec. 5. Section 80.8, unnumbered paragraphs 2 and 3, Code 1997, are amended to read as follows:

The commissioner may delegate to the members of the Iowa ~~highway safety~~ state patrol such additional duties in the enforcement of this chapter as the commissioner may deem proper and incidental to the duties now imposed upon them by law.

The salaries of all members and employees of the department and the expenses of the department shall be provided for by the legislative appropriation therefor. The compensation of the members of the ~~highway~~ Iowa state patrol shall be fixed according to grades as to rank and length of service by the commissioner with the approval of the governor. The members of the ~~highway~~ Iowa state patrol shall be paid additional compensation in accordance with the following formula: When members of the ~~highway~~ Iowa state patrol have served for a period of five years their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described five-year period; when members thereof have served for a period of ten years their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described ten-year period, such sums being in addition to the increase provided herein to be paid after five years of service; when members thereof have served for a period of fifteen years their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described fifteen-year period, such sums being in addition to the increases previously provided for herein; when members thereof have served for a period of twenty years their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described twenty-year period, such sums being in addition to the increases previously provided for herein. While on active duty each member shall also receive a flat daily sum as fixed by the commissioner with the approval of the governor for meals while away from the office to which the member has been assigned and within the member's district.

Sec. 6. Section 80.9, subsection 2, paragraph h, Code 1997, is amended to read as follows:

h. To maintain a vehicle theft unit in the Iowa ~~highway safety~~ state patrol to investigate and assist in the examination and identification of stolen, altered, or forfeited vehicles.

Sec. 7. Section 80.15, Code 1997, is amended to read as follows:

80.15 EXAMINATION — OATH — PROBATION — DISCIPLINE — DISMISSAL.

An applicant for membership in the department of public safety, except clerical workers and special agents appointed under section 80.7, shall not be appointed as a member until the applicant has passed a satisfactory physical and mental examination. In addition, the applicant must be a citizen of the United States and be not less than twenty-two years of age. The mental examination shall be conducted under the direction or supervision of the commissioner of public safety and may be oral or written or both. Each applicant shall take an oath on becoming a member of the force, to uphold the laws and Constitution of the United States and of the state of Iowa. During the period of twelve months after appointment, any member of the department of public safety, except members of the present Iowa ~~highway safety~~ state patrol who have served more than six months, is subject to dismissal at the will of the commissioner. After the twelve months' service, a member of the department, who was appointed after having passed the examinations, is not subject to dismissal, suspen-

sion, disciplinary demotion, or other disciplinary action resulting in the loss of pay unless charges have been filed with the department of inspections and appeals and a hearing held by the employment appeal board created by section 10A.601, if requested by the member, at which the member has an opportunity to present a defense to the charges. The decision of the appeal board is final, subject to the right of judicial review in accordance with the terms of the Iowa administrative procedure Act. However, these procedures as to dismissal, suspension, demotion, or other discipline do not apply to a member who is covered by a collective bargaining agreement which provides otherwise nor to the demotion of a division head to the rank which the division head held at the time of appointment as division head, if any. A division head who is demoted has the right to return to the rank which the division head held at the time of appointment as division head, if any. All rules, except employment provisions negotiated pursuant to chapter 20, regarding the enlistment, appointment, and employment affecting the personnel of the department shall be established by the commissioner in consultation with the director of the department of personnel, subject to approval by the governor.

Sec. 8. Section 80.17, subsection 4, Code 1997, is amended to read as follows:

4. Division of ~~highway safety and uniformed force~~ the Iowa state patrol.

Sec. 9. Section 85.61, subsection 11, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

"Worker" or "employee" means a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer; an executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a corporation, including a person holding an official position, or standing in a representative capacity of the employer; an official elected or appointed by the state, or a county, school district, area education agency, municipal corporation, or city under any form of government; a member of the Iowa ~~highway safety~~ state patrol; a conservation officer; and a proprietor, limited liability company member, or partner who elects to be covered pursuant to section 85.1A, except as specified in this chapter.

Sec. 10. Section 96.13, subsection 3, paragraph b, Code 1997, is amended to read as follows:

b. The department shall annually report to the joint ~~regulations~~ economic development appropriations subcommittee on its plans for expenditures during the next state fiscal year from the special employment security contingency fund. The report shall describe the specific expenditures and explain why the expenditures are to be made from the fund and not from federal administrative funds.

Sec. 11. Section 97A.1, subsection 13, Code 1997, is amended to read as follows:

13. "Peace officer" or "peace officers" shall mean all members of the divisions of ~~highway safety and uniformed force~~ the Iowa state patrol and criminal investigation and bureau of identification in the department of public safety, except clerical workers, including but not limited to gaming enforcement officers employed by the division of criminal investigation for excursion boat gambling enforcement activities, who have passed a satisfactory physical and mental examination and have been duly appointed as members of the state department of public safety in accordance with section 80.15, and the division of drug law enforcement, and arson investigators and fire prevention inspector peace officers in the department of public safety, except clerical workers, employees of the division of capitol police, except clerical workers, and the division of beer and liquor law enforcement of the department of public safety, except clerical workers.

Sec. 12. Section 97A.4, unnumbered paragraph 2, Code 1997, is amended to read as follows:

Any member of the system who has been employed continuously prior to the passage of this chapter in the division of ~~highway safety, uniformed force, and radio communications~~ the Iowa state patrol or the division of criminal investigation and bureau of identification in the department of public safety, or as a member of the Iowa ~~highway safety~~ state patrol, or as a peace officer or a member of the uniformed force in any department or division whose functions were transferred to, merged, or consolidated in the department of public safety at the time such department was created, shall receive credit for such service in determining retirement and disability benefits provided for in this chapter. Arson investigators who have contributed to this system prior to July 1, 1978 shall receive credit for such service in determining retirement and disability benefits.

Sec. 13. Section 97A.6, subsection 8, paragraph b, Code 1997, is amended to read as follows:

b. In lieu of the payment specified in paragraph "a," a beneficiary meeting the qualifications of paragraph "c" may elect to receive a monthly pension equal to one-twelfth of forty percent of the average final compensation of the member, but not less than an amount equal to twenty percent of the monthly earnable compensation paid to an active member having the rank of senior patrol officer of the Iowa ~~highway safety~~ state patrol if the member was in service at the time of death. For a member not in service at the time of death, the pension shall be reduced as provided in subsection 1, paragraph "b".

For a member not in service at the time of death, the pension shall be paid commencing when the member would have attained the age of fifty-five except that if there is a child of the member, the pension shall be paid commencing with the member's death until the children reach the age of eighteen, or twenty-two if applicable. The pension shall resume commencing when the member would have attained the age of fifty-five.

For a member in service at the time of death, the pension shall be paid commencing with the member's death. In addition to the pension, there shall also be paid for each child of a member, a monthly pension equal to six percent of the monthly earnable compensation payable to an active member having the rank of senior patrol officer of the Iowa ~~highway safety~~ state patrol.

For the purpose of this chapter, a senior patrol officer is a person who has completed ten years of service in the Iowa ~~highway safety~~ state patrol.

Notwithstanding section 97A.6, subsection 8, Code 1985, effective July 1, 1990, for a member's surviving spouse who, prior to July 1, 1986, elected to receive pension benefits under this paragraph, the monthly pension benefit shall be equal to the higher of one-twelfth of forty percent of the average final compensation of the member, or the amount the surviving spouse was receiving on July 1, 1990.

Sec. 14. Section 97A.6, subsection 9, paragraph c, Code 1997, is amended to read as follows:

c. In addition to the benefits for the surviving spouse enumerated in this subsection, there shall also be paid for each child of a member a monthly pension equal to six percent of the monthly earnable compensation payable to an active member having the rank of senior patrol officer of the Iowa ~~highway safety~~ state patrol.

Sec. 15. Section 97A.6, subsection 12, paragraph a, Code 1997, is amended to read as follows:

a. To the member's surviving spouse, equal to one-half the amount received by the deceased beneficiary, but in no instance less than an amount equal to twenty-five percent of the monthly earnable compensation paid to an active member having the rank of senior patrol officer of the Iowa ~~highway safety~~ state patrol, and in addition a monthly pension equal to the monthly pension payable under subsection 9, paragraph "c", of this section for each child under eighteen years of age or twenty-two years of age if applicable; or

Sec. 16. Section 97A.6, subsection 14, paragraph a, unnumbered paragraph 4, Code 1997, is amended to read as follows:

As of the first of July of each year, the monthly pension payable to each surviving child under the provisions of subsections 8, 9 and 12 of this section shall be adjusted to equal six percent of the monthly earnable compensation payable on that July 1 to an active member having the rank of senior patrol officer of the Iowa ~~highway safety~~ state patrol.

Sec. 17. Section 101A.10, Code 1997, is amended to read as follows:

101A.10 PERSONS AND AGENCIES EXEMPT.

This chapter shall not apply to the transportation and use of explosive materials by the regular military or naval forces of the United States, the duly organized militia of this state, representatives of the state fire marshal, the Iowa ~~highway safety~~ state patrol, division of criminal investigation and bureau of identification, local police departments, sheriffs departments, and fire departments acting in their official capacity; nor shall this chapter apply to the transportation and use of explosive materials by any peace officer to enforce provisions of this chapter when the peace officer is acting pursuant to such authority, however, other agencies of the state or any of its political subdivisions desiring to purchase, possess, transport, or use explosive materials for construction or other purposes shall be required to obtain user's permits.

Sec. 18. Section 172B.1, subsection 1, Code 1997, is amended to read as follows:

1. "Law enforcement officer" means ~~a~~ an Iowa state ~~highway safety~~ patrol officer, a sheriff, or other peace officer so designated by this state or by a county or municipality.

Sec. 19. Section 307.12, subsection 13, Code 1997, is amended to read as follows:

13. Adopt, after consultation with the department of natural resources and the department of public safety, rules relating to enforcement of the rules regarding transportation of hazardous wastes adopted by the department of natural resources. The department and the division of the ~~highway safety~~ Iowa state patrol of the department of public safety shall carry out the enforcement of the rules.

Sec. 20. Section 321.2, unnumbered paragraph 2, Code 1997, is amended to read as follows:

The division of the ~~highway safety~~ Iowa state patrol of the department of public safety shall enforce the provisions of this chapter relating to traffic on the public highways of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and buses, and to see that proper safety rules are observed.

Sec. 21. Section 321.19, subsection 1, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

The department shall furnish, on application, free of charge, distinguishing plates for vehicles thus exempted, which plates except plates on Iowa ~~highway safety~~ state patrol vehicles shall bear the word "official" and the department shall keep a separate record. Registration plates issued for Iowa ~~highway safety~~ state patrol vehicles, except unmarked patrol vehicles, shall bear two red stars on a yellow background, one before and one following the registration number on the plate, which registration number shall be the officer's badge number. Registration plates issued for a county sheriff's patrol vehicles shall display one seven-pointed gold star followed by the letter "S" and the call number of the vehicle. However, the director of general services or the director of transportation may order the issuance of regular registration plates for any exempted vehicle used by peace officers in the enforcement of the law, persons enforcing chapter 124 and other laws relating to controlled substances, persons in the department of justice, the alcoholic beverages division of the department of commerce, the department of inspections and appeals, and the department of revenue and finance, who are regularly assigned to conduct investigations which cannot reasonably be conducted with a vehicle displaying "official" state registration plates, and persons in the lottery division of the department of revenue and finance whose regularly assigned duties relating to security or the carrying of lottery tickets cannot reasonably be

conducted with a vehicle displaying "official" registration plates. For purposes of sale of exempted vehicles, the exempted governmental body, upon the sale of the exempted vehicle, may issue for in-transit purposes a pasteboard card bearing the words "Vehicle in Transit", the name of the official body from which the vehicle was purchased, together with the date of the purchase plainly marked in at least one-inch letters, and other information required by the department. The in-transit card is valid for use only within forty-eight hours after the purchase date as indicated on the bill of sale which shall be carried by the driver.

Sec. 22. Section 321.89, subsection 1, paragraph c, Code 1997, is amended to read as follows:

c. "Police authority" means the Iowa ~~highway safety~~ state patrol, any law enforcement agency of a county or city, or any special security officer employed by the state board of regents under section 262.13.

Sec. 23. Section 321.266, subsections 1 and 4, Code Supplement 1997, are amended to read as follows:

1. The driver of a vehicle involved in an accident resulting in injury to or death of any person shall immediately by the quickest means of communication give notice of such accident to the sheriff of the county in which said accident occurred, or the nearest office of the Iowa ~~highway safety~~ state patrol, or to any other peace officer as near as practicable to the place where the accident occurred.

4. Notwithstanding section 455B.386, a carrier transporting hazardous material upon a public highway in this state, in the case of an accident involving the transportation of the hazardous material, shall immediately notify the police radio broadcasting system established pursuant to section 693.1 or shall notify a peace officer of the county or city in which the accident occurs. When a local law enforcement agency is informed of the accident, the agency shall notify the Iowa ~~highway safety~~ state patrol and the state department of transportation office of motor vehicle enforcement. A person who violates a provision of this subsection is guilty of a serious misdemeanor.

Sec. 24. Section 321.380, Code 1997, is amended to read as follows:

321.380 ENFORCEMENT.

It shall be the duty of all peace officers and of the ~~highway safety~~ Iowa state patrol to enforce the provisions of sections 321.372 to 321.379.

Sec. 25. Section 321.457, subsection 3, Code 1997, is amended to read as follows:

3. Fire fighting apparatus and vehicles operated during daylight hours when transporting poles, pipe, machinery, or other objects of a structural nature which cannot be readily disassembled when required for emergency repair of public service facilities or properties are not subject to the limitations on overall length of vehicles and combinations of vehicles imposed under this section. However, for operation during nighttime hours, these vehicles and the load being transported shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps at the extreme ends of the projecting load to clearly mark the dimensions of the load. A member of the Iowa state ~~highway safety~~ patrol shall also be notified prior to the operation of the vehicle.

Sec. 26. Section 321G.18, Code 1997, is amended to read as follows:

321G.18 NEGLIGENCE.

The owner and operator of an all-terrain vehicle or snowmobile ~~is~~ are liable for any injury or damage occasioned by the negligent operation of the all-terrain vehicle or snowmobile.

Sec. 27. Section 321J.1, subsection 7, paragraph a, Code 1997, is amended to read as follows:

a. A member of the ~~highway~~ Iowa state patrol.

Sec. 28. Section 331.907, subsection 1, Code 1997, is amended to read as follows:

1. The annual compensation of the auditor, treasurer, recorder, sheriff, county attorney, and supervisors shall be determined as provided in this section. The county compensation board annually shall review the compensation paid to comparable officers in other counties of this state, other states, private enterprise, and the federal government. In setting the salary of the county sheriff, the county compensation board shall consider setting the sheriff's salary so that it is comparable to salaries paid to professional law enforcement administrators and command officers of the Iowa ~~highway safety~~ state patrol, the division of criminal investigation of the department of public safety, and city police agencies in this state. The county compensation board shall prepare a compensation schedule for the elective county officers for the succeeding fiscal year. A recommended compensation schedule requires a majority vote of the membership of the county compensation board.

Sec. 29. Section 452A.76, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Authority to enforce division III is given to the state department of transportation. Employees of the department of transportation designated enforcement employees have the power of peace officers in the performance of their duties; however, they shall not be considered members of the Iowa ~~highway safety~~ state patrol. The department of transportation shall furnish enforcement employees with necessary equipment and supplies in the same manner as provided in section 80.18, including uniforms which are distinguishable in color and design from those of the Iowa ~~highway safety~~ state patrol. Enforcement employees shall be furnished and shall conspicuously display badges of authority.

Sec. 30. Section 529.1, subsections 2, 9, and 11, Code 1997, are amended to read as follows:

2. "Check cashing" means exchanging for compensation a check, draft, money order, traveler's check, or a payment instrument of a ~~licensee~~ money transmitter for money delivered to the presenter at the time and place of the presentation.

9. "Money transmitter" means a person who is located or doing business in this state, including a check ~~cashier~~ casher and a foreign money exchanger, and who does any of the following:

a. Sells or issues payment instruments.

b. Conducts the business of receiving money for the transmission of or transmitting money.

c. Conducts the business of exchanging payment instruments or money into any form of money or payment instrument.

d. Conducts the business of receiving money for obligors for the purpose of paying obligors' bills, invoices, or accounts.

e. Meets the definition of a bank, financial agency, or financial institution as prescribed by 31 U.S.C. § 5312 or 31 C.F.R. § 103.11 and any successor provisions.

11. "Proceeds" means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind.

11A. "Property" means anything of value, and includes any interest in property, including any benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible, without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose.

Sec. 31. Section 529.2, subsection 6, paragraph b, Code 1997, is amended to read as follows:

b. With the intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct, or with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct, or with intent to evade the making or filing of a report required under this chapter, or with intent to cause the making or filing of a report that contains a material omission or misstatement of

fact, ~~or with intent~~ to conduct or structure a transaction or series of transactions by or through one or more licensees, authorized delegates, money transmitters, financial institutions, or persons engaged in a trade or business.

Sec. 32. Section 600B.41A, subsection 3, paragraph e, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) Unless otherwise specified pursuant to subsection 2 or ~~8~~ 9, blood or genetic testing shall be conducted in an action to overcome the establishment of paternity.

Sec. 33. Section 706A.2, subsection 3, Code 1997, is amended to read as follows:

3. MONEY LAUNDERING. It is unlawful for a person to commit money laundering ~~as defined~~ in violation of chapter 706B.

Sec. 34. Section 706A.3, subsection 8, paragraph b, Code 1997, is amended to read as follows:

b. For the purposes of this subsection:

(1) "Agent" means any officer, director, or employee of the legal entity, or any other person who is authorized to act in behalf of the legal entity.

(2) "High managerial agent" means any officer of the legal entity or, in the case of a partnership, a partner, or any other agent in a position of comparable authority with respect to the formulation of policy of the legal entity.

~~(3)~~ 8A. Notwithstanding any other provision of law, any pleading, motion, or other paper filed by a nongovernmental aggrieved party in connection with a proceeding or action under subsection 7 shall be verified. If such aggrieved person is represented by an attorney, such pleading, motion, or other paper shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated.

If such pleading, motion, or other paper includes an averment of fraud, coercion, accomplice, respondent superior, conspiratorial, enterprise, or other vicarious accountability, it shall state, insofar as practicable, the circumstances with particularity. The verification and the signature by an attorney required by this subsection shall constitute a certification by the signer that the attorney has carefully read the pleading, motion, or other paper and, based on a reasonable inquiry, believes that all of the following exist:

~~(a)~~ a. It is well grounded in fact.

~~(b)~~ b. It is warranted by existing law, or a good faith argument for the extension, modification, or reversal of existing law.

~~(c)~~ c. It is not made for an improper purpose, including to harass, to cause unnecessary delay, or to impose a needless increase in the cost of litigation.

The court may, after a hearing and appropriate findings of fact, impose upon any person who verified the complaint, cross-claim, or counterclaim, or any attorney who signed it in violation of this subsection, or both, a fit and proper sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the complaint or claim, including reasonable attorney fees. If the court determines that the filing of a complaint or claim under subsection 7 by a nongovernmental party was frivolous in whole or in part, the court shall award double the actual expenses, including attorney fees, incurred because of the frivolous portion of the complaint or claim.

Sec. 35. Section 706B.2, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

It is unlawful for a person to ~~do~~ commit money laundering by doing any of the following:

Sec. 36. Section 706B.2, subsection 2, Code 1997, is amended to read as follows:

2. A person who violates:

a. Subsection 1, paragraph "a", "b", or "c", commits a class "C" felony, and may be fined not more than ten thousand dollars or twice the value of the property involved, whichever is greater, or ~~by imprisonment~~ be imprisoned for not more than ten years, or both.

b. Subsection 1, paragraph "d", commits a class "D" felony, and may be fined not more than seven thousand five hundred dollars or twice the value of the property involved, whichever is greater, or ~~by imprisonment~~ be imprisoned for not more than five years, or both.

Sec. 37. Section 809A.1, subsection 1, Code 1997, is amended by striking the subsection.

Sec. 38. Section 809A.1, subsection 4, Code 1997, is amended to read as follows:

4. "Owner" means a person, other than an interest holder, who has an interest in property. A person who holds property for the benefit of or ~~for~~ as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an owner.

Sec. 39. Section 809A.4, subsection 5, Code 1997, is amended to read as follows:

5. Any interest or security in, claim against, or property or contractual right of any kind affording a source of control over any enterprise that a person has established, operated, controlled, ~~or~~ conducted ~~through~~, or participated in the conduct~~,~~ or through conduct giving rise to forfeiture.

Sec. 40. Section 809A.4, subsection 6, paragraph a, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Any property of a person up to the value of property ~~of~~ which is either of the following:

Sec. 41. Section 809A.18, subsection 1, Code 1997, is amended to read as follows:

1. A prosecuting attorney may conduct an investigation of any conduct that gives rise to forfeiture. The prosecuting attorney is authorized, before the commencement of a proceeding or action under this chapter, to subpoena witnesses, and compel their attendance, examine them under oath, and require the production of documentary evidence for inspection, reproducing, or copying. Except as otherwise provided by this section, the prosecuting attorney shall proceed under this subsection with the ~~same~~ powers and limitations, and judicial oversight and enforcement, and in the manner provided by this chapter and by the Iowa rules of civil procedure. Any person compelled to appear under a demand for oral testimony under this section may be accompanied, represented, and advised by counsel.

Approved April 10, 1998

CHAPTER 1075

TRANSPORTATION — MISCELLANEOUS PROVISIONS

S.F. 2257

AN ACT relating to the regulation of and motor vehicle operation on the roads and streets of this state by providing for the classification of the system of roads and streets, authorizing easements on state-controlled lands, providing for the admissibility of official records of the state department of transportation, regulating motor vehicles and motor vehicle dealers, authorizing maintenance vehicles to stop or park on the traveled way of the roadway, allowing single trucks a variance on their maximum length, administering of motor vehicle laws by the state department of transportation concerning motor vehicle dealer sales, multiyear vehicle and vehicle dealer licensing, requiring the payment of certain civil penalties before issuance of temporary restricted licenses, and modifying the compilation requirements for airport sufficiency ratings.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I
STATE FUNCTIONAL CLASSIFICATION SYSTEM

Section 1. Section 306.3, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

306.3 DEFINITION THROUGHOUT CODE.

As used in this chapter or in any chapter of the Code relating to highways:

1. "Area service" or "area service system" means those secondary roads that are not part of the farm-to-market road system.

2. "County conservation parkways" or "county conservation parkway system" means those parkways located wholly within the boundaries of county lands operated as parks, forests, or public access areas.

3. "Farm-to-market roads" or "farm-to-market road system" means those county jurisdiction intracounty and intercounty roads which serve principal traffic generating areas and connect such areas to other farm-to-market roads and primary roads. The farm-to-market road system includes those county jurisdiction roads providing service for short-distance intracounty and intercounty traffic or providing connections between farm-to-market roads and area service roads, and includes those secondary roads which are federal aid eligible. The farm-to-market road system shall not exceed thirty-five thousand miles.

4. "Interstate roads" or "interstate road system" means those roads and streets of the primary road system that are designated by the secretary of the United States department of transportation as the national system of interstate and defense highways in Iowa.

5. "Municipal street system" means those streets within municipalities that are not primary roads.

6. "Primary roads" or "primary road system" means those roads and streets both inside and outside the boundaries of municipalities which are under department jurisdiction.

7. "Public road right-of-way" means an area of land, the right to possession of which is secured or reserved by the state or a governmental subdivision for roadway purposes. The right-of-way for all secondary roads is sixty-six feet in width, unless otherwise specified by the county board of supervisors of the respective counties.

8. "Road" or "street" means the entire width between property lines through private property or the designated width through public property of every way or place of whatever nature if any part of such way or place is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

9. "Secondary roads" or "secondary road system" means those roads under county jurisdiction.

10. "State park, state institution, and other state land road system" consists of those roads

and streets wholly within the boundaries of state lands operated as parks, or on which institutions or other state governmental agencies are located.

Sec. 2. Section 306.5, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

306.5 CONTINUITY OF FARM-TO-MARKET ROAD SYSTEM IN MUNICIPALITIES, PARKS, AND INSTITUTIONS.

The farm-to-market road system shall be a continuous interconnected system and provision shall be made for continuity by the designation of extensions within municipalities, state parks, state institutions, other state lands, and county parks and conservation areas. The mileage of such extensions of the system shall be included in the total mileage of the farm-to-market road system.

Sec. 3. Section 306.6, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

306.6 FARM-TO-MARKET REVIEW BOARD.

A farm-to-market review board is created. Members shall be appointed by the Iowa county engineers association. This board shall select a chairperson from among its members by majority vote of the total membership.

The farm-to-market review board shall review any and all farm-to-market system modification proposals. The farm-to-market review board shall make final administrative determinations based on sound farm-to-market road system designation principles for all modifications relative to the farm-to-market road system.

Sec. 4. NEW SECTION. 306.6A FARM-TO-MARKET ROAD SYSTEM MODIFICATIONS.

1. Modifications to the existing farm-to-market road system and designation of farm-to-market routes on new alignment shall be accomplished in accordance with procedural rules adopted by the farm-to-market review board, subject to the following procedures:

a. Counties shall initiate system modifications by submitting a resolution from the board of supervisors to the department.

b. The department shall submit the resolution to the farm-to-market review board and provide additional material as requested by the board.

c. Upon receipt of a county's resolution requesting a farm-to-market system modification, the farm-to-market review board shall review the proposed system modification and shall consider, but not be limited to consideration of, the following factors:

(1) Intracounty and intercounty continuity of systems.
(2) Properly integrated systems.
(3) Existing and potential traffic.
(4) Land use.
(5) Location.
(6) Equitable distribution of farm-to-market mileage among the counties.

2. Upon completion of the review process, the farm-to-market review board may do any of the following:

a. Approve the requested modifications to the farm-to-market road system and submit the modifications to the department for processing.

b. Deny the requested modifications.

c. Request additional information for further review.

Sec. 5. Section 306.8, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

306.8 TRANSFER OF JURISDICTION.

Prior to a change in jurisdiction of a road or street, the unit of government having jurisdiction shall either place the road or street and any structures on the road or street in good repair or provide for the transfer of money to the appropriate jurisdiction in an amount sufficient for the repairs to the road or street and any structures on the road or street.

Transfers of the jurisdiction and control of roads and streets may take place if agreements are entered into between the jurisdictions of government involved in the transfer of such roads and streets.

Sec. 6. Section 306.9, unnumbered paragraph 3, Code 1997, is amended to read as follows:

It is the policy of the state of Iowa that ~~on construction of roads classified as freeway expressway and which are~~ in constructing primary highways designed with four-lane divided roadways, access controls shall be limited to the minimum level necessary, as determined by the department, to ensure the safe and efficient movement of traffic or to comply with federal aid requirements.

Sec. 7. Section 307A.2, subsection 11, Code 1997, is amended to read as follows:

11. Construct, reconstruct, improve, and maintain state institutional roads and state park roads, which are part of the state park, state institution, and other state land road system as defined in section 306.3, and bridges on such roads, roads located on state fairgrounds as defined in chapter 173, and the roads and bridges located on community college property as defined in chapter 260C, upon the request of the state board, department, or commission which has jurisdiction over such roads. This shall be done in such manner as may be agreed upon by the state transportation commission and the state board, department, or commission which has jurisdiction. The commission may contract with any county or municipality for the construction, reconstruction, improvement, or maintenance of such roads and bridges. Any state park road which is an extension of either a primary or secondary highway which both enters and exits from a state park at separate points shall be constructed, reconstructed, improved, and maintained as provided in section 306.4. Funds allocated from the road use tax fund for the purposes of this subsection shall be apportioned in the ratio that the needs of the state ~~institution~~ institutional roads and bridges, park roads and bridges, or community college roads and bridges bear to the total needs of these facilities based upon the most recent quadrennial park and institution need study. The commission shall conduct a study of the road and bridge facilities in state parks, state institutions, state fairgrounds, and on community college property. The study shall evaluate the construction and maintenance needs and projected needs based upon estimated growth for each type of facility to provide a quadrennially updated standard upon which to allocate funds appropriated for the purposes of this subsection.

Sec. 8. Section 308.9, subsection 1, Code 1997, is amended to read as follows:

1. When, as a result of its investigations and studies, the state transportation commission, in co-operation with the department of natural resources, finds that there may be a need in the future for the development and construction or reconstruction of segments of the great river road, and when the state transportation commission determines that in order to prevent conflicting costly economic development on areas of lands to be available for the great river road when needed for future development, there is need to establish and to inform the public of the approximate location and widths of new or improved segments of the great river road to be needed, the state transportation commission may proceed to establish the location and the approximate widths in the manner provided in this section.

PARAGRAPH DIVIDED. The state transportation commission shall give notice and hold a public hearing on the matter in a convenient place in the area to be affected by the proposed improvement of the great river road. The state transportation commission shall consider and evaluate the testimony presented at the public hearing and shall make a study and prepare a map showing the location of the proposed new or reconstructed segment of the great river road and the approximate widths of right of way needed. The map shall show the existing roadway and the property lines and record owners of lands to be needed. The approval of the map shall be recorded by reference in the state transportation commission's minutes, and a notice of the action and a copy of the map showing the lands or interest in the lands needed in any county shall be filed in the office of the county recorder of that county.

Notice of the action and of the filing shall be published once in a newspaper of general circulation in the county, and within sixty days following the filing, notice of the filing shall be served by registered mail on the owners of record on the date of filing ~~and on the functional classification board of the county~~. Using the same procedures for approval, notice and publications, and notice to the affected record owners, the state transportation commission may amend the map.

Sec. 9. Section 309.3, Code 1997, is amended to read as follows:

309.3 SECONDARY BRIDGE SYSTEM.

The secondary bridge system of a county shall embrace all bridges and culverts on secondary roads as defined in section 306.3~~, subsection 11~~.

Sec. 10. Section 310.10, Code 1997, is amended to read as follows:

310.10 FARM-TO-MARKET ROAD SYSTEM DEFINED.

The farm-to-market road system ~~shall embrace those roads~~ means the farm-to-market road system as defined in section 306.3~~, subsection 2~~. ~~However, a road which is classified as being part of the arterial or arterial connector system under chapter 306 but whose jurisdiction still vests in the county in which it is located, shall be deemed to be part of the farm-to-market road system until the time the jurisdiction of the road is transferred to the department.~~

Sec. 11. Section 312.2, subsection 10, Code 1997, is amended by striking the subsection.

Sec. 12. Section 312.11, Code 1997, is amended to read as follows:

312.11 ACCOUNTS OF EXPENDITURES.

Each city shall keep accounts showing the amount spent on street construction and reconstruction on extensions of rural systems~~, municipal arterial and municipal collector systems as classified pursuant to section 306.6 and the amount spent on street construction and reconstruction on municipal service systems~~ and city streets. ~~Such amounts spent on extensions of rural systems, municipal arterial, and municipal collector systems and such amounts spent on municipal service systems~~ The amount spent shall be shown on the annual street report required by section 312.14.

Sec. 13. Section 313.2, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The roads and streets of the state are, for the purpose of this chapter, ~~assigned to the functional classification systems~~ those roads and streets established under chapter 306.

Sec. 14. Section 317.18, Code 1997, is amended to read as follows:

317.18 ORDER FOR DESTRUCTION ON ROADS.

The board of supervisors may order all noxious weeds, within the right-of-way of all ~~county trunk and local county~~ roads under county jurisdiction to be cut, burned or otherwise controlled to prevent seed production, either upon its own motion or upon receipt of written notice requesting the action from any residents of the township in which the roads are located, or any person regularly using the roads. The order shall be consistent with the county integrated roadside vegetation management plan, if the county has adopted such a plan, and the order shall define the roads along which noxious weeds are required to be cut, burned or otherwise controlled and shall require the weeds to be cut, burned or otherwise controlled within fifteen days after the publication of the order in the official newspapers of the county or as prescribed in the county's integrated roadside vegetation management plan. The order shall provide that spraying for control of noxious weeds shall be limited to those circumstances when it is not practical to mow or otherwise control the weeds.

Sec. 15. Section 317.19, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The board of supervisors may appropriate moneys to be used for the purposes of cutting, burning, or otherwise controlling weeds or brush within the right-of-way of ~~county trunk~~

~~roads and local county~~ roads under county jurisdiction in time to prevent reseeding or in a manner consistent with the county's roadside vegetation management plan, if the county has adopted such a plan. The moneys appropriated shall not be spent on spraying for control of weeds except in those circumstances when it is not practical to mow or otherwise control the weeds.

Sec. 16. Section 331.321, subsection 1, paragraph j, Code 1997, is amended by striking the paragraph.

Sec. 17. Sections 306.1, 306.7, 306.43, and 309.11, Code 1997, are repealed.

DIVISION II
TRANSPORTATION

Sec. 18. NEW SECTION. 306.45 EASEMENTS ON HIGHWAY RIGHTS-OF-WAY.
The department may grant easements across land under its jurisdiction if the department determines that the easement will not adversely affect the construction and maintenance of the highway system. Written conveyances containing any easement conditions prescribed by the department shall be made in the name of the state and signed by the governor and the secretary of state, with the seal of the state of Iowa affixed.

Sec. 19. Section 306C.11, Code Supplement 1997, is amended by adding the following new subsection:
NEW SUBSECTION. 1A. The publication title of a newspaper on a delivery receptacle attached to a mailbox or mailbox support.

Sec. 20. Section 321.1, subsection 32, paragraph b, Code Supplement 1997, is amended to read as follows:
b. Any vehicle which is principally designed for agricultural purposes and which is moved during daylight hours for a distance not to exceed one hundred miles by a person ~~either~~ in any of the following ways:
(1) From a place at which the vehicles are manufactured, fabricated, repaired, or sold to a farm site or a retail seller or from a retail seller to a farm site~~;~~.
(2) To a place at which the vehicles are manufactured, fabricated, repaired, or sold from a farm site or a retail seller or to a retail seller from a farm site~~; or~~.
(3) From a place where the vehicles are housed, maintained, or stored to a farm site, retail seller, place of repair, or marketplace.
(4) From a farm site, retail seller, place of repair, or marketplace to a place where the vehicles are housed, maintained, or stored.
~~(3)~~ (5) From one farm site to another farm site.
(6) From a farm site to market or from a market to a farm site.
For the purpose of this subsection and sections 321.383 and 321.453, "farm site" means a place or location at which vehicles principally designed for agricultural purposes are used or intended to be used in agricultural operations or for the purpose of exhibiting, demonstrating, testing, or experimenting with the vehicles.

Sec. 21. Section 321.10, Code 1997, is amended by adding the following new unnumbered paragraph:
NEW UNNUMBERED PARAGRAPH. Any records or certified copies of records prepared pursuant to this section and any certified abstract, or a copy of a certified abstract, of the operating record of a driver or a motor vehicle owner prepared pursuant to chapter 321, 321A, or 321J, shall be received in evidence if determined to be relevant, in any court, preliminary hearing, grand jury proceeding, civil proceeding, administrative hearing, or forfeiture proceeding in the same manner and with the same force and effect as if the director or the director's designee had testified in person.

Sec. 22. Section 321.275, subsection 7, Code 1997, is amended by striking the subsection.

Sec. 23. Section 321.354, subsection 2, unnumbered paragraph 2, Code 1997, is amended to read as follows:

A clear view of the stopped vehicle shall be available from a distance of two hundred feet in each direction upon the highway. However, school buses may stop on the highway for receiving and discharging pupils and all other vehicles shall stop for school buses which are stopped to receive or discharge pupils, as provided in section 321.372. This section does not apply to a vehicle making a turn as provided in section 321.311. This section also does not apply to the stopping or parking of a maintenance vehicle operated by a highway authority on the main traveled way of any roadway when necessary to the function being performed and when early warning devices are properly displayed.

Sec. 24. Section 321.457, subsection 2, paragraph a, Code 1997, is amended to read as follows:

a. A single truck, unladen or with load, shall not have an overall length, inclusive of front and rear bumpers, in excess of forty feet.

When determining the overall length of a single truck the following shall be excluded:

(1) Cargo extending not more than three feet beyond the front bumper and not more than four feet beyond the rear bumper when transporting motor vehicles, boats, and chassis.

(2) An unladen cargo carrying device extending no greater than twenty-four inches from the rear of the bed of the truck.

(3) A cargo carrying device with load.

Sec. 25. Section 321J.17, subsection 1, Code Supplement 1997, is amended to read as follows:

1. If the department revokes a person's ~~motor vehicle~~ driver's license or nonresident operating privilege under this chapter, the department shall assess the person a civil penalty of two hundred dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit one-half of the money in the separate fund established in section 912.14 and one-half of the money ~~shall be deposited~~ in the general fund of the state. A ~~motor vehicle~~ temporary restricted license shall not be issued unless an ignition interlock device has been installed pursuant to section 321J.4 and the civil penalty has been paid. A driver's license or nonresident operating privilege shall not be reinstated ~~until~~ unless proof of deinstallation of an ignition interlock device installed pursuant to section 321J.4 has been submitted to the department and the civil penalty has been paid.

Sec. 26. Section 322.3, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 12. A person convicted of a fraudulent practice in connection with selling, bartering, or otherwise dealing in motor vehicles, in this state or any other state, shall not for a period of five years from the date of conviction be an owner, salesperson, officer of a corporation, or dealer representative of a licensed motor vehicle dealer or represent themselves as an owner, salesperson, or dealer representative of a licensed motor vehicle dealer.

Sec. 27. Section 322A.11, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. The fact that the dealership moved to another facility and location within the dealership's community which are equal to or superior to the dealership's former location and facility or the fact that the dealership added an additional line-make to the dealership if the dealership's facility is adequate to accommodate the additional line-make.

Sec. 28. Section 322B.3, subsection 2, unnumbered paragraph 2, Code 1997, is amended by striking the unnumbered paragraph.

Sec. 29. Section 322C.4, subsection 2, unnumbered paragraph 2, Code Supplement 1997, is amended by striking the unnumbered paragraph.

Sec. 30. Section 328.12, subsection 11, Code 1997, is amended to read as follows:

11. SUFFICIENCY ~~RATINGS~~ REPORTS. Issue sufficiency ~~ratings~~ reports for all airports in the state, which are owned and operated by a governmental subdivision, based on the functional classification of those airports as set out in the department's ~~annual~~ transportation plan.

Sec. 31. Section 805.8, subsection 2, paragraph k, Code Supplement 1997, is amended to read as follows:

k. For violations by operators of school buses and emergency vehicles, and for violations by other motor vehicle operators when in vicinity, under sections 321.231, 321.324, and 321.372, subsections 1 and 2, the scheduled fine is twenty-five dollars. For violations of section 321.372, subsection 3, the scheduled fine is one hundred dollars.

For violations by operators of school buses under section 321.285, the scheduled fine is twenty-five dollars. However, excessive speed by a school bus in excess of ten miles over the limit is not a scheduled violation.

Sec. 32. Sections 321.64, 321F.4A, 321H.4A, and 322.7A, Code 1997, are repealed.

Approved April 10, 1998

CHAPTER 1076

PAYMENT OF SNOWMOBILE AND ALL-TERRAIN VEHICLE FEES

S.F. 2294

AN ACT relating to the payment of snowmobile and all-terrain vehicle title fees.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321G.15, Code Supplement 1997, is amended to read as follows:

321G.15 OPERATION PENDING REGISTRATION.

The commission shall furnish snowmobile and all-terrain vehicle dealers with pasteboard cards bearing the words "registration applied for" and space for the date of purchase. An unregistered all-terrain vehicle or snowmobile sold by a dealer shall bear one of these cards which entitles the purchaser to operate it for ten days immediately following the purchase. The purchaser of a registered all-terrain vehicle or snowmobile may operate it for ten days immediately following the purchase, without having completed a transfer of registration. A snowmobile or all-terrain vehicle dealer shall make application and pay all registration and title fees if applicable on behalf of the purchaser of a snowmobile or all-terrain vehicle.

Approved April 10, 1998

CHAPTER 1077

ELIGIBLE ALTERNATIVE RETIREMENT BENEFIT SYSTEMS
FOR COMMUNITY COLLEGE EMPLOYEES

S.F. 2308

AN ACT concerning eligible alternative retirement benefit systems for community college employees.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 97B.42, unnumbered paragraphs 6 and 7, Code Supplement 1997, are amended to read as follows:

Notwithstanding any other provision of this section, commencing July 1, 1994, a member who is employed by a community college may elect coverage under an eligible alternative retirement benefits system~~, which is issued by or through a nonprofit corporation issuing retirement annuities exclusively to educational institutions and their employees~~ as provided in section 260C.14, subsection 18, in lieu of continuing or commencing contributions to the Iowa public employees' retirement system~~, if the board of directors of the community college has approved the alternative system pursuant to section 260C.14~~. However, the employer's annual contribution in dollars to the eligible alternative retirement benefits system shall not exceed the annual contribution in dollars which the employer would contribute if the employee had elected to remain an active member under this chapter, as set forth in section 97B.11. A member employed by a community college who elects coverage under an eligible alternative retirement benefits system may withdraw the member's accumulated contributions effective when coverage under the eligible alternative retirement benefits system commences. A member who is employed by a community college prior to July 1, 1994, must file an election for coverage under the eligible alternative retirement benefits system described in section 260C.14, subsection 18, paragraph "a", with the department and the employing community college within eighteen months of the first day on which coverage commences under the community college's eligible alternative retirement benefits system described in section 260C.14, subsection 18, paragraph "a", or the employee shall remain a member under this chapter and shall not be eligible to elect to participate in that community college's eligible alternative retirement benefits system described in section 260C.14, subsection 18, paragraph "a", at a later date. Employees of a community college hired on or after July 1, 1994, must file an election for coverage under ~~the~~ an eligible alternative retirement benefits system with the department and the employing community college within sixty days of commencing employment, or the employee shall remain a member under this chapter and shall not be eligible to elect to participate in ~~that community college's~~ an eligible alternative retirement benefits system of the community college at a later date. The department shall cooperate with the boards of directors of the community colleges to facilitate the implementation of this provision.

Notwithstanding any other provision of this section, a person newly entering employment with a community college on or after July 1, 1990, may elect coverage under an eligible alternative retirement benefits system, as defined in section 260C.14, subsection 18, ~~which is issued by or through a nonprofit corporation issuing retirement annuities exclusively to educational institutions and their employees or, for persons newly entering employment on or after July 1, 1997, which is issued by or through an insurance company authorized to issue annuity contracts in this state,~~ paragraph "a", in lieu of coverage under the Iowa public employees' retirement system, but only if the person is already a member of the alternative retirement benefits system. An election to participate in ~~the~~ an eligible alternative retirement benefits system as described in section 260C.14, subsection 18, is irrevocable as to the person's employment with that community college and any other community college in this state.

Sec. 2. Section 260C.14, subsection 17, Code Supplement 1997, is amended by striking the subsection.

Sec. 3. Section 260C.14, subsection 18, Code Supplement 1997, is amended to read as follows:

18. Provide for ~~an~~ eligible alternative retirement benefits systems which shall be limited to the following:

a. An alternative retirement benefits system~~,~~ which is issued by or through a nonprofit corporation issuing retirement annuities exclusively to educational institutions and their employees~~,~~ for persons newly employed after July 1, 1990, ~~or, in addition,~~ and for persons employed by the community college who are members of the Iowa public employees' retirement system on July 1, 1994, and who elect coverage under that system pursuant to section 97B.42, in lieu of coverage under the Iowa public employees' retirement system.

b. An alternative retirement benefits system which is issued by or through an insurance company authorized to issue annuity contracts in this state, for persons newly employed on or after July 1, 1997, who are already members of the alternative retirement benefits system and who elect coverage under that system pursuant to section 97B.42, in lieu of coverage under the Iowa public employees' retirement system.

c. An alternative retirement benefits system offered through the community college, at the discretion of the board of directors of the community college, pursuant to this lettered paragraph which is issued by or through an insurance company authorized to issue annuity contracts in this state, for persons newly employed by that community college on or after July 1, 1998, who are not members of the alternative retirement benefits system and who elect coverage under that system pursuant to section 97B.42, in lieu of coverage under the Iowa public employees' retirement system. The board of directors of a community college may limit the number of providers of alternative retirement benefits systems offered pursuant to this lettered paragraph to no more than six. The selection by the board of directors of a community college of a provider of an alternative retirement benefits system pursuant to this lettered paragraph shall not constitute an endorsement of that provider by the community college.

PARAGRAPH DIVIDED. However, the employer's annual contribution in dollars under ~~the~~ an eligible alternative retirement benefits system described in this subsection shall not exceed the annual contribution in dollars which the employer would contribute if the employee had elected to remain an active member pursuant to the Iowa public employees' retirement system, as set forth in section 97B.11. For purposes of this subsection, "alternative retirement benefits system" means an employer-sponsored primary pension plan requiring mandatory employer contributions that meets the requirements of section 401(a), 403(a), or 403(b) of the Internal Revenue Code.

Approved April 10, 1998

CHAPTER 1078

INTERNAL REVENUE CODE REFERENCES AND INCOME TAX PROVISIONS

S.F. 2357

AN ACT updating the Iowa Code references to the Internal Revenue Code, exempting certain preneed funeral trust income from taxation, revising the carryback and carryover periods for certain net operating losses, providing refunds, and providing an effective date and retroactive applicability dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 15.335, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

An eligible business may claim a corporate tax credit for increasing research activities in this state during the period the eligible business is participating in the program. The credit equals six and one-half percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. The credit allowed in this section is in addition to the credit authorized in section 422.33, subsection 5. If the eligible business is a partnership, subchapter S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, subchapter S corporation, limited liability company, or estate or trust. For purposes of this section, "qualifying expenditures for increasing research activities" means the qualifying expenditures as defined for the federal credit for increasing research activities which would be allowable under section 41 of the Internal Revenue Code in effect on January 1, ~~1997~~ 1998.

Sec. 2. Section 15A.9, subsection 8, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

For the purposes of this section, "qualifying expenditures for increasing research activities" means the qualifying expenditures as defined for the federal credit for increasing research activities which would be allowable under section 41 of the Internal Revenue Code in effect on January 1, ~~1997~~ 1998. The credit authorized in this subsection is in lieu of the credit authorized in section 422.33, subsection 5.

Sec. 3. Section 422.3, subsection 4, Code Supplement 1997, is amended to read as follows:

4. "Internal Revenue Code" means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 1, ~~1997~~ 1998, whichever is applicable.

Sec. 4. Section 422.6, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

The tax imposed by section 422.5 less the credits allowed under sections 422.10, 422.11A, and 422.11B, and the personal exemption credit allowed under section 422.12 apply to and are a charge against estates and trusts with respect to their taxable income, and the rates are the same as those applicable to individuals. The fiduciary shall make the return of income for the estate or trust for which the fiduciary acts, whether the income is taxable to the estate or trust or to the beneficiaries. However, for tax years ending after August 5, 1997, if the trust is a qualified preneed funeral trust as set forth in section 685 of the Internal Revenue Code and the trustee has elected the special tax treatment under section 685 of the Internal Rev-

enue Code, neither the trust nor the beneficiary is subject to Iowa income tax on income accruing to the trust.

Sec. 5. Section 422.9, subsection 3, paragraphs a, b, and c, Code Supplement 1997, are amended to read as follows:

a. The Iowa net operating loss shall be carried back three taxable years for an individual taxpayer with a casualty or theft property loss or for a net operating loss in a presidentially declared disaster area incurred by a taxpayer engaged in a small business or in the trade or business of farming. For all other Iowa net operating losses, the net operating loss shall be carried back two taxable years or to the taxable year in which the ~~individual~~ taxpayer first earned income in Iowa whichever year is the later.

b. The Iowa net operating loss remaining after being carried back as required in paragraph "a" of this subsection or if not required to be carried back shall be carried forward ~~fifteen~~ twenty taxable years.

c. If the election under section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward ~~fifteen~~ twenty taxable years.

Sec. 6. Section 422.10, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state. For individuals, the credit equals six and one-half percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. For purposes of this section, an individual may claim a research credit for qualifying research expenditures incurred by a partnership, subchapter S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, subchapter S corporation, estate, or trust. For purposes of this section, "qualifying expenditures for increasing research activities" means the qualifying expenditures as defined for the federal credit for increasing research activities which would be allowable under section 41 of the Internal Revenue Code in effect on January 1, ~~1997~~ 1998.

Sec. 7. Section 422.33, subsection 5, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state equal to six and one-half percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to the total qualified research expenditures. For purposes of this subsection, "qualifying expenditures for increasing research activities" means the qualifying expenditures as defined for the federal credit for increasing research activities which would be allowable under section 41 of the Internal Revenue Code in effect on January 1, ~~1997~~ 1998.

Sec. 8. Section 422.35, subsection 11, paragraphs a, b, and c, Code Supplement 1997, are amended to read as follows:

a. The Iowa net operating loss shall be carried back three taxable years for a net operating loss incurred in a presidentially declared disaster area by a taxpayer engaged in a small business or in the trade or business of farming. For all other Iowa net operating losses, the net operating loss shall be carried back two taxable years or to the taxable year in which the corporation first commenced doing business in this state, whichever is later.

b. The Iowa net operating loss remaining after being carried back as required in paragraph "a" of this subsection or if not required to be carried back shall be carried forward ~~fifteen~~ twenty taxable years.

c. If the election under section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward ~~fifteen~~ twenty taxable years.

Sec. 9. Section 422.73, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3. Notwithstanding subsection 2, a claim for credit or refund of the income tax paid is considered timely if the claim is filed with the department on or before June 30, 1999, if the taxpayer's federal income tax was refunded due to a provision in the federal Taxpayer Relief Act of 1997, Pub. L. No. 105-34, which affected the federal adjusted gross incomes of individuals or estates and trusts, or affected the taxable incomes of corporate taxpayers.

Sec. 10. Sections 1, 2, 3, 6, and 7 of this Act apply retroactively to January 1, 1997, for tax years beginning on or after that date.

Sec. 11. Section 4 of this Act applies retroactively to tax years ending after August 5, 1997.

Sec. 12. Sections 5 and 8 of this Act apply retroactively to net operating losses and casualty losses arising in taxable years beginning after August 5, 1997.

Sec. 13. Section 9 of this Act applies retroactively to January 1, 1977, for tax years beginning on or after that date.

Sec. 14. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 10, 1998

CHAPTER 1079

SPECIAL MOTOR VEHICLE REGISTRATION PLATES

S.F. 2023

AN ACT relating to the issuance of United States armed forces retired special plates, to the issuance of ex-prisoner of war motor vehicle registration plates to surviving spouses and to the issuance of emergency medical services motor vehicle registration plates and establishing fees.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321.34, subsection 8A, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

Sec. 2. Section 321.34, subsection 19, Code Supplement 1997, is amended to read as follows:

19. UNITED STATES ARMED FORCES RETIRED SPECIAL PLATES. An owner referred to in subsection 12 who is a retired member of the United States armed forces, may, upon written application to the department and upon presentation of satisfactory proof of membership, order special registration plates with a United States armed forces retired processed

emblem. The emblem shall be designed by the department in consultation with service organizations. The application is subject to approval by the department. For purposes of this subsection, a person is considered to be retired if the person served twenty years or longer in the United States armed forces or is a person who served a minimum of ten years and received an honorable discharge from service due to a medical disqualification.

Sec. 3. Section 321.34, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 10A. EMERGENCY MEDICAL SERVICES PLATES. The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, light delivery truck, panel delivery truck, pickup, motor home, multipurpose vehicle, or travel trailer who is a current member of a paid or volunteer emergency medical services agency, may upon written application to the department, order special registration plates, designed by the department in cooperation with representatives designated by the Iowa emergency medical services association, which plates signify that the applicant is a current member of a paid or volunteer emergency medical services agency. The application shall be approved by the department, in consultation with representatives designated by the Iowa emergency medical services association, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The fee for the special plates shall be twenty-five dollars which shall be in addition to the regular annual registration fee. The department shall validate the special plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee.

Approved April 13, 1998

CHAPTER 1080

RESPONSIBILITIES OF DEPARTMENT OF TRANSPORTATION

S.F. 2085

AN ACT relating to the responsibilities of the department of transportation, including vehicle equipment and parking regulation, postings of highway weight restrictions, and receipt of plans for city street construction.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 312.15, Code 1997, is amended to read as follows:

312.15 WHEN FUNDS NOT ALLOCATED.

Funds shall not be allocated to any city until such city shall have complied with the provisions of sections 312.11~~, 312.12~~ and 312.14.

If a city has not complied with the provisions of section 312.14, the treasurer of state shall withhold funds allocated to the city until the city complies. If a city has not complied with the provisions of section 312.14 by December 31 following the date the report was required, funds shall not be allocated to the city until the city has complied and all funds withheld under this paragraph shall revert to the street construction fund of the cities.

The department shall notify the treasurer of state if any city fails to comply with the provisions of sections 312.11~~, 312.12~~ and 312.14.

Sec. 2. Section 321.231, subsection 4, Code Supplement 1997, is amended to read as follows:

4. The exemptions granted to an authorized emergency vehicle under subsection 2 and for a fire department vehicle, police vehicle or ambulance as provided in subsection 3 shall apply only when such vehicle is making use of an audible signaling device meeting the requirements of section 321.433, or a visual signaling device, ~~approved by the department~~ except that use of an audible or visual signaling device shall not be required when exercising the exemption granted under subsection 3, paragraph "b" of this section when the vehicle is operated by a peace officer, pursuing a suspected violator of the speed restrictions imposed by or pursuant to this chapter, for the purpose of determining the speed of travel of such suspected violator.

Sec. 3. Section 321.383, subsection 3, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

Garbage collection vehicles, when operated on the streets or highways of this state at speeds of thirty miles per hour or less, may display a reflective device ~~of a type and in a manner approved by the director~~ that complies with the standards of the American society of agricultural engineers. At speeds in excess of thirty miles per hour the device shall not be visible.

Sec. 4. Section 321.433, Code 1997, is amended to read as follows:

321.433 SIRENS, WHISTLES, AND BELLS PROHIBITED.

~~No~~ A vehicle shall not be equipped with ~~nor shall any~~ and a person shall not use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section. It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal. Any authorized emergency vehicle may be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet ~~and of a type approved by the department~~, but ~~such~~ the siren, whistle, or bell shall not be used except when ~~such~~ the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, ~~in which said latter events~~ and the driver of ~~such~~ the vehicle shall sound ~~said~~ the siren, whistle, or bell when necessary to warn pedestrians and other drivers of the approach ~~thereof~~ of the vehicle.

Sec. 5. Section 321.444, subsection 2, Code Supplement 1997, is amended to read as follows:

2. ~~The term "safety~~ "Safety glass" ~~shall mean~~ means any product composed of glass, so manufactured, fabricated, or treated as substantially to prevent shattering and flying of the glass when struck or broken ~~or such other or similar product as may be approved by the director~~. Safety glass and glazing materials shall comply with federal motor vehicle safety standard number 205 as published in 49 C.F.R. § 571.205.

Sec. 6. Section 321.445, subsection 1, Code Supplement 1997, is amended to read as follows:

1. Except for motorcycles or motorized bicycles, 1966 model year or newer motor vehicles subject to registration in Iowa shall be equipped with safety belts and safety harnesses which conform with federal motor vehicle safety standard numbers 209 and 210 as published in 49 C.F.R. § 571.209-571.210 and with prior federal motor vehicle safety standards for seat belt assemblies and seat belt assembly anchorages applicable for the motor vehicle's model year. ~~The department may adopt rules which comply with changes in the applicable federal motor vehicle safety standards with regard to the type of safety belts and safety harnesses and their manner of installation.~~

Sec. 7. Section 321.445, subsection 2, paragraph a, Code Supplement 1997, is amended to read as follows:

a. The driver or front seat occupants of a motor vehicle which is not required to be equipped with safety belts or safety harnesses ~~under rules adopted by the department~~.

Sec. 8. Section 321G.12, Code 1997, is amended to read as follows:

321G.12 HEAD LAMP — TAIL LAMP — BRAKES.

Every all-terrain vehicle operated during the hours of darkness shall display a lighted head lamp and tail lamp. Every snowmobile shall be equipped with at least one head lamp and one tail lamp. Every all-terrain vehicle and snowmobile shall be equipped with brakes ~~which conform to standards prescribed by the director of transportation~~.

Sec. 9. Section 321L.2A, Code Supplement 1997, is amended to read as follows:

321L.2A WHEELCHAIR ~~LIFT WARNING~~ PARKING CONE.

The department ~~shall~~, upon the request of a person issued a persons with disabilities parking permit under section 321L.2 who ~~operates a motor vehicle with~~ uses a wheelchair ~~lift~~, shall provide the person with a ~~traffic cone~~ list of names and addresses of vendors who sell parking cones bearing the international symbol of accessibility and the words "wheelchair ~~lift~~ parking space". The department shall adopt rules as necessary to ~~implement~~ administer this section.

Sec. 10. Section 321L.5, subsection 5, Code Supplement 1997, is amended to read as follows:

5. A persons with disabilities parking space located on a paved surface may be painted with a blue background upon which the international symbol of accessibility is painted in white or yellow ~~nonskid~~ paint. However, the blue background paint may be omitted. As used in this subsection, "paved surface" includes surfaces which are asphalt surfaced.

Sec. 11. Section 312.12, Code 1997, is repealed.

Approved April 13, 1998

CHAPTER 1081

LICENSING SANCTIONS FOR STUDENT LOAN DEFAULT

S.F. 2170

AN ACT relating to licensing sanctions against individuals who default on debt owed to or collected by the college student aid commission.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 261.110 NOTICE TO INDIVIDUAL OF POTENTIAL SANCTION OF LICENSE.

1. The commission may initiate action to deny, revoke, or suspend any license authorized by the laws of this state, as defined in section 252J.1, to any person who has defaulted on an obligation owed to or collected by the commission as provided in this section and sections 261.111 through 261.116.

2. The commission shall proceed in accordance with this section and sections 261.111 through 261.116 only if notice is served on an individual by restricted certified mail addressed to the individual at the individual's last known address or principal place of business. The return post-office receipt signed by the individual shall be proof of notice.

The notice shall include all of the following:

a. The address and telephone number of the commission and the individual's file number.

b. A statement that the individual is in default on an obligation owed to or collected by the commission.

c. A statement that the individual may request a conference with the commission to contest the action.

d. A statement that if, within twenty days of service of notice on the individual, the individual fails to contact the commission to schedule a conference or pay the total amount of delinquent obligation owed, the commission shall issue a certificate of noncompliance bearing the individual's name, social security number, and file number to any appropriate licensing authority, certifying that the individual is in default on an obligation owed to or collected by the commission.

e. A statement that in order to stay the issuance of a certificate of noncompliance, the request for a conference shall be in writing and shall be received by the commission within twenty days of service of notice on the individual.

f. The names of the licensing authorities to which the commission intends to issue a certificate of noncompliance.

g. A statement that if the commission issues a certificate of noncompliance to an appropriate licensing authority, the licensing authority shall initiate proceedings to refuse to issue or renew, or to suspend or revoke, the individual's license, unless the commission provides the licensing authority with a withdrawal of a certificate of noncompliance.

Sec. 2. NEW SECTION. 261.111 CONFERENCE.

1. An individual may schedule a conference with the commission following service of notice pursuant to section 261.110 or at any time after notice of suspension, revocation, denial of issuance, or nonrenewal of a license from a licensing authority, to challenge the commission's actions under sections 261.110 through 261.116.

2. The request for a conference shall be made to the commission, in writing, and, if requested after service of notice pursuant to this section, shall be received by the commission within twenty days following service of notice.

3. The commission shall notify the individual of the date, time, and location of the conference by regular mail, with the date of the conference to be no earlier than ten days following issuance of notice of the conference by the commission. If the individual fails to appear at the conference, the commission shall issue a certificate of noncompliance if not already issued.

4. The commission shall grant the individual a stay of the issuance of a certificate of noncompliance upon receiving a timely written request for a conference, and if a certificate of noncompliance has previously been issued, shall issue a stay of action on the certificate. The commission shall issue a withdrawal of a certificate of noncompliance as a result of the conference if the individual enters into a written agreement with the commission to repay the obligation.

5. Following the conference, the commission shall issue a certificate of noncompliance, if not already issued, unless any of the following applies:

a. The commission finds a mistake in the identity of the individual.

b. The individual enters into a written agreement with the commission to comply with a repayment plan agreed to by the commission and the individual as a result of the conference, or to comply with the existing contract, or the individual pays the total amount of the delinquent obligation due.

c. Issuance of a certificate of noncompliance is not appropriate under other criteria established in accordance with rules adopted by the commission pursuant to chapter 17A.

6. If the individual does not timely request a conference or pay the total amount of delinquent obligation owed within twenty days of service of notice pursuant to section 261.110, the commission shall issue a certificate of noncompliance.

Sec. 3. NEW SECTION. 261.112 WRITTEN AGREEMENT.

1. An individual served with notice pursuant to section 261.110 may enter into a written agreement with the commission for payment of the obligation owed by the individual. The agreement shall take into consideration the individual's ability to pay and other criteria

established by rule of the commission. The written agreement shall include all of the following:

a. The method, amount, and dates of payments by the individual.

b. A statement that upon breach of the written agreement by the individual, the commission shall issue a certificate of noncompliance to any appropriate licensing authority.

c. A written agreement entered into pursuant to this subsection does not preclude any other remedy provided by law.

2. If the individual enters into a written agreement with the commission following issuance of a certificate of noncompliance, the commission shall issue a withdrawal of the certificate of noncompliance and shall forward a copy of the withdrawal by regular mail to the individual and any appropriate licensing authority.

Sec. 4. NEW SECTION. 261.113 DECISION OF THE COMMISSION.

1. The commission shall issue a written decision in regard to an individual served with notice pursuant to section 261.110, if any of the following occurs:

a. The individual fails to appear at a scheduled conference under section 261.111.

b. A conference is held under section 261.111.

c. The individual fails to comply with a written agreement entered into by the individual and the commission under section 261.112.

2. The commission shall send a copy of the written decision to the individual by regular mail at the individual's most recent address of record or principal place of business.

3. If the commission issues a certificate of noncompliance or withdraws a certificate of noncompliance, a copy of the certificate or of the withdrawal shall be attached to the written decision as applicable.

4. The written decision shall state all of the following:

a. That a copy of the certificate of noncompliance or withdrawal of the certificate of noncompliance has been provided to the licensing authorities named in the notice provided pursuant to section 261.110.

b. That upon receipt of a certificate of noncompliance, the licensing authority shall initiate proceedings to suspend, revoke, deny issuance, or deny renewal of a license, unless the licensing authority is provided with a withdrawal of the certificate of noncompliance from the commission.

c. If the decision is not to withdraw a certificate of noncompliance, that in order to obtain a withdrawal of a certificate of noncompliance from the commission, the individual shall enter into a written agreement with the commission, comply with an existing written agreement with the commission, or pay the total amount of delinquent obligation owed.

d. If the written decision includes a certificate of noncompliance, that all of the following apply:

(1) The individual may request a hearing as provided in section 261.116, before the district court in the county of the individual's residence, by filing a written application to the court challenging the issuance of the certificate of noncompliance by the commission and sending a copy of the application to the commission within the time period specified in section 261.116.

(2) The individual may retain an attorney at the individual's own expense to represent the individual at the hearing.

(3) The scope of review of the district court shall be limited to demonstration of a mistake of fact related to the delinquency of the individual.

4. If the commission issues a certificate of noncompliance, the commission shall only issue a withdrawal of the certificate of noncompliance if any of the following applies:

a. The commission or the court finds a mistake in the identity of the individual.

b. The commission or the court finds a mistake in determining the amount of a delinquent obligation.

c. The individual enters into a written agreement with the commission to comply with an

obligation, the individual complies with an existing written agreement to comply with an obligation, or the individual pays the total amount of delinquent obligation owed.

d. Issuance of a withdrawal of the certificate of noncompliance is appropriate under other criteria in accordance with rules adopted by the commission pursuant to chapter 17A.

Sec. 5. NEW SECTION. 261.114 CERTIFICATE OF NONCOMPLIANCE — CERTIFICATION TO LICENSING AUTHORITY.

1. If an individual fails to respond to the notice of potential license sanction provided pursuant to section 261.110 or the commission issues a written decision under section 261.113 which states that the individual is not in compliance, the commission shall certify, in writing, to any appropriate licensing authority that the individual is not in compliance and shall include a copy of the certificate of noncompliance.

2. The certificate of noncompliance shall contain the individual's name, social security number, and file number.

3. The certificate of noncompliance shall require all of the following:

a. That the licensing authority initiate procedures for the revocation or suspension of the individual's license, or for the denial of the issuance or renewal of a license using the licensing authority's procedures.

b. That the licensing authority provide notice to the individual, as provided in section 261.115, of the intent to suspend, revoke, deny issuance, or deny renewal of a license including the effective date of the action. The suspension, revocation, or denial shall be effective no sooner than thirty days following provision of notice to the individual.

Sec. 6. NEW SECTION. 261.115 REQUIREMENTS AND PROCEDURES OF LICENSING AUTHORITY.

1. A licensing authority shall maintain records of licensees by name, current known address, and social security number.

2. In addition to other grounds for suspension, revocation, or denial of issuance or renewal of a license, a licensing authority shall include in rules adopted by the licensing authority as grounds for suspension, revocation, or denial of issuance or renewal of a license, the receipt of a certificate of noncompliance from the commission.

3. The supreme court shall prescribe rules for admission of persons to practice as attorneys and counselors pursuant to chapter 602, article 10, which include provisions, as specified in this chapter, for the denial, suspension, or revocation of the admission for failure to repay an obligation owed to or collected by the commission.

4. A licensing authority that is issued a certificate of noncompliance shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. The licensing authority shall utilize existing rules and procedures for suspension, revocation, or denial of the issuance or renewal of a license.

In addition, the licensing authority shall provide notice to the individual of the licensing authority's intent to suspend, revoke, or deny issuance or renewal of a license under this chapter. The suspension, revocation, or denial shall be effective no sooner than thirty days following provision of notice to the individual. The notice shall state all of the following:

a. The licensing authority intends to suspend, revoke, or deny issuance or renewal of an individual's license due to the receipt of a certificate of noncompliance from the commission.

b. The individual must contact the commission to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance.

c. Unless the commission furnishes a withdrawal of a certificate of noncompliance to the licensing authority within thirty days of the issuance of the notice under this section, the individual's license shall be revoked, suspended, or denied.

d. If the licensing authority's rules and procedures conflict with the additional requirements of this section, the requirements of this section shall apply. Notwithstanding section 17A.18, the individual does not have a right to a hearing before the licensing authority to

contest the authority's actions under this chapter, but may request a court hearing pursuant to section 261.116 within thirty days of the provision of notice under this section.

5. If the licensing authority receives a withdrawal of a certificate of noncompliance from the commission, the licensing authority shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements established by the licensing authority.

Sec. 7. NEW SECTION. 261.116 DISTRICT COURT HEARING.

1. Following the issuance of a written decision by the commission under section 261.113, which includes the issuance of a certificate of noncompliance, or following provision of notice to the individual by a licensing authority pursuant to section 261.115, an individual may seek review of the decision and request a hearing before the district court in the individual's county of residence, by filing an application with the district court, and sending a copy of the application to the commission by regular mail. An application shall be filed to seek review of the decision by the commission or following issuance of notice by the licensing authority no later than thirty days after the issuance of the notice pursuant to section 261.115. The clerk of the district court shall schedule a hearing and mail a copy of the order scheduling the hearing to the individual and the commission and shall also mail a copy of the order to the licensing authority, if applicable. The commission shall certify a copy of its written decision and certificate of noncompliance, indicating the date of issuance, and the licensing authority shall certify a copy of a notice issued pursuant to section 261.115, to the court prior to the hearing.

2. The filing of an application pursuant to this section shall automatically stay the actions of a licensing authority pursuant to section 261.115. The hearing on the application shall be scheduled and held within thirty days of the filing of the application. However, if the individual fails to appear at the scheduled hearing, the stay shall be lifted and the licensing authority shall continue procedures pursuant to section 261.115.

3. The scope of review by the district court shall be limited to demonstration of a mistake of fact relating to the delinquency of the individual.

4. If the court finds that the commission was in error in issuing a certificate of noncompliance, or in failing to issue a withdrawal of a certificate of noncompliance, the commission shall issue a withdrawal of a certificate of noncompliance to the appropriate licensing authority.

Approved April 13, 1998

CHAPTER 1082

STATE PURCHASE OF BIODEGRADABLE HYDRAULIC FLUIDS

S.F. 2185

AN ACT providing for the purchase of biodegradable hydraulic fluids manufactured from soybeans by state agencies.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 18.6, subsection 13, Code 1997, is amended to read as follows:

13. The director shall review and, where necessary, revise specifications used by state agencies to procure products in order to ensure that all of the following occur:

a. The procurement of products containing recovered materials, including but not limited to lubricating oils, retread tires, building insulation materials, and recovered materials from waste tires ~~to ensure that the specifications allow the procurement of items containing recovered materials~~. ~~Specifications~~ The specifications shall be revised if they restrict the use of alternative materials, exclude recovered materials, or require performance standards which exclude ~~items~~ products containing recovered materials unless the agency seeking the ~~item~~ product can document that the use of recovered materials will hamper the intended use of the ~~item~~ product.

b. The procurement of biodegradable hydraulic fluids in accordance with the requirements of section 18.22.

Sec. 2. Section 18.22, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Provide that when purchasing hydraulic fluids, the department or a state agency authorized by the department to directly purchase hydraulic fluids shall give preference to purchasing biodegradable hydraulic fluids manufactured from soybeans.

The department or state agency purchasing the hydraulic fluid shall purchase biodegradable hydraulic fluid, if both of the following apply:

a. The purchase is within the purchasing budget of the department or a state agency.

b. The use of biodegradable hydraulic fluid in the equipment operated by the department or state agency is consistent with the manufacturer's specifications for the equipment.

c. The department shall provide for the implementation of requirements necessary in order to carry out this subsection by the department or state agency making the purchase, which shall include all of the following:

(1) Including the preference requirements in publications used to solicit bids for hydraulic fluids.

(2) Describing the preference requirements at bidders' conferences in which bids for the sale of hydraulic fluids are sought by the department or authorized state agency.

(3) Discussing the preference requirements in procurement solicitations or invitations to bid for hydraulic fluids.

(4) Informing industry trade associations about the preference requirements.

Sec. 3. Section 216B.3, subsection 17, Code 1997, is amended to read as follows:

17. Comply with the requirements for the purchase of lubricating oils, ~~and~~ industrial oils, and hydraulic fluids as established pursuant to section 18.22.

Sec. 4. NEW SECTION. 260C.19B PURCHASE OF BIODEGRADABLE HYDRAULIC FLUIDS.

Hydraulic fluids purchased by or used under the direction of the board of directors to provide services to a merged area shall be purchased in compliance with the preference requirements for purchasing biodegradable hydraulic fluids as provided pursuant to section 18.22.

Sec. 5. NEW SECTION. 262.25B PURCHASE OF BIODEGRADABLE HYDRAULIC FLUIDS.

The state board of regents and institutions under the control of the board purchasing hydraulic fluids shall give preference to purchasing biodegradable hydraulic fluids as provided in section 18.22.

Sec. 6. Section 307.21, subsection 4, paragraph b, subparagraph (4), Code 1997, is amended to read as follows:

(4) Comply with the requirements for the purchase of lubricating oils, ~~and~~ industrial oils, and hydraulic fluids as established pursuant to section 18.22.

Sec. 7. NEW SECTION. 904.312B PURCHASE OF BIODEGRADABLE HYDRAULIC FLUIDS.

The department when purchasing hydraulic fluids shall give preference to purchasing biodegradable hydraulic fluids as provided in section 18.22.

Approved April 13, 1998

CHAPTER 1083

VALIDITY AND ENFORCEABILITY OF VETERANS ADVANCE DIRECTIVE DOCUMENTS

S.F. 2186

AN ACT relating to the validity and enforceability in Iowa of an advance directive document executed by a veteran of the armed forces.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 144A.3, subsection 4, Code 1997, is amended to read as follows:

4. A declaration or similar document executed in another state or jurisdiction in compliance with the law of that state or jurisdiction shall be deemed valid and enforceable in this state, to the extent the declaration or similar document is consistent with the laws of this state. A declaration or similar document executed by a veteran of the armed forces which is in compliance with the federal department of veterans affairs advance directive requirements shall be deemed valid and enforceable.

Sec. 2. Section 144B.3, subsection 4, Code 1997, is amended to read as follows:

4. A durable power of attorney for health care or similar document executed in another state or jurisdiction in compliance with the law of that state or jurisdiction shall be deemed valid and enforceable in this state, to the extent the document is consistent with the laws of this state. A durable power of attorney or similar document executed by a veteran of the armed forces which is in compliance with the federal department of veterans affairs advance directive requirements shall be deemed valid and enforceable.

Approved April 13, 1998

CHAPTER 1084

NEW JOBS AND INCOME PROGRAM — INSURANCE PREMIUM TAX CREDIT

H.F. 721

AN ACT relating to an insurance premium tax credit for eligible businesses under the new jobs and income program.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 15.333A INSURANCE PREMIUM TAX CREDITS.

1. An eligible business may claim an insurance premium tax credit up to a maximum of ten percent of the new investment directly related to new jobs created by the location or expansion of an eligible business under the program. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier.

For purposes of this section, "new investment directly related to new jobs created by the location or expansion of an eligible business under the program" means the cost of machinery and equipment, as defined in section 427A.1, subsection 1, paragraphs "e" and "j", purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles, and the cost of improvements made to real property which is used in the operation of the eligible business and which receives a partial property tax exemption for the actual value added under section 15.332.

2. An eligible business which has entered into an agreement under chapter 260E and which has increased its base employment level by at least ten percent within the time set in the agreement or, in the case of a business without a base employment level, adds new jobs within the time set in the agreement is entitled to a new jobs insurance premium tax credit for the tax year selected by the business. In determining if the business has increased its base employment level by ten percent or added new jobs, only the new jobs directly resulting from the project covered by the agreement and the new jobs directly related to those new jobs shall be counted. The amount of the credit is equal to the product of six percent of the taxable wages upon which an employer is required to contribute to the state unemployment compensation fund, as defined in section 96.19, subsection 37, times the number of new jobs existing in the tax year that directly result from the project covered by the agreement or new jobs that directly result from those new jobs. The tax year chosen by the business shall either begin or end during the period beginning with the date by which the project is to be completed under the agreement. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. For purposes of this subsection, "agreement", "new job", and "project" mean the same as defined in section 260E.2 and "base employment level" means the number of full-time jobs a business employs at the site which is covered by an agreement under chapter 260E on the date of that agreement.

Approved April 13, 1998

CHAPTER 1085

SALE OF INTEREST IN CORPORATION UNDER IOWA BUSINESS DEVELOPMENT FINANCE ACT

H.F. 2168

AN ACT relating to the sale of stock or ownership interest of any corporation formed under the Iowa business development finance Act.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 15E.134, subsection 8, Code 1997, is amended to read as follows:

8. To do all acts and things necessary or convenient to carry out the powers expressly granted in this division and such other powers not in conflict with this division granted under chapter 490, including the power and authority to sell any and all of the stock or ownership interest of any corporation formed pursuant to this division notwithstanding any contrary provisions or restrictions of this division. Any proceeds of the sale of stock or ownership interest shall be deposited in the strategic investment fund created in section 15.313 to be allocated by the Iowa economic development board to programs for which the assets of the fund may be used.

Approved April 13, 1998

CHAPTER 1086

LIABILITY FOR INMATE, PRISONER, AND ESCAPEE EXPENSES — STATE TORT CLAIMS

H.F. 2211

AN ACT relating to the liability for and payment of certain costs and other expenses relating to certain inmates, prisoners, and escapees.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 669.2, subsection 4, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

"Employee of the state" includes any one or more officers, agents, or employees of the state or any state agency, including members of the general assembly, and persons acting on behalf of the state or any state agency in any official capacity, temporarily or permanently in the service of the state of Iowa, whether with or without compensation, but does not include a contractor doing business with the state. Professional personnel, including physicians, osteopathic physicians and surgeons, osteopathic physicians, optometrists, dentists, nurses, physician assistants, and other medical personnel, who render services to patients or inmates of state institutions under the jurisdiction of the department of human services or the Iowa department of corrections, and employees of the commission of veterans affairs, are to be considered employees of the state, whether the personnel are employed on a full-time basis or render services on a part-time basis on a fee schedule or other arrangement. Criminal defendants while performing unpaid community service ordered by the district court, board of parole, or judicial district department of correctional services, or an inmate providing services pursuant to a chapter 28E agreement entered into pursuant to

section 904.703, and persons supervising those inmates under and according to the terms of the chapter 28E agreement, are to be considered employees of the state.

Sec. 2. Section 669.21, Code 1997, is amended to read as follows:

669.21 EMPLOYEES DEFENDED AND INDEMNIFIED.

The state shall defend any employee, and shall indemnify and hold harmless an employee against any claim as defined in section 669.2, subsection 3, paragraph "b", including claims arising under the Constitution, statutes, or rules of the United States or of any state. The duty to indemnify and hold harmless shall not apply and the state shall be entitled to restitution from an employee if the employee fails to cooperate in the investigation or defense of the claim, as defined in this section, or, if, in an action commenced by the state against the employee, it is determined that the conduct of the employee upon which a tort claim or demand was based constituted a willful and wanton act or omission or malfeasance in office.

Sec. 3. Section 669.22, Code 1997, is amended to read as follows:

669.22 ACTIONS IN FEDERAL COURT.

The state shall defend any employee, and shall indemnify and hold harmless an employee of the state in any action commenced in federal court under section 1983, Title 42, United States Code, against the employee for acts of the employee while acting in the scope of employment. The duty to indemnify and hold harmless shall not apply and the state shall be entitled to restitution from an employee if the employee fails to cooperate in the investigation or defense of the claim or demand, or if, in an action commenced by the state against the employee, it is determined that the conduct of the employee upon which the claim or demand was based constituted a willful and wanton act or omission or malfeasance in office.

Sec. 4. Section 804.28, Code 1997, is amended to read as follows:

804.28 DEPARTMENT OF PUBLIC SAFETY PRISONERS.

The sheriff of any county shall accept for custody in the county jail of the sheriff's respective county any person handed over to the sheriff for safekeeping and lodging by any member of the department of public safety. The county shall not be liable for medical treatment for injuries incurred by a person before the person is transferred to the custody of the sheriff. Any expenses payable by the state pursuant to this section shall be paid out of any moneys in the state treasury not otherwise appropriated. The expenses shall be paid on claims filed with the department of revenue and finance.

Sec. 5. NEW SECTION. 904.507A LIABILITY FOR ESCAPEE EXPENSES.

If a person escapes from a state correctional institution including but not limited to those institutions listed in section 904.102, all necessary and legal expenses incurred by that person while absent from the state institution shall be paid out of any moneys in the state treasury not otherwise appropriated. The expenses shall be paid on claims filed with the department of revenue and finance.

Sec. 6. Section 904.703, unnumbered paragraph 3, Code 1997, is amended to read as follows:

The director may enter into a chapter 28E agreement with a county board of supervisors or county conservation board to provide inmate services for environmental maintenance including but not limited to brush and weed cutting, tree planting, and erosion control. ~~The board of supervisors or conservation board shall reimburse the department of corrections for the allowance paid the inmates by the director. The supervision, security, and transportation of inmates used pursuant to the chapter 28E agreement shall be provided by the department of corrections.~~

Approved April 13, 1998

CHAPTER 1087

HIV-RELATED TESTING OF ALLEGED OFFENDERS — CRIMINAL TRANSMISSION OF HIV

H.F. 2369

AN ACT relating to the human immunodeficiency virus including the testing of an alleged offender for the human immunodeficiency virus, the intentional transmission of the human immunodeficiency virus, making penalties applicable, establishing penalties, and providing for an affirmative defense.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 135.11, subsection 24, Code Supplement 1997, is amended to read as follows:

24. Adopt rules which provide for the testing of a convicted or alleged offender for the human immunodeficiency virus pursuant to chapter 709B. The rules shall provide for the provision of counseling, health care, and support services to the victim.

Sec. 2. Section 141.23, subsection 1, paragraph i, Code 1997, is amended to read as follows:

i. The convicted or alleged offender, the physician or other practitioner who orders the test of the convicted or alleged offender, the victim, the parent, guardian, or custodian of the victim if the victim is a minor, the physician of the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, ~~and~~ the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity, and the county attorney who may use the results as evidence in the prosecution of sexual assault or prosecution of the offense of criminal transmission of HIV under chapter 709C. For the purposes of this paragraph "victim" means victim as defined in section 709B.1.

Sec. 3. Section 709B.1, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 1A. "Alleged offender" means a person who has been charged with the commission of a sexual assault or a juvenile who has been charged in juvenile court with being a delinquent as the result of actions that would constitute a sexual assault.

NEW SUBSECTION. 1B. "Authorized representative" means an individual authorized by the victim to request an HIV-related test of a convicted or alleged offender who is any of the following:

a. The parent, guardian, or custodian of the victim if the victim is a minor.

b. The physician of the victim.

c. The victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22.

d. The victim's spouse.

e. The victim's legal counsel.

NEW SUBSECTION. 9A. "Victim" means a petitioner or a person who is the victim of a sexual assault which resulted in significant exposure, or the parent, guardian, or custodian of such a victim if the victim is a minor, for whom the victim or the peace officer files an application for a search warrant to require the alleged offender to undergo an HIV-related test. "Victim" includes an alleged victim.

Sec. 4. Section 709B.1, subsections 8 and 9, Code 1997, are amended to read as follows:

8. "Sexual assault" means sexual abuse as defined in section 709.1, or any other sexual offense by which a victim has allegedly had sufficient contact with a convicted or an alleged offender to be deemed a significant exposure.

9. "Significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with the blood or bodily fluids, other than tears, saliva, or perspiration of the convicted or alleged offender. "Significant exposure" is presumed to have occurred when there is a showing that there was penetration of the convicted or alleged offender's penis into the victim's vagina or anus, contact between the mouth and genitalia, or contact between the genitalia of the convicted or alleged offender and the genitalia or anus of the victim.

Sec. 5. Section 709B.2, Code 1997, is amended to read as follows:

709B.2 HIV-RELATED TEST — CONVICTED OR ALLEGED SEXUAL ASSAULT OFFENDER.

1. If a person is convicted of sexual assault or adjudicated delinquent for an act of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an order requiring the convicted offender to submit to an HIV-related test, provided that all of the following conditions are met:

a. The sexual assault for which the offender was convicted or adjudicated delinquent included sufficient contact between the victim and the convicted offender to be deemed a significant exposure pursuant to section 709B.1.

b. The authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent from the convicted offender to the testing.

c. Written informed consent was not provided by the convicted offender.

2. If a person is an alleged offender, the county attorney, if requested by the victim, shall make application to the court for the issuance of a search warrant, in accordance with chapter 808, for the purpose of requiring the alleged offender to submit to an HIV-related test, if all of the following conditions are met:

a. The application states that the victim believes that the sexual assault for which the alleged offender is charged included sufficient contact between the victim and the alleged offender to be deemed a significant exposure pursuant to section 709B.1 and states the factual basis for the belief that a significant exposure exists.

b. The authorized representative of the victim, the county attorney, or the court sought to obtain written informed consent to the testing from the alleged offender.

c. Written informed consent was not provided by the alleged offender.

~~2.~~ 3. Upon receipt of the petition or application, the court shall:

a. Prior to the scheduling of a hearing, refer the victim for counseling by a victim counselor or a person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, regarding the nature, reliability, and significance of the HIV-related test and of the serologic status of the convicted offender.

b. Schedule a hearing to be held as soon as is practicable.

c. Cause written notice to be served on the convicted or alleged offender who is the subject of the proceeding, in accordance with the rules of civil procedure relating to the service of original notice, or if the convicted or alleged offender is represented by legal counsel, provide written notice to the convicted or alleged offender and the convicted or alleged offender's legal counsel.

d. Provide for the appointment of legal counsel for a convicted or alleged offender if the convicted or alleged offender desires but is financially unable to employ counsel.

e. Furnish legal counsel with copies of the petition or application, written informed consent, if obtained, and copies of all other documents related to the petition or application, including, but not limited to, the charges and orders.

~~3.~~ 4. Unless a petitioner chooses to be represented by private counsel, the county attorney shall represent the victim's interest in all proceedings under this section.

~~4.~~ 5. a. A hearing under this section shall be conducted in an informal manner consistent with orderly procedure and in accordance with the Iowa rules of evidence. The hearing shall be limited in scope to the review of questions of fact only as to the issue of whether the sexual assault for which the offender was convicted or adjudicated delinquent or for which

the alleged offender was charged provided sufficient contact between the victim and the convicted or alleged offender to be deemed a significant exposure, and to questions of law.

b. In determining whether the contact should be deemed a significant exposure for a convicted offender, the court shall base the determination on the testimony presented during the proceedings on the sexual assault charge, the minutes of the testimony or other evidence included in the court record, or if a plea of guilty was entered, based upon the complaint or upon testimony provided during the hearing. In determining whether the contact should be deemed a significant exposure for an alleged offender, the court shall base the determination on the application and the factual basis provided in the application for the belief of the applicant that a significant exposure exists.

c. The victim may testify at the hearing, but shall not be compelled to testify. The court shall not consider the refusal of a victim to testify at the hearing as material to the court's decision regarding issuance of an order or search warrant requiring testing.

d. The hearing shall be in camera unless the convicted or alleged offender and the petitioner or victim agree to a hearing in open court and the court approves. The report of the hearing proceedings shall be sealed and no report of the proceedings shall be released to the public, except with the permission of all parties and the approval of the court.

e. Stenographic notes or electronic or mechanical recordings shall be taken of all court hearings unless waived by the parties.

~~5.~~ 6. Following the hearing, the court shall require a convicted or alleged offender to undergo an HIV-related test only if the petitioner or victim proves all of the following by a preponderance of the evidence:

a. The sexual assault constituted a significant exposure.

b. An authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent from the convicted or alleged offender.

c. Written informed consent was not provided by the convicted or alleged offender.

~~6.~~ 7. A convicted* offender who is required to undergo an HIV-related test may appeal to the court for review of questions of law only, but may appeal questions of fact if the findings of fact are clearly erroneous.

Sec. 6. Section 709B.3, subsections 1, 4, 5, 6, 14, and 15, Code 1997, are amended to read as follows:

1. The physician or other practitioner who orders the test of a convicted or alleged offender for HIV under this chapter shall disclose the results of the test to the convicted or alleged offender, and to the victim counselor or a person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, who shall disclose the results to the petitioner.

4. Results of a test performed under this chapter, except as provided in subsection 6, shall be disclosed only to the physician or other practitioner who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, the physician of the victim if requested by the victim, ~~and~~ the parent, guardian, or custodian of the victim, if the victim is a minor, and the county attorney who filed the petition for HIV-related testing under this chapter, who may use the results to file charges of criminal transmission of HIV under chapter 709C. Results of a test performed under this chapter shall not be disclosed to any other person without the written, informed consent of the convicted or alleged offender. A person to whom the results of a test have been disclosed under this chapter is subject to the confidentiality provisions of section 141.23, and shall not disclose the results to another person except as authorized by section 141.23, subsection 1.

~~5. Notwithstanding subsection 4, test results shall not be disclosed to a convicted offender who elects against disclosure.~~

6. If testing is ordered under this chapter, the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole or of the alleged

* Convicted or alleged offender probably intended

offender during a period of six months following the initial test if the physician or other practitioner who ordered the initial test of the convicted or alleged offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted or alleged offender was HIV-infected at the time the sexual assault or alleged sexual assault was perpetrated. The results of the test conducted pursuant to this subsection shall be released only to the physician or other practitioner who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, who shall disclose the results to the petitioner, ~~and~~ the physician of the victim, if requested by the victim and the county attorney who may use the results as evidence in the prosecution of the sexual assault or in the prosecution of the offense of criminal transmission of HIV under chapter 709C.

14. In addition to persons to whom disclosure of the results of a convicted or alleged offender's HIV-related test results is authorized under this chapter, the victim may also disclose the results to the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity.

15. A person to whom disclosure of a convicted or alleged offender's HIV-related test results is authorized under this chapter shall not disclose the results to any other person for whom disclosure is not authorized under this chapter. A person who intentionally or recklessly makes an unauthorized disclosure under this chapter is subject to a civil penalty of one thousand dollars. The attorney general or the attorney general's designee may maintain a civil action to enforce this chapter. Proceedings maintained under this subsection shall provide for the anonymity of the test subject and all documentation shall be maintained in a confidential manner.

Sec. 7. NEW SECTION. 709C.1 CRIMINAL TRANSMISSION OF HUMAN IMMUNODEFICIENCY VIRUS.

1. A person commits criminal transmission of the human immunodeficiency virus if the person, knowing that the person's human immunodeficiency virus status is positive, does any of the following:

a. Engages in intimate contact with another person.

b. Transfers, donates, or provides the person's blood, tissue, semen, organs, or other potentially infectious bodily fluids for transfusion, transplantation, insemination, or other administration to another person.

c. Dispenses, delivers, exchanges, sells, or in any other way transfers to another person any nonsterile intravenous or intramuscular drug paraphernalia previously used by the person infected with the human immunodefficiency virus.

2. For the purposes of this section:

a. "Human immunodeficiency virus" means the human immunodeficiency virus identified as the causative agent of acquired immune deficiency syndrome.

b. "Intimate contact" means the intentional exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of the human immunodeficiency virus.

c. "Intravenous or intramuscular drug paraphernalia" means any equipment, product, or material of any kind which is peculiar to and marketed for use in injecting a substance into or withdrawing a bodily fluid from the human body.

3. Criminal transmission of the human immunodeficiency virus is a class "B" felony.

4. This section shall not be construed to require that an infection with the human immunodeficiency virus has occurred for a person to have committed criminal transmission of the human immunodeficiency virus.

5. It is an affirmative defense that the person exposed to the human immunodeficiency virus knew that the infected person had a positive human immunodeficiency virus status at

the time of the action of exposure, knew that the action of exposure could result in transmission of the human immunodeficiency virus, and consented to the action of exposure with that knowledge.

Approved April 13, 1998

CHAPTER 1088

PENALTIES FOR HOMICIDE BY VEHICLE

H.F. 2394

AN ACT providing for service of one hundred percent of the maximum sentence by and the suspension of a driver's license of a person charged with homicide by vehicle.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 321.210C VEHICULAR HOMICIDE SUSPENSION — TERMINATION UPON REVOCATION OF LICENSE — REOPENING OF SUSPENSION.

1. If a trial information or indictment is filed charging a person with the offense of homicide by vehicle under section 707.6A, subsection 1 or 2, the clerk of the district court shall, upon the filing of the information or indictment, forward notice to the department including the name and address of the party charged, the registration number of the vehicle involved, if known, the nature of the offense, and the date of the filing of the indictment or information.

2. Upon receiving notice from the clerk of the district court that an indictment or information has been filed charging an operator with homicide by vehicle under section 707.6A, subsection 1, and if the person's license has not previously been suspended under chapter 321J, or under section 707.6A, subsection 2, the department shall notify the person that the person's motor vehicle license will be suspended effective ten days from the date of issuance of the notice. The department shall adopt rules relating to the suspension of the license of an operator pursuant to this section which shall include, but are not limited to, procedures for the surrender of the person's license to the department upon the effective date of the suspension.

3. If a person whose motor vehicle license has been suspended pursuant to this section is not convicted of the charge of homicide by vehicle under section 707.6A, subsection 1 or 2, upon record entry of disposition of the charge, the clerk of the district court shall forward a notice including the name and address of the party charged, the registration number of the vehicle involved, the nature of the offense charged by indictment or information, the date of the filing of the indictment or information, and of the disposition of the charge to the department. Upon receipt of the notice from the clerk, the department shall automatically rescind the suspension and reinstate the person's motor vehicle license without payment of any charge or penalty.

4. Upon receiving a record of conviction under section 321.206, for a violation of section 707.6A, subsection 1 or 2, and upon revocation of the person's license or operating privileges under section 321.209, the suspension under subsection 2 shall automatically terminate in favor of the revocation.

Sec. 2. Section 321A.17, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 7. This section does not apply to an individual whose administrative license suspension under section 321.210C has been rescinded and who is otherwise under no obligation to furnish proof of financial responsibility.

Sec. 3. Section 902.12, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Except as otherwise provided in section 903A.2, a person serving a sentence for conviction under section 707.6A, subsection 1 or 2, shall serve one hundred percent of the maximum term of the person's sentence and shall not be released on parole or work release, if the person was also convicted under section 321.261, subsection 3, based on the same facts or event that resulted in the conviction under section 707.6A, subsection 1 or 2.

Approved April 13, 1998

CHAPTER 1089

IOWA COMMUNICATIONS NETWORK CONNECTION

H.F. 2476

AN ACT providing for connection to the Iowa communications network by the quad cities graduate center.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. ADDITIONAL CONNECTION. Notwithstanding contrary provisions of chapter 8D, the Iowa telecommunications and technology commission shall provide for the construction of a connection to the network for the quad cities graduate center. The center shall be responsible for the costs associated with the connection to the network. The commission shall establish all hourly rates to be charged to the quad cities graduate center at an appropriate rate so that, at a minimum, there is no state subsidy related to the costs of the connection or use of the network by the center.

Approved April 13, 1998

CHAPTER 1090

VICTIM RIGHTS ACT

H.F. 2527

AN ACT providing for victim rights, providing for penalties, and an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 915.1 TITLE.

This chapter shall be known and may be cited as "Victim Rights Act".

Sec. 2. NEW SECTION. 915.2 IMMUNITY.

This chapter does not create a civil cause of action except where expressly stated, and a person is not liable for damages resulting from an act or omission in regard to any responsibility or authority created by this chapter, and such acts or omissions shall not be used in any proceeding for damages. This section does not apply to acts or omissions which constitute a willful and wanton disregard for the rights or safety of another.

Sec. 3. NEW SECTION. 915.3 IMMUNITY — CITIZEN INTERVENTION.

Any person who, in good faith and without remuneration, renders reasonable aid or assistance to another against whom a crime is being committed or, if rendered at the scene of the crime, to another against whom a crime has been committed, is not liable for any civil damages for acts or omissions resulting from the aid or assistance, and is eligible to file a claim for reimbursement as a victim under this chapter.

Sec. 4. Sections 915.10 through 915.23, as enacted in this Act, are enacted as a new subchapter of chapter 915, entitled "Registration, Notification, and Rights in Criminal Proceedings".

Sec. 5. NEW SECTION. 915.10 DEFINITIONS.

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

1. "Notification" means mailing by regular mail or providing for hand delivery of appropriate information or papers. However, this notification procedure does not prohibit an agency from also providing appropriate information to a registered victim by telephone.
2. "Registered" means having provided the county attorney with the victim's written request for registration and current mailing address and telephone number.
3. "Victim" means a person who has suffered physical, emotional, or financial harm as the result of a public offense, other than a simple misdemeanor, committed in this state. "Victim" also includes the immediate family members of a victim who died or was rendered incompetent as a result of the offense or who was under eighteen years of age at the time of the offense.
4. "Victim impact statement" means a written or oral presentation to the court by the victim or the victim's representative that indicates the physical, emotional, financial, or other effects of the offense upon the victim.
5. "Violent crime" means a forcible felony, as defined in section 702.11, and includes any other felony or aggravated misdemeanor which involved the actual or threatened infliction of physical or emotional injury on one or more persons.

Sec. 6. NEW SECTION. 915.11 INITIAL NOTIFICATION BY LAW ENFORCEMENT.

A local police department or county sheriff's department shall advise a victim of the right to register with the county attorney, and shall provide a request-for-registration form to each victim.

Sec. 7. NEW SECTION. 915.12 REGISTRATION.

1. The county attorney shall be the sole registrar of victims under this subchapter.
2. A victim may register by filing a written request-for-registration form with the county attorney. The county attorney shall notify the victims in writing and advise them of their registration and rights under this subchapter.
3. The county attorney shall provide a registered victim list to the offices, agencies, and departments required to provide information under this subchapter for notification purposes.
4. Notwithstanding chapter 22 or any other contrary provision of law, a victim's registration shall be strictly maintained in a separate confidential file, and shall be available only to the offices, agencies, and departments required to provide information under this subchapter.

Sec. 8. NEW SECTION. 915.13 NOTIFICATION BY COUNTY ATTORNEY.

1. The county attorney shall notify a victim registered with the county attorney's office of the following:

a. The scheduled date, time, and place of trial, and the cancellation or postponement of a court proceeding that was expected to require the victim's attendance, in any criminal case relating to the crime for which the person is a registered victim.

b. The possibility of assistance through the crime victim compensation program, and the procedures for applying for that assistance.

c. The right to restitution for pecuniary losses suffered as a result of crime, and the process for seeking such relief.

d. The victim's right to make a victim impact statement, in one or both of the following formats:

(1) Written victim impact statement. Notification shall include the procedures for filing such a statement.

(2) Oral victim impact statement, delivered in court in the presence of the defendant. The victim shall also be notified of the time and place for such statement.

e. The date on which the offender is released on bail or appeal, pursuant to section 811.5.

f. Except where the prosecuting attorney determines that disclosure of such information would unreasonably interfere with the investigation, at the request of the registered victim, notice of the status of the investigation shall be provided by law enforcement authorities investigating the case, until the alleged assailant is apprehended or the investigation is closed.

g. The right to be informed of any plea agreements related to the crime for which the person is a registered victim.

2. The county attorney and the juvenile court shall coordinate efforts so as to prevent duplication of notification under this section and section 915.24.

Sec. 9. NEW SECTION. 915.14 NOTIFICATION BY CLERK OF THE DISTRICT COURT.

The clerk of the district court shall notify a registered victim of all dispositional orders of the case in which the victim was involved and may advise the victim of any other orders regarding custody or confinement.

Sec. 10. NEW SECTION. 915.15 NOTIFICATION BY DEPARTMENT OF JUSTICE.

The department of justice shall notify a registered victim of the filing of an appeal, the expected date of decision on the appeal as the information becomes available to the department, all dispositional orders in the appeal, and the outcome of the appeal of a case in which the victim was involved.

Sec. 11. NEW SECTION. 915.16 NOTIFICATION BY LOCAL CORRECTIONAL INSTITUTIONS.

The county sheriff or other person in charge of the local jail or detention facility shall notify a registered victim of the following:

1. The offender's release from custody on bail and the terms or conditions of the release.
2. The offender's final release from local custody.
3. The offender's escape from custody.
4. The offender's transfer from local custody to custody in another locality.

Sec. 12. NEW SECTION. 915.17 NOTIFICATION BY DEPARTMENT OF CORRECTIONS.

1. The department of corrections shall notify a registered victim, regarding an offender convicted of a violent crime and committed to the custody of the director of the department of corrections, of the following:

a. The date on which the offender is expected to be released from custody on work release, and whether the offender is expected to return to the community where the registered victim resides.

b. The date on which the offender is expected to be temporarily released from custody on furlough, and whether the offender is expected to return to the community where the registered victim resides.

c. The offender's escape from custody.

d. The recommendation by the department of the offender for parole consideration.

e. The date on which the offender is expected to be released from an institution pursuant to a plan of parole or upon discharge of sentence.

f. The transfer of custody of the offender to another state or federal jurisdiction.

g. The procedures for contacting the department to determine the offender's current institution of residence.

h. Information which may be obtained upon request pertaining to or the procedures for obtaining information upon request pertaining to the offender's current employer.

2. The director of the department of corrections, or the director's designee, having probable cause to believe that a person has escaped from a state correctional institution or a person convicted of a forcible felony who is released on work release has absconded from a work release facility shall:

a. Make a complaint before a judge or magistrate. If it is determined from the complaint or accompanying affidavits that there is probable cause to believe that the person has escaped from a state correctional institution or that the forcible felon has absconded from a work release facility, the judge or magistrate shall issue a warrant for the arrest of the person.

b. Issue an announcement regarding the fact of the escape of the person or the abscondence of the forcible felon to the law enforcement authorities in, and to the news media covering, communities in a twenty-five mile radius of the point of escape or abscondence.

Sec. 13. NEW SECTION. 915.18 NOTIFICATION BY BOARD OF PAROLE.

1. The board of parole shall notify a registered victim regarding an offender who has committed a violent crime as follows:

a. Not less than twenty days prior to conducting a hearing at which the board will interview an offender, the board shall notify the victim of the interview and inform the victim that the victim may submit the victim's opinion concerning the release of the offender in writing prior to the hearing or may appear personally or by counsel at the hearing to express an opinion concerning the offender's release.

b. Whether or not the victim appears at the hearing or expresses an opinion concerning the offender's release on parole, the board shall notify the victim of the board's decision regarding release of the offender.

2. Offenders who are being considered for release on parole may be informed of a victim's registration with the county attorney and the substance of any opinion submitted by the victim regarding the release of the offender.

3. If the board of parole makes a recommendation to the governor for a reprieve, pardon, or commutation of sentence of an offender, as provided in section 914.3, the board shall forward with the recommendation information identifying a registered victim for the purposes of notification by the governor as required in section 915.19.

Sec. 14. NEW SECTION. 915.19 NOTIFICATION BY THE GOVERNOR.

1. Prior to the governor granting a reprieve, pardon, or commutation to an offender convicted of a violent crime, the governor shall notify a registered victim that the victim's offender has applied for a reprieve, pardon, or commutation. The governor shall notify a registered victim regarding the application not less than forty-five days prior to issuing a decision on the application. The governor shall inform the victim that the victim may submit a written opinion concerning the application.

2. The county attorney may notify an offender being considered for a reprieve, pardon, or commutation of sentence of a victim's registration with the county attorney and the substance of any opinion submitted by the victim concerning the reprieve, pardon, or commutation of sentence.

Sec. 15. NEW SECTION. 915.20 PRESENCE OF VICTIM COUNSELORS.

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

a. "Proceedings related to the offense" means any activities engaged in or proceedings commenced by a law enforcement agency, judicial district department of correctional services, or a court pertaining to the commission of a public offense against the victim, in which the victim is present, as well as examinations of the victim in an emergency medical facility due to injuries from the public offense which do not require surgical procedures. "Proceedings related to the offense" includes, but is not limited to, law enforcement investigations, pretrial court hearings, trial and sentencing proceedings, and proceedings relating to the preparation of a presentence investigation report in which the victim is present.

b. "Victim counselor" means a victim counselor as defined in section 915.20A.

2. A victim counselor who is present as a result of a request by a victim shall not be denied access to any proceedings related to the offense.

3. This section does not affect the inherent power of the court to regulate the conduct of discovery pursuant to the Iowa rules of criminal or civil procedure or to preside over and control the conduct of criminal or civil hearings or trials.

Sec. 16. NEW SECTION. 915.20A VICTIM COUNSELOR PRIVILEGE.

1. As used in this section:

a. "Confidential communication" means information shared between a crime victim and a victim counselor within the counseling relationship, and includes all information received by the counselor and any advice, report, or working paper given to or prepared by the counselor in the course of the counseling relationship with the victim.

Confidential information is confidential information which, so far as the victim is aware, is not disclosed to a third party with the exception of a person present in the consultation for the purpose of furthering the interest of the victim, a person to whom disclosure is reasonably necessary for the transmission of the information, or a person with whom disclosure is necessary for accomplishment of the purpose for which the counselor is consulted by the victim.

b. "Crime victim center" means any office, institution, agency, or crisis center offering assistance to victims of crime and their families through crisis intervention, accompaniment during medical and legal proceedings, and follow-up counseling.

c. "Victim" means a person who consults a victim counselor for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a violent crime committed against the person.

d. "Victim counselor" means a person who is engaged in a crime victim center, is certified as a counselor by the crime victim center, and is under the control of a direct services supervisor of a crime victim center, whose primary purpose is the rendering of advice, counseling, and assistance to the victims of crime. To qualify as a "victim counselor" under this section, the person must also have completed at least twenty hours of training provided by the center in which the person is engaged, by the Iowa organization of victim assistance, by the Iowa coalition against sexual abuse, or by the Iowa coalition against domestic violence, which shall include but not be limited to, the dynamics of victimization, substantive laws relating to violent crime, sexual assault, and domestic violence, crisis intervention techniques, communication skills, working with diverse populations, an overview of the state criminal justice system, information regarding pertinent hospital procedures, and information regarding state and community resources for victims of crime.

2. A victim counselor shall not be examined or required to give evidence in any civil or criminal proceeding as to any confidential communication made by a victim to the counselor, nor shall a clerk, secretary, stenographer, or any other employee who types or otherwise prepares or manages the confidential reports or working papers of a victim counselor be required to produce evidence of any such confidential communication, unless the victim waives this privilege in writing or disclosure of the information is compelled by a court

pursuant to subsection 7. Under no circumstances shall the location of a crime victim center or the identity of the victim counselor be disclosed in any civil or criminal proceeding.

3. If a victim is deceased or has been declared to be incompetent, this privilege specified in subsection 2 may be waived by the guardian of the victim or by the personal representative of the victim's estate.

4. A minor may waive the privilege under this section unless, in the opinion of the court, the minor is incapable of knowingly and intelligently waiving the privilege, in which case the parent or guardian of the minor may waive the privilege on the minor's behalf if the parent or guardian is not the defendant and does not have such a relationship with the defendant that the parent or guardian has an interest in the outcome of the proceeding being favorable to the defendant.

5. The privilege under this section does not apply in matters of proof concerning the chain of custody of evidence, in matters of proof concerning the physical appearance of the victim at the time of the injury or the counselor's first contact with the victim after the injury, or where the counselor has reason to believe that the victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed.

6. The failure of a counselor to testify due to this section shall not give rise to an inference unfavorable to the cause of the state or the cause of the defendant.

7. Upon the motion of a party, accompanied by a written offer of proof, a court may compel disclosure of certain information if the court determines that all of the following conditions are met:

a. The information sought is relevant and material evidence of the facts and circumstances involved in an alleged criminal act which is the subject of a criminal proceeding.

b. The probative value of the information outweighs the harmful effect, if any, of disclosure on the victim, the counseling relationship, and the treatment services.

c. The information cannot be obtained by reasonable means from any other source.

8. In ruling on a motion under subsection 7, the court, or a different judge, if the motion was filed in a criminal proceeding to be tried to the court, shall adhere to the following procedure:

a. The court may require the counselor from whom disclosure is sought or the victim claiming the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the victim and any other persons the victim is willing to have present.

b. If the court determines that the information is privileged and not subject to compelled disclosure, the information shall not be disclosed by any person without the consent of the victim.

c. If the court determines that certain information may be subject to disclosure, as provided in subsection 7, the court shall so inform the party seeking the information and shall order a subsequent hearing out of the presence of the jury, if any, at which the parties shall be allowed to examine the counselor regarding the information which the court has determined may be subject to disclosure. The court may accept other evidence at that time.

d. At the conclusion of a hearing under paragraph "c", the court shall determine which information, if any, shall be disclosed and may enter an order describing the evidence which may be introduced by the moving party and prescribing the line of questioning which may be permitted. The moving party may then offer evidence pursuant to the court order. However, no victim counselor is subject to exclusion under Iowa rule of evidence 615.

9. This section does not relate to the admission of evidence of the victim's past sexual behavior which is strictly subject to Iowa rule of evidence 412.

Sec. 17. NEW SECTION. 915.21 VICTIM IMPACT STATEMENT.

1. A victim may present a victim impact statement to the court using one or more of the following methods:

a. A victim may file a signed victim impact statement with the county attorney, and a filed impact statement shall be included in the presentence investigation report. If a presentence investigation report is not ordered by the court, a filed victim impact statement shall be provided to the court prior to sentencing.

b. A victim may orally present a victim impact statement at the sentencing hearing, in the presence of the defendant, and at any hearing regarding reconsideration of sentence.

c. If the victim is unable to make an oral or written statement because of the victim's age, or mental, emotional, or physical incapacity, the victim's attorney or a designated representative shall have the opportunity to make a statement on behalf of the victim.

2. A victim impact statement shall include the identification of the victim of the offense, and may include the following:

a. Itemization of any economic loss suffered by the victim as a result of the offense. For purposes of this paragraph, a pecuniary damages statement prepared by a county attorney pursuant to section 910.3 may serve as the itemization of economic loss.

b. Identification of any physical injury suffered by the victim as a result of the offense with detail as to its seriousness and permanence.

c. Description of any change in the victim's personal welfare or familial relationships as a result of the offense.

d. Description of any request for psychological services initiated by the victim or the victim's family as a result of the offense.

e. Any other information related to the impact of the offense upon the victim.

Sec. 18. NEW SECTION. 915.22 CIVIL INJUNCTION TO RESTRAIN HARASSMENT OR INTIMIDATION OF VICTIMS OR WITNESSES.

1. Upon application, the court shall issue a temporary restraining order prohibiting the harassment or intimidation of a victim or witness in a criminal case if the court finds, from specific facts shown by affidavit or by verified complaint, that there are reasonable grounds to believe that harassment or intimidation of an identified victim or witness in a criminal case exist or that the order is necessary to prevent and restrain an offense under this subchapter.

a. A temporary restraining order may be issued under this subsection without written or oral notice to the adverse party or the party's attorney in a civil action under this section or in a criminal case if the court finds, upon written certification of facts, that the notice should not be required and that there is a reasonable probability that the party will prevail on the merits. The temporary restraining order shall set forth the reasons for the issuance of the order, be specific in terms, and describe in reasonable detail the act or acts being restrained.

b. A temporary restraining order issued without notice under this section shall be endorsed with the date and hour of issuance and be filed immediately in the office of the clerk of the district court issuing the order.

c. A temporary restraining order issued under this section shall expire at such time as the court directs, not to exceed ten days from issuance. The court, for good cause shown before expiration of the order, may extend the expiration date of the order for up to ten days, or for a longer period agreed to by the adverse party.

d. When a temporary restraining order is issued without notice, the motion for a protective order shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. If the party does not proceed with the application for a protective order when the motion is heard, the court shall dissolve the temporary restraining order.

e. If, after two days' notice to the party or after a shorter notice as the court prescribes, the adverse party appears and moves to dissolve or modify the temporary restraining order, the court shall proceed to hear and determine the motion as expeditiously as possible.

2. Upon motion of the party, the court shall issue a protective order prohibiting the harassment or intimidation of a victim or witness in a criminal case if the court, after a hearing, finds by a preponderance of the evidence that harassment or intimidation of an identi-

fied victim or witness in a criminal case exists or that the order is necessary to prevent and restrain an offense under this chapter.

a. At the hearing, any adverse party named in the complaint has the right to present evidence and cross-examine witnesses.

b. A protective order shall set forth the reasons for the issuance of the order, be specific in terms, and describe in reasonable detail the act or acts being restrained.

c. The court shall set the duration of the protective order for the period it determines is necessary to prevent the harassment or intimidation of the victim or witness, but the duration shall not be set for a period in excess of one year from the date of the issuance of the order. The party, at any time within ninety days before the expiration of the order, may apply for a new protective order under this section.

3. Violation of a restraining or protective order issued under this section constitutes contempt of court and may be punished by contempt proceedings.

4. An application may be made pursuant to this section in a criminal case, and if made, a district associate judge or magistrate having jurisdiction of the highest offense charged in the criminal case or a district judge shall have jurisdiction to enter an order under this section.

5. The clerk of the district court shall provide notice and copies of restraining orders issued pursuant to this section in a criminal case involving an alleged violation of section 708.2A to the applicable law enforcement agencies and the twenty-four hour dispatcher for the law enforcement agencies, in the manner provided for protective orders under section 236.5. The clerk shall provide notice and copies of modifications or vacations of these orders in the same manner.

Sec. 19. NEW SECTION. 915.23 EMPLOYMENT DISCRIMINATION AGAINST WITNESSES PROHIBITED.

1. An employer shall not discharge an employee from, or take or fail to take action, regarding an employee's promotion or proposed promotion, or take action to reduce an employee's wages or benefits, for actual time worked, due to the service of an employee as a witness in a criminal proceeding.

2. An employer who violates this section commits a simple misdemeanor.

3. An employee whose employer violates this section shall also be entitled to recover damages from the employer. Damages recoverable under this section include, but are not limited to, actual damages, court costs, and reasonable attorney fees.

4. The employee may also petition the court for imposition of a cease and desist order against the person's employer and for reinstatement to the person's previous position of employment.

Sec. 20. Sections 915.24 through 915.29, as enacted in this Act, are enacted as a new subchapter of chapter 915, entitled "Victims of Juveniles".

Sec. 21. NEW SECTION. 915.24 NOTIFICATION OF VICTIM OF JUVENILE BY JUVENILE COURT OFFICER.

1. If a complaint is filed alleging that a child has committed a delinquent act, a juvenile court officer shall notify the alleged victim, as defined in section 915.10, of the following rights:

a. To be notified of the names and addresses of the child and of the child's custodial parent or guardian.

b. To be notified of the specific charge or charges filed in a petition resulting from the complaint and regarding any dispositional orders or informal adjustments.

c. To be informed of the person's rights to restitution.

d. To be notified of the person's right to offer a written victim impact statement and to orally present the victim impact statement.

e. To be informed of the availability of assistance through the crime victim compensation program.

2. The juvenile court and the county attorney shall coordinate efforts so as to prevent duplication of notification under this section and section 915.13.

Sec. 22. NEW SECTION. 915.25 RIGHT TO REVIEW COMPLAINT AGAINST JUVENILE.

1. A complaint filed with the court or its designee pursuant to chapter 232 which alleges that a child who is at least ten years of age has committed a delinquent act, which if committed by an adult would be a public offense, is a public record and shall not be confidential under section 232.147.

2. The court, its designee, or law enforcement officials are authorized to release the complaint, including the identity of the child named in the complaint.

Sec. 23. NEW SECTION. 915.26 VICTIM IMPACT STATEMENT BY VICTIM OF JUVENILE.

1. If a complaint is filed under section 232.28, alleging a child has committed a delinquent act, the alleged victim may file a signed victim impact statement with the juvenile court.

2. The victim impact statement shall be considered by the court and the juvenile court officer handling the complaint in any proceeding or informal adjustment associated with the complaint.

3. Unless the matter is disposed of at the preliminary inquiry conducted by the intake officer under section 232.28, the victim may also be allowed to orally present the victim impact statement.

Sec. 24. NEW SECTION. 915.27 SEXUAL ASSAULT BY JUVENILE.

A victim of a sexual assault by a juvenile adjudicated to have committed the assault is entitled to the rights listed in sections 915.40 through 915.44.

Sec. 25. NEW SECTION. 915.28 RESTITUTION FOR DELINQUENT ACTS OF JUVENILE.

1. If a judge of a juvenile court finds that a juvenile has committed a delinquent act and requires the juvenile to compensate the victim of that act for losses due to the delinquent act of the juvenile, the juvenile shall make such restitution according to a schedule established by the judge from funds earned by the juvenile pursuant to employment engaged in by the juvenile at the time of disposition.

2. If a juvenile enters into an informal adjustment agreement pursuant to section 232.29 to make such restitution, the juvenile shall make such restitution according to a schedule which shall be a part of the informal adjustment agreement.

3. The restitution shall be made under the direction of a juvenile court officer working under the direction of the juvenile court.

a. In those counties where the county maintains an office to provide juvenile victim restitution services, the juvenile court officer may use that office's services.

b. If the juvenile is not employed, the juvenile's juvenile court officer shall make a reasonable effort to find private or other public employment for the juvenile.

c. If the juvenile offender does not have employment at the time of disposition and private or other public employment is not obtained in spite of the efforts of the juvenile's juvenile court officer, the judge may direct the juvenile offender to perform work pursuant to section 232.52, subsection 2, paragraph "a", and arrange for compensation of the juvenile in the manner provided for under chapter 232A.

Sec. 26. NEW SECTION. 915.29 NOTIFICATION OF VICTIM OF JUVENILE BY DEPARTMENT OF HUMAN SERVICES.

The department of human services shall notify a registered victim regarding a juvenile adjudicated delinquent for a violent crime, committed to the custody of the department of human services, and placed at the state training school at Eldora or Toledo, of the following:

1. The date on which the juvenile is expected to be temporarily released from the custody

of the department of human services, and whether the juvenile is expected to return to the community where the registered victim resides.

2. The juvenile's escape from custody.

3. The recommendation by the department to consider the juvenile for release or placement.

4. The date on which the juvenile is expected to be released from a facility pursuant to a plan of placement.

Sec. 27. Sections 915.35 through 915.38, as enacted in this Act, are enacted as a new subchapter of chapter 915, entitled "Protections for Children and Other Special Victims".

Sec. 28. NEW SECTION. 915.35 CHILD VICTIM SERVICES.

1. As used in this section, "victim" means a child under the age of eighteen who has been sexually abused or subjected to any other unlawful sexual conduct under chapter 709 or 726 or who has been the subject of a forcible felony.

2. A professional licensed or certified by the state to provide immediate or short-term medical services or mental health services to a victim may provide the services without the prior consent or knowledge of the victim's parents or guardians.

3. Such a professional shall notify the victim if the professional is required to report an incidence of child abuse involving the victim pursuant to section 232.69.

To the greatest extent possible, a multidisciplinary team involving the county attorney, law enforcement personnel, community-based child advocacy organizations, and personnel of the department of human services shall be utilized in investigating and prosecuting cases involving a violation of chapter 709 or 726 or other crime committed upon a victim as defined in subsection 1. A multidisciplinary team may also consult with or include juvenile court officers, medical and mental health professionals, court-appointed special advocates, guardians ad litem, and members of a multidisciplinary team created by the department of human services for child abuse investigations. The department of justice may provide training and other assistance to support the activities of a multidisciplinary team referred to in this subsection.

Sec. 29. NEW SECTION. 915.36 PROTECTION OF CHILD VICTIM'S PRIVACY.

1. Prior to an arrest or the filing of an information or indictment, whichever occurs first, against a person charged with a violation of chapter 709, section 726.2, or section 728.12, committed with or on a child, as defined in section 702.5, the identity of the child or any information reasonably likely to disclose the identity of the child shall not be released to the public by any public employee except as authorized by the court of jurisdiction.

2. In order to protect the welfare of the child, the name of the child and identifying biographical information shall not appear on the information or indictment or any other public record. Instead, a nondescriptive designation shall appear on all public records. The nonpublic records containing the child's name and identifying biographical information shall be kept by the court. This subsection does not apply to the release of information to an accused or accused's counsel; however, the use or release of this information by the accused or accused's counsel for purposes other than the preparation of defense constitutes contempt.

3. A person who willfully violates this section or who willfully neglects or refuses to obey a court order made pursuant to this section commits contempt.

4. A release of information in violation of this section does not bar prosecution or provide grounds for dismissal of charges.

Sec. 30. NEW SECTION. 915.37 GUARDIAN AD LITEM FOR PROSECUTING CHILD WITNESSES.

A prosecuting witness who is a child, as defined in section 702.5, in a case involving a violation of chapter 709 or section 726.2, 726.3, 726.6, or 728.12, is entitled to have the witness's interests represented by a guardian ad litem at all stages of the proceedings aris-

ing from such violation. The guardian ad litem shall be a practicing attorney and shall be designated by the court after due consideration is given to the desires and needs of the child and the compatibility of the child and the child's interests with the prospective guardian ad litem. If a guardian ad litem has previously been appointed for the child in a proceeding under chapter 232 or a proceeding in which the juvenile court has waived jurisdiction under section 232.45, the court shall appoint the same guardian ad litem under this section. The guardian ad litem shall receive notice of and may attend all depositions, hearings, and trial proceedings to support the child and advocate for the protection of the child but shall not be allowed to separately introduce evidence or to directly examine or cross-examine witnesses. However, the guardian ad litem shall file reports to the court as required by the court. If a prosecuting witness is fourteen, fifteen, sixteen, or seventeen years of age, and would be entitled to the appointment of a guardian ad litem if the prosecuting witness were a child, the court may appoint a guardian ad litem if the requirements for guardians ad litem in this section are met, and the guardian ad litem agrees to participate without compensation.

References in this section to a guardian ad litem shall be interpreted to include references to a court-appointed special advocate as defined in section 232.2, subsection 9.

Sec. 31. NEW SECTION. 915.38 TELEVISED, VIDEOTAPED, AND RECORDED EVIDENCE — LIMITED COURT TESTIMONY — MINORS AND OTHERS.

1. Upon its own motion or upon motion of any party, a court may protect a minor, as defined in section 599.1, from trauma caused by testifying in the physical presence of the defendant where it would impair the minor's ability to communicate, by ordering that the testimony of the minor be taken in a room other than the courtroom and be televised by closed-circuit equipment for viewing in the courtroom. However, such an order shall be entered only upon a specific finding by the court that such measures are necessary to protect the minor from trauma. Only the judge, prosecuting attorney, defendant's attorney, persons necessary to operate the equipment, and any person whose presence, in the opinion of the court, would contribute to the welfare and well-being of the minor may be present in the room with the minor during the minor's testimony. The judge shall inform the minor that the defendant will not be present in the room in which the minor will be testifying but that the defendant will be viewing the minor's testimony through closed-circuit television.

During the minor's testimony the defendant shall remain in the courtroom and shall be allowed to communicate with the defendant's counsel in the room where the minor is testifying by an appropriate electronic method.

In addition, upon a finding of necessity, the court may allow the testimony of a victim or witness with a mental illness, mental retardation, or other developmental disability to be taken as provided in this subsection, regardless of the age of the victim or witness.

2. The court may, upon its own motion or upon motion of a party, order that the testimony of a minor, as defined in section 599.1, be taken by recorded deposition for use at trial, pursuant to rule of criminal procedure 12(2)(b). In addition to requiring that such testimony be recorded by stenographic means, the court may on motion and hearing, and upon a finding that the minor is unavailable as provided in Iowa rules of evidence 804(a), order the videotaping of the minor's testimony for viewing in the courtroom by the court. The videotaping shall comply with the provisions of rule of criminal procedure 12(2)(b), and shall be admissible as evidence in the trial. In addition, upon a finding of necessity, the court may allow the testimony of a victim or witness with a mental illness, mental retardation, or other developmental disability to be taken as provided in this subsection, regardless of the age of the victim or witness.

3. The court may upon motion of a party admit into evidence the recorded statements of a child, as defined in section 702.5, describing sexual contact performed with or on the child, not otherwise admissible in evidence by statute or court rule if the court determines that the recorded statements substantially comport with the requirements for admission under Iowa rules of evidence 803(24) or 804(b)(5).

4. A court may, upon its own motion or upon the motion of a party, order the court testimony of a child to be limited in duration in accordance with the developmental maturity of the child. The court may consider or hear expert testimony in order to determine the appropriate limitation on the duration of a child's testimony. However, the court shall, upon motion, limit the duration of a child's uninterrupted testimony to one hour, at which time the court shall allow the child to rest before continuing to testify.

Sec. 32. Sections 915.40 through 915.44, as enacted in this Act, are enacted as a new subchapter of chapter 915, entitled "Victims of Sexual Assault".

Sec. 33. NEW SECTION. 915.40 DEFINITIONS.

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

1. "AIDS" means acquired immune deficiency syndrome as defined by the centers for disease control of the United States department of health and human services.

2. "Convicted offender" means a person convicted of a sexual assault or a juvenile who has been adjudicated delinquent for an act of sexual assault.

3. "Department" means the Iowa department of public health.

4. "Division" means the crime victims assistance division of the office of the attorney general.

5. "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.

6. "HIV-related test" means a test for the antibody or antigen to HIV.

7. "Petitioner" means a person who is the victim of a sexual assault which resulted in alleged significant exposure or the parent, guardian, or custodian of a victim if the victim is a minor, for whom the county attorney files a petition with the district court to require the convicted offender to undergo an HIV-related test.

8. "Sexual assault" means sexual abuse as defined in section 709.1, or any other sexual offense by which a victim has allegedly had sufficient contact with a convicted offender to be deemed a significant exposure.

9. "Significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with the blood or bodily fluids, other than tears, saliva, or perspiration of the convicted offender. "Significant exposure" is presumed to have occurred when there is a showing that there was penetration of the convicted offender's penis into the victim's vagina or anus, contact between the mouth and genitalia, or contact between the genitalia of the offender and the genitalia or anus of the victim.

10. "Victim counselor" means a person who is engaged in a crime victim center as defined in section 915.20A, who is certified as a counselor by the crime victim center, and who has completed at least twenty hours of training provided by the Iowa coalition against sexual assault or a similar agency.

Sec. 34. NEW SECTION. 915.41 MEDICAL EXAMINATION COSTS.

The cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing venereal disease shall be paid from the fund established in section 915.94.

Sec. 35. NEW SECTION. 915.42 RIGHT TO HIV-TESTING OF CONVICTED ASSAILANT.

1. Unless a petitioner chooses to be represented by private counsel, the county attorney shall represent the victim's interest in all proceedings under this subchapter.

2. If a person is convicted of sexual assault or adjudicated delinquent for an act of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an order requiring the convicted offender to submit to an HIV-related test, provided that all of the following conditions are met:

a. The sexual assault for which the offender was convicted or adjudicated delinquent

included sufficient contact between the victim and the convicted offender to be deemed a significant exposure pursuant to section 915.40.

b. The authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent from the convicted offender to the testing.

c. Written informed consent was not provided by the convicted offender.

3. Upon receipt of the petition filed under subsection 2, the court shall:

a. Prior to the scheduling of a hearing, refer the victim for counseling by a victim counselor or a person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, regarding the nature, reliability, and significance of the HIV-related test and of the serologic status of the convicted offender.

b. Schedule a hearing to be held as soon as is practicable.

c. Cause written notice to be served on the convicted offender who is the subject of the proceeding, in accordance with the rules of civil procedure relating to the service of original notice, or if the convicted offender is represented by legal counsel, provide written notice to the convicted offender and the convicted offender's legal counsel.

d. Provide for the appointment of legal counsel for a convicted offender if the convicted offender desires but is financially unable to employ counsel.

e. Furnish legal counsel with copies of the petition.

4. a. A hearing under this section shall be conducted in an informal manner consistent with orderly procedure and in accordance with the Iowa rules of evidence. The hearing shall be limited in scope to the review of questions of fact only as to the issue of whether the sexual assault for which the offender was convicted or adjudicated delinquent provided sufficient contact between the victim and the convicted offender to be deemed a significant exposure and to questions of law.

b. In determining whether the contact should be deemed a significant exposure, the court shall base the determination on the testimony presented during the proceedings on the sexual assault charge, the minutes of the testimony or other evidence included in the court record, or if a plea of guilty was entered, based upon the complaint or upon testimony provided during the hearing.

c. The victim may testify at the hearing but shall not be compelled to testify. The court shall not consider the refusal of a victim to testify at the hearing as material to the court's decision regarding issuance of an order requiring testing.

d. The hearing shall be in camera unless the convicted offender and the petitioner agree to a hearing in open court and the court approves. The report of the hearing proceedings shall be sealed and no report of the proceedings shall be released to the public, except with the permission of all parties and the approval of the court.

e. Stenographic notes or electronic or mechanical recordings shall be taken of all court hearings unless waived by the parties.

5. Following the hearing, the court shall require a convicted offender to undergo an HIV-related test only if the petitioner proves all of the following by a preponderance of the evidence:

a. The sexual assault constituted a significant exposure.

b. An authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent from the convicted offender.

c. Written informed consent was not provided by the convicted offender.

6. A convicted offender who is required to undergo an HIV-related test may appeal to the court for review of questions of law only, but may appeal questions of fact if the findings of fact are clearly erroneous.

Sec. 36. NEW SECTION. 915.43 TESTING, REPORTING, AND COUNSELING — PENALTIES.

1. The physician or other practitioner who orders the test of a convicted offender for HIV under this subchapter shall disclose the results of the test to the convicted offender and to the

victim counselor or a person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, who shall disclose the results to the petitioner.

2. All testing under this chapter shall be accompanied by pretest and posttest counseling as required under section 141.22.

3. Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of this subchapter.

4. Results of a test performed under this subchapter, except as provided in subsection 14, shall be disclosed only to the physician or other practitioner who orders the test of the convicted offender, the convicted offender, the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, the physician of the victim if requested by the victim, and the parent, guardian, or custodian of the victim, if the victim is a minor. Results of a test performed under this subchapter shall not be disclosed to any other person without the written informed consent of the convicted offender. A person to whom the results of a test have been disclosed under this subchapter is subject to the confidentiality provisions of section 141.23, and shall not disclose the results to another person except as authorized by section 141.23, subsection 1.

5. If testing is ordered under this subchapter, the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole if the physician or other practitioner who ordered the initial test of the convicted offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted offender was HIV-infected at the time the sexual assault was perpetrated. The results of the test conducted pursuant to this subsection shall be released only to the physician or other practitioner who orders the test of the convicted offender, the convicted offender, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, who shall disclose the results to the petitioner, and the physician of the victim, if requested by the victim.

6. The court shall not consider the disclosure of an alleged offender's serostatus to an alleged victim, prior to conviction, as a basis for a reduced plea or reduced sentence.

7. The fact that an HIV-related test was performed under this subchapter and the results of the test shall not be included in the convicted offender's medical or criminal record unless otherwise included in department of corrections records.

8. The fact that an HIV-related test was performed under this subchapter and the results of the test shall not be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing.

9. If the serologic status of a convicted offender, which is conveyed to the victim, is based upon an HIV-related test other than a test which is authorized as a result of the procedures established in this subchapter, legal protections which attach to such testing shall be the same as those which attach to an initial test under this subchapter, and the rights to a predisclosure hearing and to appeal provided under section 915.42 shall apply.

10. HIV-related testing required under this subchapter shall be conducted by the state hygienic laboratory.

11. Notwithstanding the provisions of this subchapter requiring initial testing, if a petition is filed with the court under section 915.42 requesting an order for testing and the order is granted, and if a test has previously been performed on the convicted offender while under the control of the department of corrections, the test results shall be provided in lieu of the performance of an initial test of the convicted offender, in accordance with this subchapter.

12. Test results shall not be disclosed to a convicted offender who elects against disclosure.

13. In addition to the counseling received by a victim, referral to appropriate health care and support services shall be provided.

14. In addition to persons to whom disclosure of the results of a convicted offender's HIV-related test results is authorized under this subchapter, the victim may also disclose the results to the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity.

15. A person to whom disclosure of a convicted offender's HIV-related test results is authorized under this subchapter shall not disclose the results to any other person for whom disclosure is not authorized under this subchapter. A person who intentionally or recklessly makes an unauthorized disclosure in violation of this subsection is subject to a civil penalty of one thousand dollars. The attorney general or the attorney general's designee may maintain a civil action to enforce this subchapter. Proceedings maintained under this subsection shall provide for the anonymity of the test subject and all documentation shall be maintained in a confidential manner.

Sec. 37. NEW SECTION. 915.44 POLYGRAPH EXAMINATIONS OF VICTIMS OR WITNESSES — LIMITATIONS.

1. A criminal or juvenile justice agency shall not require a person claiming to be a victim of sexual assault or claiming to be a witness regarding the sexual assault of another person to submit to a polygraph or similar examination as a precondition to the agency conducting an investigation into the matter.

2. An agency wishing to perform a polygraph examination of a person claiming to be a victim or witness of sexual assault shall inform the person of the following:

a. That taking the polygraph examination is voluntary.

b. That the results of the examination are not admissible in court.

c. That the person's decision to submit or refuse a polygraph examination will not be the sole basis for a decision by the agency not to investigate the matter.

3. An agency which declines to investigate an alleged case of sexual assault following a decision by a person claiming to be a victim not to submit to a polygraph examination shall provide to that person, in writing, the reasons why the agency did not pursue the investigation at the request of the person.

Sec. 38. Section 915.50, as enacted in this Act, is enacted as a new subchapter of chapter 915 entitled "Victims of Domestic Abuse".

Sec. 39. NEW SECTION. 915.50 GENERAL RIGHTS OF DOMESTIC ABUSE VICTIMS.

In addition to other victim rights provided in this chapter, victims of domestic abuse shall have the following rights:

1. The right to file a pro se petition for relief from domestic abuse in the district court, pursuant to sections 236.3 though 236.10.

2. The right, pursuant to section 236.12, for law enforcement to remain on the scene, to assist the victim in leaving the scene, to transport the victim to medical care, and to provide the person with a written statement of victim rights and information about domestic abuse shelters, support services, and crisis lines.

3. The right to receive a criminal no-contact order upon a finding of probable cause, pursuant to section 236.14.

Sec. 40. Sections 915.80 through 915.94, as enacted in this Act, are enacted as a new subchapter of chapter 915, entitled "Victim Compensation".

Sec. 41. NEW SECTION. 915.80 DEFINITIONS.

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

1. "Compensation" means moneys awarded by the department as authorized in this subchapter.

2. "Crime" means conduct that occurs or is attempted in this state, poses a substantial threat of personal injury or death, and is punishable as a felony or misdemeanor, or would

be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state. "Crime" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, motorcycle, motorized bicycle, train, boat, or aircraft except for violations of section 321.261, 321.277, 321J.2, 462A.14, or 707.6A, or when the intention is to cause personal injury or death. A license revocation under section 321J.9 or 321J.12 shall be considered by the department as evidence of a violation of section 321J.2 for the purposes of this subchapter.

3. "Department" means the department of justice.

4. "Dependent" means a person wholly or partially dependent upon a victim for care or support and includes a child of the victim born after the victim's death.

5. "Secondary victim" means the victim's spouse, children, parents, and siblings, and any person who resides in the victim's household at the time of the crime or at the time of the discovery of the crime. Secondary victim does not include persons who are the survivors of a victim who dies as a result of a crime.

6. "Victim" means a person who suffers personal injury or death as a result of any of the following:

a. A crime.

b. The good faith effort of a person attempting to prevent a crime.

c. The good faith effort of a person to apprehend a person suspected of committing a crime.

Sec. 42. NEW SECTION. 915.81 AWARD OF COMPENSATION.

The department shall award compensation authorized by this subchapter if the department is satisfied that the requirements for compensation have been met.

Sec. 43. NEW SECTION. 915.82 CRIME VICTIM ASSISTANCE BOARD.

1. A crime victim assistance board is established, and shall consist of the following members to be appointed pursuant to rules adopted by the department:

a. A county attorney or assistant county attorney.

b. Two persons engaged full-time in law enforcement.

c. A public defender or an attorney practicing primarily in criminal defense.

d. A hospital medical staff person involved with emergency services.

e. Two public members who have received victim services.

f. A victim service provider.

g. A person licensed pursuant to chapter 154B or 154C.

h. A person representing the elderly.

Board members shall be reimbursed for expenses actually and necessarily incurred in the discharge of their duties.

2. The board shall adopt rules pursuant to chapter 17A relating to program policies and procedures.

3. A victim aggrieved by the denial or disposition of the victim's claim may appeal to the district court within thirty days of receipt of the board's decision.

Sec. 44. NEW SECTION. 915.83 DUTIES OF DEPARTMENT.

The department shall:

1. Adopt rules pursuant to chapter 17A relating to the administration of the crime victim compensation program, including the filing of claims pursuant to the program, and the hearing and disposition of the claims.

2. Hear claims, determine the results relating to claims, and reinvestigate and reopen cases as necessary.

3. Publicize through the department, county sheriff departments, municipal police departments, county attorney offices, and other public or private agencies, the existence of the crime victim compensation program, including the procedures for obtaining compensation under the program.

4. Request from the department of human services, the department of workforce development and its division of industrial services, the department of public safety, the county sheriff departments, the municipal police departments, the county attorneys, or other public authorities or agencies reasonable assistance or data necessary to administer the crime victim compensation program.

5. Require medical examinations of victims as needed. The victim shall be responsible for the cost of the medical examination if compensation is made. The department shall be responsible for the cost of the medical examination from funds appropriated to the department for the crime victim compensation program if compensation is not made to the victim unless the cost of the examination is payable as a benefit under an insurance policy or subscriber contract covering the victim or the cost is payable by a health maintenance organization.

6. Receive moneys collected pursuant to section 904.702 for the purpose of compliance with Pub. L. No. 98-473.

Sec. 45. NEW SECTION. 915.84 APPLICATION FOR COMPENSATION.

1. To claim compensation under the crime victim compensation program, a person shall apply in writing on a form prescribed by the department and file the application with the department within two years after the date of the crime, the discovery of the crime, or the date of death of the victim.

2. A person is not eligible for compensation unless the crime was reported to the local police department or county sheriff department within seventy-two hours of its occurrence. If the crime cannot reasonably be reported within that time period, the crime shall have been reported within seventy-two hours of the time a report can reasonably be made. The department may waive this requirement if good cause is shown.

3. Notwithstanding subsection 2, a victim under the age of eighteen or dependent adult as defined in section 235B.1* who has been sexually abused or subjected to any other unlawful sexual conduct under chapter 709 or 726 or who has been the subject of a forcible felony is not required to report the crime to the local police department or county sheriff department to be eligible for compensation if the crime was allegedly committed upon a child by a person responsible for the care of a child, as defined in section 232.68, subsection 7, or upon a dependent adult by a caretaker as defined in section 235B.1,* and was reported to an employee of the department of human services and the employee verifies the report to the department.

4. When immediate or short-term medical services or mental health services are provided to a victim under section 915.35, the department of human services shall file the claim for compensation as provided in subsection 3 for the victim.

5. When immediate or short-term medical services to a victim are provided pursuant to section 915.35 by a professional licensed or certified by the state to provide such services, the professional shall file the claim for compensation, unless the department of human services is required to file the claim under this section. The requirement to report the crime to the local police department or county sheriff department under subsection 2 does not apply to this subsection.

6. The victim shall cooperate with reasonable requests by the appropriate law enforcement agencies in the investigation or prosecution of the crime.

Sec. 46. NEW SECTION. 915.85 COMPENSATION PAYABLE.

The department may order the payment of compensation:

1. To or for the benefit of the person filing the claim.

2. To a person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of personal injury to the victim.

3. To or for the benefit of one or more dependents of the victim, in the case of death of the victim. If two or more dependents are entitled to compensation, the compensation may be apportioned by the department as the department determines to be fair and equitable among the dependents.

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* Section 235B.2 probably intended

4. To a victim of an act committed outside this state who is a resident of this state, if the act would be compensable had it occurred within this state and the act occurred in a state that does not have an eligible crime victim compensation program, as defined in the federal Victims of Crime Act of 1984, Pub. L. 98-473, section 1403(b), as amended and codified in 42 U.S.C. § 10602(b).

5. To or for the benefit of a resident of this state who is a victim of an act of terrorism as defined in 18 U.S.C. § 2331, which occurred outside of the United States.

Sec. 47. NEW SECTION. 915.86 COMPUTATION OF COMPENSATION.

The department shall award compensation, as appropriate, for any of the following economic losses incurred as a direct result of an injury to or death of the victim:

1. Reasonable charges incurred for medical care not to exceed ten thousand five hundred dollars. Reasonable charges incurred for mental health care not to exceed three thousand dollars which includes services provided by a psychologist licensed under chapter 154B, a person holding at least a master's degree in social work or counseling and guidance, or a victim counselor as defined in section 915.20A.

2. Loss of income from work the victim would have performed and for which the victim would have received remuneration if the victim had not been injured, not to exceed six thousand dollars.

3. Reasonable replacement value of clothing that is held for evidentiary purposes not to exceed one hundred dollars.

4. Reasonable funeral and burial expenses not to exceed five thousand dollars.

5. Loss of support for dependents resulting from death or a period of disability of the victim of sixty days or more not to exceed two thousand dollars per dependent or a total of six thousand dollars.

6. In the event of a victim's death, reasonable charges incurred for counseling the victim's spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim if the counseling services are provided by a psychologist licensed under chapter 154B, a victim counselor as defined in section 915.20A, subsection 1, or an individual holding at least a master's degree in social work or counseling and guidance, and reasonable charges incurred by such persons for medical care counseling provided by a psychiatrist licensed under chapter 147 or 150A. The allowable charges under this subsection shall not exceed three thousand dollars per person or a total of six thousand dollars per victim death.

7. In the event of a victim's death, reasonable charges incurred for health care for the victim's spouse, children, parents, siblings, or persons related by blood or affinity to the victim not to exceed three thousand dollars per survivor.

8. Reasonable expenses incurred for cleaning the scene of a homicide, if the scene is a residence, not to exceed one thousand dollars.

9. Reasonable charges incurred for mental health care for secondary victims which include the services provided by a psychologist licensed under chapter 154B, a person holding at least a master's degree in social work, counseling, or a related field, a victim counselor as defined in section 915.20A, or a psychiatrist licensed under chapter 147, 148, or 150A. The allowable charges under this subsection shall not exceed one thousand dollars per secondary victim or a total of six thousand dollars.

Sec. 48. NEW SECTION. 915.87 REDUCTIONS AND DISQUALIFICATIONS.

Compensation is subject to reduction and disqualification as follows:

1. Compensation shall be reduced by the amount of any payment received, or to be received, as a result of the injury or death:

a. From or on behalf of, a person who committed the crime or who is otherwise responsible for damages resulting from the crime.

b. From an insurance payment or program, including but not limited to workers' compensation or unemployment compensation.

c. From public funds.

d. As an emergency award under section 915.91.

2. Compensation shall not be made when the bodily injury or death for which a benefit is sought was caused by any of the following:

a. Consent, provocation, or incitement by the victim.

b. The victim assisting, attempting, or committing a criminal act.

Sec. 49. NEW SECTION. 915.88 COMPENSATION WHEN MONEY INSUFFICIENT.

Notwithstanding this subchapter, a victim otherwise qualified for compensation under the crime victim compensation program is not entitled to the compensation when there is insufficient money from the appropriation for the program to pay the compensation.

Sec. 50. NEW SECTION. 915.89 ERRONEOUS OR FRAUDULENT PAYMENT — PENALTY.

1. If a payment or overpayment of compensation is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient, or other circumstances of a similar nature, not induced by fraud by or on behalf of the recipient, the recipient is liable for repayment of the compensation. The department may waive, decrease, or adjust the amount of the repayment of the compensation. However, if the department does not notify the recipient of the erroneous payment or overpayment within one year of the date the compensation was made, the recipient is not liable for the repayment of the compensation.

2. If a payment or overpayment has been induced by fraud by or on behalf of a recipient, the recipient is liable for repayment of the compensation.

Sec. 51. NEW SECTION. 915.90 RELEASE OF INFORMATION.

A person in possession or control of investigative or other information pertaining to an alleged crime or a victim filing for compensation shall allow the inspection and reproduction of the information by the department upon the request of the department, to be used only in the administration and enforcement of the crime victim compensation program. Information and records which are confidential under section 22.7 and information or records received from the confidential information or records remain confidential under this section.

A person does not incur legal liability by reason of releasing information to the department as required under this section.

Sec. 52. NEW SECTION. 915.91 EMERGENCY PAYMENT COMPENSATION.

If the department determines that compensation may be made and that undue hardship may result to the person if partial immediate payment is not made, the department may order emergency compensation to be paid to the person, not to exceed five hundred dollars.

Sec. 53. NEW SECTION. 915.92 RIGHT OF ACTION AGAINST PERPETRATOR — SUBROGATION.

A right of legal action by the victim against a person who has committed a crime is not lost as a consequence of a person receiving compensation under the crime victim compensation program. If a person receiving compensation under the program seeks indemnification which would reduce the compensation under section 915.87, subsection 1, the department is subrogated to the recovery to the extent of payments by the department to or on behalf of the person. The department has a right of legal action against a person who has committed a crime resulting in payment of compensation by the department to the extent of the compensation payment. However, legal action by the department does not affect the right of a person to seek further relief in other legal actions.

Sec. 54. NEW SECTION. 915.93 RULEMAKING.

The department shall adopt rules pursuant to chapter 17A to implement the procedures for reparation payments with respect to section 915.35 and section 915.84, subsections 3, 4, and 5.

Sec. 55. NEW SECTION. 915.94 VICTIM COMPENSATION FUND.

A victim compensation fund is established as a separate fund in the state treasury. Moneys deposited in the fund shall be administered by the department and dedicated to and used for the purposes of section 915.41 and this subchapter. In addition, the department may use moneys from the fund for the purposes of section 236.15 and for the award of funds to programs that provide services and support to victims of domestic abuse or sexual assault as provided in chapter 236. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

Sec. 56. Section 915.100, as enacted in this Act, is enacted as a new subchapter of chapter 915, entitled "Victim Restitution".

Sec. 57. NEW SECTION. 915.100 VICTIM RESTITUTION RIGHTS.

1. Victims, as defined in section 910.1, have the right to recover pecuniary damages, as defined in section 910.1.

2. The right to restitution includes the following:

a. In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgement of conviction is rendered, the sentencing court shall order that restitution be made by each offender to victims of the offender's criminal activities.

b. A judge may require a juvenile who has been found to have committed a delinquent act to compensate the victim of that act for losses due to the act.

c. In cases where the act committed by an offender causes the death of another person, in addition to the amount ordered for payment of the victim's pecuniary damages, the court shall also order the offender to pay at least one hundred fifty thousand dollars in restitution to the victim's estate.

d. The clerk of court shall forward a copy of the plan of payment or the modified plan of payment to the victim or victims.

e. Victims shall be paid in full pursuant to an order of restitution, before fines, penalties, surcharges, crime victim compensation program reimbursement, public agency reimbursement, court costs, correctional fees, court-appointed attorney fees, expenses of a public defender, or contributions to local anticrime organizations are paid.

f. A judgment of restitution may be enforced by a victim entitled under the order to receive restitution, or by a deceased victim's estate, in the same manner as a civil judgment.

g. A victim in a criminal proceeding who is entitled to restitution under a court order may file a restitution lien.

h. If a convicted felon attempts to profit from the commission of the crime, and the attorney general brings an action to recover such profits, the victim may be entitled to funds held in escrow, pursuant to the provisions of section 910.15.

i. The right to victim restitution for the pecuniary damages incurred by a victim as the result of a crime does not limit or impair the right of the victim to sue and recover damages from the offender in a civil action.

Sec. 58. Section 13.31, subsections 2 and 5, Code 1997, are amended to read as follows:

2. Administer the state crime victim compensation program as provided in chapter ~~912~~ 915.

5. Administer payment for sexual abuse medical examinations pursuant to section ~~709.10~~ 915.41.

Sec. 59. Section 22.7, subsection 2, Code Supplement 1997, is amended to read as follows:

2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a crime victim and the victim's counselor are not subject to disclosure except as provided in section ~~236A.1~~ 915.20A. However, the Iowa department of public health shall adopt rules which provide for

the sharing of information among agencies and providers concerning the maternal and child health program including but not limited to the statewide child immunization information system, while maintaining an individual's confidentiality.

Sec. 60. Section 135.11, subsection 24, Code Supplement 1997, is amended to read as follows:

24. Adopt rules which provide for the testing of a convicted offender for the human immunodeficiency virus pursuant to ~~chapter 709B~~ sections 915.40 through 915.43. The rules shall provide for the provision of counseling, health care, and support services to the victim.

Sec. 61. Section 232.28, subsections 10 and 11, Code Supplement 1997, are amended by striking the subsections.

Sec. 62. Section 232.28A, subsection 1, paragraph d, Code Supplement 1997, is amended to read as follows:

d. To be notified of the person's right to offer a written victim impact statement and to orally present the victim impact statement under sections ~~232.28 and 910A.5~~ 915.26.

Sec. 63. Section 232.147, subsections 2 and 9, Code Supplement 1997, are amended to read as follows:

2. Official juvenile court records in cases alleging delinquency, including complaints under section 232.28, shall be public records, subject to sealing under section 232.150. If the court has excluded the public from a hearing under division II of this chapter, the transcript of the proceedings shall not be deemed a public record and inspection and disclosure of the contents of the transcript shall not be permitted except pursuant to court order or unless otherwise provided in this chapter. Complaints under section 232.28 shall be released in accordance with section ~~232.28~~ 915.25. Other official juvenile court records may be released under this section by a juvenile court officer.

9. Release of official juvenile court records to a victim of a delinquent act is subject to the provisions of section ~~232.28A~~ 915.25, notwithstanding contrary provisions of this chapter.

Sec. 64. Section 235A.15, subsection 2, paragraph e, subparagraph (3), Code Supplement 1997, is amended to read as follows:

(3) To the department of justice for the sole purpose of the filing of a claim for restitution or compensation pursuant to ~~section 910A.5~~ sections 915.21 and ~~section 912.4, subsections 3 through 5~~ 915.84. Data provided pursuant to this subparagraph is subject to the provisions of section ~~912.10~~ 915.90.

Sec. 65. Section 235B.6, subsection 2, paragraph e, subparagraph (3), Code Supplement 1997, is amended to read as follows:

(3) The department of justice for the sole purpose of the filing of a claim for reparation pursuant to ~~section 910A.5~~ sections 915.21 and ~~section 912.4, subsections 3 through 5~~ 915.84.

Sec. 66. Section 236.14, subsection 2, unnumbered paragraph 3, Code 1997, is amended to read as follows:

The clerk of the court or other person designated by the court shall provide a copy of this order to the victim pursuant to chapter ~~910A~~ 915. The order has force and effect until it is modified or terminated by subsequent court action in the contempt proceeding or the criminal or juvenile court action and is reviewable in the manner prescribed in section 811.2. If a defendant is convicted for, receives a deferred judgment for, or pleads guilty to a violation of section 708.2A, the court shall modify the no-contact order issued by the magistrate to provide that the no-contact order shall continue in effect for a period of one year from the date that the judgment is entered or the deferred judgment is granted, regardless of whether the defendant is placed on probation. Upon an application by the state which is filed within ninety days prior to the expiration of the modified no-contact order, the court shall modify and extend the no-contact order for an additional period of one year, if the court finds that

the defendant continues to pose a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family. The number of modifications extending the no-contact order permitted by this subsection is not limited.

Sec. 67. Section 321J.17, subsection 1, Code Supplement 1997, is amended to read as follows:

1. If the department revokes a person's motor vehicle license or nonresident operating privilege under this chapter, the department shall assess the person a civil penalty of two hundred dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit one-half of the money in the separate fund established in section ~~912.14~~ 915.94 and one-half of the money shall be deposited in the general fund of the state. A motor vehicle license or nonresident operating privilege shall not be reinstated until the civil penalty has been paid.

Sec. 68. Section 331.653, subsection 65A, Code Supplement 1997, is amended to read as follows:

65A. Carry out the duties imposed under ~~section 910A.8~~ sections 915.11 and 915.16.

Sec. 69. Section 331.756, subsection 83A, Code Supplement 1997, is amended to read as follows:

83A. Carry out the duties imposed under sections ~~910A.2, 910A.5, and 910A.6~~ 915.12 and 915.13.

Sec. 70. Section 331.909, subsection 2, Code 1997, is amended to read as follows:

2. The activities of a multidisciplinary community services team shall not duplicate the activities of a multidisciplinary team for child abuse under section 235A.13, dependent adult abuse activities under section 235B.6, area education agency activities under section 294A.14, or child victim services provided under section ~~910A.16~~ 915.35.

Sec. 71. Section 562A.27A, subsection 3, paragraph a, Code 1997, is amended to read as follows:

a. The tenant seeks a protective order, restraining order, order to vacate the homestead, or other similar relief pursuant to chapter 236, 598, or ~~910A~~ 915, or any other applicable provision which would apply to the person conducting the activities causing the clear and present danger.

Sec. 72. Section 562B.25A, subsection 3, paragraph a, Code 1997, is amended to read as follows:

a. The tenant seeks a protective order, restraining order, order to vacate the homestead, or other similar relief pursuant to chapter 236, 598, or ~~910A~~ 915, or any other applicable provision which would apply to the person conducting the activities causing the clear and present danger.

Sec. 73. Section 602.8108, subsection 3, paragraph b, Code 1997, is amended to read as follows:

b. Of the amount received from the clerk, the state court administrator shall allocate eighteen percent to be deposited in the fund established in section ~~912.14~~ 915.94 and eighty-two percent to be deposited in the general fund.

Sec. 74. Section 622.69, unnumbered paragraph 2, Code 1997, is amended to read as follows:

Witness fees to be received by an inmate, while in the custody of the department of corrections, shall be applied either toward payment of any restitution owed by the inmate or to the crime victim compensation program established in ~~chapter 912~~ sections 915.80 through 915.94.

Sec. 75. Section 809.17, Code 1997, is amended to read as follows:

809.17 PROCEEDS APPLIED TO VARIOUS PROGRAMS.

Except as provided in section 809.21, proceeds from the disposal of seized property pursuant to this chapter may be transferred in whole or in part to the victim compensation fund created in section ~~912.14~~ 915.94 at the discretion of the recipient agency, political subdivision, or department.

Sec. 76. Section 904.108, subsection 6, Code Supplement 1997, is amended by striking the subsection.

Sec. 77. Section 904.602, subsection 3, Code 1997, is amended to read as follows:

3. Information identified in subsection 2 shall not be disclosed or used by any person or agency except for purposes of the administration of the department's programs of services or assistance and shall not, except as otherwise provided in ~~subsection 4~~ this section, be disclosed by the department or be used by persons or agencies outside the department unless they are subject to, or agree to, comply with standards of confidentiality comparable to those imposed on the department by this section.

Sec. 78. Section 904.602, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 6A. Information described in subsection 2 which pertains to the name and address of the employer of an individual who is receiving or has received services shall be released upon request to an individual for the purpose of executing a judgment resulting from the individual's current or past criminal activity.

Sec. 79. Section 904.809, subsection 5, paragraph a, subparagraph (3), Code Supplement 1997, is amended to read as follows:

(3) Five percent of the balance to the victim compensation fund created in section ~~912.14~~ 915.94.

Sec. 80. Section 232A.4, 709.10, and 709.17, Code 1997, are repealed.

Sec. 81. Section 232.28A, Code Supplement 1997, is repealed.

Sec. 82. Chapters 709B, 910A, and 912, Code and Code Supplement 1997, are repealed.

Sec. 83. The Code editor is directed to correct internal references throughout the Code as necessary in conjunction with the transfer of Code sections to and reenactment of Code sections in Code chapter 915.

Sec. 84. EFFECTIVE DATE. This Act takes effect January 1, 1999.

Approved April 13, 1998

CHAPTER 1091

FOOD AND BEVERAGE SALES AND USE TAX EXEMPTION

S.F. 2364

AN ACT relating to the sales, services, and use taxes exemption for the sales of food and beverages for human consumption by certain organizations, providing refunds, and including effective and retroactive applicability date provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 422.45, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 52. The gross receipts from the sales of food and beverages for human consumption by a nonprofit organization which principally promotes a food or beverage product for human consumption produced, grown, or raised in this state and whose income is exempt from federal taxation under section 501(c) of the Internal Revenue Code.

Sec. 2. REFUNDS. Refunds of taxes, interest, or penalties which arise from claims resulting from the enactment of section 422.45, subsection 52, in this Act, for sales occurring between July 1, 1988, and June 30, 1998, shall be limited to twenty-five thousand dollars in the aggregate and shall not be allowed unless refund claims are filed prior to October 1, 1998, notwithstanding any other provision of law. If the amount of claims total more than twenty-five thousand dollars in the aggregate, the department of revenue and finance shall prorate the twenty-five thousand dollars among all claimants in relation to the amounts of the claimants' valid claims.

Sec. 3. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY PROVISION. This Act, being deemed of immediate importance, takes effect upon enactment and applies retroactively to July 1, 1988.

Approved April 14, 1998

CHAPTER 1092

MID-AMERICA PORT COMMISSION AGREEMENT

H.F. 2135

AN ACT relating to a mid-America port commission agreement and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 28K.1 MID-AMERICA PORT COMMISSION AGREEMENT.

The mid-America port commission agreement is entered into and enacted into law with the state of Illinois and the state of Missouri if those states legally join the agreement, in the form substantially as follows:

AGREEMENT

This agreement shall be known as and may be cited as the "Mid-America Port Commission Agreement". This agreement allows for the states of Missouri and Illinois to join the effort of the state of Iowa for developing the mid-America port commission.

PORT COMMISSION

There is created a mid-America port commission to be governed by a nine-member port commission. The governors of Iowa, Illinois, and Missouri shall appoint one member to the port commission in accordance with the laws of the respective state. Each state shall also be represented by two members elected through the county governance in the geographical jurisdiction of the port commission. The port commission members shall hold office for a period of six years. The port commission members shall elect a chairperson of the port commission after all the members are selected. The position of chairperson shall rotate among the Iowa, Illinois, and Missouri members for two-year periods. A member of the port commission shall not serve more than two terms.

POWERS OF COMMISSION

The port commission shall have the power to acquire, purchase, install, lease, construct, own, hold, maintain, equip, use, control, or operate ports, harbors, waterways, channels, wharves, piers, docks, quays, elevators, tipples, compresses, bulk loading and unloading facilities, warehouses, dry docks, marine support railways, tugboats, ships, vessels, shipyards, shipbuilding facilities, machinery and equipment, dredges, or any other facilities required or incidental to the construction, outfitting, dry docking, or repair of ships or vessels, or water, air, or rail terminals, or roadways or approaches thereto, or other structures or facilities necessary for the convenient use of the same in the aid of commerce, including the dredging, deepening, extending, widening, or enlarging of any ports, harbors, rivers, channels, or waterways, the damming of inland waterways, the establishment of a water basin, the acquisition and development of industrial sites, or the reclaiming of submerged lands.

Sec. 2. NEW SECTION. 28K.2 CITATION.

This division shall be known and may be cited as the "Mid-America Port Commission Act".

Sec. 3. NEW SECTION. 28K.3 JURISDICTION.

The Iowa counties which shall be included in the jurisdiction of the mid-America port commission agreement are Lee, Henry, and Des Moines counties.

Sec. 4. NEW SECTION. 28K.4 AUTHORITY.

Any power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with the mid-America port commission according to the powers delegated to the commission under this chapter.

A public agency of this state may enter into a chapter 28E agreement with the commission to advance the purposes of the commission.

Sec. 5. NEW SECTION. 28K.5 COUNTY ELECTION OF PORT COMMISSION MEMBERS.

The chairpersons of the Lee, Henry, and Des Moines county boards of supervisors shall jointly elect two members to serve on the port commission.

Sec. 6. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 14, 1998

CHAPTER 1093

SECURITY FOR DAMAGES FROM ABANDONMENT OF PIPELINES

S.F. 2201

AN ACT relating to security for damages arising from the abandonment of natural gas pipelines.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 479A.12, Code 1997, is amended to read as follows:

479A.12 FINANCIAL CONDITION OF COMPANY — BOND OR OTHER SECURITY.

Before construction is begun by a pipeline company, the company shall satisfy the board that the company has property subject to execution within this state other than pipelines, of a value in excess of two hundred fifty thousand dollars, or the company must file and maintain with the board a surety bond in the penal sum of two hundred fifty thousand dollars with surety approved by the board, conditioned that the company will pay any and all damages legally recovered against it growing out of the construction, abandonment, or operation of its pipeline and underground storage facilities in this state, or the company shall deposit with the board security satisfactory to the board as a guaranty for the payment of that amount of damages, or furnish to the board satisfactory proofs of its solvency and financial ability to pay that amount of damages.

Approved April 15, 1998

CHAPTER 1094

SEXUAL MISCONDUCT WITH OFFENDERS AND JUVENILES

S.F. 2335

AN ACT relating to the prohibition of sex acts between juveniles and employees and agents at juvenile placement facilities and between prisoners incarcerated in a county jail and employees or agents of a county and providing a penalty.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 709.16, Code 1997, is amended to read as follows:

709.16 SEXUAL MISCONDUCT WITH OFFENDERS AND JUVENILES.

1. An officer, employee, contractor, vendor, volunteer, or agent of the department of corrections, or an officer, employee, or agent of a judicial district department of correctional services, who engages in a sex act with an individual committed to the custody of the department of corrections or a judicial district department of correctional services commits an aggravated misdemeanor.

2. An officer, employee, contractor, vendor, volunteer, or agent of a juvenile placement facility who engages in a sex act with a juvenile placed at such facility commits an aggravated misdemeanor.

For purposes of this subsection, a "juvenile placement facility" means any of the following:

a. A child foster care facility licensed under section 237.4.

b. Institutions controlled by the department of human services listed in section 218.1.

c. Juvenile detention and juvenile shelter care homes approved under section 232.142.

d. Psychiatric medical institutions for children licensed under chapter 135H.

e. Substance abuse facilities as defined in section 125.2.

3. An officer, employee, contractor, vendor, volunteer, or agent of a county who engages in a sex act with a prisoner incarcerated in a county jail commits an aggravated misdemeanor.

Approved April 15, 1998

CHAPTER 1095

PRESENTENCE INVESTIGATION REPORT DISTRIBUTION

S.F. 2337

AN ACT to allow distribution of the presentence investigation report under certain circumstances.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 901.4, Code 1997, is amended to read as follows:

901.4 PRESENTENCE INVESTIGATION REPORT CONFIDENTIAL — DISTRIBUTION.

The presentence investigation report is confidential and the court shall provide safeguards to ensure its confidentiality, including but not limited to sealing the report, which may be opened only by further court order. At least three days prior to the date set for sentencing, the court shall serve all of the presentence investigation report upon the defendant's attorney and the attorney for the state, and the report shall remain confidential except upon court order. However, the court may conceal the identity of the person who provided confidential information. The report of a medical examination or psychological or psychiatric evaluation shall be made available to the attorney for the state and to the defendant upon request. The reports are part of the record but shall be sealed and opened only on order of the court. If the defendant is committed to the custody of the Iowa department of corrections and is not a class "A" felon, a copy of the presentence investigation report shall be forwarded to the director with the order of commitment by the clerk of the district court and to the board of parole at the time of commitment. The presentence investigation report may also be released by the department of corrections or a judicial district department of correctional services pursuant to section 904.602 to another jurisdiction for the purpose of providing interstate probation and parole compact services or evaluations. The defendant or the defendant's attorney may file with the presentence investigation report, a denial or refutation of the allegations, or both, contained in the report. The denial or refutation shall be included in the report.

Approved April 15, 1998

CHAPTER 1096

LOCATIONS FOR SHARED PUBLIC SCHOOL SERVICES

S.F. 2348

AN ACT relating to the locations at which shared public school services may be made available to nonpublic school students.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 256.12, subsection 2, unnumbered paragraph 1, Code 1997, is amended to read as follows:

This section does not deprive the respective boards of public school districts of any of their legal powers, statutory or otherwise, and in accepting the specially enrolled students, each of the boards shall prescribe the terms of the special enrollment, including but not limited to scheduling of courses and the length of class periods. In addition, the board of the affected public school district shall be given notice by the department of its decision to permit the special enrollment not later than six months prior to the opening of the affected public school district's school year, except that the board of the public school district may waive the notice requirement. School districts and area education agency boards shall make public school services, which shall include special education programs and services and may include health services, services for remedial education programs, guidance services, and school testing services, available to children attending nonpublic schools in the same manner and to the same extent that they are provided to public school students. However, services that are made available shall be provided on neutral sites, or in mobile units located off the nonpublic school premises as determined by the boards of the school districts and area education agencies providing the services, and not on nonpublic school property, except for health services, services funded by Title I of the federal Elementary and Secondary Education Act of 1965, diagnostic services for speech, hearing, and psychological purposes, and assistance with physical and communication needs of students with physical disabilities, and services of an educational interpreter, which may be provided on nonpublic school premises, with the permission of the lawful custodian.

Approved April 15, 1998

CHAPTER 1097

TIME FOR REVIEW OF PUBLIC UTILITY REORGANIZATION

S.F. 2351

AN ACT relating to the time for review of the reorganization of a public utility by the utilities board and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 476.77, subsection 2, Code 1997, is amended to read as follows:

2. A proposal for reorganization shall be deemed to have been approved unless the board disapproves the proposal within ninety days after its filing. The board, for good cause shown, may extend the deadline for acting on an application for an additional period not to exceed ninety days. However, the board shall not disapprove a proposal for reorganization

without providing for notice and opportunity for hearing. The notice of hearing shall be provided no later than fifty days after the proposal for reorganization has been filed.

Sec. 2. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 15, 1998

CHAPTER 1098

LIMITED PARTNERSHIP MERGERS

S.F. 2399

AN ACT providing for the merger of a limited partnership with other business entities.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 487.1201 MERGER.

1. Any one or more limited partnerships may merge with or into any one or more limited partnerships, limited liability companies, or corporations, provided that no limited partner of a limited partnership that is a party to the merger will, as a result of the merger, become personally liable for the liabilities or obligations of any other person or entity unless that limited partner approves the plan of merger or otherwise consents to becoming personally liable.

2. Unless otherwise provided in the partnership agreement, each domestic limited partnership which is to merge must approve the merger by approval of all general partners, and by limited partners who own more than fifty percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners. If more than one class or group of limited partners exists, the merger must be approved by the limited partners in each class or group who own more than fifty percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners of such class or group.

3. In connection with a merger under this section, rights or securities of, or interests in, a limited partnership, limited liability company, or corporation which is a constituent party to the merger may be exchanged for or converted into cash, property, rights, or securities of, or interest in, a limited partnership, limited liability company, or corporation which is the surviving entity or, in addition to or in lieu of such cash, property, rights, securities, or interests, may be exchanged for or converted into cash, property, rights, or securities of, or interest in, a limited partnership, limited liability company, or corporation other than the surviving entity.

Sec. 2. NEW SECTION. 487.1202 PLAN OF MERGER.

1. Each constituent party to the merger must enter into a written plan of merger, which must be approved in accordance with section 487.1203.

2. The plan of merger must set forth all of the following:

a. The name of each constituent party to the merger and the name of the surviving entity into which each other constituent party proposes to merge.

b. The terms and conditions of the proposed merger.

c. The manner and basis of converting the interests in each constituent party to the merger into interests, shares, or other securities or obligations of the surviving entity, or of any other entity, or, in whole or in part, into cash or other property.

d. Such amendments to the certificate of limited partnership of a limited partnership, articles of organization of a limited liability company, or articles or certificate of incorporation of a corporation, as the case may be, of the surviving entity as are desired to be effected by the merger, or that such changes are not desired.

e. Other provisions relating to the proposed merger as are deemed necessary or desirable.

Sec. 3. NEW SECTION. 487.1203 ACTION ON PLAN.

1. A proposed plan of merger complying with the requirements of section 487.1202 shall be approved in the manner provided by this section:

a. A limited partnership which is a party to a proposed merger shall have the plan of merger authorized and approved in the manner and by the vote required in section 487.1201.

b. A limited liability company which is a party to a proposed merger shall have the plan of merger authorized and approved as required by chapter 490A.

c. A corporation which is a party to a proposed merger shall have the plan of merger authorized and approved in the manner and by the vote required by chapter 490.

2. After a merger is authorized, unless the plan of merger provides otherwise, and at any time before articles of merger as provided for in section 487.1204 are filed, the plan of merger may be abandoned subject to any contractual rights, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in one of the following ways:

a. By the limited partners of any limited partnership that is a constituent party as provided in section 487.1201.

b. By the majority consent of the members of each limited liability company that is a constituent party, unless the articles of organization or an operating agreement of such limited liability company provides otherwise.

c. In the manner determined by the board of directors of any corporation that is a constituent entity.

Sec. 4. NEW SECTION. 487.1204 ARTICLES OF MERGER.

1. After a plan of merger is approved as provided in section 487.1203, the surviving entity shall deliver to the secretary of state for filing articles of merger duly executed by each constituent party setting forth all of the following:

a. The name of each constituent party.

b. The plan of merger.

c. The effective date of the merger if later than the date of filing of the articles of merger.

d. The name of the surviving entity.

e. A statement that the plan of merger was duly authorized and approved by each constituent party as provided in section 487.1203.

2. A merger takes effect upon the later of the effective date of the filing of the articles of merger or the date set forth in the plan of merger.

Sec. 5. NEW SECTION. 487.1205 EFFECT OF MERGER.

When a merger takes effect all of the following apply:

1. Every other constituent party merges into the surviving entity and the separate existence of every constituent party except the surviving entity ceases.

2. The title to all real estate and other property owned by each constituent party is vested in the surviving entity without reversion or impairment.

3. The surviving entity has all liabilities of each constituent party.

4. A proceeding pending against any constituent party may be continued as if the merger did not occur or the surviving entity may be substituted in the proceeding for the constituent party whose existence ceased.

5. The articles or limited partnership agreement of the surviving entity are amended to the extent provided in the plan of merger.

6. The shares or interests of each constituent party that are to be converted into shares,

obligations, or other securities of the surviving or any other entity or into cash or other property are converted, and the former holders of the shares or interests are entitled only to the rights provided in the articles of merger except for dissenters' rights provided by law.

7. Except as provided by agreement with a person to whom a general partner of a limited partnership is obligated, a merger of a limited partnership that has become effective shall not affect any obligation of liability existing at the time of such merger of a general partner of a limited partnership which is merging.

8. If a limited partnership is a constituent party to a merger that becomes effective, but the limited partnership is not the surviving entity of the merger, a judgment creditor of a general partner of such limited partnership may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the surviving entity of the merger unless any of the following applies:

a. A judgment based on the same claim has been obtained against the surviving entity of the merger and a writ of execution on the judgment is returned unsatisfied in whole or in part.

b. The surviving entity of the merger is a debtor in bankruptcy.

c. The general partner agrees that the creditor need not exhaust the assets of the limited partnership that was not the surviving entity of the merger.

d. The general partner agrees that the creditor need not exhaust the assets of the surviving entity of the merger.

e. A court grants permission to the judgment creditor to levy execution against the assets of the general partner based on a finding that the assets of the surviving entity of the merger that are subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the surviving entity of the merger is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers.

f. Liability is imposed on the general partner by law or contract independent of the existence of the surviving entity of the merger.

Sec. 6. NEW SECTION. 487.1206 MERGER WITH FOREIGN ENTITY.

1. Any one or more limited partnerships of this state may merge with or into one or more foreign limited partnerships, foreign limited liability companies, or foreign corporations, or any one or more foreign limited partnerships, foreign limited liability companies, or foreign corporations may merge with or into any one or more limited partnerships of this state, if all of the following apply:

a. The merger is permitted by the law of the state or jurisdiction under whose law each foreign constituent party is organized or formed and each foreign constituent party complies with that law in effecting the merger.

b. The foreign constituent party complies with section 487.1204 if it is the surviving entity.

c. Each domestic constituent party complies with the applicable provisions of sections 487.1202 and 487.1203 and, if it is the surviving entity, with section 487.1204.

2. Upon a merger involving one or more domestic limited partnerships taking effect, if the surviving entity is to be governed by the law of any state other than this state or of any foreign country, the surviving entity shall agree to both of the following:

a. That it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent party to the merger that was organized under the law of this state, as well as for enforcement of any obligation of the surviving entity arising from the merger.

b. To irrevocably appoint the secretary of state as its agent for service of process in any such proceeding, and the surviving entity shall specify the address to which a copy of the process shall be mailed to it by the secretary of state.

3. The effect of the merger shall be as provided in section 487.1205, if the surviving entity is to be governed by the law of this state. If the surviving entity is to be governed by the law

of any jurisdiction other than this state, the effect of the merger shall be the same as provided in section 487.1205, except insofar as the law of the other jurisdiction provides otherwise.

Approved April 15, 1998

CHAPTER 1099

VALIDITY OF CERTAIN MARRIAGES

H.F. 382

AN ACT relating to certain relationships including certain marriages.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 595.2, Code 1997, is amended to read as follows:

595.2 AGE — GENDER.

1. ~~A~~ Only a marriage between a male and a female ~~each eighteen years of age or older~~ is valid.

2. ~~A~~ Additionally, a marriage between a male and a female is valid only if each is eighteen years of age or older. However, if either or both of ~~whom~~ the parties have not attained that age, the marriage may be valid under the circumstances prescribed in this section.

~~1~~ 3. If either party to a marriage falsely represents the party's self to be eighteen years of age or older at or before the time the marriage is solemnized, the marriage is valid unless the person who falsely represented their age chooses to void the marriage by making their true age known and verified by a birth certificate or other legal evidence of age in an annulment proceeding initiated at any time before the person reaches their eighteenth birthday. A child born of a marriage voided under this subsection is legitimate.

~~2~~ 4. A marriage license may be issued to a male and a female either or both of whom are sixteen or seventeen years of age if:

a. The parents of the underaged party or parties certify in writing that they consent to the marriage. If one of the parents of any underaged party to a proposed marriage is dead or incompetent the certificate may be executed by the other parent, if both parents are dead or incompetent the guardian of the underaged party may execute the certificate, and if the parents are divorced the parent having legal custody may execute the certificate and

b. The certificate of consent of the parents, parent, or guardian is approved by a judge of the district court or, if both parents of any underaged party to a proposed marriage are dead, incompetent, or cannot be located and the party has no guardian, the proposed marriage is approved by a judge of the district court. A judge shall grant approval under this subsection only if the judge finds the underaged party or parties capable of assuming the responsibilities of marriage and that the marriage will serve the best interest of the underaged party or parties. Pregnancy alone does not establish that the proposed marriage is in the best interest of the underaged party or parties, however, if pregnancy is involved the court records which pertain to the fact that the female is pregnant shall be sealed and available only to the parties to the marriage or proposed marriage or to any interested party securing an order of the court.

c. If a parent or guardian withholds consent, the judge upon application of a party to a proposed marriage shall determine if the consent has been unreasonably withheld. If the judge so finds, the judge shall proceed to review the application under paragraph "b" ~~of this subsection~~.

Sec. 2. Section 595.3, subsection 2, Code 1997, is amended to read as follows:

2. Where either party is under eighteen years of age, unless the marriage is approved by a judge of the district court as provided by section 595.2~~, subsection 2~~.

Sec. 3. NEW SECTION. 595.20 FOREIGN MARRIAGES — VALIDITY.

A marriage which is solemnized in any other state, territory, country, or any foreign jurisdiction which is valid in that state, territory, country, or other foreign jurisdiction, is valid in this state if the parties meet the requirements for validity pursuant to section 595.2, subsection 1, and if the marriage would not otherwise be declared void.

Sec. 4. TASK FORCE — DOMESTIC PARTNERS. The legislative council is requested to establish an interim task force to review the issues faced by domestic partners including but not limited to property rights, access to courts, parentage, inheritance, hospital or health care facility visitation, health decisions, contract rights, workplace benefits, insurance coverage, and retirement benefits. The task force shall include representatives of the legal profession, the courts, insurance, business and industry, labor, consumers who are domestic partners, and others with interest or expertise in this area. The task force shall submit a report of recommendations concerning these issues and recommendations for any necessary legislation to the general assembly by January 1, 1999.

Approved April 15, 1998

CHAPTER 1100

NONSUBSTANTIVE CODE CORRECTIONS

H.F. 2162

AN ACT relating to nonsubstantive Code corrections and including a retroactive applicability provision.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 15.353, subsection 5, paragraph b, Code Supplement 1997, is amended to read as follows:

b. "Local housing group" means an entity organized to represent community housing development ~~interest~~ interests.

Sec. 2. Section 15E.182, subsection 1, paragraph b, Code Supplement 1997, is amended to read as follows:

b. The director of the department of economic development.

Sec. 3. Section 15E.182, subsection 3, paragraph e, Code Supplement 1997, is amended to read as follows:

e. Conduct an annual risk analysis which matches the current and anticipated value of investments made pursuant to this division with the current and anticipated value of any tax credits given. If the anticipated value of any tax credits given exceeds the anticipated value of investments, the department of economic development shall establish a reserve account within the strategic investment fund sufficient to cover such losses to the general fund of the state in the event of the termination of the Iowa capital investment board.

Sec. 4. Section 15E.183, subsection 2, Code Supplement 1997, is amended to read as follows:

2. The department of revenue and finance shall, in consultation with the Iowa capital transition board, develop a system for the registration, issuance, transfer, or redemption of tax credits issued by the state under this section. The department of revenue and finance shall also, in consultation with the Iowa capital transition board, adopt any other policies, procedures, or rules pursuant to chapter 17A necessary for the administration of tax credits issued by the state under this section.

Sec. 5. Section 15E.184, Code Supplement 1997, is amended to read as follows:

15E.184 SUPPORT.

The department of economic development shall provide staff assistance, physical facilities, and other support as necessary.

Sec. 6. Section 49.30, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

~~The names of all candidates,~~ All constitutional amendments, ~~and~~ all public measures, and the names of all candidates, other than presidential electors, to be voted for in each election precinct, ~~other than presidential electors,~~ shall be printed on one ballot, except that separate ballots are authorized under the following circumstances:

Sec. 7. Section 49.47, Code Supplement 1997, is amended to read as follows:

49.47 NOTICE ON BALLOTS.

At the top of paper ballots for public measures shall be printed the following:

[Notice to voters. To vote to approve any question on this ballot, make a cross mark or check in the target ~~after~~ before the word "Yes". To vote against a question make a similar mark in the target ~~following~~ preceding the word "No".]

This notice shall be adapted to describe the proper mark where it is appropriate.

Sec. 8. Section 49.94, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

If ~~the names of~~ all the candidates for whom a voter desires to vote in any election other than the primary election were nominated by the same political party or nonparty political organization, and the voter desires to vote for all candidates nominated by that political party or organization, the voter may do so in any one of the following ways:

Sec. 9. Section 49.95, Code Supplement 1997, is amended to read as follows:

49.95 VOTING PART OF TICKET ONLY.

If ~~the names of~~ all the candidates for whom the voter desires to vote were nominated by the same political party or nonparty political organization but the voter does not desire to vote for all of the candidates nominated by the party or organization, the voter shall mark the voting target next to the name of each candidate for whom the voter desires to vote without marking the target next to the name of the party or organization in the straight party or organization section of the ballot.

Sec. 10. Section 49.97, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

If ~~the names of~~ all candidates for whom a voter desires to vote were not nominated by the same political party or nonparty political organization, the voter may indicate the candidates of the voter's choice by marking the ballot in any one of the following ways:

Sec. 11. Section 52.10, Code Supplement 1997, is amended to read as follows:

52.10 BALLOTS — FORM.

All ballots shall be printed in black ink on clear, white material, of such size as will fit the ballot frame, and in as plain, clear type as the space will reasonably permit. The party name for each political party represented on the machine shall be prefixed to the list of candidates of such party. The order of the list of candidates of the several parties or organizations shall be arranged as provided in sections 49.30 to ~~49.41~~ 49.42A, except that the lists may be

arranged in horizontal rows or vertical columns to meet the physical requirements of the voting machine used.

Sec. 12. Section 97A.3, subsection 1, Code 1997, is amended to read as follows:

1. All members of the division of highway safety, uniformed force, and radio communications and the division of criminal investigation and bureau of identification in the department of public safety, excepting the members of the clerical force, who are employed by the state of Iowa ~~when this chapter becomes effective~~ on July 4, 1949, and all persons thereafter employed as members of such divisions in the department of public safety or division of drug law enforcement and arson investigators, except the members of the clerical force, shall be members of this system, except as otherwise provided in subsection 3. Effective July 1, 1994, gaming enforcement officers employed by the division of criminal investigation for excursion boat gambling enforcement activities, fire prevention inspector peace officers employed by the department of public safety, and employees of the division of capitol police, except clerical workers, shall be members of this system, except as otherwise provided in subsection 3 or section 97B.42B. Such members shall not be required to make contributions under any other pension or retirement system of the state of Iowa, anything to the contrary notwithstanding.

Sec. 13. Section 135.83, Code Supplement 1997, is amended to read as follows:

135.83 CONTRACTS FOR ASSISTANCE WITH ANALYSES, STUDIES AND DATA.

In furtherance of the department's responsibilities under sections 135.76~~, 135.77~~ and 135.78, the director may contract with the ~~Iowa hospital~~ association of Iowa hospitals and health systems and third party payers, the Iowa health care facilities association and third party payers, or the Iowa association of homes for the aging and third party payers for the establishment of pilot programs dealing with prospective rate review in hospitals or health care facilities, or both. Such contract shall be subject to the approval of the executive council and shall provide for an equitable representation of health care providers, third party payers, and health care consumers in the determination of criterion for rate review. No third party payer shall be excluded from positive financial incentives based upon volume of gross patient revenues. No state or federal funds appropriated or available to the department shall be used for any such pilot program.

Sec. 14. Section 135.105A, subsections 3 and 4, Code Supplement 1997, are amended to read as follows:

3. A person who owns real property which includes a residential dwelling and who performs lead inspection or lead abatement of the residential dwelling is not required to obtain certification to perform these measures, unless the residential dwelling is occupied by a person other than the owner or a member of the owner's immediate family while the measures are being performed. However, the department shall encourage property owners ~~and managers~~ who are not required to be certified to complete the training course to ensure the use of appropriate and safe mitigation and abatement procedures.

4. ~~A~~ Except as otherwise provided in this section, a person shall not perform lead abatement or lead inspections unless the person has completed a training program approved by the department and has obtained certification. A person who violates this section is subject to a civil penalty not to exceed five thousand dollars for each offense.

Sec. 15. Section 135.107, subsection 4, Code Supplement 1997, is amended to read as follows:

4. The director of public health shall establish a primary care collaborative work group to coordinate all statewide recruitment and retention activities established pursuant to this section and to make recommendations to the department and the center for rural health and primary care relating to the implementation of subsection 3. Membership of the work group shall consist, at a minimum, of representatives from the university of Iowa college of medicine, university of osteopathic medicine and health sciences, university of Iowa physician

assistant school, university of Iowa nurse practitioner school, university of osteopathic medicine and health sciences physician assistant program, Iowa-Nebraska primary care association, Iowa medical society, Iowa osteopathic medical association, Iowa chapter of American college of osteopathic family physicians, Iowa academy of family physicians, nurse practitioner association, Iowa nurses association, ~~Iowa hospital~~ association of Iowa hospitals and health systems, and Iowa physicians assistants association.

Sec. 16. Section 135B.20, subsection 4, Code 1997, is amended to read as follows:

4. "Joint conference committee" shall mean the joint conference committee as required by the joint commission on accreditation of ~~hospitals~~ health care organizations or, in a hospital having no such committee, a similar committee, an equal number of which shall be members of the medical staff selected by the staff and an equal number of which shall be selected by the governing board of the hospital.

Sec. 17. Section 135J.2, unnumbered paragraph 2, Code 1997, is amended to read as follows:

The hospice program shall meet the criteria pursuant to section 135J.3 before a license is issued. The department of inspections and appeals is responsible to provide the necessary personnel to inspect the hospice program, the home care and inpatient care provided and the hospital or facility used by the hospice to determine if the hospice complies with necessary standards before a license is issued. Hospices that are certified as medicare hospice providers by the department of inspections and appeals or are accredited as hospices by the joint commission ~~for~~ on the accreditation of ~~hospitals~~ health care organizations, shall be licensed without inspection by the department of inspections and appeals.

Sec. 18. Section 147A.2, Code 1997, is amended to read as follows:

147A.2 COUNCIL ESTABLISHED — TERMS OF OFFICE.

An EMS advisory council shall be appointed by the director. Membership of the council shall be comprised of individuals nominated from, but not limited to, the following state or national organizations: Iowa osteopathic medical association, Iowa medical society, American college of emergency physicians, Iowa physician assistant society, Iowa academy of family physicians, university of Iowa hospitals and clinics, Iowa EMS association, Iowa firemen's association, Iowa professional firefighters, EMS education programs committee, EMS regional council, Iowa nurses association, ~~Iowa hospital~~ association of Iowa hospitals and health systems, and the Iowa state association of counties.

The EMS advisory council shall advise the director and develop policy recommendations concerning the regulation, administration, and coordination of emergency medical services in the state.

Sec. 19. Section 147A.24, subsection 1, paragraphs i and j, Code 1997, are amended to read as follows:

i. ~~Iowa hospital association~~ Association of Iowa hospitals and health systems representing rural hospitals.

j. ~~Iowa hospital association~~ Association of Iowa hospitals and health systems representing urban hospitals.

Sec. 20. Section 155A.13, subsection 4, paragraph d, Code 1997, is amended to read as follows:

d. Give recognition to the standards of the joint commission on the accreditation of ~~hospitals~~ health care organizations and the American osteopathic association and to the conditions of participation under medicare.

Sec. 21. Section 169C.4, subsection 1, paragraphs a and b, Code Supplement 1997, are amended to read as follows:

a. To a landowner for damages caused by the livestock owner's livestock which have trespassed on the landowner's land, including but not limited to property damage and costs

incurred by ~~a~~ the landowner's custody of the livestock including maintenance costs. A livestock owner's liability is not affected by the failure of a landowner to take custody of the livestock. A livestock owner shall not be liable for damages incurred by ~~the~~ a landowner if the livestock trespassed through a fence that was not maintained by the landowner as required pursuant to chapter 359A.

b. To a landowner who takes custody of livestock on a public road as provided in section ~~169C.3~~ 169C.2 for costs incurred by the landowner in taking custody of the livestock, including maintenance costs.

Sec. 22. Section 169C.4, subsection 3, Code Supplement 1997, is amended to read as follows:

3. ~~An aggrieved party~~ A landowner is not liable for an injury or death suffered by the livestock in the landowner's custody, unless the landowner caused the injury or death. The landowner is not liable for livestock that strays from the landowner's land. An aggrieved party is not liable for livestock that strays from the control of the aggrieved party.

Sec. 23. Section 218.99, Code Supplement 1997, is amended to read as follows:

218.99 COUNTIES TO BE NOTIFIED OF PATIENTS' PERSONAL ACCOUNTS.

The administrator of a division of the department of human services in control of a state institution shall direct the business manager of each institution under the administrator's jurisdiction which is mentioned in section 331.424, subsection 1, paragraphs "a" and "b" and for which services are paid under section 331.424A to quarterly inform the county of legal settlement's entity designated to perform the county's single entry point process of any patient or resident who has an amount in excess of two hundred dollars on account in the patients' personal deposit fund and the amount on deposit. The administrators shall direct the business manager to further notify the entity designated to perform the county's single entry point process at least fifteen days before the release of funds in excess of two hundred dollars or upon the death of the patient or resident. If the patient or resident has no county of legal settlement, notice shall be made to the director of human services and the administrator of the division of the department in control of the institution involved.

Sec. 24. Section 232.19, subsection 1, paragraph c, Code Supplement 1997, is amended to read as follows:

c. By a peace officer, when the peace officer has reasonable grounds to believe the child has run away from the child's parents, guardian, or custodian, for the purposes of determining whether the child shall be reunited with the child's parents, guardian, or custodian, placed in shelter care, or, if the child is a chronic runaway and the county has an approved county runaway treatment plan, placed in a runaway assessment ~~and counseling~~ center under section 232.196.

Sec. 25. Section 232.54, subsection 7, Code Supplement 1997, is amended to read as follows:

7. With respect to a juvenile court dispositional order entered regarding a child who has received a youthful offender deferred sentence under section 907.3A, the dispositional order may be terminated prior to the child reaching the age of eighteen upon motion of the child, the person or agency to whom custody of the child has been transferred, or the county attorney following a hearing before the juvenile court if it is shown by clear and convincing evidence that it is in the best interests of the child and the community to terminate the order. The hearing may be waived if all parties to the proceeding agree. The dispositional order regarding a child who has received a youthful offender deferred sentence may also be terminated prior to the child reaching the age of eighteen upon motion of the county attorney, if the waiver of the child to district court was conditioned upon the terms of an agreement between the county attorney and the child, and the child violates the terms of the agreement after the waiver order has been entered. The district court shall discharge the child's youthful offender status upon receiving a termination order under this section.

Sec. 26. Section 232.148, subsection 5, paragraph b, Code Supplement 1997, is amended to read as follows:

b. After a petition is filed, the petition is dismissed or the proceedings are suspended and the child has not entered into a consent decree~~,~~ and has not been adjudicated delinquent on the basis of a delinquent act other than one alleged in the petition in question, or the child has not been placed on youthful offender status.

Sec. 27. Section 232.163, subsection 2, Code Supplement 1997, is amended to read as follows:

2. If a child is placed outside the residency state of the child's parent, the ~~placement~~ sending agency shall provide for a designee to visit the child at least once every twelve months and to submit a written report to the court concerning the child and the visit.

Sec. 28. Section 232.195, Code Supplement 1997, is amended to read as follows:

232.195 RUNAWAY TREATMENT PLAN.

A county may develop a runaway treatment plan to address problems with chronic runaway children in the county. The plan shall identify the problems with chronic runaway children in the county and specific solutions to be implemented by the county, including the development of a runaway assessment ~~and counseling~~ center.

Sec. 29. Section 232.196, Code Supplement 1997, is amended to read as follows:

232.196 RUNAWAY ASSESSMENT ~~AND COUNSELING~~ CENTER.

1. As part of a county runaway treatment plan under section 232.195, a county may establish a runaway assessment ~~and treatment~~ center or other plan. The center or other plan, if established, shall provide services to assess a child who is referred to the center or plan for being a chronic runaway and intensive family counseling services designed to address any problem causing the child to run away. A center shall at least meet the requirements established for providing child foster care under chapter 237.

2. a. If not sent home with the child's parent, guardian, or custodian, a chronic runaway may be placed in a runaway assessment ~~and treatment~~ center by the peace officer who takes the child into custody under section 232.19, if the officer believes it to be in the child's best interest after consulting with the child's parent, guardian, or custodian. A chronic runaway shall not be placed in a runaway assessment ~~and treatment~~ center for more than forty-eight hours.

b. If a runaway is placed in ~~a treatment~~ an assessment center according to a county plan, the runaway shall be assessed within twenty-four hours of being placed in the center by a center counselor to determine the following:

(1) The reasons why the child is a runaway.

(2) Whether the initiation or continuation of child in need of assistance or family in need of assistance proceedings is appropriate.

c. As soon as practicable following the assessment, the child and the child's parents, guardian, or custodian shall be provided the opportunity for a counseling session to identify the underlying causes of the runaway behavior and develop a plan to address those causes.

d. A child shall be released from a runaway assessment ~~and treatment~~ center, established pursuant to the county plan, to the child's parents, guardian, or custodian not later than forty-eight hours after being placed in the center unless the child is placed in shelter care under section 232.21 or an order is entered under section 232.78. A child whose parents, guardian, or custodian failed to attend counseling at the center or fail to take custody of the child at the end of placement in the center may be the subject of a child in need of assistance petition or such other order as the juvenile court finds to be in the child's best interest.

Sec. 30. Section 235C.2, subsection 8, Code 1997, is amended to read as follows:

8. A hospital administrator selected by the board of the ~~Iowa hospital~~ association of Iowa hospitals and health systems.

Sec. 31. Section 252B.1, subsection 2, Code Supplement 1997, is amended to read as follows:

2. "Child" includes but shall not be limited to a stepchild, foster child or legally adopted child and means a child actually or apparently under eighteen years of age, and a dependent person eighteen years of age or over who is unable to maintain the person's self and is likely to become a public charge. "Child" includes "~~dependent children~~ child" as defined in section 239B.1.

Sec. 32. Section 255.26, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Warrants issued under section 255.25 shall be promptly drawn on the treasurer of state and forwarded by the director of revenue and finance to the treasurer of the state university, and the same shall be by the treasurer of the state university placed to the credit of the funds which are set aside for the support of ~~said~~ the university hospital. However, warrants shall not be paid unless the UB-82 claim required pursuant to section 255A.13 has been filed with the ~~Iowa~~ community health ~~data commission~~ management information system. The superintendent of the ~~said~~ university hospital shall certify to the auditor of state on the first day of January, April, July and October of each year, the amount as herein provided not previously certified by the superintendent due the state from the several counties having patients chargeable thereto, and the auditor of state shall thereupon charge the same to the county so owing. A duplicate certificate shall also be mailed to the auditor of each county having patients chargeable thereto. Expenses for obstetrical patients served under section 255A.9 shall be reimbursed as specified in section 255A.9.

Sec. 33. Section 255A.13, Code 1997, is amended to read as follows:

255A.13 DATA COLLECTION.

Beginning July 1, 1987, the University of Iowa hospitals and clinics shall submit, on a quarterly basis, UB-82 claims for all patients discharged after being served under the indigent patient program under chapter 255. The UB-82 claim shall include all data elements which are required by the ~~Iowa~~ community health ~~data commission~~ management information system.

Sec. 34. Section 257.14, subsection 2, Code Supplement 1997, is amended by striking the subsection.

Sec. 35. Section 260A.1, subsection 4, Code Supplement 1997, is amended to read as follows:

4. Moneys received by a community college under this section shall not be commingled with general state financial aid, including financial aid to merged areas in lieu of personal property tax replacement payments ~~under section 427A.13~~, to merged areas as defined in section 260C.2, and including moneys received for vocational education programs in accordance with chapters 258 and 260C. Payments made to a community college shall be accounted for by the community college separately from other state aid payments. Each community college shall maintain a separate listing within its budget accounting for payments received and expenditures made pursuant to this section and section 260A.3.

Sec. 36. Section 280.17, Code 1997, is amended to read as follows:

280.17 PROCEDURES FOR HANDLING CHILD ABUSE REPORTS.

The board of directors of a public school and the authorities in control of a nonpublic school shall prescribe procedures, in accordance with the guidelines contained in the model policy developed by the department of education in consultation with the department of human services, and adopted by the department of education pursuant to chapter 17A, for the handling of reports of child abuse, as defined in section 232.68, subsection 2, paragraph "a", "~~b~~ c", or "~~d~~ e", alleged to have been committed by an employee or agent of the public or nonpublic school.

Sec. 37. Section 297.22, subsection 3, Code Supplement 1997, is amended to read as follows:

3. The provisions in ~~subsection~~ subsections 1 and 2~~,~~ relating to the sale, lease, or disposition of school district property do not apply to student-constructed buildings and the property on which student-constructed buildings are located. The board of directors of a school district may sell, lease, or dispose of a student-constructed building and the property on which the student-constructed building is located, and may purchase sites for the erection of additional structures, by any procedure which is adopted by the board.

Sec. 38. Section 307.25, subsection 4, Code Supplement 1997, is amended to read as follows:

4. Administer chapters ~~327A,~~ 328, 329 and 330.

Sec. 39. Section 307.27, subsection 7, Code Supplement 1997, is amended to read as follows:

7. Administer the regulation of motor ~~vehicle certificated~~ carriers pursuant to chapter ~~325~~ 325A.

Sec. 40. Section 307.27, subsection 8, Code Supplement 1997, is amended by striking the subsection.

Sec. 41. Section 321.20B, subsection 1, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

This subsection does not apply to the operator of a motor vehicle owned or leased to the United States, this state, or any political subdivision of this state or to a motor vehicle which is subject to section ~~325.26, 327.15, 327A.5,~~ 325A.6 or 327B.6.

Sec. 42. Section 321.44A, Code Supplement 1997, is amended to read as follows:

321.44A VOLUNTARY CONTRIBUTION — ANATOMICAL GIFT PUBLIC AWARENESS AND TRANSPLANTATION FUND — AMOUNT RETAINED BY COUNTY TREASURER.

For each application for registration or renewal, the county treasurer or the department shall request through use of a written form, and, if the application is made in person, through verbal communication, that an applicant make a voluntary contribution of one dollar or more to the anatomical gift public awareness and transplantation fund established pursuant to section 142C.15. Ninety-five percent of the moneys collected by the county and one hundred percent of the moneys collected by the department in the form of contributions shall be remitted to the treasurer of state for deposit in the fund to be used for the purposes specified for the fund. The remaining five percent of the moneys collected by the county shall be retained by the county treasurer for deposit in the general fund of the county. The director shall adopt rules to administer this section.

Sec. 43. Section 321.71, subsection 7, Code 1997, is amended to read as follows:

7. A certificate of title shall not be issued for a motor vehicle less than ten model years old which is equipped with an odometer by the manufacturer, unless an odometer statement which is in compliance with federal law and regulations has been made by the transferor of the vehicle and is furnished with the application for certificate of title. The new certificate of title shall record on its face the odometer reading and the word "actual" if the true mileage is known. If the odometer reading is not the true mileage or the true mileage is unknown, the words "not actual" shall be recorded. If the odometer reading is greater than the odometer can mechanically count, the words "exceeds the mechanical limits" shall be recorded. However, a certificate of title may be issued for a motor vehicle to a person who moves into this state if the person acquired ownership of the motor vehicle prior to moving to this state. This subsection does not apply to motor vehicles having a ~~registered~~ gross vehicle weight rating of more than sixteen thousand pounds.

Sec. 44. Section 321.179, subsection 1, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

Notwithstanding the provisions of this chapter or chapter 321L which grant sole authority to the department for the issuance of motor vehicle licenses, nonoperator's identification cards, and persons with disabilities ~~identification devices~~ parking permits, the counties of Adams, Cass, Fremont, Mills, Montgomery, and Page shall be authorized to issue motor vehicle licenses, nonoperator's identification cards, and persons with disabilities ~~identification devices~~ parking permits on a permanent basis. However, a county shall only be authorized to issue commercial driver's licenses if certified to do so by the department. If a county fails to meet the standards for certification under this section, the department itself shall provide for the issuance of commercial driver's licenses in that county. The department shall certify the county treasurers in the permanent counties to issue commercial driver's licenses if all of the following conditions are met:

Sec. 45. Section 321.216B, Code Supplement 1997, is amended to read as follows:

321.216B USE OF MOTOR VEHICLE LICENSE OR NONOPERATOR'S IDENTIFICATION CARD BY UNDERAGE PERSON TO OBTAIN ALCOHOL.

A person who is under the age of twenty-one, who alters or displays or has in the person's possession a fictitious or fraudulently altered motor vehicle license or nonoperator's identification card and who uses the license to violate or attempt to violate section 123.47, commits a simple misdemeanor punishable by a fine of one hundred dollars. The court shall forward a copy of the conviction ~~or order of adjudication under section 232.47~~ to the department.

Sec. 46. Section 321.231, subsection 5, Code Supplement 1997, is amended to read as follows:

5. The foregoing provisions shall not relieve the driver of an authorized emergency vehicle or the rider of a police bicycle from the duty to drive or ride with due regard for the safety of all persons, nor shall such provisions protect the driver or rider from the consequences of the driver's or rider's reckless disregard for the safety of others.

Sec. 47. Section 321.284, Code 1997, is amended to read as follows:

321.284 OPEN CONTAINERS IN MOTOR VEHICLES.

A person driving a motor vehicle shall not knowingly possess in a motor vehicle upon a public street or highway an open or unsealed bottle, can, jar, or other receptacle containing an alcoholic beverage, wine, or beer with the intent to consume the alcoholic beverage, wine, or beer while the motor vehicle is upon a public street or highway. Evidence that an open or unsealed receptacle containing an alcoholic beverage, wine, or beer was found during an authorized search in the glove compartment, utility compartment, console, front passenger seat, or any unlocked portable device and within the immediate reach of the driver while the motor vehicle is upon a public street or highway is evidence from which the court or jury may infer that the driver intended to consume the alcoholic beverage, wine, or beer while upon the public street or highway if the inference is supported by corroborative evidence. However, an open or unsealed receptacle containing an alcoholic beverage, wine, or beer may be transported at any time in the trunk of the motor vehicle or in some other area of the interior of the motor vehicle not designed or intended to be occupied by the driver and not readily accessible to the driver while the motor vehicle is in motion. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8, subsection 10~~, paragraph "c"~~.

Sec. 48. Section 321.492, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

A peace officer having probable cause to stop a vehicle may require exhibition of the proof of ~~insurance~~ financial liability coverage card issued for the vehicle if the vehicle is a motor vehicle registered in this state.

Sec. 49. Section 321A.33, Code Supplement 1997, is amended to read as follows:

321A.33 EXCEPTIONS.

This chapter does not apply to any motor vehicle owned by the United States, this state, or any political subdivision of this state or to any operator, except for section 321A.4, while on official duty operating such motor vehicle. This chapter does not apply, except for sections 321A.4 and 321A.26, to any motor vehicle which is subject to section ~~325.26, 327.15, 327A.5,~~ 325A.6 or 327B.6.

Sec. 50. Section 321J.2, subsection 3, paragraph a, subparagraph (3), Code Supplement 1997, is amended to read as follows:

(3) If the defendant has previously received a deferred judgment or sentence for a violation of subsection ~~2~~ 1 or for a violation of a statute in another state substantially corresponding to subsection ~~2~~ 1.

Sec. 51. Section 327C.2, Code Supplement 1997, is amended to read as follows:

327C.2 GENERAL JURISDICTION OF TRANSPORTATION DEPARTMENT.

The department has general supervision of all railroads in the state, express companies, car companies, freight and freight-line companies, motor carriers, and any common carrier engaged in the transportation of passengers or freight. However, the provisions of this chapter regarding the supervision of carriers do not apply to regular route motor carriers of passengers or charter carriers, as defined under section ~~325.1~~ 325A.12.

Sec. 52. Section 327D.1, Code Supplement 1997, is amended to read as follows:

327D.1 APPLICABILITY OF CHAPTER.

This chapter applies to intrastate transportation by for-hire common carriers of persons and property. However, this chapter does not apply to regular route motor carriers of passengers or charter carriers, as defined under section ~~325.1~~ 325A.12.

Sec. 53. Section 331.439, subsection 3, paragraph b, Code Supplement 1997, is amended to read as follows:

b. Based upon information contained in county management plans and budgets, the state-county management committee shall recommend an allowed growth factor adjustment to the governor by November 15 for the fiscal year which commences two years from the beginning date of the fiscal year in progress at the time the recommendation is made. The allowed growth factor adjustment shall address costs associated with new consumers of service, service cost inflation, and investments for economy and efficiency. In developing the service cost inflation recommendation, the committee shall consider the cost trends indicated by the gross expenditure amount reported in the expenditure reports submitted by counties pursuant to subsection 1, paragraph "~~b~~ a". The governor shall consider the committee's recommendation in developing the governor's recommendation for an allowed growth factor adjustment for such fiscal year. The governor's recommendation shall be submitted at the time the governor's proposed budget for the succeeding fiscal year is submitted in accordance with chapter 8.

Sec. 54. Section 331.439, subsection 7, Code Supplement 1997, is amended to read as follows:

7. A county shall annually report data concerning the services managed by the county. At a minimum, the data reported shall indicate the number of different individuals who utilized services in a fiscal year and the various types of services. Data reported under this subsection shall be submitted with the county's expenditure report required under subsection 1, paragraph "~~b~~ a".

Sec. 55. Section 400.1, Code Supplement 1997, is amended to read as follows:

400.1 APPOINTMENT OF COMMISSION.

In cities having a population of eight thousand or over and having a paid fire department

or a paid police department, the mayor, one year after ~~each~~ a regular municipal election, with the approval of the council, shall appoint three civil service commissioners who shall hold office, one until the first Monday in April of the second year, one until the first Monday in April of the third year, and one until the first Monday in April of the fourth year after such appointment, whose successors shall be appointed for a term of four years. In cities having a population of more than one hundred thousand, the city council may establish, by ordinance, the number of civil service commissioners at not less than three.

For the purpose of determining the population of a city under this chapter, the federal census conducted in 1980 shall be used.

Sec. 56. Section 403.22, subsection 1, unnumbered paragraph 3, Code Supplement 1997, is amended to read as follows:

For a municipality with a population of five thousand or less, the municipality need not provide any low and moderate income family housing assistance if the municipality has completed a housing needs assessment meeting the standards set out by the department of economic development, which shows no low and moderate income housing need and the department of economic development agrees that no low and moderate income family housing assistance is needed.

Sec. 57. Section 422.7, subsection 12A, unnumbered paragraph 3, Code Supplement 1997, is amended to read as follows:

The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the ~~division of job service of the~~ department of ~~employment services~~ workforce development, the additional deduction shall be allowed.

Sec. 58. Section 422.120, subsection 1, paragraph a, Code Supplement 1997, is amended to read as follows:

a. There is allowed a state tax credit for livestock production operations located in the state. The amount of the credit equals ten cents for each corn equivalent consumed by the livestock in the production operation as specified under this section. The credit shall be refunded as provided in section ~~422.121~~ 422.122.

Sec. 59. Section 426B.2, subsection 3, Code Supplement 1997, is amended to read as follows:

3. The ~~department~~ director of human services shall ~~notify the director of revenue and finance of the amounts due a county in accordance with the provisions of this section. The director of revenue and finance shall~~ draw warrants on the property tax relief fund, payable to the county treasurer in the amount due to a county in accordance with subsection 1 and mail the warrants to the county auditors in September and March of each year.

Sec. 60. Section 426B.3, subsection 1, Code Supplement 1997, is amended to read as follows:

1. The county auditor shall reduce the certified budget amount received from the board of supervisors for the succeeding fiscal year for the county mental health, mental retardation, and developmental disabilities services fund created in section 331.424A by an amount equal to the amount the county will receive from the property tax relief fund pursuant to section 426B.2, for the succeeding fiscal year and the auditor shall determine the rate of taxation necessary to raise the reduced amount. On the tax list, the county auditor shall compute the amount of taxes due and payable on each parcel before and after the amount received from the property tax relief fund is used to reduce the county budget. The director of ~~revenue and finance~~ human services shall notify the county auditor of each county of the

amount of moneys the county will receive from the property tax relief fund pursuant to section 426B.2, for the succeeding fiscal year.

Sec. 61. Section 452A.52, unnumbered paragraph 2, Code 1997, is amended to read as follows:

Any person who is unable to display either of the permits or the license provided in section 452A.53 and brings into the state in the fuel supply tanks of a commercial motor vehicle more than thirty gallons of motor fuel or special fuel in violation of the provisions of the preceding paragraph is guilty of a simple misdemeanor.

Sec. 62. Section 452A.53, unnumbered paragraph 4, Code Supplement 1997, is amended to read as follows:

Each vehicle operated into or through Iowa in interstate operations using motor fuel or special fuel acquired in any other state shall carry in or on the vehicle a duplicate or evidence of the permit or license required in this section. A fee not to exceed fifty cents shall be charged for each duplicate or other evidence of a permit or license issued.

Sec. 63. Section 453A.3, subsection 2, Code Supplement 1997, is amended to read as follows:

2. A person who violates section 453A.2, subsection 2, shall pay a civil penalty pursuant to section 805.8, subsection 11. Failure to pay the civil penalty imposed for a violation of section 453A.2, subsection 2, is a simple misdemeanor punishable as a scheduled violation under section 805.8, subsection 11. Notwithstanding section 602.8106 or any other provision to the contrary, any civil penalty or criminal fine paid under this subsection shall be retained by the city or county enforcing the violation to be used for enforcement of section 453A.2.

Sec. 64. Section 455A.11, Code 1997, is amended to read as follows:

455A.11 PREFERENCES IN TEMPORARY EMPLOYMENT.

In its employment of persons in temporary positions in conservation and outdoor recreation, the department of natural resources shall give preference to persons meeting eligibility requirements for the green thumb program ~~under section 15.227~~ and to persons working toward an advanced education in natural resources and conservation.

Sec. 65. Section 487.909, Code Supplement 1997, is amended to read as follows:

487.909 RESIGNATION OF AGENT FOR SERVICE OF PROCESS.

An agent for service of process of a foreign limited partnership may resign as agent by signing and delivering to the secretary of state an original statement of resignation for filing in accordance with section ~~487.206~~ 487.108. The agent shall send a copy of the statement of resignation by certified mail to the foreign limited partnership at its principal place of business. The agent shall certify to the secretary of state that the copy has been sent to the limited partnership, including the date the copy was sent. The appointment of the agent terminates on the date on which the statement is filed by the secretary of state.

Sec. 66. Section 490.1110, subsection 2, Code Supplement 1997, is amended to read as follows:

2. This section does not apply in any of the following circumstances:

a. The corporation does not have a class of voting stock that is listed on a national securities exchange, authorized for quotation on the national association of securities dealers automated quotations – national market system, or held of record by more than two thousand shareholders, unless any of the foregoing results from action taken, directly or indirectly, by an interested shareholder or from a transaction in which a person becomes an interested shareholder.

b. The corporation's original articles of incorporation contain a provision expressly electing not to be governed by this section.

c. The corporation, by action of its board of directors, adopts an amendment to its bylaws by no later than September 29, 1997, expressly electing not to be governed by this section, which amendment shall not be further amended by the board of directors.

d. The corporation, by action of its shareholders, adopts an amendment to its articles of incorporation or bylaws expressly electing not to be governed by this section, provided that, in addition to any other vote required by law, such amendment to the articles of incorporation or bylaws must be approved by the affirmative vote of a majority of the shares entitled to vote. An amendment adopted pursuant to this paragraph is effective immediately in the case of a corporation that has never had a class of voting stock that falls within any of the three categories set out in paragraph "a" and has not elected by a provision in its original articles of incorporation or any amendment to such articles to be governed by this section. In all other cases, an amendment adopted pursuant to this paragraph is not effective until twelve months after the adoption of the amendment and does not apply to any business combination between the corporation and any person who became an interested shareholder of the corporation on or prior to such adoption.

An amendment to the bylaws adopted pursuant to this paragraph shall not be further amended by the board of directors.

e. A shareholder becomes an interested shareholder inadvertently and both of the following apply:

(1) As soon as practicable the shareholder divests itself of ownership of sufficient shares so that the shareholder ceases to be an interested shareholder.

(2) The shareholder would not, at any time within the three-year period immediately prior to a business combination between the corporation and such shareholder, have been an interested shareholder but for the inadvertent acquisition of ownership.

f. (1) The business combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required in this paragraph of a proposed transaction which satisfies all of the following:

(a) Constitutes a transaction described in subparagraph (2).

(b) Is with or by a person who either was not an interested shareholder during the previous three years or who became an interested shareholder with the approval of the corporation's board of directors or who became an interested shareholder during the time period described in paragraph "g".

(c) Is approved or not opposed by a majority of the members of the board of directors then in office who were directors prior to any person becoming an interested shareholder during the previous three years, or who were recommended for election or elected to succeed such directors by a majority of such directors.

(2) A proposed transaction under subparagraph (1) is limited to the following:

(a) A merger of the corporation, other than a merger pursuant to section 490.1104.

(b) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions and whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation, other than to a direct or indirect wholly owned subsidiary of the corporation or to the corporation itself, which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

(c) A proposed tender or exchange offer for fifty percent or more of the outstanding voting stock of the corporation.

(3) The corporation shall give no less than twenty days' notice to all interested shareholders prior to the consummation of any of the transactions described in subparagraph (2), subparagraph subdivision (a) or (b).

g. The business combination is with an interested shareholder who becomes an interested shareholder of the corporation at a time when the corporation is not subject to this section pursuant to ~~paragraphs~~ paragraph "a", ~~through~~ "b", "c", or "d".

Notwithstanding paragraphs "a" through "d", a corporation may elect under its original articles of incorporation or any amendment to such articles to be subject to this section. However, such amendment shall not apply to restrict a business combination between the corporation and an interested shareholder of the corporation if the interested shareholder became such prior to the effective date of the amendment.

Sec. 67. Section 499.22, Code Supplement 1997, is amended to read as follows:

499.22 CAPITAL STOCK.

An association with capital stock may divide the shares into common and preferred stock. Par value stock shall not be issued for less than par. The general corporation laws shall govern the consideration for which no-par stock is issued. If the articles so provide, common stock may be issued in two classes, voting and nonvoting. Voting stock shall be issued to all agricultural producers and nonvoting stock to all other members. Voting stock or nonvoting stock may be issued to a cooperative association as provided in the ~~cooperative association's~~ articles of incorporation of the association issuing the stock. Nonvoting stock shall have all privileges of membership except the right to vote. Preferred stock held by nonmembers shall not exceed in amount that held by members.

Sec. 68. Section 513B.7, subsections 2 and 3, Code Supplement 1997, are amended to read as follows:

2. A small employer carrier or organized delivery system shall file each March 1 with the commissioner or the director of public health an actuarial certification that the small employer carrier or organized delivery system is in compliance with this section and that the rating methods of the small employer carrier or organized delivery system are actuarially sound. A copy of the certification shall be retained by the small employer carrier or organized delivery system at its principal place of business.

3. A small employer carrier or organized delivery system shall make the information and documentation described in subsection 1 available to the commissioner or ~~organized delivery system~~ the director of public health upon request. The information is not a public record or otherwise subject to disclosure under chapter 22, and is considered proprietary and trade secret information and is not subject to disclosure by the commissioner or the director of public health to persons outside of the division or department except as agreed to by the small employer carrier or organized delivery system or as ordered by a court of competent jurisdiction.

Sec. 69. Section 513B.10, subsection 4, paragraph b, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

A carrier or organized delivery system offering group health insurance coverage shall not impose any preexisting condition exclusion as follows:

Sec. 70. Section 514E.1, subsection 1, Code Supplement 1997, is amended to read as follows:

1. "Association" means the Iowa comprehensive health insurance association established by section 514E.2.

Sec. 71. Section 514E.7, subsection 4, paragraph b, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

Plan coverage shall not impose any preexisting condition exclusion as follows:

Sec. 72. Section 535.11, subsection 4, Code 1997, is amended to read as follows:

4. With respect to an open account, the creditor may impose a finance charge not exceeding that permitted by section 537.2202, ~~subsections~~ subsection 2 ~~and 3~~.

Sec. 73. Section 537.2202, subsection 3, Code Supplement 1997, is amended by striking the subsection.

Sec. 74. Section 537.2402, subsection 3, Code Supplement 1997, is amended by striking the subsection.

Sec. 75. Section 537B.2, subsection 2, Code 1997, is amended to read as follows:

2. "Motor vehicle" means a motor vehicle as defined in section 321.1 which is subject to registration. However, "motor vehicle" does not include a motor vehicle, as defined in section 321.1, with a ~~registered~~ gross vehicle weight rating of more than twelve thousand pounds.

Sec. 76. Section 556.13, subsection 3, Code Supplement 1997, is amended to read as follows:

3. If the holder of property reported to the treasurer of state is the issuer of a certificated security, the treasurer of state has the right to obtain a replacement certificate pursuant to section ~~554.8408~~ 554.8405 but an indemnity bond is not required.

Sec. 77. Section 602.6110, subsection 1, Code Supplement 1997, is amended to read as follows:

1. A peer review court may be established in each judicial district to divert certain ~~youthful~~ juvenile offenders from the criminal or juvenile justice systems. The court shall consist of a qualified adult to act as judge while the duties of prosecutor, defense counsel, court attendant, clerk, and jury shall be performed by persons twelve through seventeen years of age.

Sec. 78. Section 614.1, subsection 2A, paragraph b, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) The fifteen-year limitation in paragraph "a" shall not apply to the time period in which to discover a disease that is latent and caused by exposure to a harmful material, in which event the cause of action shall be deemed to have accrued when the disease and such disease's cause have been made known to the person or at the point the person should have been aware of the disease and such disease's cause. This subsection shall not apply to cases governed by section 614.1, subsection 11.

Sec. 79. Section 633.556, subsection 3, Code Supplement 1997, is amended to read as follows:

3. Section 633.551 applies to the appointment of a ~~conservator~~ guardian.

Sec. 80. Section 673.3, unnumbered paragraph 4, Code Supplement 1997, is amended to read as follows:

The domesticated animal may ~~act~~ react unpredictably to conditions, including, but not limited to, a sudden movement, loud noise, an unfamiliar environment, or the introduction of unfamiliar persons, animals, or objects.

Sec. 81. Section 730.5, subsection 3, paragraph f, Code 1997, is amended to read as follows:

f. The employer shall provide substance abuse evaluation, and treatment if recommended by the evaluation, with costs apportioned as provided under the employee benefit plan or at employer expense, if there is no employee benefit plan, the first time an employee's drug test indicates the presence of alcohol or a controlled substance. An employer shall take no disciplinary action against an employee due to the employee's drug involvement the first time the employee's drug test indicates the presence of alcohol or a controlled substance if the employee undergoes a substance abuse evaluation, and if the employee successfully completes substance abuse treatment if treatment is recommended by the evaluation. However, if an employee fails to undergo substance abuse evaluation when required under the results of a drug test, or fails to successfully complete substance abuse treatment when recommended by an evaluation, the employee may be disciplined up to and including discharge. The substance abuse evaluation and treatment provided by the employer shall take

place under a program approved by the department of public health or accredited by the joint commission on the accreditation of ~~hospitals~~ health care organizations.

Sec. 82. Section 805.8, subsection 2, paragraph c, Code Supplement 1997, is amended to read as follows:

c. For improperly used or nonused, or defective or improper equipment, other than brakes, driving lights and brake lights, under sections 321.317, 321.387, 321.388, 321.389, 321.390, ~~321.391,~~ 321.392, 321.393, 321.422, 321.432, 321.436, 321.437, 321.438, subsection 1 or 3, sections 321.439, 321.440, 321.441, 321.442, 321.444, and 321.445, the scheduled fine is ten dollars.

Sec. 83. Section 805.8, subsection 2, paragraph p, Code Supplement 1997, is amended by striking the paragraph.

Sec. 84. Section 805.8, subsection 2, paragraph q, Code Supplement 1997, is amended to read as follows:

q. For failure to have proper carrier identification markings under section ~~325.31, 327.19, 327A.8, or~~ 327B.1, the scheduled fine is fifteen dollars.

Sec. 85. Section 805.8, subsection 2, paragraph v, Code Supplement 1997, is amended to read as follows:

v. Violations of the schedule of axle and tandem axle and gross or group of axle weight violations in section 321.463 shall be scheduled violations subject to the provisions, procedures and exceptions contained in sections 805.6 to 805.11, irrespective of the amount of the fine under that schedule. Violations of the schedule of weight violations shall be chargeable, where the fine charged does not exceed one hundred dollars, only by uniform citation and complaint. Violations of the schedule of weight violations, where the fine charged exceeds one hundred dollars:

~~(1)~~ ~~Shall~~ shall, when the violation is admitted and section 805.9 applies, be chargeable upon uniform citation and complaint, indictment, or county attorney's information,

~~(2)~~ but otherwise, shall be chargeable only upon indictment or county attorney's information.

PARAGRAPH DIVIDED. In all cases of charges under the schedule of weight violations, the charge shall specify the amount of fine charged under the schedule. Where a defendant is convicted and the fine under the foregoing schedule of weight violations exceeds one hundred dollars, the conviction shall be of an indictable offense although section 805.9 is employed and whether the violation is charged upon uniform citation and complaint, indictment, or county attorney's information.

Sec. 86. Section 805.8, subsection 11, paragraph b, subparagraph (2), Code Supplement 1997, is amended to read as follows:

(2) For failing to pay the civil penalty under section 453A.2, subsection 2, the scheduled criminal fine is twenty-five dollars if the violation is a first offense, fifty dollars if the violation is a second offense, and one hundred dollars if the violation is a third or subsequent offense. Failure to pay the scheduled criminal fine shall not result in the person being detained in a secure facility. The complainant shall not be charged a filing fee.

Sec. 87. Section 809A.4, subsection 2, paragraph b, Code 1997, is amended to read as follows:

b. If the only conduct giving rise to forfeiture is a violation of section 124.401, subsection ~~3~~ 5, real property is not subject to forfeiture and other property subject to forfeiture pursuant to paragraph "a", subparagraph (2), may be forfeited only pursuant to section 809A.14.

Sec. 88. Section 903A.2, Code Supplement 1997, is amended to read as follows:

903A.2 GOOD CONDUCT TIME.

1. Each inmate committed to the custody of the director of the department of corrections is eligible for a reduction of sentence for good behavior in the manner provided in this section. For purposes of calculating the amount of time by which an inmate's sentence may be reduced, inmates shall be grouped into the following two sentencing categories:

a. Category "A" sentences are those sentences which are not subject to a maximum accumulation of good conduct time of fifteen percent of the total sentence of confinement under section 902.12. To the extent provided in subsection 5, category "A" sentences also include life sentences imposed under section 902.1. An inmate of an institution under the control of the department of corrections who is serving a category "A" sentence is eligible for a reduction of sentence equal to one day for each day of good conduct while committed to one of the department's institutions. In addition, each inmate who is serving a category "A" sentence is eligible for an additional reduction of up to five days per month if the inmate participates satisfactorily in any of the following activities:

(1) Employment in the institution.
(2) Iowa state industries.
(3) An employment program established by the director.
(4) A treatment program established by the director.
(5) An inmate educational program approved by the director.

b. Category "B" sentences are those sentences which are subject to a maximum accumulation of good conduct time of fifteen percent of the total sentence of confinement under section 902.12. An inmate of an institution under the control of the department of corrections who is serving a category "B" sentence is eligible for a reduction of sentence equal to fifteen eighty-fifths of a day for each day of good conduct by the inmate.

2. Good conduct time earned pursuant to this section may be forfeited in the manner prescribed in section 903A.3.

3. Time served in a jail or another facility prior to actual placement in an institution under the control of the department of corrections and credited against the sentence by the court shall accrue for the purpose of reduction of sentence under this section. Time which elapses during an escape shall not accrue for purposes of reduction of sentence under this section.

4. Time which elapses between the date on which a person is incarcerated, based upon a determination of the board of parole that a violation of parole has occurred, and the date on which the violation of parole was committed shall not accrue for purposes of reduction of sentence under this section.

5. Good conduct time accrued by inmates serving life sentences imposed under section 902.1 shall not reduce the life sentence, but shall be credited against the inmate's sentence if the life sentence is commuted to a term of years under section 902.2.

Sec. 89. Section 903A.7, Code Supplement 1997, is amended to read as follows:

903A.7 SEPARATE SENTENCES.

Consecutive multiple sentences that are within the same category under section 903A.2 shall be construed as one continuous sentence for purposes of calculating reductions of sentence for good conduct time. If a person is sentenced to serve sentences of both categories, category "B" sentences shall be served before category "A" sentences are served, and good conduct time earned against the category "B" sentences shall not be used to reduce the category "A" sentences. If an inmate serving a category "A" sentence is sentenced to serve a category "B" sentence, the category "A" sentence shall be interrupted, and no further good conduct time shall accrue against that sentence until the category "B" sentence is completed.

Sec. 90. Section 910.9, unnumbered paragraph 3, Code Supplement 1997, is amended to read as follows:

Fines, penalties, and surcharges, crime victim compensation program reimbursement, public agency restitution, court costs including correctional fees claimed by a sheriff pursuant to section 356.7, court-appointed attorney's fees, and expenses for public defenders, shall not be withheld by the clerk of court until all victims have been paid in full. Payments

to victims shall be made by the clerk of court at least quarterly. Payments by a clerk of court shall be made no later than the last business day of the quarter, but may be made more often at the discretion of the clerk of court. The clerk of court receiving final payment from an offender, shall notify all victims that full restitution has been made, and a copy of the notice shall be sent to the sentencing court. Each office or individual charged with supervising an offender who is required to perform community service as full or partial restitution shall keep records to assure compliance with the portions of the plan of restitution and restitution plan of payment relating to community service and, when the offender has complied fully with the community service requirement, notify the sentencing court.

Sec. 91. 1997 Iowa Acts, chapter 84, section 6, is amended to read as follows:

SEC. 6. EFFECTIVE DATE — APPLICABILITY. This Act, being deemed of immediate importance, takes effect upon enactment. ~~Notwithstanding~~ Prior to the beginning of school for the school year beginning July 1, 1997, and notwithstanding the timing of the notice requirements in section 4 of this Act, a school district may conduct periodic inspection of school lockers, desks, or other facilities or spaces if the school district sends a notice to all students and the students' parents, guardians, or legal custodians prior to commencing any inspections.

Sec. 92. 1997 Iowa Acts, chapter 130, section 3, is amended by striking the section and inserting in lieu thereof the following:

SEC. 3. Section 904.102, subsection 8, Code 1997, is amended to read as follows:

8. ~~Correctional release center~~ Newton correctional facility.

Sec. 93. 1997 Iowa Acts, chapter 137, section 7, is amended by striking the section and inserting in lieu thereof the following:

SEC. 7. Section 455B.304, subsection 2, Code 1997, is amended to read as follows:

2. The commission shall adopt rules that allow the use of wet or dry sludge from publicly owned treatment works for land application. A sale of wet or dry sludge for the purpose of land application shall be accompanied by a written agreement signed by both parties which contains a general analysis of the contents of the sludge. The heavy metal content of the sludge shall not exceed that allowed by rules of the commission. An owner of a publicly owned treatment works which sells wet or dry sludge ~~is not subject to criminal liability for acts or omissions in connection with a sale, and~~ is not subject to any action by the purchaser to recover damages for harm to person or property caused by sludge that is delivered pursuant to a sale unless it is a result of a violation of the written agreement or if the heavy metal content of the sludge exceeds that allowed by rules of the commission. Nothing in this section shall provide immunity to any person from action by the department pursuant to section 455B.307. The rules ~~promulgated~~ adopted under this subsection shall be generally consistent with those rules of the department existing on January 1, 1982, regarding the land application of municipal sewage sludge except that they may provide for different methods of application for wet sludge and dry sludge.

Sec. 94. 1997 Iowa Acts, chapter 175, section 110, is amended by striking the section and inserting in lieu thereof the following:

SEC. 110. Section 252I.1, subsections 1, 3, 5, and 8, Code 1997, are amended to read as follows:

1. "Account" means "account" as defined in section 524.103, "share account or shares" as defined in section 534.102, the savings or deposits of a member received or being held by a credit union, or certificates of deposit. "Account" also includes deposits held by an agent, a broker-dealer, or an issuer as defined in section 502.102 and money-market mutual fund accounts. However, "account" does not include amounts held by a financial institution as collateral for loans extended by the financial institution.

3. "Court order" means "~~court~~ support order" as defined in section ~~252C.1~~ 252J.1.

5. "Financial institution" ~~includes a bank, credit union, or savings and loan association~~

means "financial institution" as defined in 42 U.S.C. § 669A(d)(1). "Financial institution" also includes an institution which holds deposits for an agent, broker-dealer, or an issuer as defined in section 502.102.

8. "Support" or "support payments" means "support" or "support payments" as defined in section ~~252D.1~~ 252D.16A.

Sec. 95. 1997 Iowa Acts, chapter 176, section 32, is amended by striking the section and inserting in lieu thereof the following:

SEC. 32. Section 235A.15, subsection 2, paragraph b, unnumbered paragraph 1, Code 1997, as amended by this Act, is amended to read as follows:

Persons involved in an ~~investigation or~~ assessment of child abuse as follows:

Sec. 96. 1997 Iowa Acts, chapter 176, section 33, is amended by striking the section and inserting in lieu thereof the following:

SEC. 33. Section 235A.15, subsection 2, paragraph b, subparagraphs (2), (3), (4), and (8), Code 1997, as amended by this Act, are amended to read as follows:

(2) To an employee or agent of the department of human services responsible for the ~~investigation or~~ assessment of a child abuse report.

(3) To a law enforcement officer responsible for assisting in an ~~investigation~~ assessment of a child abuse allegation or for the temporary emergency removal of a child from the child's home.

(4) To a multidisciplinary team, if the department of human services approves the composition of the multidisciplinary team and determines that access to the team is necessary to assist the department in the ~~investigation,~~ diagnosis, assessment, and disposition of a child abuse case.

(8) To a licensing authority for a facility providing care to a child named in a report, if the licensing authority is notified of a relationship between facility policy and the alleged child abuse under section ~~232.71, subsection 4~~ 232.71B.

Sec. 97. 1997 Iowa Acts, chapter 176, section 37, is amended by striking the section and inserting in lieu thereof the following:

SEC. 37. Section 235A.15, subsection 6, Code 1997, as amended by this Act, is amended to read as follows:

6. a. If a child who is a legal resident of another state is present in this state and a report of child abuse is made concerning the child, the department shall act to ensure the safety of the child. The department shall contact the child's state of legal residency to coordinate the ~~investigation or~~ assessment of the report. If the child's state of residency refuses to conduct an ~~investigation or~~ assessment, the department shall commence an appropriate ~~investigation or~~ assessment.

b. If a report of child abuse is made concerning an alleged perpetrator who resides in this state and a child who resides in another state, the department shall assist the child's state of residency in conducting an ~~investigation or~~ assessment of the report. The assistance shall include but is not limited to an offer to interview the alleged perpetrator and any other relevant source. If the child's state of residency refuses to conduct an ~~investigation or~~ assessment of the report, the department shall commence an appropriate ~~investigation or~~ assessment. The department shall seek to develop protocols with states contiguous to this state for coordination in the ~~investigation or~~ assessment of a report of child abuse when a person involved with the report is a resident of another state.

Sec. 98. 1997 Iowa Acts, chapter 176, section 39, is amended by striking the section and inserting in lieu thereof the following:

SEC. 39. Section 235A.19, subsection 2, paragraph a, Code 1997, as amended by this Act, is amended to read as follows:

a. A subject of a child abuse report may file with the department within six months of the date of the notice of the results of ~~an investigation required by section 232.71, subsection 7,~~

~~or~~ an assessment performed in accordance with section ~~232.71A~~ 232.71B, a written statement to the effect that report data and disposition data referring to the subject is in whole or in part erroneous, and may request a correction of that data or of the findings of the ~~investigation or~~ assessment report. The department shall provide the subject with an opportunity for an evidentiary hearing pursuant to chapter 17A to correct the data or the findings, unless the department corrects the data or findings as requested. The department may defer the hearing until the conclusion of a pending juvenile or district court case relating to the data or findings.

Sec. 99. RETROACTIVE APPLICABILITY. Sections 92 through 94 of this Act, amending 1997 Iowa Acts, chapters 130, 137, and 175, are retroactively applicable to July 1, 1997.

Approved April 15, 1998

CHAPTER 1101

ENHANCED E911 EMERGENCY TELEPHONE SYSTEMS — WIRELESS COMMUNICATIONS SURCHARGE AND E911 ADMINISTRATOR

S.F. 530

AN ACT relating to the establishment of an E911 surcharge, providing for the distribution of the surcharge, and providing a pooling mechanism for the purchase of equipment necessary for an E911 system and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 16.161, Code 1997, is amended to read as follows:

16.161 AUTHORITY TO ISSUE E911 PROGRAM BONDS AND NOTES.

The authority shall assist the ~~department of public defense~~ administrator appointed pursuant to section 34A.2A or* as provided in chapter 34A, subchapter II and the authority shall have all of the powers delegated to it by a joint E911 service board or the department of public defense in a chapter 28E agreement with respect to the issuance and securing of bonds or notes and the carrying out of the purposes of chapter 34A.

Sec. 2. Section 16.161, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The authority shall provide a mechanism for the pooling of funds of two or more joint E911 service boards to be used for the joint purchasing of necessary equipment and reimbursement of land-line and wireless service providers' costs for upgrades necessary to provide E911 service. When two or more joint E911 service boards have agreed to pool funds for the purpose of purchasing necessary equipment to be used in providing E911 service, the authority shall issue bonds and notes as provided in sections 34A.20 through 34A.22.

Sec. 3. Section 34A.2, subsection 2, Code 1997, is amended to read as follows:

2. "Administrator" means the E911 administrator ~~of the division of emergency management of the department of public defense~~ appointed pursuant to section 34A.2A.

Sec. 4. Section 34A.2, subsection 3, Code 1997, is amended by striking the subsection.

* The underscored word "or" probably not intended

Sec. 5. NEW SECTION. 34A.2A ADMINISTRATOR — APPOINTMENT — DUTIES.
The administrator of the division of emergency management of the department of public defense shall appoint an E911 administrator to administer this chapter. The E911 administrator shall act under the supervisory control of the administrator of the division of emergency management of the department of public defense, and in consultation with the E911 communications council, and perform the duties specifically set forth in this chapter.

Sec. 6. Section 34A.3, subsection 1, Code 1997, is amended to read as follows:
1. JOINT 911 SERVICE BOARDS TO SUBMIT PLANS. The board of supervisors of each county shall establish a joint 911 service board not later than January 1, 1989. Each political subdivision of the state having a public safety agency serving territory within the county is entitled to voting membership on the joint 911 service board. Each private safety agency operating within the area is entitled to nonvoting membership on the board. A township which does not operate its own public safety agency, but contracts for the provision of public safety services, is not entitled to membership on the joint 911 service board, but its contractor is entitled to membership according to the contractor's status as a public or private safety agency. The joint 911 service board shall develop an enhanced 911 service plan encompassing at minimum the entire county, unless an exemption is granted by the administrator permitting a smaller E911 service area. The administrator may grant a discretionary exemption from the single county minimum service area requirement based upon an E911 joint service board's or other E911 service plan operating authority's presentation of evidence which supports the requested exemption if the administrator finds that local conditions make adherence to the minimum standard unreasonable or technically infeasible, and that the purposes of this chapter would be furthered by granting an exemption. The minimum size requirement is intended to prevent unnecessary duplication of public safety answering points and minimize other administrative, personnel, and equipment expenses. An E911 service area must encompass a geographically contiguous area. No exemption shall be granted from the contiguous area requirement. The administrator may order the inclusion of a specific territory in an adjoining E911 service plan area to avoid the creation by exclusion of a territory smaller than a single county not serviced by surrounding E911 service plan areas upon request of the joint 911 service board representing the territory. The E911 service plan operating authority shall submit the plan on or before January 1, 1994, to all of the following:
a. The ~~division~~ administrator.
b. Public and private safety agencies in the enhanced 911 service area.
c. Providers affected by the enhanced 911 service plan.
An E911 joint service board that has a state-approved service plan in place prior to July 1, 1993, is exempt from the provisions of this section. The ~~division~~ administrator shall establish, by July 1, 1994, E911 service plans for those E911 joint service boards which do not have a state-approved service plan in place on or before January 1, 1994.
The ~~division~~ administrator shall prepare a summary of the plans submitted and present the summary to the legislature on or before August 1, 1994.

Sec. 7. Section 34A.6, subsection 3, Code 1997, is amended to read as follows:
3. The secretary of state, in consultation with the administrator ~~of the office of emergency management of the department of public defense~~, shall adopt rules for the conduct of joint E911 service referendums as required by and consistent with subsections 1 and 2.

Sec. 8. Section 34A.7, subsection 6, Code 1997, is amended to read as follows:
6. LIMITATION OF ACTIONS — PROVIDER NOT LIABLE ON CAUSE OF ACTION RELATED TO PROVISION OF 911 SERVICES. A claim or cause of action does not exist based upon or arising out of an act or omission in connection with a land-line or wireless provider's participation in an E911 service plan or provision of 911 or local exchange access service, unless the act or omission is determined to be willful and wanton negligence.

Sec. 9. NEW SECTION. 34A.7A WIRELESS COMMUNICATIONS SURCHARGE — FUND ESTABLISHED — DISTRIBUTION AND PERMISSIBLE EXPENDITURES.

1. a. Notwithstanding section 34A.6, the administrator shall adopt by rule a monthly surcharge of up to fifty cents to be imposed on each wireless communications service number provided in this state. The surcharge shall be imposed uniformly on a statewide basis and simultaneously on all wireless communications service numbers as provided by rule of the administrator.

b. The administrator shall provide no less than one hundred days' notice of the surcharge to be imposed to each wireless communications service provider. The administrator, subject to the fifty cent limit in paragraph "a", may adjust the amount of the surcharge as necessary, but no more than once in any calendar year.

c. The surcharge shall be collected as part of the wireless communications service provider's periodic billing to a subscriber. In compensation for the costs of billing and collection, the provider may retain one percent of the gross surcharges collected. The surcharges shall be remitted quarterly by the provider to the administrator for deposit into the fund established in subsection 2. A provider is not liable for an uncollected surcharge for which the provider has billed a subscriber but which has not been paid. The surcharge shall appear as a single line item on a subscriber's periodic billing indicating that the surcharge is for E911 emergency telephone service. The E911 service surcharge is not subject to sales or use tax.

2. Moneys collected pursuant to subsection 1 shall be deposited in a separate wireless E911 emergency communications fund within the state treasury under the control of the administrator. Section 8.33 shall not apply to moneys in the fund. Moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section. Moneys in the fund shall be expended and distributed annually as follows:

a. An amount as appropriated by the general assembly to the administrator for implementation, support, and maintenance of the functions of the administrator.

b. (1) The administrator shall retain funds necessary to reimburse wireless carriers for their costs to deliver E911 services. The administrator shall assure that wireless carriers recover all eligible costs associated with the implementation and operation of E911 services, including but not limited to hardware, software, and transport costs. The administrator shall adopt rules defining eligible costs which are consistent with federal law, regulations, and any order of a federal agency.

(2) The administrator shall provide for the reimbursement of wireless carriers on a quarterly basis. If the total amount of moneys available in the fund for the reimbursement of wireless carriers pursuant to subparagraph (1) is insufficient to reimburse all wireless carriers for such carriers' eligible expenses, the administrator shall remit an amount to each wireless carrier equal to the percentage of such carrier's eligible expenses as compared to the total of all eligible expenses for all wireless carriers for the calendar quarter during which such expenses were submitted.

c. (1) The remainder of the surcharge collected shall be remitted to the administrator for distribution to the joint E911 service boards and the department of public safety pursuant to subparagraph (2) to be used for the implementation of enhanced wireless communications capabilities.

(2) The administrator, in consultation with the E911 communications council, shall adopt rules pursuant to chapter 17A governing the distribution of the surcharge collected and distributed pursuant to this lettered paragraph. The rules shall include provisions that all joint E911 service boards and the department of public safety which answer or service wireless E911 calls are eligible to receive an equitable portion of the receipts.

A joint E911 service board or the department of public safety, to receive funds from the E911 emergency communications fund, must submit a written request for such funds to the administrator in a form as approved by the administrator. A request shall be for funding

under an approved E911 service plan for equipment which is directly related to the reception and disposition of incoming wireless E911 calls. The administrator may approve the distribution of funds pursuant to such request if the administrator finds that the requested funding is for equipment necessary for the reception and disposition of such calls and that sufficient funds are available for such distribution.

If insufficient funds are available to fund all requests, the administrator shall fund requests in an order deemed appropriate by the administrator after considering factors including, but not limited to, all of the following:

(a) Documented volume of wireless E911 calls received by each public safety answering point.

(b) The population served by each public safety answering point.

(c) The number of wireless telephones in the public safety answering point jurisdiction.

(d) The public safety of the citizens of this state.

(e) Any other factor deemed appropriate by the administrator, in consultation with the E911 communications council, and adopted by rule.

(3) The administrator shall submit an annual report by January 15 of each year advising the general assembly of the status of E911 implementation and operations, including both land-line and wireless services, and the distribution of surcharge receipts.

3. The amount collected from a wireless service provider and deposited in the fund, pursuant to section 22.7, subsection 6, information provided by a wireless service provider to the administrator consisting of trade secrets, pursuant to section 22.7, subsection 3, and other financial or commercial operations information provided by a wireless service provider to the administrator, shall be kept confidential as provided under section 22.7. This subsection does not prohibit the inclusion of information in any report providing aggregate amounts and information which does not identify numbers of accounts or customers, revenues, or expenses attributable to an individual wireless communications service provider.

4. For purposes of this section, "wireless communications service" means commercial mobile radio service, as defined under sections 3(27) and 332(d) of the federal Telecommunications Act of 1996, 47 U.S.C. § 151 et seq.; federal communications commission rules, and the Omnibus Budget Reconciliation Act of 1993. "Wireless communications service" includes any wireless two-way communications used in cellular telephone service, personal communications service, or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network access line. "Wireless communications service" does not include services whose customers do not have access to 911 or a 911-like service, a communications channel utilized only for data transmission, or a private telecommunications system.

Sec. 10. Section 34A.15, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

An E911 communications council is established. The council consists of the following ~~eleven~~ thirteen members:

Sec. 11. Section 34A.15, subsection 1, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. k. Two persons appointed by the Iowa wireless industry. One appointee shall represent cellular companies and the other appointee shall represent personal communications services companies.

Sec. 12. Section 34A.15, subsection 2, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

2. The council shall advise and make recommendations to the administrator regarding the implementation of this chapter. Such advice and recommendations shall be provided on issues at the request of the administrator or as deemed necessary by the council.

Sec. 13. Section 34A.15, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. A member of the council shall be reimbursed for actual and necessary expenses incurred in the performance of the member's duties, if such member is not otherwise reimbursed for such expenses.

Sec. 14. Section 34A.20, subsection 2, Code 1997, is amended to read as follows:

2. The authority shall cooperate with the ~~department of public defense~~ administrator in the creation, administration, and funding of the E911 program established in subchapter I.

Sec. 15. TRANSITION PROVISIONS.

1. The E911 administrator appointed pursuant to section 34A.2A, as enacted in this Act, shall be appointed by no later than July 1, 1998. The E911 administrator shall determine and implement an initial surcharge as soon as possible, but at a minimum such surcharge shall be determined and implemented by no later than January 1, 1999.

2. a. There is appropriated from surcharge moneys received by the E911 administrator and deposited into the wireless E911 emergency communications fund, for the fiscal year beginning July 1, 1998, and ending June 30, 1999, an amount not to exceed two hundred thousand dollars to be used for the implementation, support, and maintenance of the functions of the E911 administrator. The amount appropriated in this paragraph includes any amounts necessary to reimburse the division of emergency management of the department of public defense pursuant to paragraph "b".

b. Notwithstanding the distribution formula in section 34A.7A, as enacted in this Act, and prior to any such distribution, of the initial surcharge moneys received by the E911 administrator and deposited into the wireless E911 emergency communications fund, for the fiscal year beginning July 1, 1998, and ending June 30, 1999, an amount shall be transferred to the division of emergency management of the department of public defense as necessary to reimburse the division for amounts expended for the implementation, support, and maintenance of the E911 administrator, including the E911 administrator's salary.

3. a. Notwithstanding the distribution formula in section 34A.7A, as enacted in this Act, and after the distribution provided for in subsection 2 of this section and prior to any other distribution pursuant to section 34A.7A, of the surcharge moneys received by the E911 administrator and deposited into the wireless E911 emergency communications fund, for the fiscal year beginning July 1, 1998, and ending June 30, 1999, an amount not to exceed eighty thousand dollars shall be transferred to the Iowa law enforcement academy to be used for implementation, maintenance, and support of telecommunicator training. For purposes of this paragraph, the total amount transferred includes any amounts transferred to the Iowa law enforcement academy under paragraph "b".

b. The Iowa law enforcement academy shall begin as soon as practicable the telecommunicator training as provided in this subsection. If the academy expends funds on or after July 1, 1998, for telecommunicator training and prior to the imposition of the surcharge under section 34A.7A, the E911 administrator, subject to the limit of eighty thousand dollars in paragraph "a", shall transfer from the wireless E911 emergency communications fund to the Iowa law enforcement academy an amount necessary to reimburse the academy for such amounts expended by the academy. The E911 administrator and the Iowa law enforcement academy shall provide a written report to the fiscal committee of the legislative council and to the legislative fiscal bureau regarding amounts expended by the academy and reimbursed by the E911 administrator pursuant to this section.

c. The Iowa law enforcement academy, for telecommunicator training for fiscal years beginning on and after July 1, 1999, shall submit requests for funding through the general assembly's appropriation process in the same manner as the academy submits requests for other general fund appropriations.

4. a. The department of public defense is authorized two additional full-time equivalent positions for the purpose of implementing the amendments to chapter 34A in this Act. Included in these two full-time equivalent positions is the E911 administrator appointed pursuant to section 34A.2A, as enacted in this Act.

b. The Iowa law enforcement academy is authorized one and one-half additional full-time equivalent positions for the purpose of implementing telecommunicator training as provided for in this Act.

Sec. 16. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 16, 1998

CHAPTER 1102

MEMBERSHIP OF FAMILY DEVELOPMENT AND SELF-SUFFICIENCY COUNCIL

S.F. 2072

AN ACT providing for the appointment of an additional member to the family development and self-sufficiency council.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 217.11, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 9A. The director of the department of workforce development or the director's designee.

Approved April 16, 1998

CHAPTER 1103

RAW MILK TRANSPORTER PERMITS

S.F. 2218

AN ACT relating to the issuance of highway travel permits to raw milk transporters whose motor trucks exceed gross weight and axle weight restrictions and establishing a fee.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 321E.29A RAW MILK TRANSPORTERS.

The department or a local authority may issue annual permits authorizing a raw milk transporter to transport by motor truck raw milk to or from a milk plant, receiving station, or transfer station. The combined gross weight or gross weight on any axle or groups of axles of the motor truck shall not exceed the limits established under section 321.463. The issuing authority may specify weight limits or routes for each raw milk transporter or establish weight limits or routes under section 321E.8.

Sec. 2. Section 321.463, subsection 3, Code Supplement 1997, is amended to read as follows:

3. Notwithstanding other provisions of this chapter to the contrary, indivisible loads operating under the permit requirements of sections 321E.7, 321E.8, ~~and~~ 321E.9, and 321E.29A shall be allowed a maximum of twenty thousand pounds per axle.

Approved April 16, 1998

CHAPTER 1104

GRANDPARENT AND GREAT-GRANDPARENT VISITATION

S.F. 2261

AN ACT relating to the criteria for the awarding of grandparent and great-grandparent visitation rights.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 598.35, subsection 6, Code Supplement 1997, is amended to read as follows:

6. The paternity of a child born out of wedlock is judicially established and the grandparent of the child is the parent of the mother or father of the child or the great-grandparent of the child is the grandparent of the mother or father of the child and the mother of the child has custody of the child, or the grandparent of a child born out of wedlock is the parent of the mother or father of the child or the great-grandparent of the child is the grandparent of the mother or father of the child and custody has been awarded to the father of the child.

Approved April 16, 1998

CHAPTER 1105

CONFIDENTIALITY OF RECORDS AND REPORTS OF LABOR COMMISSIONER

S.F. 2321

AN ACT relating to the confidentiality of certain records and reports held by the labor commissioner.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 88.6, subsection 5, Code 1997, is amended to read as follows:

5. SPECIAL INSPECTIONS. Any employees or authorized employee representative who believes that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the commissioner or the commissioner's authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or authorized employee representative, and a copy shall be provided the employer or the employer's agent no later than at the time of inspection, except that upon the request of the person giving such notice the

person's ~~name~~ identifying information and the ~~names~~ identifying information of individual employees referred to ~~therein~~ in the notice shall not appear in such copy or on any record published, released, or made available ~~pursuant to this section~~. If, upon receipt of such notification, the commissioner determines that there are reasonable grounds to believe that such violation or danger exists, the commissioner shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the commissioner determines that there ~~is~~ are no reasonable grounds to believe that a violation or danger exists, the commissioner shall notify the employees or authorized employee representative in writing of such determination. For purposes of this subsection, "identifying information" means specific personal information including, but not limited to, the person's name, home address, telephone number, social security number, and handwriting and language idiosyncrasies. In circumstances when the release of any fact may be used to identify the person, that fact shall not be released.

Sec. 2. Section 88.6, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 8. CONFIDENTIALITY. Notwithstanding chapter 22, records prepared or obtained by the commissioner relating to an enforcement action conducted pursuant to this chapter shall be kept confidential until the enforcement action is complete. For purposes of this subsection, an enforcement action is complete when any of the following occurs:

a. An inspection file is closed without the issuance of a citation.

b. A citation or noncompliance notice resulting from an inspection becomes a final order of the employment appeal board and all applicable courts pursuant to sections 88.8 and 88.9, and abatement is verified.

c. A determination and any subsequent action is final in an occupational safety and health discrimination case.

A citation or noncompliance notice shall remain a confidential record until received by the appropriate employer. This subsection shall not affect the discovery rights of any party to a contested case.

Sec. 3. Section 88.16, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Notwithstanding chapter 22, consultation records prepared or obtained by the commissioner pursuant to this section and which relate to specific employers or specific workplaces shall be kept confidential. For purposes of this subsection, "consultation record" means a record created when an employer requests and receives from the labor commissioner direct assistance in the recognition and correction of workplace hazards.

Sec. 4. Section 91.12, Code 1997, is amended to read as follows:

91.12 REPORTS AND RECORDS TO DIVISION OF LABOR SERVICES.

1. ~~It shall be the duty of every~~ An owner, operator, or manager of every factory, mill, workshop, mine, store, railway, business house, public or private work, or any other establishment where labor is employed, ~~as herein provided, to make~~ shall submit to the division of labor services~~, upon blanks furnished~~ reports in the form and manner prescribed by the commissioner, ~~such reports and returns as the commissioner may require~~ for the purpose of compiling ~~such~~ labor statistics ~~as are contemplated in this chapter; and the~~. The owner, operator, or business manager shall ~~make such~~ submit the reports ~~or returns~~ within sixty days from ~~the~~ receipt of ~~blanks furnished by the commissioner~~ notice, and shall certify under oath ~~to~~ the ~~correctness~~ accuracy of the ~~same~~ reports.

2. Notwithstanding chapter 22, records containing identifiable financial institution or credit card account numbers obtained by the commissioner shall be kept confidential.

Approved April 16, 1998

CHAPTER 1106

INVESTMENT ADVISERS

S.F. 2325

AN ACT amending the uniform securities Act, by regulating persons involved in managing investments, providing for the administration of the securities bureau, providing fees, and providing for penalties and effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 502.102, Code Supplement 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 5A. "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80(b) et seq. "Federal covered adviser" does not include a person who is excluded from the definition of "investment adviser" as provided in subsection 9A, paragraph "c", subparagraphs (1) through (7).

NEW SUBSECTION. 9A. a. "Investment adviser" means any person who, for compensation, does any of the following:

(1) Engages in the business of providing investment advisory services by advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

(2) As a part of a regular business, issues or promulgates analyses or reports concerning securities.

b. "Investment adviser" includes a financial planner or other person who, as an integral component of other financially related services, does either of the following:

(1) Provides investment advisory services to others for compensation and as part of a business.

(2) Holds oneself out as providing investment advisory services to others for compensation.

c. "Investment adviser" does not include a person who is any of the following:

(1) An investment adviser representative.

(2) A bank, savings institution, or trust company.

(3) An attorney licensed to practice law in this state, a certified public accountant licensed pursuant to chapter 542C, a professional engineer licensed pursuant to chapter 542B, or a certified teacher, if the person's performance of these services is solely incidental to the practice of the person's profession.

(4) An attorney licensed to practice law in this state or a certified public accountant licensed pursuant to chapter 542C who does not do any of the following:

(a) Exercise investment discretion regarding the assets of a client or maintain custody of the assets of a client for the purpose of investing the assets, except when the person is acting as a bona fide fiduciary in a capacity such as an executor, administrator, trustee, estate or trust agent, guardian, or conservator.

(b) Accept or receive directly or indirectly any commission, fee, or other remuneration contingent upon the purchase or sale of any specific security by a client of such person.

(c) Provide advice regarding the purchase or sale of specific securities. However, this subparagraph subdivision (c) shall not apply when the advice about specific securities is based on a financial statement analysis or tax considerations that are reasonably related to and in connection with the person's profession.

(5) A broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them.

(6) A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or

by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.

(7) A person who is excluded from the definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940.

(8) A person who is a federal covered adviser.

(9) A person not within the intent of this subsection as the administrator may by rule or order designate.

d. As used in this subsection, "compensation" does not include a commission, fee, or a combination of a commission and a fee, which is paid to an insurance agent licensed under chapter 522, if the insurance agent receives the commission, fee, or the combination of a commission and a fee, for the sale of insurance as regulated pursuant to Title XIII, subtitle 1.

NEW SUBSECTION. 9B. a. "Investment adviser representative" means an individual including but not limited to a partner, officer, director, or an individual occupying a similar status or performing similar functions as a partner, officer, or director, except clerical or ministerial personnel, if both of the following apply:

(1) The individual is employed by or associated with an investment adviser that is registered or required to be registered under this chapter, or who is employed by or associated with a federal covered adviser.

(2) The individual does any of the following:

(a) Makes any recommendations or otherwise renders advice regarding securities.

(b) Manages accounts or portfolios of clients.

(c) Determines which recommendation or advice regarding securities should be given.

(d) Solicits, offers, or negotiates for the sale of or sells investment advisory services.

(e) Supervises employees who perform any of the functions in subparagraphs (a) through (d).

b. "Investment adviser representative" does not include any other person not within the intent of this subsection as the administrator may by rule or order designate.

Sec. 2. Section 502.102, subsection 14, Code Supplement 1997, is amended to read as follows:

14. "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisers Act of 1940", "Investment Company Act of 1940", "Internal Revenue Code" and "Agricultural Marketing Act" mean the federal statutes of those names.

Sec. 3. Section 502.301, subsection 3, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

3. It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless one of the following applies:

a. The person is registered under this part.

b. The person has no place of business in this state, and either of the following applies:

(1) The person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal covered advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the administrator.

(2) During the preceding twelve-month period the person has had no more than five clients, other than those specified in subparagraph (1), who are residents of this state.

Sec. 4. Section 502.301, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 4. It is unlawful for any of the following persons to do the following:

a. An investment adviser required to be registered to employ an investment adviser representative unless the investment adviser representative is registered under this chapter, provided that the registration of an investment adviser representative is not effective during any period when the investment adviser representative is not employed by an investment adviser registered under this part.

b. A federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state, unless the investment adviser representative is registered under this chapter, or is exempt from registration.

When an investment adviser representative begins or terminates employment or association with an investment adviser, the investment adviser in the case of paragraph "a", or the investment adviser representative in the case of paragraph "b", shall promptly notify the administrator.

NEW SUBSECTION. 5. Every registration or notice filing under this section expires December 31, unless renewed.

NEW SUBSECTION. 6. Except with respect to advisers whose only clients are those described in section 502.301, subsection 3, paragraph "b", it is unlawful for any federal covered adviser to conduct advisory business in this state unless such person complies with the provisions of section 502.302, subsection 2.

Sec. 5. Section 502.302, Code Supplement 1997, is amended to read as follows:

502.302 REGISTRATION AND NOTICE FILING PROCEDURES.

1. A broker-dealer, ~~or~~ agent, investment adviser, or investment adviser representative may obtain an initial or renewal license by filing with the administrator, or an organization which the administrator by rule designates, an application together with a consent to service of process pursuant to section 502.609 and the appropriate filing fee. The application shall contain ~~the~~ information the administrator requires by rule concerning the applicant's form and place of organization, proposed method of doing business and financial condition, and the qualifications and experience of the applicant~~, including, in~~. In the case of a broker-dealer or investment adviser, the application shall include the qualifications and experience of any partner, officer, director or controlling person, any injunction or administrative order or conviction of a misdemeanor involving securities and any conviction of a felony, and any other matters which the administrator determines are relevant to the application. In addition, in the case of an investment adviser, the application shall include any information to be furnished or disseminated to any client or prospective client, and any other information which the administrator determines is relevant to the application. If no denial order is in effect and no proceeding is pending under section 502.304, registration becomes effective at noon of the sixtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The administrator may by rule or order specify an earlier effective date.

2. Except with respect to federal covered advisers whose only clients are those described in section 502.301, subsection 3, paragraph "b", a federal covered adviser shall file with the administrator, prior to acting as a federal covered adviser in this state, such documents as have been filed with the securities and exchange commission as the administrator, by rule or order, may require.

3. Every applicant for initial or renewal registration as a broker-dealer or investment adviser shall pay a filing fee of two hundred dollars. Every applicant for initial or renewal registration as an agent or investment adviser representative shall pay a filing fee of thirty dollars. A filing fee is not refundable. Every person acting as a federal covered adviser in this state, except with respect to federal covered advisers whose only clients are those described in section 502.301, subsection 3, paragraph "b", shall pay an initial and renewal notice filing fee of one hundred dollars.

~~3.~~ 4. A registered broker-dealer, federal covered adviser, or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

~~4.~~ 5. The administrator may by rule or order require a minimum capital for broker-dealers subject to the limitations of section 15 of the Securities Exchange Act of 1934. The administrator by rule or order may also establish minimum financial requirements for investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of client funds or securities or who have discretionary authority over client funds or securities and those investment advisers who do not.

6. The administrator may by rule or order require investment advisers who have custody of or discretionary authority over client funds or securities to post bonds in amounts as the administrator may prescribe, subject to the limitations of section 222 of the Investment Advisers Act of 1940 and may determine conditions on the bonds. A bond shall not be required of any investment adviser whose minimum financial requirements, which may be defined by rule, exceed the amounts required by the administrator. Every bond shall provide for suit on the bond by the person who has a cause of action under this chapter and, if the administrator by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that a suit shall not be maintained to enforce liability on the bond unless brought within the time limitations of section 502.504.

~~5.~~ 7. The administrator may by rule or order impose such other conditions in connection with registration under this chapter as are deemed appropriate, in the public interest or for the protection of investors.

Sec. 6. Section 502.303, Code Supplement 1997, is amended to read as follows:

502.303 POST-REGISTRATION PROVISIONS.

1. Every registered broker-dealer and investment adviser shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the administrator may prescribe by rule or order, except as provided by section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer, and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser. All records required, with respect to an investment adviser, shall be preserved for a period as the administrator prescribes by rule or order.

2. With respect to investment advisers, the administrator may require that certain information be furnished or disseminated to clients or prospective clients as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined in the administrator's discretion, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules under that Act may be used in whole or in partial satisfaction of this requirement.

3. Every registered broker-dealer and investment adviser shall file such financial reports as the administrator prescribes by rule or order, not to exceed the limitations provided in section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer, and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser.

~~3.~~ 4. If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall ~~promptly~~ file a correcting amendment promptly if the document is filed with respect to a registrant, or when such amendment is required to be filed with the securities and exchange commission, if the document is filed with respect to a federal covered adviser, unless notification of the correction has been given under section 502.301, subsection 2.

~~4.~~ 5. The administrator may make examinations, within or without this state, of the business and records of each registered broker-dealer or investment adviser, at the times and in the scope as the administrator determines. The examinations may be made without prior notice to the broker-dealer or investment adviser. The administrator may copy all records the administrator ~~feels~~ believes are necessary to conduct the examination. The expense reasonably attributable to an examination shall be paid by the broker-dealer or investment adviser whose business is examined, but the expense so payable shall not exceed an amount which the administrator by rule prescribes. For the purpose of avoiding unnecessary dupli-

cation of examinations, the administrator may co-operate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. The administrator shall not make public the information obtained in the course of examinations, except when a duty under this chapter requires the administrator to take action regarding a broker-dealer or investment adviser or to make the information available to one of the agencies specified in this section, or except when the administrator is called as a witness in a criminal or civil proceeding.

Sec. 7. Section 502.304, subsection 1, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

The administrator may by order deny, suspend, or revoke a registration or may censure, impose a civil penalty upon, or bar an applicant, registrant, or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant. A person barred under this subsection may be prohibited by the administrator from employment with a registered broker-dealer or investment adviser. The administrator may restrict the person barred from engaging in any activity for which registration is required. Any action by the administrator under this subsection may be taken if the order is found to be in the public interest and it is found that the applicant or registrant or, in the case of a broker-dealer or investment adviser, a partner, an officer, or a director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser:

Sec. 8. Section 502.304, subsection 1, paragraphs e, h, and j, Code Supplement 1997, are amended to read as follows:

e. Is the subject of an order of the administrator denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, investment adviser representative, or insurance agent;

h. Is insolvent, either in the equity or bankruptcy sense; but the administrator may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;

j. Has failed reasonably to supervise an agent or employee in the case of a broker-dealer, or an investment adviser representative or employee in the case of an investment adviser;

Sec. 9. Section 502.304, subsection 1, paragraph m, subparagraph (2), Code Supplement 1997, is amended to read as follows:

(2) Within the past five years, has been the subject of an action of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, ~~or~~ agent, investment adviser, or investment adviser representative.

Sec. 10. Section 502.304, subsection 3, Code Supplement 1997, is amended to read as follows:

3. The administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

Sec. 11. Section 502.304, subsection 4, paragraph a, Code Supplement 1997, is amended to read as follows:

a. If the administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, ~~or~~ agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after search, the administrator may by order revoke the registration or application.

Sec. 12. Section 502.304, subsection 5, Code Supplement 1997, is amended to read as follows:

5. Withdrawal from registration as a broker-dealer, ~~or~~ agent, investment adviser, or investment adviser representative becomes effective thirty days after receipt of an application to withdraw or within such shorter period of time as the administrator may by order determine, unless a proceeding to deny, suspend, or revoke a registration is pending when the application is filed or a proceeding to deny, suspend, or revoke a registration, or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the administrator may nevertheless institute a revocation or suspension proceeding under subsection 1, paragraph "b", within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

Sec. 13. NEW SECTION. 502.305 EXAMINATION OF INVESTMENT ADVISER REPRESENTATIVE AND EXEMPTION FROM EXAMINATION.

The administrator may adopt rules requiring the passage of an examination by an individual who is required to be registered under this chapter as an investment adviser representative. However, a person who is registered as an investment adviser representative between January 1, 1999, and December 31, 2000, shall not be required to pass an examination for as long as the person maintains a continuous registration.

Sec. 14. Section 502.406, subsections 1 and 2, Code Supplement 1997, are amended to read as follows:

1. It is unlawful for any person registered as a broker-dealer, ~~or~~ agent, investment adviser, or investment adviser representative under this chapter to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved or that the person's abilities or qualifications have in any respect been passed upon by the administrator. Nothing in this subsection prohibits a statement other than in a paid advertisement that a person is registered under this chapter, if such statement is true in fact and if the effect of such registration is not misrepresented.

2. a. The fact that an application for registration or notice filing under part III or a registration statement or a notice filing has been filed under this chapter or the fact that a person or the statement has become effective does not constitute a finding by the administrator that any document filed under this chapter is true, complete, or not misleading. Any such fact or the fact that an exemption is available for a security or a transaction does not mean that the administrator has passed in any way upon the merits or qualifications of, or has recommended or given approval to, any person, security, or transaction.

b. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, client, or any other person, any representation inconsistent with paragraph "a" ~~of this subsection~~.

Sec. 15. NEW SECTION. 502.408 ADVISORY ACTIVITIES.

1. It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, to do any of the following:

a. Employ any device, scheme, or artifice to defraud the other person.

b. Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

c. Engage in dishonest or unethical practices as the administrator may define by rule.

2. In the solicitation of advisory clients, it is unlawful for a person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

3. Except as may be permitted by rule or order of the administrator, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing all of the following:

a. That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client.

b. That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract.

c. That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

4. Subsection 3, paragraph "a", does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in subsection 3, paragraph "b", includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. However, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

5. It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if any of the following applies:

a. The administrator by rule prohibits custody.

b. In the absence of rule, the investment adviser fails to notify the administrator that it has or may have custody.

6. The administrator may by rule or order adopt exemptions from the requirements of subsection 1, paragraph "c", and subsection 3, paragraphs "a", "b", and "c", where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this chapter.

Sec. 16. Section 502.501, subsection 1, paragraph c, Code Supplement 1997, is amended to read as follows:

c. ~~Offers or sells a security at any time when such person has committed a material violation of~~ Violates section 502.301, or

Sec. 17. NEW SECTION. 502.502A ADVISORY MISCONDUCT.

1. A person shall be held civilly liable for doing any of the following:

a. Engaging in the business of advising others, for compensation, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities in violation of section 502.301, subsection 3 or 4; section 502.406, subsection 2; section 502.408; or of any rule or order under section 502.602.

b. Receiving directly or indirectly any consideration from another person for advice as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports, or otherwise and employs any device, scheme, or artifice to defraud such other person or engages in any act, practice, or course of business which operates or would oper-

ate as a fraud or deceit on such other person. The person acting in violation of this section is liable to the other person who may sue either at law or in equity to recover the consideration paid for such advice and any loss due to such advice, together with interest at the legal rate per year from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such advice.

2. A person shall not base the civil action on a contract, if the person did any of the following:

a. Engaged in the performance of the contract in violation of any provision of this chapter, or any rule adopted or order issued under this chapter.

b. Acquired any purported right under the contract with knowledge of the facts by reason of which its making or performance was in violation of any provision of this chapter or any rule adopted or order issued under this chapter.

Sec. 18. Section 502.503, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Affiliates of a person liable under either section 502.501, ~~or~~ 502.502, or 502.502A, partners, principal executive officers or directors of such person, persons occupying a similar status or performing similar functions for such person, persons (whether employees of such person or otherwise) who materially aid and abet in the act or transaction constituting the violation, and broker-dealers or agents who materially aid and abet in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person, unless:

Sec. 19. Section 502.503, subsection 1, paragraph a, Code 1997, is amended to read as follows:

a. With respect to section 502.501, ~~and~~ section 502.502, subsections 1 and 5, or section 502.502A, any person liable hereunder proves that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist; and

Sec. 20. Section 502.602, Code Supplement 1997, is amended to read as follows:

502.602 FILING OF SALES AND ADVERTISING LITERATURE.

The administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security is a federal covered security or the transaction relates to a federal covered security or the security or transaction is exempted by section 502.202 or 502.203. The administrator may by rule or order prohibit the publication, circulation or use of any advertising deemed false or misleading.

Sec. 21. Section 502.608, subsection 2, Code Supplement 1997, is amended to read as follows:

2. The administrator shall keep a register of all applications for registration, notice filings, and registration statements which are or have been effective under this chapter and predecessor laws, and all censure, denial, suspension, or revocation orders which have been entered under this chapter and predecessor laws. All records may be maintained in an electronic or microfilm format or any other form of data storage. The register shall be open for public inspection.

Sec. 22. Section 502.610, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 5. Section 502.301, subsection 3, and section 502.408, and section 502.406 so far as investment advisers and investment adviser representatives are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

Sec. 23. RULEMAKING. The securities bureau of the insurance division of the department of commerce shall adopt rules as soon as is practicable in order to administer the provisions of this Act.

Sec. 24. EFFECTIVE DATES.

1. Except as provided in subsection 2, this Act takes effect January 1, 1999.
2. This section and section 23 of this Act, being deemed of immediate importance, take effect upon enactment.

Approved April 16, 1998

CHAPTER 1107

POWERS AND DUTIES OF COUNTY TREASURERS

S.F. 2400

AN ACT relating to the powers and duties of county treasurers, removal or sale of a mobile home or manufactured home, and including a retroactive applicability date provision.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 161A.35, subsection 2, Code 1997, is amended to read as follows:

2. To pay such assessments in not less than ten nor more than forty equal installments, the number to be fixed by the governing body of the subdistrict and interest at the rate fixed by the governing body of the subdistrict, not exceeding that permitted by chapter 74A. The first installment of each assessment shall become due and payable at the ~~October~~ September semiannual tax paying date after the date of filing such agreement, unless the agreement is filed with the county ~~auditor~~ treasurer less than ~~thirty~~ ninety days prior to such ~~October~~ September semiannual tax paying date, in that event, the first installment shall become due and payable at the next succeeding ~~October~~ September semiannual tax paying date. The second and each subsequent installment shall become due and payable at the ~~October~~ September semiannual tax paying date each year thereafter. All such installments shall be collected with interest accrued on the unpaid balance to the ~~October~~ September semiannual tax paying date and as other taxes on real estate, with like penalty for delinquency.

Sec. 2. Section 176A.14, subsection 5, Code Supplement 1997, is amended to read as follows:

5. Each of the officers of the extension council shall perform and carry out the officer's duties as provided in this section and shall perform and carry out any other duties as required by rules adopted by the extension council as authorized in this chapter. A member of the extension council, within fifteen days after the member's election, shall take and sign the usual oath of public officers which shall be filed in the office of the county auditor of the county of the extension district. The treasurer of the extension council, within ten days after being elected and before entering upon the duties of the office, shall execute to the extension council a corporate surety bond for an amount not less than twenty thousand dollars. The bond shall be continued until the treasurer faithfully discharges the duties of the office. The bond shall be filed with the county auditor of the county of the extension district. The county auditor shall notify the chairperson of the extension council of the ~~approval by the county treasurer and of the~~ bond's filing in the auditor's office. The cost of the surety bond shall be paid for by the extension council.

Sec. 3. Section 309.55, Code 1997, is amended to read as follows:

309.55 TERMINATING INTEREST.

When the accruing funds in the hands of the county treasurer, for a year covered by anticipatory certificates, are sufficient to pay the first retirable certificate or certificates, the county treasurer shall, by mail, as shown by the county treasurer's records, promptly notify the holder of such certificate of such fact, and ~~thirty~~ ten days from and after the mailing of such letter all interest on such certificates shall cease.

Sec. 4. Section 311.17, Code 1997, is amended to read as follows:

311.17 ASSESSMENTS OVER TEN DOLLARS — WAIVER.

1. If an owner other than the state or a county or city, of any tracts of land on which the assessment is more than ~~ten~~ one hundred dollars, shall, within twenty days from the date of the assessment, agree in writing filed in the office of the county auditor, that in consideration of the owner having the right to pay the assessment in installments, the owner will not make any objection of illegality or irregularity as to the assessment upon the real estate, and will pay the assessment plus interest, the assessment shall be payable in ten equal installments. The first installment shall be payable on the date of the agreement. The other installments ~~with interest on the whole amount unpaid~~ shall be paid annually at the same time and in the same manner as the September semiannual payment of ordinary taxes with interest accruing as provided in section 384.65, subsection 3. The rate of interest shall be as established by the board, but not exceeding that permitted by chapter 74A.

2. An owner of land who has used ~~said~~ the ten-year option may at any time discharge the assessment by paying the balance then due on all unpaid installments, with interest on the entire amount of the unpaid installments ~~for thirty days in advance~~ to the following December 1.

Sec. 5. Section 311.18, Code 1997, is amended to read as follows:

311.18 ASSESSMENT DELINQUENT — INTEREST.

The assessed taxes shall become delinquent from October 1 after their maturity ~~unless the last day of September is a Saturday or Sunday, in which case the taxes become delinquent from the following Tuesday~~ including those instances when the last day of September is a Saturday or Sunday, shall bear the same interest, and be attended with the same rights and remedies for collection, as ordinary taxes.

Sec. 6. Section 311.19, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Assessments of ~~ten~~ one hundred dollars or less against any tract of land, and assessments against lands owned by the state, county or city, shall be due and payable from the date of levy by the board of supervisors, or in the case of any appeal, from the date of final confirmation of the levy by the court.

Sec. 7. Section 317.21, subsection 1, Code 1997, is amended to read as follows:

1. Annually, after the weed commissioner has completed the program of destruction of weeds by reason of noncompliance by persons responsible for the destruction, the board of supervisors shall determine as to each tract of real estate the actual cost of labor and materials used by the commissioner in cutting, burning, or otherwise destroying the weeds, the cost of serving notice, and of special meetings or proceedings, if any. To the total of all sums expended, the board shall add an amount equal to twenty-five percent of that total to compensate for the cost of supervision and administration and assess the resulting sum against the tract of real estate by a special tax, which shall be certified to the county auditor and county treasurer by the clerk of the board of supervisors, and shall be placed upon the tax books, and collected, with interest after delinquent, in the same manner as other unpaid taxes. The tax shall be due on March 1 after assessment, and shall be delinquent from April 1 after due ~~unless the last day of March is a Saturday or Sunday, in which case the tax becomes delinquent from the following Tuesday~~, including those instances when the last

day of March is a Saturday or Sunday. When collected, the moneys shall be paid into the fund from which the costs were originally paid.

Sec. 8. Section 321.44A, Code Supplement 1997, is amended to read as follows:

321.44A VOLUNTARY CONTRIBUTION — ANATOMICAL GIFT PUBLIC AWARENESS AND TRANSPLANTATION FUND — AMOUNT RETAINED BY COUNTY TREASURER.

For each application for registration or renewal, the county treasurer or the department shall request through use of a written form, and, if the application is made in person, through verbal communication, that an applicant make a voluntary contribution of one dollar or more to the anatomical gift public awareness and transplantation fund established pursuant to section 142C.15. ~~Ninety-five~~ One hundred percent of the moneys collected by the county and one hundred percent of the moneys collected by the department in the form of contributions shall be remitted to the treasurer of state for deposit in the fund to be used for the purposes specified for the fund. ~~The remaining~~ However, up to five percent ~~shall~~ of the moneys collected by the county may be retained by the county treasurer for deposit in the general fund of the county. The director shall adopt rules to administer this section.

Sec. 9. Section 331.502, subsection 10, Code 1997, is amended to read as follows:

10. Notify the chairperson of the county agricultural extension education council when the bond of the council treasurer has been ~~approved and~~ filed as provided in section 176A.14.

Sec. 10. Section 335.30A, Code Supplement 1997, is amended to read as follows:

335.30A LAND-LEASED COMMUNITIES.

A county shall not adopt or enforce zoning or subdivision regulations or other ordinances which disallow or make infeasible the plans and specifications of land-leased communities ~~solely~~ because the housing within the land-leased community will be ~~modular or~~ manufactured housing.

"Land-leased community" means any site, lot, field, or tract of land under common ownership upon which ten or more occupied manufactured homes ~~or modular homes~~ are harbored, either free of charge or for revenue purposes, and shall include any building, structure, or enclosure used or intended for use as part of the equipment of the land-leased community. The term "land-leased community" shall not be construed to include homes, buildings, or other structures temporarily maintained by any individual, educational institution, or company on their own premises and used exclusively to house their own labor or students. A manufactured home located in a land-leased community shall be taxed under section 435.22 as if the manufactured home were located in a mobile home park.

Sec. 11. Section 384.47, subsection 1, Code 1997, is amended to read as follows:

1. A description and parcel number of each lot and the name of the property owner.

Sec. 12. Section 384.60, subsection 1, paragraph b, Code Supplement 1997, is amended to read as follows:

b. State the number of annual installments, not exceeding fifteen, into which assessments of ~~fifty~~ one hundred dollars or more are divided.

Sec. 13. Section 384.60, subsection 2, Code Supplement 1997, is amended to read as follows:

2. On or before the second publication of the notice, the clerk shall send by mail to each property owner whose property is subject to assessment for the improvement, as shown by the records in the office of the county auditor, a copy of the notice. The notice shall also include a statement in substance that assessments may be paid in full or in part without interest within thirty days after the date of the first notice of the final assessment schedule, and thereafter all unpaid special assessments bear interest at the rate specified by the council, but not exceeding that permitted by chapter 74A, computed to the December 1 next following the due dates of the respective installments as provided in section 384.65, subsec-

tion 3, and each installment will be delinquent from October 1 following its due date, ~~unless~~ including those instances when the last day of September is a Saturday or Sunday, ~~in which case the installment becomes delinquent from the following Tuesday,~~ and will draw additionally the same delinquent interest as ordinary taxes. The notice shall also state substantially that property owners may elect to pay any installment semiannually in advance. If a property is shown by the records to be in the name of more than one owner at the same mailing address, a single notice may be mailed to all owners at that address. Failure to receive a mailed notice is not a defense to the special assessment or interest due on the special assessment.

Sec. 14. Section 384.65, subsection 4, Code 1997, is amended to read as follows:

4. Each installment of an assessment with interest on the unpaid balance is delinquent from October 1 after its due date, ~~unless~~ including those instances when the last day of September is a Saturday or Sunday, ~~in which case the installment becomes delinquent from the following Tuesday,~~ and bears the same delinquent interest as ordinary taxes. When collected, the interest must be credited to the same fund as the special assessment.

Sec. 15. Section 384.84, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 8. For the purposes of this section, "premises" includes a mobile home, modular home, or manufactured home as defined in section 435.1, when the mobile home, modular home, or manufactured home is taxed as real estate.

Sec. 16. Section 414.28A, Code Supplement 1997, is amended to read as follows:

414.28A LAND-LEASED COMMUNITIES.

A city shall not adopt or enforce zoning or subdivision regulations or other ordinances which disallow or make infeasible the plans and specifications of land-leased communities ~~solely~~ because the housing within the land-leased community will be ~~modular or~~ manufactured housing.

"Land-leased community" means any site, lot, field, or tract of land under common ownership upon which ten or more occupied manufactured homes ~~or modular homes~~ are harbored, either free of charge or for revenue purposes, and shall include any building, structure, or enclosure used or intended for use as part of the equipment of the land-leased community. The term "land-leased community" shall not be construed to include homes, buildings, or other structures temporarily maintained by any individual, educational institution, or company on their own premises and used exclusively to house their own labor or students. A manufactured home located in a land-leased community shall be taxed under section 435.22 as if the manufactured home were located in a mobile home park.

Sec. 17. Section 435.1, subsection 1, Code Supplement 1997, is amended to read as follows:

1. "Home" means a mobile home~~,~~ or a manufactured home~~, or a modular home~~.

Sec. 18. Section 435.1, subsection 4,* Code Supplement 1997, is amended to read as follows:

4. "Mobile home park" means a site, lot, field, or tract of land upon which three or more mobile homes~~,~~ or manufactured homes, ~~or modular homes,~~ or a combination of any of these homes are placed on developed spaces and operated as a for-profit enterprise with water, sewer or septic, and electrical services available.

Sec. 19. Section 435.22, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The owner of each mobile home~~,~~ or manufactured home~~, or modular home,~~ located within a mobile home park shall pay to the county treasurer an annual tax. However, when the owner is any educational institution and the home is used solely for student housing or

* Subsection 4, unnumbered paragraph 1 probably intended

when the owner is the state of Iowa or a subdivision of the state, the owner shall be exempt from the tax. The annual tax shall be computed as follows:

Sec. 20. Section 435.26, subsection 1, paragraph a, Code 1997, is amended to read as follows:

a. A mobile home~~, modular home,~~ or manufactured home which is located outside a mobile home park shall be converted to real estate by being placed on a permanent foundation and shall be assessed for real estate taxes. A home, after conversion to real estate, is eligible for the homestead tax credit and the military tax exemption as provided in sections 425.2 and 427.3.

Sec. 21. Section 435.26, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3. When the property is entered on the tax rolls, the assessor shall also enter on the tax rolls the title number last assigned to the mobile home, modular home, or manufactured home and the manufacturer's identification number.

Sec. 22. Section 435.27, subsection 1, Code 1997, is amended to read as follows:

1. A mobile home~~,~~ or manufactured home~~, or modular home~~ converted to real estate under section 435.26 may be reconverted to a home as provided in this section when it is moved to a mobile home park or a dealer's inventory. When the home is located within a mobile home park, the home shall be taxed pursuant to section 435.22, subsection 1.

Sec. 23. Section 435.29, Code 1997, is amended to read as follows:

435.29 CIVIL PENALTY.

The person who moves the mobile home~~,~~ or manufactured home~~, or modular home~~ without having obtained a tax clearance statement as provided in section 435.24 shall pay a civil penalty of one hundred dollars. The penalty money shall be credited to the general fund of the county.

Sec. 24. NEW SECTION. 435.34 MODULAR HOME EXEMPTION.

For the purposes of this chapter a modular home shall not be construed to be a mobile home and shall be exempt from the provisions of this chapter. However, this section shall not prohibit the location of a modular home within a mobile home park.

This section does not apply to mobile home parks in existence on or before January 1, 1998. If a modular home is placed in a mobile home park which was in existence on or before January 1, 1998, that modular home shall be subject to property tax pursuant to section 435.22.

Sec. 25. Section 435.35, Code 1997, is amended to read as follows:

435.35 EXISTING HOME OUTSIDE OF MOBILE HOME PARK — EXEMPTION.

A taxable mobile home~~,~~ or manufactured home~~, or modular home~~ which is not located in a mobile home park as of January 1, 1995, shall be assessed and taxed as real estate. The home is also exempt from the permanent foundation requirements of this chapter until the home is relocated.

Sec. 26. Section 445.36, subsection 2, Code 1997, is amended to read as follows:

2. A demand of taxes is not necessary, but every person subject to taxation shall attend at the office of the county treasurer and pay the taxes either in full, or one-half of the taxes before September 1 succeeding the levy, and the remaining half before March 1 following. However, if the first installment of taxes is delinquent and not paid as of February 15, the treasurer shall mail a notice to the taxpayer of the delinquency and the due date for the second installment. Failure to receive a mailed notice is not a defense to the payment of the ~~tax and any interest~~ total amount due. This section does not apply to special assessments, or rates or charges.

Sec. 27. Section 446.2, Code 1997, is amended to read as follows:

446.2 NOTICE OF SALE.

For each parcel sold, the county treasurer shall notify the party in whose name the parcel was taxed, according to the treasurer's records at the time of sale, that the parcel was sold at tax sale. The notice of sale shall be sent by regular mail within fifteen days from the date of the annual tax sale or any adjourned tax sale. Failure to receive a mailed notice is not a defense to payment of the total amount due.

Sec. 28. Section 446.9, subsection 4, Code Supplement 1997, is amended to read as follows:

4. Notice required by subsections 1 and 3 shall be deemed completed when the notice is enclosed in a sealed envelope with the proper postage on the envelope, is addressed to the person entitled to receive it at the person's last known mailing address, and is deposited in a mail receptacle provided by the United States postal service. Failure to receive a mailed notice is not a defense to the payment of the total amount due.

Sec. 29. Section 446.20, subsection 2, unnumbered paragraph 2, Code 1997, is amended to read as follows:

Service of the notice shall also be made by mail on any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor who has a recorded lease or memorandum of a recorded lease, and any other person who has an interest of record, at the person's last known address, if the mortgagee, vendor, lessor, or other person has filed a request for notice, as prescribed in section 446.9, subsection 3, and on the state of Iowa in case of an old-age assistance lien by service upon the department of human services. The notice shall also be served on any city where the parcel is situated. Failure to receive a mailed notice is not a defense to the payment of the total amount due.

Sec. 30. Section 447.9, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

After one year and nine months from the date of sale, or after nine months from the date of a sale made under section 446.18 or 446.39, the holder of the certificate of purchase may cause to be served upon the person in possession of the parcel, and also upon the person in whose name the parcel is taxed, ~~in the manner provided for the service of original notices in R.C.P. 56.1, if the person resides in Iowa, or otherwise as provided in section 446.9, subsection 1,~~ a notice signed by the certificate holder or the certificate holder's agent or attorney, stating the date of sale, the description of the parcel sold, the name of the purchaser, and that the right of redemption will expire and a deed for the parcel be made unless redemption is made within ninety days from the completed service of the notice. The notice shall be served by both regular mail and certified mail to the person's last known address and such notice is deemed completed when the notice by certified mail is deposited in the mail and postmarked for delivery. The ninety-day redemption period begins as provided in section 447.12. When the notice is given by a county as a holder of a certificate of purchase the notice shall be signed by the county treasurer or the county attorney, and when given by a city, it shall be signed by the city officer designated by resolution of the council. When the notice is given by the Iowa finance authority or a city or county agency holding the parcel as part of an Iowa homesteading project, it shall be signed on behalf of the agency or authority by one of its officers, as authorized in rules of the agency or authority.

Sec. 31. NEW SECTION. 648.6 DELAYED VACATION — NOTICE TO LIENHOLDERS.

In cases covered by chapter 562B, a plaintiff may preserve the option of consenting to delayed vacation of a premises as provided in section 648.22A, by sending a copy of the petition, prior to the date set for hearing, by certified or restricted certified mail to the county treasurer and to each lienholder whose name and address are of record in the office of the county treasurer of the county where the mobile home or manufactured home is located.

Sec. 32. NEW SECTION. 648.22A EXECUTIONS INVOLVING MOBILE HOMES AND MANUFACTURED HOMES.

1. In cases covered by chapter 562B, upon expiration of three days from the date the judgment is entered pursuant to section 648.22, the defendant may elect to leave a mobile home or manufactured home and its contents in the mobile home park for up to thirty days provided all of the following occur:

a. The plaintiff consents and the plaintiff has complied with the provisions of section 648.6.

b. All utilities to the mobile home or manufactured home are disconnected prior to expiration of three days from the entry of judgment. Payment of any reasonable costs incurred in disconnecting utilities is the responsibility of the defendant.

2. During the thirty-day period the defendant may have reasonable access to the home site to show the home to prospective purchasers, prepare the home for removal, or remove the home, provided that the defendant gives the plaintiff and sheriff at least twenty-four hours' notice prior to each exercise of the defendant's right of access.

3. During the thirty-day period the defendant shall not occupy the home or be present on the premises between the hours of seven p.m. and seven a.m. A violation of this subsection shall be punishable as contempt.

4. If the defendant finds a purchaser of the home, who is a prospective tenant of the mobile home park, the provisions of section 562B.19, subsection 3, paragraph "c", shall apply.

5. If, within the thirty-day period, the home is not sold to an approved purchaser or removed from the mobile home park, all of the following shall occur:

a. The home, its contents, and any other property of the defendant remaining on the premises shall become the property of the plaintiff free and clear of all rights of the defendant to the property and of all liens, claims, or encumbrances of third parties, and any tax levied pursuant to chapter 435 may be abated by the board of supervisors.

b. Any money judgment against the defendant and in favor of the plaintiff relating to the previous tenancy shall be deemed satisfied.

c. The county treasurer, upon receipt of a fee equal to the fee specified in section 321.42 for replacement of certificates of title for motor vehicles, and upon receipt of an affidavit submitted by the plaintiff verifying that the home was not sold to an approved purchaser or removed within the time specified in this subsection, shall issue to the plaintiff a new title for the home.

6. A purchaser of the home shall be liable for any unpaid sums due the plaintiff, sheriff, or county treasurer. For the purposes of this section, "purchaser" includes a lienholder or other claimant acquiring title to the home in whole or in part by reason of a lien or other claim.

7. A mobile home or manufactured home shall not be removed without the prior payment to the plaintiff of all sums owing at the time of entry of judgment, interest accrued on such sums as provided by law, and per diem rent for that portion of the thirty-day period which has expired prior to removal, and payment of any taxes due on the home which are not abated pursuant to subsection 5.

Sec. 33. RETROACTIVE APPLICABILITY. Sections 10, 16 through 20, and 22 through 25 of this Act apply retroactively to the assessment year beginning January 1, 1998, and all subsequent assessment years.

Approved April 16, 1998

CHAPTER 1108

EXCISE TAX ON MOTOR FUEL CONTAINING ETHANOL

S.F. 2407

AN ACT relating to the extension of the reduced excise tax imposed on motor fuel containing ethanol.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 452A.3, subsections 1 and 2, Code 1997, are amended to read as follows:

1. For the privilege of operating motor vehicles in this state, an excise tax of twenty cents per gallon is imposed upon the use of all motor fuel used for any purpose except ~~aviation gasoline and except motor fuel containing at least ten percent alcohol distilled from cereal grains grown in the United States for the period ending June 30, 2000, and except~~ as otherwise provided in this section and in this division.

2. a. For the privilege of operating aircraft in this state an excise tax of eight cents per gallon is imposed on the use of all aviation gasoline.

~~2.~~ b. For the privilege of operating motor vehicles in this state, an excise tax of nineteen cents per gallon until June 30, ~~2000~~ 2007, is imposed upon the use of motor fuel containing at least ten percent alcohol distilled from cereal grains grown in the United States and used for any purpose except as otherwise provided in this division.

Approved April 16, 1998

CHAPTER 1109

ENVIRONMENTAL AUDITS

H.F. 681

AN ACT creating an environmental audit privilege and immunity, and an environmental auditor training program, and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 455J.1 TITLE.

This chapter shall be known and cited as the "Environmental Audit Privilege and Immunity Act".

Sec. 2. NEW SECTION. 455J.2 DEFINITIONS.

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

1. "Department" means the department of natural resources created under section 455A.2 or its delegated authority.

2. "Environmental audit" means a voluntary evaluation of a facility or operation, of an activity at a facility or operation, or of an environmental management system at a facility or operation when the facility, operation, or activity is regulated under state or federal environmental laws, rules, or permit conditions, conducted by an owner or operator, an employee of the owner or operator, or an independent contractor retained by the owner or operator that is designed to identify historical or current noncompliance with environmental laws, rules, ordinances, or permit conditions, discover environmental contamination or hazards, rem-

edy noncompliance or improve compliance with environmental laws, or improve an environmental management system. Once notification is given to the department, an environmental audit shall be completed within a reasonable time not to exceed six months unless an extension is approved by the department based on reasonable grounds.

3. "Environmental audit report" means a document or set of documents generated and developed for the primary purpose and in the course of or as a result of conducting an environmental audit. An "environmental audit report" includes supporting information which may include, but is not limited to, the report document itself, observations, samples, analytical results, exhibits, findings, opinions, suggestions, recommendations, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs, surveys, implementation plans, interviews, discussions, correspondence, and communications related to the environmental audit. An "environmental audit report" may include any of the following components:

a. An executive summary prepared by the person conducting the environmental audit which may include the scope of the environmental audit, the information gained in the environmental audit, conclusions, recommendations, exhibits, and appendices.

b. Memoranda and documents analyzing portions or all of the report and discussing implementation issues.

c. An implementation plan which addresses correcting past noncompliance, improving current compliance or an environmental management system, or preventing future noncompliance.

d. Periodic updates documenting progress in completing the implementation plan.

4. "Inquiring party" means any party appearing before a court or a presiding officer in an administrative proceeding seeking to review or obtain an in camera review of an environmental audit report.

5. "Owner or operator" means the person or entity who caused the environmental audit to be undertaken.

6. "Privilege" means the protections provided in regard to an environmental audit report as provided in this chapter.

Sec. 3. NEW SECTION. 455J.3 PRIVILEGE.

1. Material included in an environmental audit report generated during an environmental audit conducted after the effective date of this Act is privileged and confidential and is not discoverable or admissible as evidence in any civil or administrative proceeding, except as otherwise provided in this chapter. The environmental audit report shall be labeled "ENVIRONMENTAL AUDIT REPORT: PRIVILEGED DOCUMENT". Failure to label each document within the report does not constitute a waiver of the environmental audit privilege or create a presumption that the privilege does or does not apply.

2. A person shall not be compelled to testify in regard to or produce a document included in an environmental audit report in any of the following circumstances:

a. If the testimony or document discloses any component listed in section 455J.2, subsection 3, that was made as part of the preparation of an environmental audit report and that is addressed in a privileged part of an environmental audit report.

b. If the person is any of the following:

(1) A person who conducted any portion of the environmental audit but did not personally observe the physical events of an environmental violation.

(2) A person to whom the results of the environmental audit report are disclosed under section 455J.4, subsection 2.

(3) A custodian of the environmental audit report.

3. A person who conducts or participates in the preparation of an environmental audit report and who has observed physical events of an environmental violation may testify about those events but shall not be compelled to testify about or produce documents related to the preparation of or any privileged part of an environmental audit or any component listed in section 455J.2, subsection 3.

4. An employee of a state agency or other governmental employee shall not request, review, or otherwise use an environmental audit report during an agency inspection of a regulated facility or operation, or an activity of a regulated facility or operation.

5. A party asserting the privilege under this section has the burden of establishing the applicability of the privilege.

6. The privilege provided in this section is in addition to the privilege provided to assistance programs pursuant to section 455B.484A.

Sec. 4. NEW SECTION. 455J.4 WAIVER OF PRIVILEGE — DISCLOSURE.

1. The privilege described in section 455J.3 shall not apply to the extent that the privilege is expressly waived in writing by the owner or operator who prepared the environmental audit report or caused the report to be prepared.

2. Disclosure of an environmental audit report or any other information generated by an environmental audit does not waive the privilege established in section 455J.3 if the disclosure meets any of the following criteria:

a. The disclosure is made to address or correct a matter raised by the environmental audit and the disclosure is made to any of the following:

(1) A person employed by the owner or operator, including temporary and contract employees.

(2) A legal representative of the owner or operator.

(3) An officer or director of the regulated facility or operation or a partner of the owner or operator.

(4) An independent contractor retained by the owner or operator.

b. The disclosure is made under the terms of a confidentiality agreement between any person and the owner or operator of the audited facility or operation.

3. A party to a confidentiality agreement described in subsection 2, paragraph "b", who violates that agreement is liable for damages caused by the disclosure and for any other penalties stipulated in the confidentiality agreement.

4. Information that is disclosed under subsection 2, paragraph "b", is confidential and is not subject to disclosure under chapter 22. A governmental entity, governmental employee, or governmental official who discloses information in violation of this subsection is subject to the penalty provided in section 22.6.

5. The protections provided by federal or state law shall be afforded to individuals who disclose information to law enforcement authorities.

6. The provisions of this chapter shall not abrogate the protections provided by federal and state law regarding confidentiality and trade secrets.

Sec. 5. NEW SECTION. 455J.5 REQUIRED DISCLOSURE.

1. A court or a presiding officer in an administrative hearing may require disclosure of a portion of an environmental audit report in a civil or administrative proceeding if the court or presiding officer affirmatively determines, after an in camera review, that any of the following exists:

a. The privilege is asserted for a fraudulent purpose.

b. The portion of the environmental audit report is not subject to the privilege under section 455J.6.

c. The portion of the environmental audit report shows evidence of noncompliance with a state or federal environmental or other law, rule, or permit condition and appropriate efforts to achieve compliance with the law or ordinance were not promptly initiated and pursued with reasonable diligence after discovery of noncompliance.

d. The portion of the environmental audit report shows clear and convincing evidence of substantial actual personal injury, which information is not otherwise available.

e. The portion of the environmental audit report shows a clear and present danger to the public health or the environment.

2. A party seeking disclosure under this section has the burden of proving that subsection 1 applies.

3. A decision of a presiding officer in an administrative hearing under subsection 1 may be directly appealed to the district court without disclosure of the environmental audit report to any person unless so ordered by the court.

4. A determination of a court under this section is subject to interlocutory appeal to an appropriate appellate court.

5. If a court finds that a person claiming privilege under this chapter intentionally claimed the privilege for material not privileged as provided in section 455J.6, the person is subject to a fine not to exceed one thousand dollars.

6. Privilege provided in this chapter does not apply if an owner or operator of the facility or operation has been found in a civil or administrative proceeding to have committed serious violations in this state that constitute a pattern of continuous or repeated violations of environmental laws, administrative rules, or permit conditions, that were due to separate and distinct events giving rise to the violations within the three-year period prior to the date of disclosure.

Sec. 6. NEW SECTION. 455J.6 MATERIALS NOT PRIVILEGED.

1. The privilege described in this chapter does not apply to any of the following:

a. A document, communication, datum, report, or other information required by a regulatory agency to be collected, developed, retained, or reported under a state or federal environmental law, rule, or permit condition.

b. Information obtained by observation, sampling, or monitoring by a regulatory agency or a regulatory agency's authorized designee.

c. Information obtained from a source not involved in the preparation of the environmental audit report.

2. This section does not limit the right of a person to agree to conduct an environmental audit and disclose an environmental audit report.

Sec. 7. NEW SECTION. 455J.7 REVIEW OF PRIVILEGED DOCUMENTS.

1. The privileges created in this chapter shall not apply to criminal investigations or proceedings. An environmental audit report, supporting documents, and testimony relating thereto may be obtained by a prosecutor's subpoena pursuant to the rules of criminal procedure. If an environmental audit report is obtained, reviewed, or used in a criminal investigation or proceeding, the administrative and civil evidentiary privilege established in this chapter is not waived or made inapplicable for any purpose other than for the criminal investigation or proceeding.

2. Notwithstanding the privilege established in this chapter, the department may review information in an environmental audit report, but such review does not waive or make the administrative and civil evidentiary privilege inapplicable to the report. A regulatory agency shall not adopt a rule or impose a condition that circumvents the purpose of this chapter.

3. If information is required to be made available to the public by operation of a specific state or federal law, rule, or permit condition, the governmental authority shall notify the person claiming the privilege of the potential for public disclosure prior to obtaining such information under subsection 1 or 2.

4. If privileged information is disclosed under subsection 2 or 3, on the motion of a party, a court or the presiding officer in an administrative hearing shall suppress evidence offered in any civil or administrative proceeding that arises or is derived from review, disclosure, or use of information obtained under this section if the review, disclosure, or use is not authorized under section 455J.6. A party having received information under subsection 2 or 3 has the burden of proving that the evidence offered did not arise and was not derived from the review of privileged information.

Sec. 8. NEW SECTION. 455J.8 VOLUNTARY DISCLOSURE OF ENVIRONMENTAL VIOLATION — IMMUNITY.

1. An owner or operator is eligible for immunity under this section from the time the department receives official notification from the owner or operator of a scheduled environmental audit. An owner or operator is immune from any administrative or civil penalty associated with the information disclosed if the owner or operator makes a prompt voluntary disclosure to the department regarding an environmental violation which is discovered through the environmental audit. The owner or operator creates a rebuttable presumption that the disclosure is voluntary by meeting the criteria provided in subsection 2 at the time of disclosure. To rebut the presumption that a disclosure is voluntary, the department or other party has the burden of proving that the disclosure was not voluntary. Immunity is not provided if the violations of state or federal environmental law, rule, or permit condition are intentional or if the violations of state or federal law, rule, or permit condition resulted in substantial actual injury or imminent and substantial risk of injury to persons, property, or the environment.

2. The disclosure of information is voluntary if all of the following circumstances exist:

a. The disclosure arises out of an environmental audit and relates to privileged information as provided in section 455J.3.

b. The person making the disclosure uses reasonable efforts to pursue compliance and to correct the noncompliance within a reasonable period of time after completion of the environmental audit in accordance with a remediation schedule submitted to and approved by the department. If evidence shows that the noncompliance is due to the failure to obtain a permit, reasonable effort may be demonstrated by the submittal of a complete permit application within a reasonable time. Disclosure of information required to be reported by state or federal law, rule, or permit condition is not considered to be voluntary disclosure and the immunity provisions in this section are not applicable.

c. Environmental violations are identified in an environmental audit report and disclosed to the department before there is notice of a citizen suit or a legal complaint by a third party.

d. Environmental violations are identified in an environmental audit report and disclosed to the department before the environmental violations are reported by any person not involved in conducting the environmental audit or to whom the environmental audit report was disclosed.

3. If an owner or operator has not provided the department with notification of a scheduled environmental audit prior to performing the audit, a disclosure of information is voluntary if the environmental violations are identified in an environmental audit report and disclosed by certified mail to the proper regulatory agency that has jurisdiction over the disclosed violation prior to the agency's commencement of an investigation.

4. If a person is required to make a disclosure relating to a specific issue under a specific permit condition or under an order issued by the department, the disclosure is not voluntary with respect to that issue.

5. Except as provided in this section, this section does not impair the authority of the proper regulatory agency to require a technical or remedial action or to order injunctive relief.

6. Upon application to the department, the time period within which the disclosed violation is corrected under subsection 2 may be extended if it is not practical to correct the noncompliance within the reasonable period of time initially approved by the department. The department shall not unreasonably withhold the grant of an extension. If the department denies an extension, the department shall provide the requesting party with a written explanation of the reasons for the denial. A request for de novo review of the department's decision may be made to the appropriate court.

7. Immunity provided under this section from administrative or civil penalties does not apply under any of the following circumstances:

a. If an owner or operator of the facility or operation has been found in a civil or administrative proceeding to have committed serious violations in this state that constitute a pattern

of continuous or repeated violations of environmental laws, administrative rules, and permit conditions and that were due to separate and distinct events giving rise to the violations within the three-year period prior to the date of disclosure, or if under section 455B.191 an owner or operator of a facility or operation is classified as a habitual violator.

b. If a violation of an environmental law, administrative rule, permit condition, settlement agreement, or order on consent, final order, or judicial order results in a substantial economic benefit which gives the violator a clear advantage over its business competitors.

8. In cases where the conditions of a voluntary disclosure are not met but a good faith effort was made to voluntarily disclose and resolve a violation detected in an environmental audit, the state regulatory authorities shall consider the nature and extent of any good faith effort in deciding the appropriate enforcement response and shall consider reducing any administrative or civil penalties based on mitigating factors showing that one or more of the conditions for voluntary disclosure have been met.

9. The immunity provided by this section does not abrogate the responsibility of a person as provided by applicable law to report a violation, to correct the violation, conduct necessary remediation, or respond to third-party actions. This chapter shall not be construed to confer immunity from liability in any private civil action except those actions brought pursuant to section 455B.111.

10. Information required by rule to be submitted to the department as part of a disclosure made pursuant to this section is not privileged information.

Sec. 9. NEW SECTION. 455J.9 ABROGATION OF OTHER PRIVILEGES.

This chapter shall not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work product doctrine and the attorney-client privilege.

Sec. 10. NEW SECTION. 455J.10 ENVIRONMENTAL AUDITOR TRAINING PROGRAM.

A training program for and standards for certification of environmental auditors shall be developed jointly by the Iowa waste reduction center and the department. The training program shall be administered by the Iowa waste reduction center. The program shall provide training on the proper conduct of an environmental audit; local, state, and federal environmental ordinances, rules, and laws that apply to businesses in this state; and the environmental audit laws in this state. The program shall be made available to small and large business owners and operators, consulting engineers, regulatory personnel, and citizens through the community college system. A fee may be assessed for participation in the program. Upon completion of the training program, program participants may elect to be tested by the department for certification as an environmental auditor for the purposes of this chapter.

Sec. 11. NEW SECTION. 455J.11 SUMMARY.

On or before December 1 of each year, the department shall make available a summary of the number of environmental audit notices received, the violations, and the remediation status of the violations reported pursuant to this chapter during the preceding fiscal year.

Sec. 12. NEW SECTION. 455J.12 RULEMAKING.

The department shall adopt rules pursuant to chapter 17A necessary to administer this chapter.

Sec. 13. NEW SECTION. 455J.13 COSTS.

The necessary costs incurred by the department under this chapter shall be funded from appropriations made to the department from the general fund of the state.

Approved April 16, 1998

CHAPTER 1110

AGRICULTURAL LANDHOLDING RESTRICTIONS AND REPORTING REQUIREMENTS

H.F. 2335

AN ACT relating to persons holding interests in agricultural land and providing penalties and an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I
LANDHOLDING RESTRICTIONS
SUBCHAPTER I — GENERAL

Section 101. NEW SECTION. 10.1 DEFINITIONS.

As used in this chapter and in chapter 10B, unless the context otherwise requires:

1. "Actively engaged in farming" means that a natural person, including a shareholder or an officer, director, or employee of a corporation, or a member or manager of a limited liability company, does any of the following:

a. Inspects the production activities periodically and furnishes at least half of the value of the tools used for crop or livestock production and pays at least half the direct cost of crop or livestock production.

b. Regularly and frequently makes or takes an important part in making management decisions substantially contributing to or affecting the success of the farm operation.

c. Performs physical work which significantly contributes to crop or livestock production.

2. "Agricultural land" means the same as defined in section 9H.1.

3. "Authorized entity" means an authorized farm corporation; authorized limited liability company; limited partnership, other than a family farm limited partnership; or an authorized trust as defined in section 9H.1.

4. "Commodity share landlord" means a natural person or a general partnership as provided in chapter 486 in which all partners are natural persons, who owns at least one hundred fifty acres of agricultural land, if the owner receives rent on a commodity share basis, which may be either a share of the crops or livestock produced on the land.

5. "Cooperative association" means an entity which is structured and operated on a cooperative basis pursuant to 26 U.S.C. § 1381(a) and which meets the definitional requirements of an association as provided in 12 U.S.C. § 1141(j)(a) or 7 U.S.C. § 291.

6. "Family farm entity" means a family farm corporation, family farm limited liability company, family farm limited partnership, or family trust, as defined in section 9H.1.

7. "Farm estate" means the real and personal property of a decedent, a ward, or a trust as provided in chapter 633, if at least sixty percent of the gross receipts from the estate comes from farming.

8. "Farmers cooperative association" means a cooperative association organized under chapter 490 or 499, if all of the following conditions are satisfied:

a. All of the following apply:

(1) Qualified farmers must hold at least a fifty-one percent equity interest in the cooperative association, including fifty-one percent of each class of members' equity.

(2) The following persons must hold at least a seventy percent equity interest in the cooperative association, including seventy percent of each class of members' equity:

(a) A qualified farmer.

(b) A family farm entity.

(c) A commodity share landlord.

b. As used in this subsection, "members' equity" includes but is not limited to issued shares, including common stock or preferred stock, regardless of a right to receive dividends or earning distributions. However, "members' equity" does not include nonvoting common stock or nonvoting membership interests. A security such as a warrant or option that may be converted to voting stock shall be considered as issued shares.

c. For purposes of this subsection, a person who was a qualified person within the last ten years shall be treated as a qualified person.

9. "Farmers cooperative limited liability company" means a limited liability company organized under chapter 490A, if cooperative associations hold one hundred percent of all membership interests in the limited liability company. Farmers cooperative associations must hold at least seventy percent of all membership interests in the limited liability company. If more than one type of membership interest is established, including any series as provided in section 490A.305 or any class or group as provided in section 490A.307, farmers cooperative associations must hold at least seventy percent of all membership interests of that type.

10. "Farmers entity" means a networking farmers entity, farmers cooperative limited liability company, or farmers cooperative association.

11. "Farming" means the same as defined in section 9H.1.

12. "Grain" means the same as defined in section 203.1.

13. "Intra-company loan agreement" means an agreement involving a loan, if the parties to the agreement are members of the same farmers cooperative limited liability company, and according to the terms of the loan a member which is a regional cooperative association directly or indirectly loans money to a member which is a farmers cooperative association, on condition that the money, including any interest, must be repaid by the member which is a farmers cooperative association to the regional cooperative association or another person. A loan agreement does not include an operating loan agreement, in which all of the following apply:

a. The money is required to be repaid within ninety days from the date that the farmers cooperative association receives the money, and the money is actually repaid by that date.

b. The money is used to pay for reasonable and ordinary expenses of the farmers cooperative association in conducting its affairs.

14. "Livestock" means an animal belonging to the bovine, caprine, equine, ovine, or porcine species, ostriches, rheas, emus, farm deer as defined in section 481A.1, or poultry.

15. "Networking farmers corporation" means a corporation, other than a family farm corporation as defined in section 9H.1, organized under chapter 490 if all of the following conditions are satisfied:

a. All of the following apply:

(1) Qualified farmers must hold at least fifty-one percent of all issued shares of the corporation. If more than one class of shares is authorized, qualified farmers must hold at least fifty-one percent of all issued shares in each class.

(2) Qualified persons must hold at least seventy percent of all issued shares of the corporation. If more than one class of shares is authorized, qualified persons must hold at least seventy percent of all issued shares in each class.

b. As used in paragraph "a", "issued shares" includes but is not limited to common stock or preferred stock, or each class of common stock or preferred stock, regardless of voting rights or a right to receive dividends or earning distributions. A security such as a warrant or option that may be converted to stock shall be considered as issued shares.

16. "Networking farmers entity" means a networking farmers corporation or networking farmers limited liability company.

17. "Networking farmers limited liability company" means a limited liability company, other than a family farm limited liability company as defined in section 9H.1, organized under chapter 490A if all of the following conditions are satisfied:

a. Qualified farmers must hold at least fifty-one percent of all membership interests in the limited liability company. If more than one type of membership interest is established,

including any series as provided in section 490A.305 or any class or group as provided in section 490A.307, qualified farmers must hold at least fifty-one percent of all membership interests of that type.

b. Qualified persons must hold at least seventy percent of all membership interests in the limited liability company. If more than one type of membership interest is established, including any series as provided in section 490A.305 or any class or group as provided in section 490A.307, qualified persons must hold at least seventy percent of all membership interests of that type.

18. "Operation of law" means a transfer by inheritance, devise, or bequest, court order, dissolution decree, order in bankruptcy, insolvency, replevin, foreclosure, execution sale, the execution of a judgment, the foreclosure of a real estate mortgage, the forfeiture of a real estate contract, or a transfer resulting from a decree for specific performance.

19. "Qualified farmer" means any of the following:

a. A natural person actively engaged in farming.

b. A general partnership as provided in chapter 486 in which all partners are natural persons actively engaged in farming.

c. A farm estate.

20. "Qualified commodity share landlord" means a commodity share landlord, if the owner of the agricultural land was actively engaged in farming the land or a family member of the owner is or was actively engaged in farming the land, if the family member is related to the owner as a spouse, parent, grandparent, lineal ascendant of a grandparent or spouse, or other lineal descendant of a grandparent or spouse.

21. "Qualified person" means a person who is any of the following:

a. A qualified farmer.

b. A family farm entity.

c. A qualified commodity share landlord.

22. "Regional cooperative association" means a cooperative association other than a farmers cooperative association.

Sec. 102. NEW SECTION. 10.2 INTERESTS DESCRIBED.

As used in this chapter, the following apply:

1. A person holds an interest in agricultural land if the person either directly or indirectly owns or leases the agricultural land in this state.

2. A person holds an interest in a farmers entity if the person holds an interest as any of the following:

a. A shareholder of a networking farmers corporation.

b. A member of a networking farmers limited liability company.

c. A member of a farmers cooperative association.

d. A member of a farmers cooperative limited liability company.

SUBCHAPTER II — RESTRICTIONS

PART 1

NETWORKING FARMERS CORPORATIONS

Sec. 103. NEW SECTION. 10.3 LANDHOLDINGS RESTRICTED.

1. Notwithstanding section 9H.4, a networking farmers corporation may hold agricultural land in this state if it meets all of the following conditions:

a. The networking farmers corporation does not hold an interest in agricultural land of more than six hundred forty acres.

b. At least seventy-five percent of the networking farmers corporation's gross receipts are from the sale of livestock or livestock products.

2. a. An interest in agricultural land held by a networking farmers corporation shall be attributable as an interest in agricultural land held by a shareholder having an interest in the networking farmers corporation. The shareholder shall be deemed to hold an interest in

agricultural land held by the networking farmers corporation in proportion to the interest that the shareholder holds in the networking farmers corporation.

b. Except to the extent provided in this paragraph, a shareholder holding agricultural land by attribution shall be subject to landholding restrictions imposed pursuant to the Code, including sections 9H.4, 9H.5, 501.103, and 567.3. However, notwithstanding section 9H.4, a cooperative association may hold an interest in any number of farmers entities, if the total number of acres held by the farmers entities and attributable to the cooperative association is six hundred forty acres or less.

c. The shareholder's proportionate interest shall be calculated by multiplying the number of acres of agricultural land held by the networking farmers corporation by the percentage interest in the networking farmers corporation held by the shareholder.

3. In the event of a transfer of an interest in the networking farmers corporation by operation of law, the corporation may disregard the transfer for purposes of determining compliance with subsection 1 for a period of two years after the transfer.

Sec. 104. NEW SECTION. 10.4 MULTIPLE INTERESTS RESTRICTED.

1. A person who holds an interest in a networking farmers corporation holding an interest in agricultural land pursuant to section 10.3 shall not hold an interest in another farmers entity if any of the following applies:

a. The person holds a twenty-five percent or greater interest in a networking farmers corporation having six or fewer stockholders.

b. The person holds a fifteen percent or greater interest in a networking farmers corporation having seven or more stockholders.

2. A person who holds a majority interest in an authorized entity shall not hold a majority interest in a networking farmers corporation.

3. A qualified commodity share landlord who owns an interest in a networking farmers corporation holding agricultural land under section 10.3 must rent an additional one hundred fifty acres of agricultural land on a commodity share basis for each farmers entity holding agricultural land under this chapter in which the commodity share landlord acquires an interest.

PART 2
NETWORKING FARMERS
LIMITED LIABILITY COMPANIES

Sec. 105. NEW SECTION. 10.5 LANDHOLDINGS RESTRICTED.

1. Notwithstanding section 9H.4, a networking farmers limited liability company may hold agricultural land in this state if it meets all of the following conditions:

a. The networking farmers limited liability company does not hold an interest in agricultural land of more than six hundred forty acres.

b. At least seventy-five percent of the networking farmers limited liability company's gross receipts from farming are from the sale of livestock or livestock products.

2. a. An interest in agricultural land held by a networking farmers limited liability company shall be attributable as an interest in agricultural land held by a member having an interest in the networking farmers limited liability company. The member shall be deemed to hold an interest in agricultural land held by the networking farmers limited liability company in proportion to the interest that the member holds in the networking farmers limited liability company.

b. Except to the extent provided in this paragraph, a member holding agricultural land by attribution shall be subject to landholding restrictions imposed pursuant to the Code, including sections 9H.4, 9H.5, 501.103, and 567.3. However, notwithstanding section 9H.4, a cooperative association may hold an interest in any number of farmers entities, if the total number of acres held by the farmers entities and attributable to the cooperative association is six hundred forty acres or less.

c. The member's proportionate interest shall be calculated by multiplying the number of acres of agricultural land held by the networking farmers limited liability company by the percentage interest in the networking farmers limited liability company held by the member.

3. In the event of a transfer of an interest in the networking farmers limited liability company by operation of law, the networking farmers limited liability company may disregard the transfer for purposes of determining compliance with subsection 1 for a period of two years after the transfer.

Sec. 106. NEW SECTION. 10.6 MULTIPLE INTERESTS RESTRICTED.

1. A person who holds an interest in a networking farmers limited liability company holding an interest in agricultural land pursuant to section 10.5 shall not hold an interest in another farmers entity, if any of the following applies:

a. The person holds a twenty-five percent or greater interest in a networking farmers limited liability company having six or fewer members.

b. The person holds a fifteen percent or greater interest in a networking farmers limited liability company having seven or more members.

2. A person who holds a majority interest in an authorized entity shall not hold a majority interest in a networking farmers limited liability company.

3. A qualified commodity share landlord who owns an interest in a networking farmers limited liability company holding agricultural land under section 10.5 must rent an additional one hundred fifty acres of agricultural land on a commodity share basis for each farmers entity holding agricultural land under this chapter in which the commodity share landlord acquires an interest.

PART 3
FARMERS COOPERATIVE ASSOCIATIONS

Sec. 107. NEW SECTION. 10.7 LANDHOLDINGS RESTRICTED.

1. Notwithstanding section 9H.4, a farmers cooperative association may hold agricultural land in this state if it meets all of the following conditions:

a. The farmers cooperative association does not hold an interest in agricultural land of more than six hundred and forty acres.

b. The farmers cooperative association does not produce, including by planting or harvesting, forage or grain on agricultural land in which the farmers cooperative association holds an interest. However, the farmers cooperative association may enter into an agreement under a lease or production contract with a person to produce the forage or grain, if the farmers cooperative association does not receive forage or grain in payment under the agreement. The lease or contract may specify the type of forage or grain that must be produced and provide that the farmers cooperative association has a right to purchase the forage or grain on the same terms and conditions as the highest bona fide offer received by the person for the forage or grain, within a period agreed to by the parties to the lease or production contract.

2. a. Except as provided in this section, an interest in agricultural land held by a farmers cooperative association shall be attributable as an interest in agricultural land held by a member having an interest in the farmers cooperative association. The member shall be deemed to hold an interest in agricultural land held by the farmers cooperative association in proportion to the interest that the member holds in the farmers cooperative association.

b. Except to the extent provided in this paragraph, a member holding agricultural land by attribution shall be subject to landholding restrictions imposed pursuant to the Code, including sections 9H.4, 9H.5, 501.103, and 567.3. However, notwithstanding section 9H.4, all of the following shall apply:

(1) A cooperative association may hold an interest in any number of farmers entities, if the total number of acres held by the farmers entities and attributable to the cooperative association is six hundred forty acres or less.

(2) An interest in agricultural land held by a farmers cooperative association shall not be attributable to a member who is an entity organized under state law, if the entity holds a five percent or less interest in the farmers cooperative association.

c. The member's proportionate interest shall be calculated by multiplying the number of acres of agricultural land held by the farmers cooperative association by the percentage interest in the farmers cooperative association held by the member.

3. In the event of a transfer of an interest in a farmers cooperative association by operation of law, the association may disregard the transfer for purposes of determining compliance with subsection 1 for a period of two years after the transfer.

Sec. 108. NEW SECTION. 10.8 MULTIPLE INTERESTS RESTRICTED.

1. A person who holds an interest in a farmers cooperative association holding an interest in agricultural land pursuant to section 10.7 shall not hold an interest in another farmers entity if any of the following applies:

a. The person holds a twenty-five percent or greater interest in a farmers cooperative association having six or fewer members.

b. The person holds a fifteen percent or greater interest in a farmers cooperative association having seven or more members.

2. A person who holds a majority interest in an authorized entity shall not hold a majority interest in a farmers cooperative association.

Sec. 109. NEW SECTION. 10.8A PROCEDURE FOR ACQUISITION - REVERSE REFERENDUM; DISSENT.

A farmers cooperative association shall not acquire an interest in agricultural land or in a farmers entity, unless all of the following apply:

1. The board of directors of the farmers cooperative association adopts a resolution authorizing the acquisition. Except as provided in this section, the resolution shall become effective thirty-one days from the date that the resolution was adopted. The farmers cooperative association is not required to comply with the procedures of this section for as long as the resolution remains in effect. The resolution shall contain all of the following:

a. A declaration stating that the farmers cooperative association reserves the right to acquire agricultural land or an interest in a farmers entity under this chapter.

b. A description of a planned acquisition, if any, including the location of agricultural land planned to be acquired, the identity of any farmers entity in which the farmers cooperative association plans to acquire an interest, and the nature of any farming operation which is planned to occur on land acquired by the farmers cooperative association or conducted by the farmers entity.

c. The date that the resolution was adopted and the date that it will take effect.

2. Within five days following the date that the resolution authorizing the farmers cooperative association to acquire an interest in agricultural land or acquire an interest in a farmers entity is adopted, the farmers cooperative association must provide notice of the resolution as provided in this section. The notice shall be in the following form:

NOTICE

MEMBERS OF THE (INSERT NAME OF THE FARMERS COOPERATIVE ASSOCIATION)

THE (INSERT NAME OF THE FARMERS COOPERATIVE ASSOCIATION) IS PLANNING ON ACQUIRING AN INTEREST IN AGRICULTURAL LAND WHICH MAY BE USED FOR FARMING OR ACQUIRING AN INTEREST IN A BUSINESS THAT OWNS AGRICULTURAL LAND THAT MAY BE USED FOR FARMING. UNDER IOWA CODE CHAPTER 10, THE (INSERT NAME OF THE FARMERS COOPERATIVE ASSOCIATION) IS A FARMERS COOPERATIVE ASSOCIATION. WITHIN A LIMITED TIME PERIOD: (1) VOTING MEMBERS MAY PETITION A FARMERS COOPERATIVE ASSOCIATION TO REQUIRE A MEMBERSHIP VOTE TO APPROVE THE ACQUISITION; AND (2) ALL HOLDERS OF MEMBERS' EQUITY MAY DEMAND PAYMENT OF THE FAIR VALUE OF THEIR INTERESTS.

a. The notice must be published in a newspaper having a general circulation in the county where the farmers cooperative association is located as provided in section 618.3. The notice shall be printed as provided in section 618.17.

b. The notice shall be delivered to all holders of members' equity in the farmers cooperative association, including members and shareholders, by mailing the notice to the holder's last known address as shown on the books of the farmers cooperative association. The notice shall be accompanied by a copy of the resolution adopted by the board pursuant to this section, and a copy of this section.

3. Within thirty days following the date that the resolution authorizing the farmers cooperative association to acquire an interest in agricultural land or acquire an interest in a farmers entity is adopted, at least twenty percent of the voting members of the farmers cooperative association may file a petition with the board of directors demanding a referendum under this subsection.

a. If a valid petition is filed, the board of directors shall call a special referendum of voting members at a regular or special meeting, as provided in section 499.27. The filing of the petition suspends the effectiveness of the resolution until a referendum is conducted as provided in this subsection.

b. The resolution shall not become effective as otherwise provided in this section, until the resolution is approved by a majority vote of the voting members of the farmers cooperative association casting ballots at the meeting to conduct the referendum.

4. a. Within thirty days following the date that the resolution authorizing the farmers cooperative association to acquire an interest in agricultural land or acquire an interest in a farmers entity is adopted, a holder of members' equity, including a member or shareholder, may dissent to an acquisition as expressed in the resolution adopted by the board of directors under this section.

b. The holder of members' equity shall dissent by filing a demand with the board of directors. The farmers cooperative association shall pay the holder the fair value of that holder's interest as if the holder were a member dissenting to a merger or consolidation, as provided in section 499.66, upon surrender of the holder's evidence of equity in the farmers cooperative association, including a certificate of membership or shares.

c. The farmers cooperative association is not required to pay the holder of members' equity the fair value of that holder's interest as provided in this subsection, if the resolution provided for in this section does not become effective.

PART 4
FARMERS COOPERATIVE LIMITED LIABILITY COMPANIES

Sec. 110. NEW SECTION. 10.9 LANDHOLDINGS RESTRICTED.

1. Notwithstanding section 9H.4, a farmers cooperative limited liability company may hold agricultural land in this state if it meets all of the following conditions:

a. The farmers cooperative limited liability company does not hold an interest in agricultural land of more than six hundred and forty acres.

b. The farmers cooperative limited liability company does not produce, including by planting or harvesting, forage or grain on agricultural land in which the farmers cooperative limited liability company holds an interest. However, the farmers cooperative limited liability company may enter into an agreement under a lease or production contract with a person to produce the forage or grain, if the farmers limited liability company does not receive forage or grain in payment under the agreement. The lease or contract may specify the type of forage or grain that must be produced and provide that the farmers cooperative limited liability company has a right to purchase the forage or grain on the same terms and conditions as the highest bona fide offer received by the person for the forage or grain, within a period agreed to by the parties to the lease or production contract.

c. Less than fifty percent of the interest in the farmers cooperative limited liability company is held by members which are parties to intra-company loan agreements. If more than one type of membership interest is established, including any series as provided in section 490A.305 or any class or group as provided in section 490A.307, less than fifty percent of the interest in each type of membership shall be held by members which are parties to intra-company loan agreements.

d. The farmers cooperative limited liability company does not own swine or contract for the care and feeding of swine, if a member of the farmers cooperative limited liability company is a regional cooperative association.

2. a. An interest in agricultural land held by a farmers cooperative limited liability company shall be attributable as an interest in agricultural land held by a member cooperative association of the farmers cooperative limited liability company. The member cooperative association shall be deemed to hold an interest in agricultural land held by the farmers cooperative limited liability company in proportion to the interest that the member cooperative association holds in the limited liability company.

b. Except to the extent provided in this paragraph, a member holding agricultural land by attribution shall be subject to landholding restrictions imposed pursuant to the Code, including sections 9H.4, 9H.5, 501.103, and 567.3. However, notwithstanding section 9H.4, a cooperative association may hold an interest in any number of farmers entities, if the total number of acres held by the farmers entities and attributable to the cooperative association is six hundred forty acres or less.

c. The member cooperative association's proportionate interest shall be calculated by multiplying the number of acres of agricultural land held by the farmers cooperative limited liability company by the percentage interest in the limited liability company held by the cooperative association as a member.

3. In the event of a transfer of an interest in the farmers cooperative limited liability company by operation of law, the farmers cooperative limited liability company may disregard the transfer for purposes of determining compliance with subsection 1 for a period of two years after the transfer.

SUBCHAPTER III — PENALTIES

Sec. 111. NEW SECTION. 10.10 LANDHOLDING RESTRICTIONS — PENALTIES.

A person violating the landholding restrictions in section 10.3, 10.5, 10.7, or 10.9 shall be assessed a civil penalty of not more than ten thousand dollars and shall divest itself of any land held in violation of the section within one year after judgment is entered ordering the farmers entity to comply with that section, as provided in section 10.12.

Sec. 112. NEW SECTION. 10.11 MULTIPLE INTERESTS RESTRICTED — PENALTIES.

1. A civil penalty of not more than one thousand dollars may be imposed on a person who becomes one of the following:

a. A stockholder of a networking farmers corporation as prohibited in section 10.4.

b. A member of a networking farmers limited liability company as prohibited in section 10.6.

c. A member of a farmers cooperative association as prohibited in section 10.8.

2. The person violating the section shall divest the interest held by the person in a farmers entity or authorized entity as is necessary to comply with this chapter, as provided in section 10.12.

Sec. 113. NEW SECTION. 10.12 DIVESTITURE PROCEEDINGS.

The court may determine the method of divesting an interest held by a person found to be in violation of this chapter. A financial gain realized by a person who disposes of an interest held in violation of this chapter shall be forfeited to the state's general fund. All court costs and fees shall be paid by the person holding the interest in violation of the section.

Sec. 114. NEW SECTION. 10.13 INJUNCTIVE RELIEF.

The courts of this state may prevent and restrain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this chapter.

DIVISION II
REPORTS

Sec. 201. NEW SECTION. 10B.1 DEFINITIONS.

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

1. "Agricultural land" means the same as defined in section 9H.1.

2. "Cooperative association" means any entity organized on a cooperative basis, including an association of persons organized under chapter 497, 498, or 499; an entity composed of entities organized under those chapters; or a cooperative corporation organized under chapter 501.

3. "Corporation" means a domestic or foreign corporation, including an entity organized pursuant to chapter 490, or a nonprofit corporation.

4. "Farming" means the same as defined in section 9H.1.

5. "Foreign business" means the same as defined in section 567.1.

6. "Foreign government" means the same as defined in section 567.1.

7. "Limited liability company" means a foreign or domestic limited liability company, including a limited liability company as defined in section 490A.102.

8. "Limited partnership" means a foreign or domestic limited partnership, including a limited partnership as defined in section 487.101, subsection 7.

9. "Nonprofit corporation" means any of the following:

a. A corporation organized under the provisions of former chapter 504 or chapter 504A.

b. A corporation which qualifies under Title 26, section 501, of the United States Code.

10. "Nonresident alien" means the same as defined in section 567.1.

11. "Reporting entity" means any of the following:

a. A corporation, other than a family farm corporation as defined in section 9H.1, including an authorized farm corporation as defined in section 9H.1 or networking farmers corporation as defined in section 10.1, holding an interest in agricultural land in this state.

b. A cooperative association holding an interest in agricultural land in this state.

c. A limited partnership, other than a family farm limited partnership as defined in section 9H.1, holding an interest in agricultural land in this state.

d. A person acting in a fiduciary capacity or as a trustee on behalf of a person, including a corporation, cooperative association, limited liability company, or limited partnership, which holds in a trust, other than through a family trust as defined in section 9H.1, including through an authorized trust, an interest in agricultural land in this state.

e. A limited liability company, other than a family farm limited liability company as defined in section 9H.1, including an authorized limited liability company as defined in section 9H.1, or a networking farmers limited liability company or farmers cooperative limited liability company as defined in section 10.1, holding an interest in agricultural land in this state.

f. A foreign business holding an interest in agricultural land in this state as provided in chapter 567.

g. A foreign government holding an interest in agricultural land in this state as provided in chapter 567.

h. A nonresident alien holding an interest in agricultural land in this state as provided in chapter 567.

Sec. 202. NEW SECTION. 10B.2 INTERESTS DESCRIBED.

A reporting entity holds an interest in agricultural land if the reporting entity directly or indirectly owns or leases agricultural land in this state.

Sec. 203. NEW SECTION. 10B.3 PERSONS REQUIRED TO FILE REPORTS.

The reports required under section 10B.4 shall be signed and filed by the following individuals required to submit reports pursuant to that section for their respective reporting entities:

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

2. A person serving as the president or other officer or authorized representative of a cooperative association.

3. A person acting as the general partner of a limited partnership.

4. A person acting in a fiduciary capacity or as a trustee on behalf of a person.

5. A person who is a member, manager, or authorized representative of a limited liability company.

6. A person serving as the president or other officer or authorized representative of a foreign business.

7. A person authorized to make the report by a foreign government.

8. A nonresident alien or an agent, trustee, or fiduciary of the nonresident alien.

Sec. 204. NEW SECTION. 10B.4 REPORTING REQUIREMENTS.

1. An annual report shall be filed by a reporting entity with the secretary of state on or before March 31 of each year as required by rules adopted by the secretary of state pursuant to chapter 17A. The reports shall be filed on forms prepared and supplied by the secretary of state.

2. A report required pursuant to this section shall contain information for the last year regarding the reporting entity as required by the secretary of state which shall at least include all of the following:

a. The name and address of the reporting entity.

b. The name and address of the person supervising the daily operations on the agricultural land in which the reporting entity holds an interest.

c. The following information regarding each person who holds an interest in the reporting entity:

(1) The name and address of the person.

(2) The person's citizenship, if other than the United States.

(3) The percentage interest held by the person in the reporting entity, unless the person is a natural person who holds less than a ten percent interest in a reporting entity.

d. The percentage interest that a reporting entity holds in another reporting entity, and the number of acres of agricultural land that is attributable to the reporting entity which holds an interest in another reporting entity as provided in chapter 10.

e. A certification that the reporting entity meets all of the requirements to lawfully hold agricultural land in this state.

f. The number of acres of agricultural land held by the reporting entity, including the following:

(1) The total number of acres in the state.

(2) The number of acres in each county identified by county name.

(3) The number of acres owned.

(4) The number of acres leased.

(5) The number of acres held other than by ownership or lease.

(6) The number of acres used for the production of row crops.

3. A reporting entity other than a foreign business, foreign government, or nonresident alien shall be excused from filing a report with the secretary of state during any year in which the reporting entity holds an interest in less than twenty acres of agricultural land in this state and the gross revenue produced from all farming on the land equals less than ten thousand dollars.

Sec. 205. NEW SECTION. 10B.5 USE OF REPORTS.

1. The secretary of state shall notify the attorney general when the secretary of state has reason to believe a violation of this chapter has occurred.

2. Information provided in reports required in this chapter shall be made available to members of the general assembly and appropriate committees of the general assembly in order to determine the extent that agricultural land is held in this state by corporations and other business and foreign entities and the effect of such land ownership upon the economy of this state. The secretary of state shall assist any committee of the general assembly studying these issues.

Sec. 206. NEW SECTION. 10B.6 PENALTIES.

1. The failure to timely file a report or the filing of false information in a report as provided in section 10B.4 is punishable by a civil penalty not to exceed one thousand dollars.

2. The secretary of state shall notify a reporting entity which the secretary of state has reason to believe is required to file a report and who has not filed a timely report, that the person may be in violation of section 10B.4. The secretary of state shall include in the notice a statement of the penalty which may be assessed if the required report is not filed within thirty days. The secretary of state shall refer to the attorney general any reporting entity which the secretary of state has reason to believe is required to report if, after thirty days from receipt of the notice, the reporting entity has not filed the required report. The attorney general may, upon referral from the secretary of state, file an action in district court to seek the assessment of a civil penalty of one hundred dollars for each day the report is not filed.

Sec. 207. SUSPENSION OF REPORTING REQUIREMENTS.

1. A person required to file a report with the secretary of state pursuant to this chapter is not required to file a report with the secretary of state pursuant to section 9H.5A or 501.103, subsection 3, or section 567.8.

2. This section is repealed on July 1, 2000.

DIVISION III
EFFECTIVE DATE

Sec. 301. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 16, 1998

CHAPTER 1111

FORCIBLE FELON LIABILITY

H.F. 2336

AN ACT relating to the assumption of risk by and liability of forcible felons and persons aiding and abetting in the commission of forcible felonies for damages resulting from the offenders' criminal conduct.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 670A.1 DEFINITIONS.

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

1. "Act" means an act as defined under section 702.2.

2. "Convicted" means a finding of guilt, irrespective of imposition or execution of any

sentence; a final and valid admission of guilt or a guilty plea; an entry of judgment of conviction; an adjudication of delinquency; a plea of guilty to a delinquency petition; the entry into an informal adjustment agreement or an agreement to the entry of a consent decree regarding a delinquent act.

3. "Course of criminal conduct" means an act which when committed constitutes a crime and includes any acts of a victim in defending or attempting to defend against the crime.

4. "Crime" means a forcible felony as defined under section 702.11.

5. "Perpetrator" means a person who has committed the acts constituting a crime and includes a person who has been convicted of a crime and any person who jointly participates or aids and abets in the commission of a crime.

6. "Victim" means a person who is the object of a course of criminal conduct and also includes persons who provide reasonable assistance to or who defend another person who is exposed to or has suffered serious injury at the time of or immediately after the commission of a crime.

Sec. 2. NEW SECTION. 670A.2 PERPETRATOR LIABILITY.

1. A perpetrator assumes the risk of and is liable for any loss, injury, or death which results from or arises out of the perpetrator's course of criminal conduct. A crime victim is not liable for any damages caused by any acts of the victim in defending or attempting to defend against the crime if the victim used reasonable force when committing the acts. A perpetrator's assumption of risk and liability does not eliminate a victim's duty to protect against any conditions which the victim knows or has reason to know may create an unreasonable risk of harm. This section shall not apply to perpetrators who, because of mental illness or defect, are incapable of knowing the nature and quality of their acts or are incapable of distinguishing between right and wrong in relation to those acts.

2. For purposes of this section, a certified copy of a guilty plea, an order entering a judgment of guilt, a court record of conviction or adjudication, an order adjudicating a child delinquent, or a record of an informal adjustment agreement shall be conclusive proof of a perpetrator's assumption of risk of and liability for any damage or harm caused to a victim.

3. In addition to any claim for damages, the court shall award a victim reasonable expenses, including attorney's fees and disbursements, which are incurred in the prosecution of the damages claim.

4. Except as necessary to preserve evidence, the court shall stay any action for damages under this section during the pendency of any criminal action which pertains to the course of criminal conduct which forms the basis for a claim for relief under this section.

Approved April 16, 1998

CHAPTER 1112

GRADUATED DRIVER'S LICENSES

H.F. 2528

AN ACT establishing a graduated driver's license for young drivers, making penalties applicable, creating an interim study committee, and including an applicability provision and an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321.177, subsection 1, Code 1997, is amended to read as follows:

1. To any person who is under the age of eighteen years~~, without the person's first having successfully completed an approved driver education course, in which case, the minimum age is sixteen years~~ except as provided in section 321.180B. However, the department may issue a driver's license to certain minors as provided in section 321.178 or 321.194, ~~an instruction permit as provided in section 321.180, subsection 1,~~ or a driver's license restricted to motorized bicycles as provided in section 321.189~~, subsection 8~~.

Sec. 2. Section 321.178, subsection 1, Code 1997, is amended to read as follows:

1. APPROVED COURSE. An approved driver education course as programmed by the department of education shall consist of at least thirty clock hours of classroom instruction, and six or more clock hours of laboratory instruction of which at least three clock hours shall consist of street or highway driving. Classroom instruction shall include all of the following:

a. A minimum of four hours of instruction concerning substance abuse.

b. A minimum of twenty minutes of instruction concerning railroad crossing safety.

c. Instruction relating to becoming an organ donor under the uniform anatomical gift Act.

~~After the student has completed three clock hours of street or highway driving and has demonstrated to the instructor an ability to properly operate a motor vehicle and upon written request of a parent or guardian, the instructor may waive the remaining required laboratory instruction.~~

To be qualified as a classroom or laboratory driver education instructor, a person shall have satisfied the educational requirements for a teaching license at the elementary or secondary level and hold a valid license to teach driver education in the public schools of this state.

Every public school district in Iowa shall offer or make available to all students residing in the school district or Iowa students attending a nonpublic school in the district an approved course in driver education. The courses may be offered at sites other than at the public school, including nonpublic school facilities within the public school districts. An approved course offered during the summer months, on Saturdays, after regular school hours during the regular terms or partly in one term or summer vacation period and partly in the succeeding term or summer vacation period, as the case may be, shall satisfy the requirements of this section to the same extent as an approved course offered during the regular school hours of the school term. A student who successfully completes and obtains certification in an approved course in driver education or an approved course in motorcycle education may, upon proof of such fact, be excused from any field test which the student would otherwise be required to take in demonstrating the student's ability to operate a motor vehicle. A student shall not be excused from any field test if a parent, guardian, or instructor requests that a test be administered. Street or highway driving instruction may be provided by a person qualified as a classroom driver education instructor or a person certified by the department of transportation. The department of transportation shall adopt rules pursuant to chapter 17A to provide for certification of persons qualified to provide street or highway driving instruction and for administering requested field tests.

"Student," for purposes of this section, means a person between the ages of fourteen years and twenty-one years who resides in the public school district and who satisfies the preliminary licensing requirements of the department of transportation.

Any person who successfully completes an approved driver education course at a private or commercial driver education school licensed by the department of transportation, shall likewise be eligible for a driver's license ~~at the age of sixteen years, providing the instructor in charge of the student's training has satisfied the educational requirements for a teaching certificate at the secondary level and holds a valid certificate to teach driver education in the public schools of Iowa~~ as provided in section 321.180B or 321.194.

Sec. 3. Section 321.180, subsection 1, Code 1997, is amended to read as follows:

1. a. A person who is at least ~~fourteen~~ eighteen years of age and who, except for the person's lack of instruction in operating a motor vehicle, would be qualified to obtain a driver's license, shall, upon meeting the requirements of section 321.186 other than a driving demonstration, and upon paying the required fee, be issued an instruction permit by the department. Subject to the limitations in this subsection, an instruction permit entitles the permittee, while having the permit in the permittee's immediate possession, to operate a motor vehicle, other than a commercial motor vehicle or as a chauffeur or a motor vehicle with a gross vehicle weight rating of sixteen thousand one or more pounds, upon the highways for a period not to exceed two years from the licensee's birthday anniversary in the year of issuance. If the applicant for an instruction permit holds a driver's license issued in this state valid for the operation of a motorized bicycle or a motorcycle, the instruction permit shall be valid for such operation without the need of an accompanying person.

A permittee shall not be penalized for failing to have the instruction permit in immediate possession if the permittee produces in court, within a reasonable time, an instruction permit issued to the permittee and valid at the time of the permittee's arrest or at the time the permittee was charged with failure to have the permit in the permittee's immediate possession.

b. Except as otherwise provided, a permittee who is ~~sixteen~~ eighteen years of age or older must be accompanied by a person issued a motor vehicle license valid for the vehicle operated who is a member of the permittee's immediate family if the family member is at least twenty-one years of age, an approved driver education instructor, a prospective driver education instructor who is enrolled in a practitioner preparation program with a safety education program approved by the state board of education, or a person at least ~~eighteen~~ twenty-five years of age, and who is actually occupying a seat beside the driver. ~~Except as otherwise provided, a permittee who is less than sixteen years of age must be accompanied by a person issued a motor vehicle license valid for the vehicle operated who is the parent or guardian of the permittee, member of the permittee's immediate family if the family member is at least twenty-one years of age, an approved driver education instructor, a prospective driver education instructor who is enrolled in a practitioner preparation program with a safety education program approved by the state board of education, or a person who is twenty-five years of age or more if written permission is granted by the parent or guardian, and who is actually occupying a seat beside the driver.~~

However, if the permittee is operating a motorcycle in accordance with this section or section 321.180B, the accompanying person must be within audible and visual communications distance from the permittee and be accompanying the permittee on or in a different motor vehicle. Only one permittee shall be under the immediate supervision of an accompanying qualified person~~, unless the qualified person is an approved motorcycle or driver education instructor or a prospective motorcycle or driver education instructor who is enrolled in a practitioner preparation program with a safety education program approved by the state board of education, and the permittee is enrolled in an approved motorcycle or driver education course, in which case no more than three students shall be under the immediate supervision of each instructor while on the highway~~.

Sec. 4. Section 321.180, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 5. A motorcycle instruction permit issued under this section is not renewable.

Sec. 5. NEW SECTION. 321.180B GRADUATED DRIVER'S LICENSES FOR PERSONS AGED FOURTEEN THROUGH SEVENTEEN.

Persons under age eighteen shall not be issued a license or permit to operate a motor vehicle except under the provisions of this section. However, the department may issue restricted and special driver's licenses to certain minors as provided in sections 321.178 and 321.194, and driver's licenses restricted to motorized bicycles as provided in section 321.189. A license or permit shall not be issued under this section or section 321.178 or 321.194 without the consent of a parent or guardian. An additional consent is required each time a license or permit is issued under this section or section 321.178 or 321.194. The consent must be signed by at least one parent or guardian on an affidavit form provided by the department.

1. INSTRUCTION PERMIT. The department may issue an instruction permit to an applicant between the ages of fourteen and eighteen years if the applicant meets the requirements of sections 321.184 and 321.186, other than a driving demonstration, and pays the required fee. An instruction permit issued under this section shall be valid for a period not to exceed two years from the licensee's birthday anniversary in the year of issuance. A motorcycle instruction permit issued under this section is not renewable.

Subject to the limitations in this subsection, an instruction permit entitles the permittee, while having the permit in the permittee's immediate possession, to operate a motor vehicle other than a commercial motor vehicle or as a chauffeur or a motor vehicle with a gross vehicle weight rating of sixteen thousand one or more pounds upon the highways.

Except as otherwise provided, a permittee who is less than eighteen years of age and who is operating a motor vehicle must be accompanied by a person issued a driver's license valid for the vehicle operated who is the parent or guardian of the permittee, member of the permittee's immediate family if the family member is at least twenty-one years of age, an approved driver education instructor, a prospective driver education instructor who is enrolled in a practitioner preparation program with a safety education program approved by the state board of education, or a person at least twenty-five years of age if written permission is granted by the parent or guardian, and who is actually occupying a seat beside the driver. A permittee shall not operate a motor vehicle if the number of passengers in the motor vehicle exceeds the number of passenger safety belts in the motor vehicle. If the applicant for an instruction permit holds a driver's license issued in this state valid for the operation of a motorized bicycle or a motorcycle, the instruction permit shall be valid for such operation without the requirement of an accompanying person.

However, if the permittee is operating a motorcycle in accordance with this section, the accompanying person must be within audible and visual communications distance from the permittee and be accompanying the permittee on or in a different motor vehicle. Only one permittee shall be under the immediate supervision of an accompanying qualified person.

A permittee shall not be penalized for failing to have the instruction permit in the permittee's immediate possession if the permittee produces in court, within a reasonable time, an instruction permit issued to the permittee and valid at the time of the permittee's arrest or at the time the permittee was charged with failure to have the permit in the permittee's immediate possession.

2. INTERMEDIATE LICENSE. The department may issue an intermediate driver's license to a person sixteen or seventeen years of age who possesses an instruction permit issued under subsection 1 for a minimum of six months, and who presents an affidavit signed by a parent or guardian on a form to be provided by the department that the permittee has accumulated a total of twenty hours of street or highway driving of which two hours were conducted after sunset and before sunrise and the street or highway driving was with the permittee's parent, guardian, instructor, a person certified by the department, or a person at

least twenty-five years of age who had written permission from a parent or guardian to accompany the permittee, and whose driving privileges have not been suspended, revoked, or barred under this chapter or chapter 321J during, and who has been accident and conviction free continuously for, the six-month period immediately preceding the application for an intermediate license. An applicant for an intermediate license must meet the requirements of section 321.186, including satisfactory completion of driver education as required in section 321.178, and payment of the required license fee before an intermediate license will be issued. A person issued an intermediate license must limit the number of passengers in the motor vehicle when the intermediate licensee is operating the motor vehicle to the number of passenger safety belts.

Except as otherwise provided, a person issued an intermediate license under this subsection who is operating a motor vehicle between the hours of twelve-thirty a.m. and five a.m. must be accompanied by a person issued a driver's license valid for the vehicle operated who is the parent or guardian of the permittee, a member of the permittee's immediate family if the family member is at least twenty-one years of age, an approved driver education instructor, a prospective driver education instructor who is enrolled in a practitioner preparation program with a safety education program approved by the state board of education, or a person at least twenty-five years of age if written permission is granted by the parent or guardian, and who is actually occupying a seat beside the driver. However, a licensee may operate a vehicle to and from school-related extracurricular activities and work without an accompanying driver between the hours of twelve-thirty a.m. and five a.m. if such licensee possesses a waiver on a form to be provided by the department. An accompanying driver is not required between the hours of five a.m. and twelve-thirty a.m.

3. REMEDIAL DRIVER IMPROVEMENT ACTION OR SUSPENSION OF PERMIT OR INTERMEDIATE LICENSE. A person who has been issued an instruction permit or an intermediate license under this section, upon conviction of a moving traffic violation or involvement in a motor vehicle accident which occurred during the term of the instruction permit or intermediate license, shall be subject to remedial driver improvement action or suspension of the permit or license. A person possessing an instruction permit who has been convicted of a moving traffic violation or has been involved in an accident shall not be issued an intermediate license until the person has completed the remedial driver improvement action and has been accident and conviction free continuously for the six-month period immediately preceding the application for the intermediate license. A person possessing an intermediate license who has been convicted of a moving traffic violation or has been involved in an accident shall not be issued a full driver's license until the person has completed the remedial driver improvement action and has been accident and conviction free continuously for the twelve-month period immediately preceding the application for a full driver's license.

4. FULL DRIVER'S LICENSE. A full driver's license may be issued to a person seventeen years of age who possesses an intermediate license issued under subsection 2 for a minimum of twelve months, and who presents an affidavit signed by a parent or guardian on a form to be provided by the department that the intermediate licensee has accumulated a total of ten hours of street or highway driving of which two hours were conducted after sunset and before sunrise and the street or highway driving was with the licensee's parent, guardian, instructor, a person certified by the department, or a person at least twenty-five years of age who had written permission from a parent or guardian to accompany the licensee, whose driving privileges have not been suspended, revoked, or barred under this chapter or chapter 321J during, and who has been accident and conviction free continuously for, the twelve-month period immediately preceding the application for a full driver's license, and who has paid the required fee.

5. CLASS M LICENSE EDUCATION REQUIREMENTS. A person under the age of eighteen applying for an intermediate or full driver's license valid for the operation of a motorcycle shall be required to successfully complete a motorcycle education course either approved and established by the department of transportation or from a private or commercial

driver education school licensed by the department of transportation before the class M license will be issued. A public school district shall charge a student a fee which shall not exceed the actual cost of instruction minus moneys received by the school district under subsection 6.

6. MOTORCYCLE RIDER EDUCATION FUND. The motorcycle rider education fund is established in the office of the treasurer of state. The moneys credited to the fund are appropriated to the state department of transportation to be used to establish new motorcycle rider education courses and reimburse sponsors of motorcycle rider education courses for the costs of providing motorcycle rider education courses approved and established by the department. The department shall adopt rules under chapter 17A providing for the distribution of moneys to sponsors of motorcycle rider education courses based upon the cost of providing the education courses.

7. RULES. The department may adopt rules pursuant to chapter 17A to administer this section.

Sec. 6. Section 321.189, subsection 6, Code Supplement 1997, is amended to read as follows:

6. LICENSES ISSUED TO PERSONS UNDER AGE TWENTY-ONE. A motor vehicle license issued to a person under eighteen years of age shall be identical in form to any other motor vehicle license except that the words "under eighteen" shall appear prominently on the face of the license. A motor vehicle license issued to a person eighteen years of age or older but less than twenty-one years of age shall be identical in form to any other motor vehicle license except that the words "under twenty-one" shall appear prominently on the face of the license. Upon attaining the age of eighteen or upon attaining the age of twenty-one, and upon payment of a one dollar fee, the person shall be entitled to a new motor vehicle license or nonoperator's identification card for the unexpired months of the motor vehicle license or card. An instruction permit or intermediate license issued under section 321.180B, subsection 1 or 2, shall include a distinctive color bar. An intermediate license issued under section 321.180B, subsection 2, shall include the words "intermediate license" printed prominently on the face of the license.

Sec. 7. Section 321.189, subsections 7 and 9, Code Supplement 1997, are amended by striking the subsections.

Sec. 8. Section 321.194, Code 1997, is amended to read as follows:

321.194 SPECIAL MINORS' LICENSES.

1. DRIVER'S LICENSE ISSUED FOR TRAVEL TO AND FROM SCHOOL. Upon certification of a special need by the school board, ~~or the~~ superintendent of the applicant's school, or principal, if authorized by the superintendent, the department may issue a class C or M driver's license to a person between the ages of fourteen and eighteen years whose driving privileges have not been suspended, revoked, or barred under this chapter or chapter 321J during, and who has not been convicted of a moving traffic violation or involved in a motor vehicle accident for, the six-month period immediately preceding the application for the special minor's license and who has successfully ~~completes~~ completed an approved driver education course. However, the completion of a course is not required if the applicant demonstrates to the satisfaction of the department that completion of the course would impose a hardship upon the applicant. The department shall adopt rules defining the term "hardship" and establish procedures for the demonstration and determination of when completion of the course would impose a hardship upon an applicant.

a. The driver's license entitles the holder, while having the license in immediate possession, to operate a motor vehicle other than a commercial motor vehicle or as a chauffeur:

(1) During the hours of 6 a.m. to 10 p.m. over the most direct and accessible route between the licensee's residence and schools of enrollment and between schools of enrollment for the purpose of attending duly scheduled courses of instruction and extracurricular activities ~~at the schools~~ within the school district.

(2) At any time when the licensee is accompanied in accordance with section ~~321.180~~ 321.180B, subsection 1~~, paragraph "b"~~.

b. Each application shall be accompanied by a statement from the school board, ~~or~~ superintendent, or principal, if authorized by the superintendent, of the applicant's school. The statement shall be upon a form provided by the department. The school board, ~~or~~ superintendent, or principal, if authorized by the superintendent, shall certify that a need exists for the license and that the board, ~~and~~ superintendent, and a principal authorized by the superintendent are not responsible for actions of the applicant which pertain to the use of the driver's license. The department of education shall adopt rules establishing criteria for issuing a statement of necessity. Upon receipt of a statement of necessity, the department shall issue the driver's license. The fact that the applicant resides at a distance less than one mile from the applicant's schools of enrollment is prima facie evidence of the nonexistence of necessity for the issuance of a license. The driver's license shall not be issued for purposes of attending a public school in a school district other than either of the following:

(1) The district of residence of the parent or guardian of the student.

(2) A district which is contiguous to the district of residence of the parent or guardian of the student, if the student is enrolled in the public school which is not the school district of residence because of open enrollment under section 282.18 or as a result of an election by the student's district of residence to enter into one or more sharing agreements pursuant to the procedures in chapter 282.

2. SUSPENSION AND REVOCATION. A driver's license issued under this section is subject to suspension or revocation for the same reasons and in the same manner as suspension or revocation of any other driver's license. The department may also suspend a driver's license issued under this section upon receiving satisfactory evidence that the licensee has violated the restrictions of the license or has been involved in one or more accidents chargeable to the licensee. The department may suspend a driver's license issued under this section upon receiving a record of the licensee's conviction for one violation. The department shall revoke the license upon receiving a record of conviction for two or more violations of a law of this state or a city ordinance regulating the operation of motor vehicles on highways other than parking violations as defined in section 321.210. After a person licensed under this section receives two or more convictions which require revocation of the person's license under this section, the department shall not grant an application for a new motor vehicle license until the expiration of one year ~~or until the licensee's sixteenth birthday, whichever is the longer period~~.

Sec. 9. Section 321.196, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Except as otherwise provided, a motor vehicle license, other than an instruction permit, chauffeur's instruction permit, or commercial driver's instruction permit issued under section 321.180, expires, at the option of the applicant, two or four years from the licensee's birthday anniversary occurring in the year of issuance if the licensee is between the ages of seventeen years eleven months and seventy years on the date of issuance of the license. If the licensee is under the age of seventeen years eleven months or age seventy or over, the license is effective for a period of two years from the licensee's birthday anniversary occurring in the year of issuance. Except as required in section 321.188, and except for a motorcycle instruction permit issued in accordance with section 321.180 or 321.180B, a motor vehicle license is renewable without written examination or penalty within a period of sixty days after its expiration date. A person shall not be considered to be driving with an invalid license during a period of sixty days following the license expiration date. However, for a license renewed within the sixty-day period, the date of issuance shall be considered to be the previous birthday anniversary on which it expired. Applicants whose licenses are restricted due to vision or other physical deficiencies may be required to renew their licenses every two years. For the purposes of this section the birthday anniversary of a person born on February 29 shall be deemed to occur on March 1. The department in its discretion may

authorize the renewal of a valid motor vehicle license other than a commercial driver's license upon application without an examination provided that the applicant satisfactorily passes a vision test as prescribed by the department, files a vision report in accordance with section 321.186A which shows that the applicant's visual acuity level meets or exceeds those required by the department, or is eligible for renewal by mail pursuant to rules adopted by the department. The department may assess an applicant a fee of no more than two dollars for administration and mailing expenses for providing for renewal of the applicant's driver's license by mail.

Sec. 10. NEW SECTION. 321.210C PROBATION PERIOD.

A person whose driver's license or operating privileges have been suspended, revoked, or barred under chapter 321 for a conviction of a moving traffic violation, or suspended, revoked, or barred under section 321.205 or section 321.210, subsection 1, paragraph "e", or chapter 321J, must satisfactorily complete a twelve-month probation period beginning immediately after the end of the period of suspension, revocation, or bar. Upon conviction of a moving traffic violation which occurred during the probation period, the department may suspend the driver's license or operating privileges for an additional period equal in duration to the original period of suspension, revocation, or bar, or for one year, whichever is the shorter period.

Sec. 11. Section 321.218A, Code Supplement 1997, is amended to read as follows:

321.218A CIVIL PENALTY — DISPOSITION — REINSTATEMENT.

When the department suspends, revokes, or bars a person's motor vehicle license or nonresident operating privilege for a conviction under this chapter, the department shall assess the person a civil penalty of two hundred dollars. However, for persons age nineteen or under, the civil penalty assessed shall be fifty dollars. The civil penalty does not apply to a suspension issued for a violation of section 321.180B. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit the money in the general fund of the state. A temporary restricted license shall not be issued or a motor vehicle license or nonresident operating privilege reinstated until the civil penalty has been paid.

Sec. 12. Section 321A.17, subsection 5, Code 1997, is amended to read as follows:

5. An individual applying for a motor vehicle license following a period of suspension or revocation pursuant to a dispositional order issued under section 232.52, subsection 2, paragraph "a", or under section 321.180B, section 321.210, subsection 1, paragraph "d", or section 321.210A, 321.213A, 321.213B, 321.216B, or 321.513, following a period of suspension under section 321.194, or following a period of revocation pursuant to a court order issued under section 901.5, subsection 10, or under section 321J.2A, is not required to maintain proof of financial responsibility under this section.

Sec. 13. Section 805.8, subsection 2, paragraph f, Code Supplement 1997, is amended to read as follows:

f. For violations of the conditions or restrictions of a motor vehicle license under sections 321.180, 321.180B, 321.193, and 321.194, the scheduled fine is twenty dollars.

Sec. 14. APPLICABILITY. The provisions of this Act relating to the issuance of any individual type of driver's permit or license to operate a motor vehicle and to the operation of a motor vehicle under that permit or license shall be applied only to a person who meets the minimum age qualification for the particular permit or license on or after the effective date of this Act.

Sec. 15. DRIVER'S EDUCATION CURRICULUM — STUDY.

The legislative council is requested to establish an interim study committee consisting of members of both political parties administered throughout the state. The study may include but is not limited to driver's education curriculum, certification of persons by the department

to provide classroom and laboratory instruction, costs to students and to schools, privatizing driver's education, expansion of behind-the-wheel training and effects on insurance rates. The committee may consult with the department of transportation, department of education, parents, educators, insurance executives, and other persons the committee may believe relevant to the study of driver's education. The committee is directed to submit its findings, together with any recommendations, in a report to the general assembly which convenes in January 1999.

Sec. 16. EFFECTIVE DATE. This Act takes effect January 1, 1999.

Approved April 16, 1998

CHAPTER 1113

CONTRIBUTIONS AND PAYMENTS TO SECOND INJURY FUND

S.F. 540

AN ACT relating to the second injury compensation Act, by providing for payments to the second injury fund including the imposition of an employer surcharge and a sunset of the ability to impose an employer surcharge, providing for the collection of payments to the second injury fund, and providing an effective date and applicability provision.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 85.65, Code 1997, is amended to read as follows:

85.65 PAYMENTS TO SECOND INJURY FUND.

The employer, or, if insured, the insurance carrier in each case of compensable injury causing death, shall pay to the treasurer of state for the second injury fund the sum of ~~four~~ twelve thousand dollars in a case where there are dependents and ~~fifteen~~ forty-five thousand dollars in a case where there are no dependents. The payment shall be made at the time compensation payments are begun, or at the time the burial expenses are paid in a case where there are no dependents. However, the payments shall be required only in cases of injury resulting in death coming within the purview of this chapter and occurring after July 1, 1978. These payments shall be in addition to any payments of compensation to injured employees or their dependents, or of burial expenses as provided in this chapter.

Sec. 2. NEW SECTION. 85.65A PAYMENTS TO SECOND INJURY FUND — SURCHARGE ON EMPLOYERS.

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

a. "Insured employers" means employers who are commercially insured for purposes of workers' compensation coverage or who have been self-insured for less than twenty-four months as of the first day of the fiscal year in which a surcharge is imposed pursuant to this section.

b. "Self-insured employers" means employers who have been self-insured for purposes of workers' compensation coverage for at least twenty-four months as of the first day of the fiscal year in which a surcharge is imposed pursuant to this section.

2. Prior to each fiscal year commencing on or after July 1, 1999, the commissioner of insurance shall conduct an examination of the outstanding liabilities of the second injury fund and shall make a determination as to whether sufficient funds will be available in the second injury fund to pay the liabilities of the fund for each of the next two fiscal years. If the

commissioner of insurance determines sufficient funds will be available, the commissioner shall not impose a surcharge on employers during the next succeeding fiscal year. If the commissioner determines sufficient funds will not be available, the commissioner shall impose by rule, pursuant to chapter 17A, a surcharge on employers during the next succeeding fiscal year for payment to the treasurer of state for the second injury fund pursuant to the requirements of this section.

3. If the commissioner of insurance determines that a surcharge on employers shall be imposed during any applicable fiscal year, the surcharge imposed shall comply with and be subject to all of the following requirements:

a. The surcharge shall apply to all workers' compensation insurance policies and self-insurance coverages of employers approved for self-insurance by the commissioner of insurance pursuant to section 87.4 or 87.11, and to the state of Iowa, its departments, divisions, agencies, commissions, and boards, or any political subdivision coverages whether insured or self-insured. The surcharge shall not apply to any reinsurance or retrocessional transaction under section 520.4 or 520.9.

b. In determining the surcharge for any applicable fiscal year, the commissioner of insurance shall provide that all insured and self-insured employers be assessed, in total, an amount the commissioner determines is sufficient, together with the moneys in the second injury fund, to meet the outstanding liabilities of the second injury fund.

c. The total assessment amount used in calculating the surcharge shall be allocated between self-insured employers and insured employers based on paid losses for the preceding calendar year. The portion of the total aggregate assessment that shall be collected from self-insured employers shall be equal to that proportion of total paid losses during the preceding calendar year, which the total compensation payments of all self-insured employers bore to the total compensation payments made by all self-insured employers and insurers on behalf of all insured employers during the preceding calendar year. The portion of the total aggregate assessment that is not to be collected from self-insured employers shall be collected from insured employers.

d. The method of assessing self-insured employers a surcharge shall be based on paid losses. The method of assessing insured employers a surcharge shall be by insurers collecting assessments from insured employers through a surcharge based on premium.

e. Assessments collected through imposition of a surcharge pursuant to this section shall not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but shall for the purpose of collection be treated as separate costs by insurers. The surcharge is collectible by an insurer and nonpayment of the surcharge shall be treated as nonpayment of premium and the insurer shall retain all cancellation rights inuring to it for nonpayment of premium. An insurance carrier, its agent, or a third-party administrator shall not be entitled to any portion of the surcharge as a fee or commission for its collection. The surcharge is not subject to any taxes, licenses, or fees. The surcharge is not deemed to be an assessment or tax, but shall be deemed an additional benefit paid for injuries compensable under this division.

4. The commissioner of insurance shall adopt rules, pursuant to chapter 17A, concerning the requirements of this section.

5. This section is repealed July 1, 2003.

Sec. 3. Section 85.66, Code 1997, is amended to read as follows:

85.66 SECOND INJURY FUND — ~~PAYMENTS~~ CREATION — CUSTODIAN.

~~When the total amount of the payments provided for in the preceding section, together with accumulated interest and earnings, equals or exceeds one million dollars no further contributions to the fund shall be required; but when, thereafter, the amount of the sum is reduced below five hundred thousand dollars by reason of payments made to employees pursuant to this division, contributions shall be resumed and shall continue until the sum, together with accumulated interest and earnings, again amounts to one million dollars.~~

~~The treasurer of state shall determine when contributions shall be made to the fund and when they shall be suspended and may enforce the collection of contributions.~~

The "Second Injury Fund" is hereby established under the custody of the treasurer of state and shall consist of payments to the fund as provided by this division and any accumulated interest and earnings on moneys in the second injury fund. The treasurer of state is charged with the conservation of the assets of the second injury fund. Moneys ~~so~~ collected ~~shall constitute a~~ in the "Second Injury Fund"~~, in the custody of the treasurer of state, to~~ shall be disbursed only for the purposes stated in this division, and shall not at any time be appropriated or diverted to any other use or purpose. The treasurer of state shall invest any surplus moneys of the fund in securities which constitute legal investments for state funds under the laws of this state, and may sell any of the securities in which the fund is invested, if necessary, for the proper administration or in the best interests of the fund. Disbursements from the fund shall be paid by the treasurer of state only upon the written order of the industrial commissioner. The treasurer of state shall quarterly prepare a statement of the fund, setting forth the balance of moneys in the fund, the income of the fund, specifying the source of all income, the payments out of the fund, specifying the various items of payments, and setting forth the balance of the fund remaining to its credit. The statement shall be open to public inspection in the office of the treasurer of state.

Sec. 4. Section 85.67, Code 1997, is amended to read as follows:

85.67 ADMINISTRATION OF FUND — SPECIAL COUNSEL — PAYMENT OF AWARD.

~~The treasurer of state shall be charged with the conservation of the assets of the second injury fund, and the collection of contributions to the fund.~~ The attorney general shall appoint a staff member to represent the treasurer of state and the fund in all proceedings and matters arising under this division. In making an award under this division, the industrial commissioner shall specifically find the amount the injured employee shall be paid weekly, the number of weeks of compensation which shall be paid by the employer, the date upon which payments out of the fund shall begin, and, if possible, the length of time the payments shall continue.

Sec. 5. Section 85.68, Code 1997, is amended to read as follows:

85.68 ACTIONS — COLLECTION OF PAYMENTS — SUBROGATION.

~~The treasurer of state~~ The labor commissioner shall be charged with the collection of contributions and payments to the second injury fund required to be made pursuant to section 85.65. In addition, the labor commissioner, on behalf of the second injury fund created under this division, shall have a cause of action under section 85.22 to the same extent as an employer against any person not in the same employment by reason of whose negligence or wrong the subsequent injury of the person with the previous disability was caused. The action shall be brought by the ~~treasurer of state~~ labor commissioner on behalf of the fund, and any recovery, less the necessary and reasonable expenses incurred by the ~~treasurer of state~~ labor commissioner, shall be paid to the treasurer of state and credited to the second injury fund.

Sec. 6. SECOND INJURY FUND LIABILITY — SURCHARGE ON EMPLOYERS.

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

a. "Insured employers" means employers who are commercially insured for purposes of workers' compensation coverage or who have been self-insured for less than twenty-four months as of the first day of the fiscal year in which a surcharge is imposed pursuant to this section.

b. "Self-insured employers" means employers who have been self-insured for purposes of workers' compensation coverage for at least twenty-four months as of the first day of the fiscal year in which a surcharge is imposed pursuant to this section.

2. Prior to the fiscal year commencing July 1, 1998, the commissioner of insurance shall

examine claims in which there has been an agreement for settlement or an award has been made involving the second injury compensation Act and shall determine the outstanding liability of such claims.

3. For the fiscal year commencing July 1, 1998, the commissioner of insurance may adopt by rule, pursuant to chapter 17A, a surcharge on employers pursuant to the requirements of this section and payable to the second injury fund if, pursuant to its examination of claims, the commissioner of insurance determines that insufficient funds are available in the second injury fund to pay claims involving the second injury compensation Act. The surcharge shall apply to all workers' compensation insurance policies and self-insurance coverages of employers approved for self-insurance by the commissioner of insurance pursuant to section 87.4 or 87.11, and to the state of Iowa, its departments, divisions, agencies, commissions, and boards, or any political subdivision coverages whether insured or self-insured. The surcharge shall not apply to any reinsurance or retrocessional transaction under section 520.4 or 520.9. In determining the surcharge for each applicable fiscal year, the commissioner of insurance shall provide that all insured and self-insured employers be assessed for the outstanding liabilities arising out of claims involving the second injury compensation Act as determined pursuant to subsection 2. The total assessment amount used in calculating the surcharge for each applicable fiscal year shall be allocated between self-insured employers and insured employers, based on paid losses for the preceding calendar year as provided in this subsection. The method of assessing self-insured employers shall be based on paid losses. The method of assessing insured employers shall be a surcharge based on premium, as set forth in this subsection. The portion of the total aggregate assessment that shall be collected from self-insured employers shall be equal to that proportion of total paid losses during the preceding calendar year, which the total compensation payments of all self-insured employers bore to the total compensation payments made by all self-insured employers and insurers on behalf of all insured employers during the preceding calendar year. The portion of the total aggregate assessment that shall be collected from insured employers shall be equal to that proportion of total paid losses during the preceding calendar year, which the total compensation payments on behalf of all insured employers bore to the total compensation payments made by all self-insured employers and insurers on behalf of all insured employers during the preceding calendar year. Insurers shall collect assessments from insured employers through a surcharge based on premium. Such assessments when collected shall not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but shall for the purpose of collection be treated as separate costs by insurers. The surcharge is collectible by an insurer and nonpayment of the surcharge shall be treated as nonpayment of premium and the insurer shall retain all cancellation rights inuring to it for nonpayment of premium. An insurance carrier, its agent, or a third-party administrator shall not be entitled to any portion of the surcharge as a fee or commission for its collection. The surcharge is not subject to any taxes, licenses, or fees. The surcharge is not deemed to be an assessment or tax, but shall be deemed an additional benefit paid for injuries compensable under the second injury compensation Act.

Sec. 7. EFFECTIVE DATE — APPLICABILITY.

1. This Act, being deemed of immediate importance, takes effect upon enactment.

2. Section 1 of this Act, amending section 85.65, applies to deaths occurring on or after the effective date of this Act.

Approved April 17, 1998

CHAPTER 1114

IOWA STATE FAIR CONVENTION AND BOARD

S.F. 2037

AN ACT relating to the Iowa state fair convention by providing for its membership and the election of members to the Iowa state fair board.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 173.1, subsection 2, Code 1997, is amended to read as follows:

2. Two board congressional directors from each congressional district to be elected at a convention as provided in section ~~173.2~~ 173.4.

Sec. 2. Section 173.2, subsections 4 through 14, Code 1997, are amended by striking the subsections.

Sec. 3. Section 173.4, Code 1997, is amended to read as follows:

173.4 VOTING POWER — ELECTION OF BOARD CONGRESSIONAL DIRECTORS.

1. ~~On all questions arising for determination by the convention~~ Except as provided in this subsection, each member present at the convention shall be entitled to ~~but~~ not more than one vote~~, and no proxies shall be recognized by the convention~~. ~~However, a~~ A member shall not vote by proxy.

2. A successor to a board congressional director shall be elected by a majority of convention members from the same congressional district as the director, according to rules adopted by the convention. A member who is also a board congressional director shall not be entitled to vote for a successor to ~~each~~ a board congressional director ~~on the board~~.

Sec. 4. Section 173.5, subsection 2, Code 1997, is amended to read as follows:

2. ~~The~~ Each year, the convention shall elect a successor to ~~each~~ one of the two ~~district~~ board congressional directors ~~on the board~~ whose term expires ~~at noon on the day~~ following the adjournment of the convention, as provided in section 173.4.

Sec. 5. Section 173.6, unnumbered paragraph 2, Code 1997, is amended to read as follows:

A member of the board who is a director, elected as provided in section 173.1, shall serve a term of two years. The term of a director shall begin ~~at noon on the day~~ following the adjournment of the convention at which the director was elected and shall continue until a successor is elected and qualified as provided in this chapter. ~~However, a person elected as a director pursuant to section 173.1 shall not serve for more than five consecutive terms. A director who has ever served five consecutive terms is again eligible to serve for an additional five consecutive terms after not serving as a director for at least one term.~~

Approved April 17, 1998

CHAPTER 1115

JUDICIAL ADMINISTRATION

S.F. 2235

AN ACT concerning judicial administration and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 2B.5, subsection 2, Code 1997, is amended to read as follows:

2. Cause the Iowa court rules to be published, as directed by the supreme court after consultation with the legislative council. The Iowa court rules shall consist of all rules prescribed by the supreme court. The court rules shall be published in loose-leaf form, ~~appropriately indexed,~~ and supplements shall be prepared and distributed as directed by the supreme court. The Iowa court rules and supplements to the court rules shall be priced as provided in section 7A.22.

Sec. 2. Section 2B.10, subsection 3, Code 1997, is amended by striking the subsection.

Sec. 3. Section 235A.15, subsection 2, paragraph d, subparagraph (5), Code Supplement 1997, is amended to read as follows:

(5) To a probation or parole officer, juvenile court officer, court-appointed special advocate as defined in section 232.2, or adult correctional officer having custody or supervision of, or conducting an investigation for a court or the board of parole regarding, a person named in a report as a victim of child abuse or as having abused a child.

Sec. 4. Section 421.17, subsection 29, paragraph g, Code Supplement 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. However, upon submission of an allegation of the liability of a person which is owing and payable to the clerk of the district court and upon the determination by the department that the person allegedly liable is entitled to payment from a state agency, the department shall send written notification to the person which states the assertion by the clerk of the district court of rights to all or a portion of the payment, the clerk's entitlement to recover the liability through the setoff procedure, the basis of the assertions, the person's opportunity to request within fifteen days of the mailing of the notice that the department divide a jointly or commonly owned right to payment between owners, the opportunity to contest the liability to the clerk by written application to the clerk within fifteen days of the mailing of the notice, and the person's opportunity to contest the department's setoff procedure.

Sec. 5. Section 421.17, subsection 29, paragraph i, Code Supplement 1997, is amended to read as follows:

i. The department shall, after the state agency has sent notice to the person liable or, if the liability is owing and payable to the clerk of the district court, the department has sent notice to the person liable, set off the amount owed to the agency against any amount which a state agency owes that person. The department shall refund any balance of the amount to the person. The department shall periodically transfer amounts set off to the state agencies entitled to them. If a person liable to a state agency gives written notice of intent to contest an allegation, a state agency shall hold a refund or rebate until final disposition of the allegation. Upon completion of the setoff, a state agency shall notify in writing the person who was liable or, if the liability is owing and payable to the clerk of the district court, shall comply with the procedures as provided in paragraph "k".

Sec. 6. Section 421.17, subsection 29, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. k. If the alleged liability is owing and payable to the clerk of the district court and setoff as provided in this subsection is sought, all of the following shall apply:

(1) The judicial department shall prescribe procedures to permit a person to contest the amount of the person's liability to the clerk of the district court.

(2) The department shall, except for the procedures described in subparagraph (1), prescribe any other applicable procedures concerning setoff as provided in this subsection.

(3) Upon completion of the setoff, the department shall file, at least monthly, with the clerk of the district court a notice of satisfaction of each obligation to the full extent of all moneys collected in satisfaction of the obligation. The clerk shall record the notice and enter a satisfaction for the amounts collected and no separate written notice is required.

Sec. 7. Section 602.4102, subsections 3 and 5, Code 1997, are amended to read as follows:

3. The supreme court shall prescribe rules for the transfer of matters to the court of appeals. These rules may provide for the selective transfer of individual cases and may provide for the transfer of cases according to subject matter or other general criteria. ~~Rules relating to the transfer of cases are subject to section 602.4202.~~ A rule shall not provide for the transfer of a matter other than by an order of transfer under subsection 2.

5. The supreme court shall prescribe rules of appellate procedure which shall govern further review by the supreme court of decisions of the court of appeals. These rules shall contain, but need not be limited to, a specification of the grounds upon which further review may, in the discretion of the supreme court, be granted. ~~These rules are subject to section 602.4202.~~

Sec. 8. Section 602.4201, Code 1997, is amended to read as follows:

602.4201 RULES GOVERNING ACTIONS AND PROCEEDINGS.

1. The supreme court may prescribe all rules of pleading, practice, evidence, and procedure, and the forms of process, writs, and notices, for all proceedings in all courts of this state, for the purposes of simplifying the proceedings and promoting the speedy determination of litigation upon its merits. ~~Rules are subject to section 602.4202.~~

2. Rules of appellate procedure relating to appeals to and review by the supreme court, discretionary review by the courts of small claims actions, review by the supreme court by writ of certiorari to inferior courts, appeal to or review by the court of appeals of a matter transferred to that court by the supreme court, and further review by the supreme court of decisions of the court of appeals, shall be known as "Rules of Appellate Procedure", and shall be published as provided in section 2B.5.

3. The following rules are subject to section 602.4202:

a. Rules of civil procedure.

b. Rules of criminal procedure.

c. Rules of evidence.

d. Rules of appellate procedure 1 through 9.

e. Rules of probate procedure.

f. Juvenile procedure.

g. Involuntary hospitalization of mentally ill.

h. Involuntary commitment or treatment of substance abusers.

Sec. 9. Section 602.4202, Code 1997, is amended to read as follows:

602.4202 RULEMAKING PROCEDURE.

1. The supreme court shall submit a rule or form prescribed by the supreme court under section 602.4201, subsection 3, or pursuant to any other rulemaking authority specifically made subject to this section to the legislative council and shall at the same time report the rule or form to the chairpersons and ranking members of the senate and house committees on judiciary. The legislative service bureau shall make recommendations to the supreme court on the proper style and format of rules and forms required to be submitted to the legislative council under this subsection.

2. A rule or form submitted as required under subsection 1 takes effect sixty days after submission to the legislative council, or at a later date specified by the supreme court, unless the legislative council, within sixty days after submission and by a majority vote of its members, delays the effective date of the rule or form to a date as provided in subsection 3.

3. The effective date of a rule or form submitted during the period of time beginning February 15 and ending February 14 of the next calendar year may be delayed by the legislative council until May 1 of that next calendar year.

~~4. A rule or form submitted as required under subsection 1 and effective on or before July 1 shall be bound with the Acts of the general assembly meeting in regular session in the calendar year in which the July 1 falls.~~

~~5.~~ 4. If the general assembly enacts a bill changing a rule or form, the general assembly's enactment supersedes a conflicting provision in the rule or form as submitted by the supreme court.

Sec. 10. Section 602.4303, subsection 2, Code 1997, is amended by striking the subsection.

Sec. 11. Section 602.4304, subsection 1, Code 1997, is amended to read as follows:

1. The supreme court may appoint ~~not more than nine~~ attorneys or graduates of a reputable law school to act as legal assistants to the justices of the supreme court.

Sec. 12. Section 602.6301, Code 1997, is amended to read as follows:

602.6301 NUMBER AND APPORTIONMENT OF DISTRICT ASSOCIATE JUDGES.

There shall be one district associate judge in counties having a population~~, according to the most recent federal decennial census,~~ of more than thirty-five thousand and less than eighty thousand; two in counties having a population of eighty thousand or more and less than one hundred twenty-five thousand; three in counties having a population of one hundred twenty-five thousand or more and less than two hundred thousand; four in counties having a population of two hundred thousand or more and less than two hundred thirty-five thousand; five in counties having a population of two hundred thirty-five thousand or more and less than two hundred seventy thousand; six in counties having a population of two hundred seventy thousand or more and less than three hundred five thousand; and seven in counties having a population of three hundred five thousand or more. However, a county shall not lose a district associate judgeship solely because of a reduction in the county's population. If the formula provided in this section results in the allocation of an additional district associate judgeship to a county, implementation of the allocation shall be subject to prior approval of the supreme court and availability of funds to the judicial department. A district associate judge appointed pursuant to section 602.6302 or 602.6303 shall not be counted for purposes of this section.

Sec. 13. Section 602.6304, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. A district associate judge who seeks to resign from the office of district associate judge shall notify in writing the chief judge of the judicial district as to the district associate judge's intention to resign and the effective date of the resignation. The chief judge of the judicial district, upon receipt of the notice, shall notify the county magistrate appointing commission and the state court administrator of the actual or impending vacancy in the office of district associate judge due to resignation.

Sec. 14. Section 602.6403, subsection 1, Code 1997, is amended to read as follows:

1. ~~In~~ By June 1 of each year in which magistrates' terms expire, the county magistrate appointing commission shall appoint, except as otherwise provided in section 602.6302, the number of magistrates apportioned to the county by the state court administrator under section 602.6401, and may appoint an additional magistrate when allowed by section 602.6402. The commission shall not appoint more magistrates than are authorized for the county by this article.

Sec. 15. Section 602.6403, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. A magistrate who seeks to resign from the office of magistrate shall notify in writing the chief judge of the judicial district as to the magistrate's intention to resign and the effective date of the resignation. The chief judge of the judicial district, upon receipt of the notice, shall notify the county magistrate appointing commission and the state court administrator of the vacancy in the office of magistrate due to resignation.

Sec. 16. Section 602.8102, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 126A. Upon the failure of a person charged to appear in person or by counsel to defend against the offense charged pursuant to a uniform citation and complaint as provided in section 805.6, enter a conviction and render a judgment in the amount of the appearance bond in satisfaction of the penalty plus court costs.

Sec. 17. Section 684A.6, Code 1997, is amended to read as follows:

684A.6 PROCEDURE.

The supreme court may prescribe rules of procedure concerning the answering and certification of questions of law under this chapter~~, subject to section 602.4202~~.

Sec. 18. Section 804.21, subsection 3, Code 1997, is amended to read as follows:

3. If the magistrate who issued the warrant is absent or unable to act, the arrested person shall be taken to the nearest or most accessible magistrate in the judicial district where the offense occurred or a magistrate in an approved judicial district, and all documents on which the warrant was issued must be sent to such magistrate, or if they cannot be procured, the informant and the informant's witnesses must be subpoenaed to make new affidavits. For purposes of this subsection, an "approved judicial district" means, as to any particular arrest of a person described in this subsection, any judicial district in this state in which the chief judge of that judicial district and the chief judge of the judicial district in which the offense occurred have previously entered an order permitting a person arrested or described in this subsection to be taken to a magistrate from any judicial district subject to the order.

Sec. 19. Section 804.22, unnumbered paragraph 1, Code 1997, is amended to read as follows:

When an arrest is made without a warrant, the person arrested shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the judicial district in which such arrest was made or before a magistrate in an approved judicial district, and the grounds on which the arrest was made shall be stated to the magistrate by complaint, subscribed and sworn to by the complainant, or supported by the complainant's affirmation, and such magistrate shall proceed as follows:

Sec. 20. Section 804.22, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. For purposes of this section, an "approved judicial district" means, as to any particular arrest of a person made without a warrant, any judicial district in this state in which the chief judge of that judicial district and the chief judge of the judicial district in which the arrest was made have previously entered an order permitting a person arrested without warrant to be taken to a magistrate from any judicial district subject to the order.

Sec. 21. Sections 1, 2, 7, 8, 9, 10, and 17 of this Act, being deemed of immediate importance, take effect upon enactment.

Approved April 17, 1998

CHAPTER 1116

ROOM AND BOARD CHARGES FOR CERTAIN PRISONERS

S.F. 2254

AN ACT relating to charges for room and board by certain prisoners.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 356.7, subsection 1, Code Supplement 1997, is amended to read as follows:

1. The county sheriff may charge a prisoner who is eighteen years of age or older and who has been convicted of a criminal offense or sentenced for contempt of court for violation of a domestic abuse order for the room and board provided to the prisoner while in the custody of the county sheriff. Moneys collected by the sheriff under this section shall be credited to the county general fund and distributed as provided in this section. If a prisoner who has been convicted of a criminal offense or sentenced for contempt of court for violation of a domestic abuse order fails to pay for the room and board, the sheriff may file a room and board reimbursement claim with the district court as provided in subsection 2. The county attorney may file the room and board reimbursement claim on behalf of the sheriff and the county. This section does not apply to prisoners who are paying for their room and board by court order pursuant to sections 356.26 through 356.35.

Sec. 2. Section 602.8107, subsection 4, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

This subsection does not apply to amounts collected for victim restitution, the victim compensation fund, criminal penalty surcharge, ~~or~~ amounts collected as a result of procedures initiated under subsection 5 or under section 421.17, subsection 25, or sheriff's room and board fees.

Approved April 17, 1998

CHAPTER 1117

SEARCH WARRANT APPLICATIONS

S.F. 2259

AN ACT relating to search warrant applications.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 808.3, Code 1997, is amended to read as follows:

808.3 APPLICATION FOR SEARCH WARRANT.

A person may make application for the issuance of a search warrant by submitting before a magistrate a written application, supported by the person's oath or affirmation, which includes facts, information, and circumstances tending to establish sufficient grounds for granting the application, and probable cause for believing that the grounds exist. The application shall describe the person, place, or thing to be searched and the property to be seized with sufficient specificity to enable an independent reasonable person with reasonable effort to ascertain and identify the person, place, or thing. If the magistrate issues the search warrant, the magistrate shall endorse on the application the name and address of all

persons upon whose sworn testimony the magistrate relied to issue the warrant together with the abstract of each witness' testimony, or the witness' affidavit. However, if the grounds for issuance are supplied by an informant, the magistrate shall identify only the peace officer to whom the information was given ~~but shall include a determination that the information appears credible either because sworn testimony indicates that the informant has given reliable information on previous occasions or because the informant or the information provided by the informant appears credible for reasons specified by the magistrate~~. The application or sworn testimony supplied in support of the application must establish the credibility of the informant or the credibility of the information given by the informant. The magistrate may in the magistrate's discretion require that a witness upon whom the applicant relies for information appear personally and be examined concerning the information.

Approved April 17, 1998

CHAPTER 1118

CONSERVATORSHIP ASSETS

H.F. 2169

AN ACT raising the limit on the amount of assets subject to a conservatorship in cases where a private nonprofit corporation serves as conservator and providing for an increase in the amount of assets in a minor ward's conservatorship eligible for an order for termination of the conservatorship and for delivery of the conservatorship assets to certain custodians.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 633.63, subsection 3, Code 1997, is amended to read as follows:

3. A private nonprofit corporation organized under chapter 504 or 504A is qualified to act as a guardian, as defined in section 633.3, subsection 19,* or a conservator, as defined in section 633.3, subsection 7, where the assets subject to the conservatorship at the time when such corporation is appointed conservator are less than ~~fifteen~~ or equal to seventy-five thousand dollars and the corporation does not possess a proprietary or legal interest in an organization which provides direct services to the individual.

Sec. 2. Section 633.681, Code 1997, is amended to read as follows:

633.681 ASSETS OF MINOR WARD EXHAUSTED.

When the assets of a minor ward's conservatorship are exhausted or consist of personal property only of an aggregate value not in excess of ~~four~~ ten thousand dollars, the court, upon application or upon its own motion, may terminate the conservatorship ~~and~~. The order for termination shall direct the conservator to deliver ~~the~~ any property remaining after the payment of allowed claims and expenses of administration to ~~the parent or other person entitled to the custody of the minor ward, for the use of the ward, after payment of allowed claims and expenses of administration~~ a custodian under any uniform transfers to minors Act. Such delivery shall have the same force and effect as if delivery had been made to the ward after attaining majority.

Approved April 17, 1998

* Subsection 20 probably intended

CHAPTER 1119

OBSOLETE AND UNNECESSARY CODE PROVISIONS CORRECTIONS

H.F. 2271

AN ACT relating to obsolete and unnecessary provisions of the Code.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I
ETHICS AND CAMPAIGN DISCLOSURE BOARD

Section 1. Section 49.51, unnumbered paragraph 2, Code 1997, is amended by striking the unnumbered paragraph.

DIVISION II
DEPARTMENT OF COMMERCE
INSURANCE DIVISION

Sec. 2. Section 502.202, subsection 16, Code Supplement 1997, is amended by striking the subsection.

Sec. 3. Section 505.8, subsection 5, paragraphs a, b, c, and e, Code Supplement 1997, are amended by striking the paragraphs.

Sec. 4. Section 505.13, subsection 2, Code 1997, is amended by striking the subsection.

Sec. 5. Chapter 144C, Code 1997, is repealed effective February 28, 1999.

Sec. 6. Sections 523G.10 and 523G.11, Code 1997, are repealed.

PROFESSIONAL LICENSING AND REGULATION

Sec. 7. Section 7A.4, subsections 5 and 6, Code 1997, are amended by striking the subsections.

Sec. 8. Section 272C.4, subsection 2, Code Supplement 1997, is amended by striking the subsection.

Sec. 9. Section 542C.3, subsection 3, unnumbered paragraph 2, Code Supplement 1997, is amended by striking the unnumbered paragraph.

Sec. 10. Section 544B.19, Code 1997, is amended to read as follows:

544B.19 INJUNCTION.

In addition to any other remedies, and on the petition of the board or any person, any person violating any of the provisions of sections 544B.1 to 544B.5 and 544B.7 to 544B.21 may be restrained and permanently enjoined from committing or continuing the violations.

Sec. 11. Sections 542B.10, 544A.4, and 544B.6, Code Supplement 1997, are repealed.

DIVISION III
DEPARTMENT OF INSPECTIONS AND APPEALS

Sec. 12. Section 135C.2, subsection 5, paragraph f, Code 1997, is amended by striking the paragraph.

DIVISION IV
DEPARTMENT OF GENERAL SERVICES

Sec. 13. Section 2B.1, subsection 3, Code 1997, is amended to read as follows:

3. The Iowa Code and administrative code divisions are responsible for the editing, compiling, and proofreading of the publications they prepare, as provided in this chapter ~~and notwithstanding section 18.76~~. The Iowa Code division is entitled to the temporary possession of the original enrolled Acts and resolutions as necessary to prepare them for publication.

Sec. 14. Section 18.3, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 10. Insuring motor vehicles owned by the state. Insurance coverage may be provided through a self-insurance program administered by the department or purchased from an insurer. If the department uses a self-insurance program, the department shall maintain loss and exposure data for vehicles under the jurisdiction of the state fleet administrator. Upon request, state agencies shall provide all loss and exposure information to the department.

Sec. 15. Section 18.6, subsection 12, Code 1997, is amended by striking the subsection.

Sec. 16. Section 18.12, subsection 9, Code 1997, is amended to read as follows:

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

b. When the general assembly is not in session, the director ~~of general services~~ may request ~~funds~~ moneys from the executive council for moving state agencies located at the seat of government from one location to another. The request may include moving costs, ~~telephone~~ telecommunications costs, repair costs, or any other costs relating to the move. The executive council may approve and shall pay the costs from funds provided in section 7D.29 if it determines the agency or department has no available funds for these expenses.

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

Sec. 17. Section 18.12, subsection 12, Code 1997, is amended by striking the subsection.

Sec. 18. Section 18.16, subsection 2, Code 1997, is amended to read as follows:

2. The director shall pay the lease or rental fees to the renter or lessor and submit a monthly statement to each state agency for which building and office space is rented or leased. ~~The~~ If the director pays the lease or rental fees on behalf of a state agency, the state agency's payment to the department shall be credited to the rent revolving fund established by this section. With the approval of the director, a state agency may pay the lease or rental cost ~~shall be paid by the state agency to the department of general services in the same manner as other expenses of the state agency are paid and the payment shall be credited to the rent revolving fund~~ directly to the person who is due the payment under the lease or rental agreement.

Sec. 19. Section 18.18, subsection 1, paragraphs a, b, and c, Code 1997, are amended to read as follows:

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

b. ~~By July 1, 1993, one~~ One hundred percent of the purchases of inks, other than inks which are used for newsprint printing services, and which are used internally or contracted

for by the department, shall be soybean-based to the extent formulations for such inks are available.

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

Sec. 20. Section 18.18, subsection 5, Code 1997, is amended to read as follows:

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

Sec. 21. Section 18.20, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The department in accordance with recommendations made by the department of natural resources shall require all state agencies to establish an agency wastepaper recycling program ~~by January 1, 1990~~. The director shall adopt rules which require a state agency to develop a program to ensure the recycling of the wastepaper generated by the agency. ~~Each agency shall submit a report to the general assembly meeting in January 1990, which includes a description of the program plan and the agency's efforts to use recycled products.~~ All state employees shall practice conservation of paper materials.

Sec. 22. Section 18.28, unnumbered paragraph 2, Code 1997, is amended by striking the unnumbered paragraph.

Sec. 23. Section 18.46, Code 1997, is amended to read as follows:

18.46 ~~WRITTEN~~ AUTHORIZATION OF ORDERS.

~~No printing~~ Printing shall not be performed under any contract except ~~on written orders therefor, on detailed forms prescribed~~ as authorized by the director~~, and signed by the director or by some person authorized by the director~~. ~~Every~~ Each order shall designate the contract under which the order is given~~,~~ and the class, quantity, and kind of the required printing~~, the definite quantity and kind thereof, and be issued in duplicate with a stub copy preserved. A separate series of stubs and duplicates shall be used for each class of printing.~~

Sec. 24. Section 18.115, Code 1997, is amended to read as follows:

18.115 ~~VEHICLE DISPATCHER~~ STATE FLEET ADMINISTRATOR — EMPLOYEES — POWERS AND DUTIES — FUEL ECONOMY REQUIREMENTS.

The director of the department of general services shall appoint a state ~~vehicle dispatcher~~ fleet administrator and other employees as necessary to administer this division. The state ~~vehicle dispatcher~~ fleet administrator shall serve at the pleasure of the director and is not governed by the merit system provisions of chapter 19A. Subject to the approval of the director, the state ~~vehicle dispatcher~~ fleet administrator has the following duties:

1. The ~~dispatcher~~ state fleet administrator shall assign to a state officer or employee or to a state ~~office, department, bureau, or commission~~ agency, one or more motor vehicles which may be required by the state officer or employee or ~~department~~ state agency, after the state officer or employee or ~~department~~ state agency has shown the necessity for such transportation. The state ~~vehicle dispatcher shall have the power to~~ fleet administrator may assign a motor vehicle either for part time or full time. The ~~dispatcher shall have the right to~~ state fleet administrator may revoke the assignment at any time.

2. The state ~~vehicle dispatcher~~ fleet administrator may cause all state-owned motor vehicles to be inspected periodically. Whenever the inspection reveals that repairs have been improperly made on the motor vehicle or that the operator is not giving it the proper care, the ~~dispatcher~~ state fleet administrator shall report this fact to the head of the ~~department~~ state agency to which the motor vehicle has been assigned, together with recommendation for improvement.

3. The state ~~vehicle dispatcher~~ fleet administrator shall install a record system for the keeping of records of the total number of miles state-owned motor vehicles are driven and the per-mile cost of operation of each motor vehicle. Every state officer or employee shall keep a record book to be furnished by the state ~~vehicle dispatcher~~ fleet administrator in which the officer or employee shall enter all purchases of gasoline, lubricating oil, grease, and other incidental expense in the operation of the motor vehicle assigned to the officer or employee, giving the quantity and price of each purchase, including the cost and nature of all repairs on the motor vehicle. Each operator of a state-owned motor vehicle shall promptly prepare a report at the end of each month on forms furnished by the state ~~vehicle dispatcher~~ fleet administrator and ~~forward the same~~ forwarded to the ~~dispatcher at the statehouse~~ state fleet administrator, giving the information the state ~~vehicle dispatcher~~ fleet administrator may request in the report. ~~The~~ Each month the state ~~vehicle dispatcher~~ fleet administrator shall ~~each month~~ compile the costs and mileage of state-owned motor vehicles from the reports and keep a cost history ~~card on~~ for each motor vehicle and the costs shall be reduced to a cost-per-mile basis for each motor vehicle. ~~It shall be the duty of the~~ The state ~~vehicle dispatcher to~~ fleet administrator shall call to the attention of an elected official or the head of any ~~department~~ state agency to which a motor vehicle has been assigned any evidence of the mishandling or misuse of ~~any~~ a state-owned motor vehicle which is called to the ~~dispatcher's~~ state fleet administrator's attention.

PARAGRAPH DIVIDED. A motor vehicle operated under this subsection shall not operate on gasoline other than gasoline blended with at least ten percent ethanol, unless under emergency circumstances. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol, if commercially available. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

4. The state ~~vehicle dispatcher~~ fleet administrator shall purchase all motor vehicles for all branches of the state government, except the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other ~~agencies~~ state agency exempted by law. ~~Before purchasing any new motor vehicle the dispatcher shall make requests for public bids by advertisement and shall purchase the vehicles from the lowest responsible bidder for the type and make of motor vehicle designated.~~ The state fleet administrator shall purchase new vehicles in accordance with competitive bidding procedures for items or services as provided in this chapter. The ~~vehicle dispatcher~~ state fleet administrator may purchase used or preowned vehicles at governmental or dealer auctions if the purchase is determined to be in the best interests of the state.

~~In conjunction with the requirements of section 18.3, subsection 1, effective January 1, 1991, the~~ The state ~~vehicle dispatcher~~ fleet administrator, and any other state agency, which for purposes of this subsection includes but is not limited to community colleges and institutions under the control of the state board of regents, or local governmental political subdivision purchasing new motor vehicles ~~for other than law enforcement purposes,~~ shall purchase new passenger vehicles and light trucks ~~such~~ so that the average fuel efficiency for the fleet of new passenger vehicles and light trucks purchased in that year ~~by the state vehicle dispatcher or other state agency or local governmental political subdivision~~ equals or exceeds the average fuel economy standard for the vehicles' model year as established by the United States secretary of transportation under 15 U.S.C. § 2002. This paragraph does not apply to vehicles purchased for ~~any of the following:~~ law enforcement purposes~~, school buses,~~ or used for off-road maintenance work, or work vehicles used to pull loaded trailers. ~~The group of comparable vehicles within the total fleet purchased by the state vehicle dispatcher, or any other state agency or local governmental political subdivision purchasing motor vehicles for other than law enforcement purposes, shall have an average fuel efficiency rating equal to or exceeding the average fuel economy rating for that model year for that class of comparable vehicles as defined in 40 C.F.R. § 315.82. As used in this para-~~

~~graph, "fuel economy" means the average number of miles traveled by an automobile per gallon of gasoline consumed as determined by the United States environmental protection agency administrator in accordance with 26 U.S.C. § 4064(c). For purposes of this paragraph, "state agency" includes, but is not limited to, a community college or an institution under the control of the state board of regents.~~

~~The~~ Not later than February 15 of each year, the state ~~vehicle dispatcher~~ fleet administrator shall ~~annually~~ report compliance with the corporate average ~~combined~~ fuel economy standards published by the United States secretary of transportation for ~~all~~ new motor vehicles ~~purchased by classification~~, other than motor vehicles purchased by the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other state agency exempted from the requirements of this subsection. The report of compliance shall classify the vehicles purchased for the current vehicle model year using the following categories: ~~(~~passenger automobiles, enforcement automobiles, vans, and light trucks~~) no later than January 31 of each year to the department of management and the energy and geological resources division of~~. The state fleet administrator shall deliver a copy of the report to the department of natural resources. As used in this paragraph, "~~combined~~ corporate average fuel economy" means the ~~combined~~ corporate average fuel economy as defined in ~~40~~ 49 C.F.R. § ~~600.002~~ 533.5.

a. ~~Effective January 1, 1993, the~~ The state ~~vehicle dispatcher, after consultation with the department of management and the various state agencies exempted from obtaining vehicles for use through the state vehicle dispatcher, shall adopt by rule pursuant to chapter 17A, a system of uniform standards for assigning~~ fleet administrator shall assign motor vehicles available for use to maximize the average passenger miles per gallon of motor vehicle fuel consumed. ~~The standards should~~ In assigning motor vehicles, the state fleet administrator shall consider standards established by the state fleet administrator, which may include but are not limited to the number of passengers traveling to a destination, the fuel economy of and passenger capacity of vehicles available for assignment, and any other relevant information, to assure assignment of the most energy efficient vehicle or combination of vehicles for a trip from those vehicles available for assignment. The standards ~~adopted by the state vehicle dispatcher~~ shall not apply to special work vehicles, and law enforcement vehicles. The ~~rules when adopted~~ standards shall apply to the following agencies:

(1) State ~~vehicle dispatcher~~ fleet administrator.

(2) State department of transportation.

(3) Institutions under the control of the state board of regents.

(4) The department for the blind.

(5) Any other state agency exempted from obtaining vehicles for use through the state ~~vehicle dispatcher~~ fleet administrator.

b. As used in paragraph "a", "fuel economy" means the average number of miles traveled by an automobile per gallon of gasoline consumed as determined by the United States environmental protection agency administrator in accordance with 26 U.S.C. § 4064(c).

5. Of all new passenger vehicles and light pickup trucks purchased by the state ~~vehicle dispatcher~~ fleet administrator, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion including but not limited to any of the following:

a. A flexible fuel, which is any of the following:

(1) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.

(2) A fuel which is a mixture of diesel fuel and processed soybean oil. At least twenty percent of the mixed fuel by volume must be processed soybean oil.

(3) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.2.

b. Compressed or liquefied natural gas.

c. Propane gas.

d. Solar energy.

e. Electricity.

The provisions of this subsection do not apply to vehicles and trucks purchased and directly used for law enforcement or purchased and used for off-road maintenance work or to pull loaded trailers.

~~It is the intent of the general assembly that the members of the midwest energy compact promote the development and purchase of motor vehicles equipped with engines which utilize alternative methods of propulsion.~~

6. All used motor vehicles turned in to the state ~~vehicle dispatcher~~ fleet administrator shall be disposed of by public auction, and the sales shall be advertised in a newspaper of general circulation one week in advance of sale, and the receipts from the sale shall be deposited in the depreciation fund to the credit of that ~~department or~~ state agency turning in the vehicle; except that, in the case of a used motor vehicle of special design, the state ~~vehicle dispatcher~~ fleet administrator may, with the approval of the director, instead of selling it at public auction, authorize the motor vehicle to be traded for another vehicle of similar design. If a vehicle sustains damage and the cost to repair exceeds the wholesale value of the vehicle, the state ~~vehicle dispatcher~~ fleet administrator may dispose of the motor vehicle by obtaining two or more written salvage bids and the vehicle shall be sold to the highest responsible bidder.

7. The state ~~vehicle dispatcher~~ fleet administrator may authorize the establishment of motor pools consisting of a number of state-owned motor vehicles under the ~~dispatcher's~~ state fleet administrator's supervision ~~and which the dispatcher~~. The state fleet administrator may ~~cause to be stored~~ store the motor vehicles in a public or private garage. If the state fleet administrator establishes a motor pool ~~is established by the state vehicle dispatcher~~, any state officer or employee desiring the use of a state-owned motor vehicle on state business shall notify the state ~~vehicle dispatcher~~ fleet administrator of the need for a vehicle within a reasonable time prior to actual use of the motor vehicle. The state ~~vehicle dispatcher~~ fleet administrator may assign a motor vehicle from the motor pool to the state officer or employee. If two or more state officers or employees desire the use of a state-owned motor vehicle for a trip to the same destination for the same length of time, the state ~~vehicle dispatcher~~ fleet administrator may assign one vehicle to make the trip.

8. The state ~~vehicle dispatcher~~ fleet administrator shall ~~cause to be marked~~ require that a sign be placed on ~~every~~ each state-owned motor vehicle ~~a sign~~ in a conspicuous place which indicates its ownership by the state ~~except cars~~. This requirement shall not apply to motor vehicles requested to be exempt by the commissioner of public safety or the director of the department of general services. All state-owned motor vehicles shall display registration plates bearing the word "official" except ~~cars~~ motor vehicles requested to be furnished with ordinary plates by the commissioner of public safety or the director of the department of general services pursuant to section 321.19. The state ~~vehicle dispatcher~~ fleet administrator shall keep an accurate record of the registration plates used on all ~~state cars~~ state-owned motor vehicles.

9. The state ~~vehicle dispatcher shall have the authority to make such~~ fleet administrator may adopt other rules regarding the operation of state-owned motor vehicles, with the approval of the director of the department of general services, as may be necessary to carry out the purpose of this chapter. All rules adopted by the ~~vehicle dispatcher~~ state fleet administrator shall be approved by the director before becoming effective.

10. All ~~gasoline~~ fuel used in state-owned automobiles shall be purchased at cost from the various installations or garages of the state department of transportation, state board of regents, department of human services, or state ~~car~~ motor pools throughout the state, unless ~~such purchases are exempted by the vehicle dispatcher. The vehicle dispatcher shall study and determine the reasonable accessibility of these state-owned sources for the purchase of gasoline. If these~~ the state-owned sources for the purchase of ~~gasoline~~ fuel are not reasonably accessible~~,~~. If the ~~vehicle dispatcher~~ state fleet administrator determines that state-owned sources for the purchase of fuel are not reasonably accessible, the state fleet administrator

shall authorize the purchase of ~~gasoline~~ fuel from other sources. The ~~vehicle dispatcher~~ state fleet administrator may prescribe a manner, other than the use of the revolving fund, in which the purchase of ~~gasoline~~ fuel from state-owned sources ~~shall be~~ is charged to the ~~department or~~ state agency responsible for the use of the ~~automobile~~ motor vehicle. The ~~vehicle dispatcher~~ state fleet administrator shall prescribe the manner in which oil and other normal ~~automobile~~ motor vehicle maintenance for state-owned ~~automobiles~~ motor vehicles may be purchased from private sources, if they cannot be reasonably obtained from a state ~~car~~ motor pool. The state ~~vehicle dispatcher~~ fleet administrator may advertise for bids and award contracts in accordance with competitive bidding procedures for items and services as provided in this chapter for ~~the~~ furnishing ~~of gasoline~~ fuel, oil, grease, and vehicle replacement parts for all state-owned motor vehicles. The state ~~vehicle dispatcher~~ fleet administrator and other state agencies, when advertising for bids for gasoline, shall also seek bids for ethanol-blended gasoline.

~~11. The state vehicle dispatcher is responsible for insuring motor vehicles owned by the state. Insurance coverage may be through a self-insurance program administered by the department or purchased from an insurer. If the determination is made to utilize a self-insurance program the vehicle dispatcher shall maintain loss and exposure data for the vehicles under the dispatcher's jurisdiction. Each agency shall provide to the department all requested motor vehicle loss and loss exposure information.~~

Sec. 25. NAME CHANGES — DIRECTIONS TO CODE EDITOR.

1. The Iowa Code editor shall change references to "superintendent of printing" to "state printing administrator" wherever the references appear in the Code.

2. The Iowa Code editor shall change references to "state vehicle dispatcher" to "state fleet administrator" wherever the references appear in the Code.

Sec. 26. Sections 18.41, 18.55, 18.56, 18.76, 18.78, and 18.79, Code 1997, are repealed.

DIVISION V
DEPARTMENT OF PERSONNEL

Sec. 27. Section 19A.9, subsection 24, Code Supplement 1997, is amended by striking the subsection.

DIVISION VI
DEPARTMENT OF REVENUE AND FINANCE

Sec. 28. Section 422.75, Code 1997, is amended to read as follows:

422.75 STATISTICS — PUBLICATION OF.

The department shall prepare and publish ~~annually~~ an annual report which shall include statistics reasonably available, with respect to the operation of this chapter, including amounts collected, classification of taxpayers, and such other facts as are deemed pertinent and valuable. The annual report shall also include the reports and information required pursuant to sections 421.1, subsection 5; 421.17, subsection 13; 421.17, subsection 34, paragraph "h"; 421.60, subsection 2, paragraphs "i" and "l"; and 1997 Iowa Acts, Senate File 529, section 22, subsection 5, paragraph "a".

DIVISION VII
SECRETARY OF STATE

Sec. 29. Section 50.19, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The commissioner may destroy precinct election registers, the declarations of eligibility signed by voters, and other material pertaining to any election in which federal offices are not on the ballot, except the tally lists which have not been electronically recorded, six months after the election if a contest is not pending. If a contest is pending all election

materials shall be preserved until final determination of the contest. Before destroying the election registers and declarations of eligibility, the commissioner shall prepare records as necessary to permit compliance with chapter 48A, subchapter V. Nomination papers for primary election candidates for state and county offices shall be destroyed ten days before the general election, if a contest is not pending.

Approved April 17, 1998

CHAPTER 1120

MANDATORY RECORDING OF CERTAIN REAL ESTATE CONTRACTS

H.F. 2281

AN ACT providing for the mandatory recording of certain residential real estate installment sales contracts, providing a penalty, and providing for the Act's applicability.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 558.46 MANDATORY RECORDING OF CERTAIN RESIDENTIAL REAL ESTATE INSTALLMENT SALES CONTRACTS.

1. Every real estate installment sales contract transferring an interest in residential property shall be recorded by the contract seller with the county recorder in the county in which the real estate is situated not later than one hundred eighty days from the date the contract was signed by the contract seller and contract purchaser.

2. Failure to record a real estate contract required to be recorded by this section by the contract seller within the specified time limit is punishable by a fine not to exceed one hundred dollars per day for each day of violation. The county recorder shall record a real estate contract presented for recording even though not presented within one hundred eighty days of the signing of the contract. The county recorder shall forward to the county attorney a copy of each real estate contract recorded more than one hundred eighty days from the date the contract was signed by the contract seller and contract purchaser. The county attorney shall initiate action in the district court to enforce the provisions of this section. Fines collected pursuant to this subsection shall be deposited in the general fund of the county.

3. Failure to timely record shall not invalidate an otherwise valid real estate contract. However, a contract seller is prohibited from initiating forfeiture proceedings on the basis of a failure to comply with the terms of a real estate contract, if the contract has not been recorded.

4. If a real estate contract is required to be recorded under this section, the requirement is satisfied by recording either the entire real estate contract or a memorandum of the contract containing at least the names and addresses of all parties named in the contract, a description of all real property and interests in the real property subject to the contract, the length of the contract, and a statement as to whether the seller is entitled to the remedy of forfeiture and as to the dates upon which payments are due.

5. For the purposes of this section, "residential property" includes commercial property consisting of three or more separate living quarters with at least seventy-five percent of the space used for residential purposes.

6. This section applies to residential real estate installment sales contracts entered into before, on, or after July 1, 1998. However, such contracts entered into before July 1, 1998, shall not be subject to the fine in subsection 2.

Sec. 2. Section 558.41, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A provision contained in a residential real estate installment sales contract which prohibits the recording of the contract, or the recording of a memorandum of the contract, is unenforceable by any party to the contract.

Approved April 17, 1998

CHAPTER 1121

MOTOR VEHICLE PROOF OF FINANCIAL RESPONSIBILITY

H.F. 2454

AN ACT relating to motor vehicle operator proof of financial responsibility and providing an effective date and for retroactive applicability.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321.20B, subsections 1, 2, and 3, Code Supplement 1997, are amended to read as follows:

1. Notwithstanding chapter 321A, which requires certain persons to maintain proof of financial responsibility, a person shall not drive a motor vehicle ~~which is registered in this state~~ on the highways of this state unless financial liability coverage, as defined in section 321.1, subsection 24A, is in effect for the motor vehicle and unless the driver has in the motor vehicle the proof of financial liability coverage card issued for the motor vehicle, or if the vehicle is registered in another state, other evidence that financial liability coverage is in effect for the motor vehicle.

This subsection does not apply to the operator of a motor vehicle owned by or leased to the United States, this state or another state, or any political subdivision of this state or of another state, or to a motor vehicle which is subject to section ~~325.26, 327.15, 327A.5,~~ 325A.6 or 327B.6.

2. a. An insurance company transacting business in this state shall issue to its insured owners of motor vehicles registered in this state a financial liability coverage card for each ~~registered~~ motor vehicle insured. Each financial liability coverage card shall identify the registration number or vehicle identification number of the motor vehicle insured and shall indicate the expiration date of the applicable insurance coverage. The financial liability coverage card shall also contain the name and address of the insurer or the name of the insurer and the name and address of the ~~insurer~~ insurance agency, the name of the insured, ~~the type of coverage provided,~~ and an emergency telephone number of the insurer or emergency telephone number of the insurance agency.

b. The insurance division and the department, as appropriate, shall adopt rules regarding the contents of a financial liability coverage card to be issued pursuant to this section. Notwithstanding the provisions of this section, a fleet owner ~~shall~~ is not ~~be~~ required to maintain in each vehicle a financial liability coverage card with the individual registration number or the vehicle identification number of the vehicle included on the card. Such fleet owner shall be required to maintain a financial liability coverage card in each vehicle in the fleet including information deemed appropriate by the commissioner of insurance or the director, as applicable.

3. If the financial liability coverage for a motor vehicle which is registered in this state is canceled or terminated effective prior to the expiration date indicated on the financial liability coverage card issued for the vehicle, the person to whom the financial liability coverage card was issued shall destroy the card.

Sec. 2. Section 321.20B, subsections 4 and 5, Code Supplement 1997, are amended by striking the subsections and inserting in lieu thereof the following:

4. a. If a peace officer stops a motor vehicle registered in this state and the driver is unable to provide proof of financial liability coverage, the peace officer shall do one of the following:

(1) Issue a warning memorandum to the driver.

(2) Issue a citation to the driver. If a citation is issued, the citation shall be issued under this subparagraph unless the driver has been previously charged and cited for a violation of subsection 1. A citation which is issued and subsequently dismissed shall be disregarded for purposes of determining if the driver has been previously charged and cited.

(3) Issue a citation and remove the motor vehicle's license plates and registration receipt. Upon removing the license plates and registration receipt, the peace officer shall deliver the plates for destruction, as appropriate, and forward the registration receipt and evidence of the violation, as determined by the department, to the county treasurer of the county in which the motor vehicle is registered. The motor vehicle may be driven for a time period of up to forty-eight hours after receiving the citation solely for the purpose of removing the motor vehicle from the highways of this state, unless the driver's operating privileges are otherwise suspended.

After receiving the citation, the driver shall keep the citation in the motor vehicle at all times while driving the motor vehicle as provided in this subparagraph, as proof of the driver's privilege to drive the motor vehicle for such limited time and purpose.

(4) (a) Issue a citation, remove the motor vehicle's license plates and registration receipt, and impound the motor vehicle. The peace officer shall deliver the plates for destruction, as appropriate, and forward the registration receipt and evidence of the violation, as determined by the department, to the county treasurer of the county in which the motor vehicle is registered.

(b) A motor vehicle which is impounded may be claimed by a person if the owner provides proof of financial liability coverage and proof of payment of any applicable fine and the costs of towing and storage for the motor vehicle. If the motor vehicle is not claimed within thirty days after impoundment, the motor vehicle may be treated as an abandoned vehicle pursuant to section 321.89.

(c) The holder of a security interest in a motor vehicle which is impounded pursuant to this subparagraph shall be notified of the impoundment within seventy-two hours of the impoundment of the motor vehicle and shall have the right to claim the motor vehicle upon the payment of all fees. However, if the value of the vehicle is less than the security interest, all fees shall be divided equally between the lienholder and the political subdivision impounding the vehicle.

b. An owner or driver of a motor vehicle who is charged with a violation of subsection 1 and issued a citation under paragraph "a", subparagraph (3) or (4), is subject to the following:

(1) An owner or driver who produces to the clerk of court, within thirty days of the issuance of the citation under paragraph "a", or prior to the date of the individual's court appearance as indicated on the citation, whichever is earlier, proof that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, or, if the driver is not the owner of the motor vehicle, proof that liability coverage was in effect for the driver with respect to the motor vehicle being driven at the time the driver was stopped and cited, in the same manner as if the motor vehicle were owned by the driver, shall be given a receipt indicating that such proof was provided and be subject to one of the following:

(a) If the person was cited pursuant to paragraph "a", subparagraph (3), the owner or driver shall provide a copy of the receipt to the county treasurer of the county in which the motor vehicle is registered and the owner shall be assessed a fifteen dollar administrative fee by the county treasurer who shall issue new license plates and registration to the person after payment of the fee.

(b) If the person was cited pursuant to paragraph "a", subparagraph (4), the owner or driver, after the owner provides proof of financial liability coverage to the clerk of court, may claim the motor vehicle after such person pays any applicable fine and the costs of towing and storage for the motor vehicle, and the owner or driver provides a copy of the receipt and the owner pays to the county treasurer of the county in which the motor vehicle is registered a fifteen dollar administrative fee, and the county treasurer shall issue new license plates and registration to the person.

(2) An owner or driver who is charged with a violation of subsection 1 and is unable to show that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited may do either of the following:

(a) Sign an admission of violation on the citation and remit to the clerk of court a scheduled fine as provided in section 805.8, subsection 2, for a violation of subsection 1. Upon payment of the fine to the clerk of court of the county where the citation was issued, payment of a fifteen dollar administrative fee to the county treasurer of the county in which the motor vehicle is registered, and providing proof of payment of any applicable fine and proof of financial liability coverages to the county treasurer of the county in which the motor vehicle is registered, the treasurer shall issue new license plates and registration to the owner.

(b) Request an appearance before the court on the matter. If the matter goes before the court, and the owner or driver is found guilty of a violation of subsection 1, the court may impose a fine as provided in section 805.8, subsection 2, for a violation of subsection 1, or the court may order the person to perform unpaid community service instead of the fine. Upon the payment of the fine or the entry of the order for unpaid community service, the person shall provide proof of payment or entry of such order and the county treasurer of the county in which the motor vehicle is registered shall issue new license plates and registration to the owner upon the owner providing proof of financial liability coverage and paying a fifteen dollar administrative fee to the county treasurer.

c. An owner or driver cited for a violation of subsection 1, who produces to the clerk of court within thirty days of the issuance of the citation proof that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited as provided in paragraph "b", shall not be convicted of such violation and the citation issued shall be dismissed.

5. If the motor vehicle is not registered in this state and the driver is a nonresident, the peace officer shall do one of the following:

a. Issue a warning memorandum to the driver.

b. Issue a citation. An owner or driver who produces to the clerk of court within thirty days of the issuance of the citation, or prior to the date of the individual's court appearance as indicated on the citation, whichever is earlier, proof that the financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, or if the driver is not the owner of the motor vehicle, proof that liability coverage was in effect for the driver with respect to the motor vehicle being driven at the time the driver was stopped and cited in the same manner as if the motor vehicle were owned by the driver, shall be given a receipt indicating that proof was provided, and the citation issued shall be dismissed.

Sec. 3. Section 321.20B, subsections 6 and 7, Code Supplement 1997, are amended to read as follows:

6. This section ~~applies to a motor vehicle subject to registration under this chapter other than~~ does not apply to a motor vehicle identified in section 321.18, subsections 1 through 6, and subsection 8.

7. This section does not apply to a motor vehicle owned by a motor vehicle dealer or wholesaler licensed pursuant to chapter 322.

Sec. 4. Section 321.20B, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 6A. This section does not apply to a lienholder who has a security interest in a motor vehicle subject to the registration requirements of this chapter, so long as such lienholder maintains financial liability coverage for any motor vehicle driven or moved by the lienholder in which the lienholder has an interest.

Sec. 5. Section 321.57, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

A dealer owning any vehicle of a type otherwise required to be registered under this chapter may operate or move the vehicle upon the highways solely for purposes of transporting, testing, demonstrating, or selling the vehicle without registering the vehicle, upon condition that the vehicle display in the manner prescribed in sections 321.37 and 321.38 a special plate issued to the owner as provided in sections 321.58 to 321.62. ~~However, if the vehicle is a motor vehicle, the dealer, if subject to section 321.20B, shall maintain financial liability coverage for the motor vehicle as required under section 321.20B. A~~ Additionally, a new car dealer or a used car dealer may operate or move upon the highways a new or used car or trailer owned by the dealer for either private or business purposes without registering it if the new or used car or trailer is in the dealer's inventory and is continuously offered for sale at retail, and there is displayed on it a special plate issued to the dealer as provided in sections 321.58 to 321.62.

Sec. 6. NEW SECTION. 322.27A WHOLESALER'S LICENSE.

A person shall not engage in business as a wholesaler of motor vehicles in this state without a license as provided in this chapter.

Prior to the issuance of such license, the department, at a minimum, and in addition to any other information the department deems necessary to the application, shall require proof that the applicant has financial liability coverage as defined in section 321.1, except that such coverage shall be in limits of not less than one hundred thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, three hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident, and fifty thousand dollars because of injury to or destruction of property of others in any one accident.

Sec. 7. Section 805.8, subsection 2, paragraph ah, Code Supplement 1997, is amended to read as follows:

ah. If~~, in connection with a motor vehicle accident,~~ a person is charged and found guilty of a violation of section 321.20B, subsection 1, the scheduled fine is one hundred dollars.

Sec. 8. 1997 Iowa Acts, chapter 139, section 18, is repealed.

Sec. 9. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY. This Act, being deemed of immediate importance, takes effect upon enactment and applies retroactively to July 1, 1997.

Approved April 17, 1998

CHAPTER 1122

FARM MEDIATION

H.F. 2473

AN ACT providing for mediation in disputes involving agricultural producers.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 654A.11, subsection 3, paragraph b, Code 1997, is amended to read as follows:

b. The mediator shall issue a mediation release unless the creditor fails to personally attend and participate in ~~at least one~~ all mediation ~~meeting~~ meetings. The mediator shall issue a mediation release if the borrower waives or fails to personally attend and participate in ~~at least one~~ all mediation ~~meeting~~ meetings, regardless of participation by the creditor. ~~The creditor or borrower may be represented by another person, if the person participates in mediation and has authority to discuss the debt on behalf of the creditor or borrower.~~ However, if a creditor or borrower is not a natural person, the creditor or borrower must be represented by a natural person who is an officer, director, employee, or partner of the creditor or borrower. If a person acts in a fiduciary capacity for the creditor or borrower, the fiduciary may represent the creditor or borrower. If the creditor or borrower or eligible representative is not able to attend and participate as required in this paragraph, due to physical infirmity, mental infirmity, or other exigent circumstances determined reasonable by the farm mediation service, the creditor or borrower must be represented by another natural person. Any representative of the creditor or borrower must be authorized to sign instruments provided by this chapter, including a mediation agreement or a statement prepared by the mediator that mediation was waived. This section does not require the creditor or borrower to reach an agreement, including restructuring a debt, in order to receive a mediation release.

Sec. 2. Section 654B.4, subsection 3, Code 1997, is amended to read as follows:

3. At the meeting, a party ~~to the dispute~~ participating in mediation may be ~~represented~~ accompanied by counsel or ~~appear with~~ a consultant to assist the party in mediation.

Sec. 3. Section 654B.8, subsection 2, paragraph a, Code 1997, is amended to read as follows:

a. The mediator shall issue a mediation release unless the other party desiring to initiate a civil proceeding to resolve the dispute fails to personally attend and participate in ~~at least one~~ all mediation ~~meeting~~ meetings. The mediator shall issue a mediation release if the farm resident waives or fails to personally attend and participate in ~~at least one~~ all mediation ~~meeting~~ meetings, regardless of participation by the other party. ~~A party to a dispute may be represented by another person, if the person participates in mediation and has authority to discuss the dispute on behalf of the party being represented.~~ However, if the other party or the farm resident is not a natural person, the other party or farm resident must be represented by a natural person who is an officer, director, employee, or partner of the other party or farm resident. If a person acts in a fiduciary capacity for the other party or farm resident, the fiduciary may represent the other party or farm resident. If the other party or farm resident or eligible representative is not able to attend and participate as required in this paragraph, due to physical infirmity, mental infirmity, or other exigent circumstances determined reasonable by the farm mediation service, the other party or farm resident must be represented by another natural person. Any representative of the other party or the farm resident must be authorized to sign instruments provided by this chapter, including a mediation agreement or a statement prepared by the mediator that mediation was waived. This section does not require a party to reach an agreement. This section does not require a person to change a position, alter an activity which is a subject of the dispute, or restructure a contract in order to receive a mediation release.

Sec. 4. Section 654C.5, subsection 2, Code 1997, is amended to read as follows:

2. The parties agreeing to mediation shall personally attend and participate in ~~at least one~~ all mediation ~~meeting~~ meetings. ~~A party to a dispute may be represented by another person, if the person participates in mediation and has authority to discuss the dispute on behalf of the party being represented.~~ However, if a party is not a natural person, the party must be represented by a natural person who is an officer, director, employee, or partner of the party. If a person acts in a fiduciary capacity for a party, the fiduciary may represent the party. If the party or an eligible representative is not able to attend and participate as required in this subsection, due to physical infirmity, mental infirmity, or other exigent circumstances determined reasonable by the farm mediation service, the party must be represented by another natural person. Any representative of a party must be authorized to sign instruments provided by this chapter, including a mediation agreement or a statement prepared by the mediator that mediation was waived. This section does not require a party to reach an agreement. This section does not require a person to change a position, alter an activity which is a subject of the dispute, alter an application for a permit for construction of an animal feeding operation, or restructure a contract.

Approved April 17, 1998

CHAPTER 1123

ELECTIONS

H.F. 2495

AN ACT relating to the conduct of elections in the state.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 39.2, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

All special elections which are authorized or required by law, unless the applicable law otherwise requires, shall be held on Tuesday. A special election shall not be held on the first, ~~and~~ second, and third Tuesdays preceding and following the primary and the general elections.

Sec. 2. Section 44.4, subsection 3, Code Supplement 1997, is amended to read as follows:

3. Those filed with the city clerk, at least forty-two days before the ~~municipal~~ regularly scheduled or special city election. However, for those cities that may be required to hold a primary election, at least sixty-three days before the regularly scheduled or special city election.

Sec. 3. Section 44.9, subsection 6, Code 1997, is amended to read as follows:

6. In the office of the proper city clerk, at least forty-two days before the regularly scheduled or special city election. However, for those cities that may be required to hold a primary election, at least sixty-three days before a regularly scheduled or special city election.

Sec. 4. Section 49.12, Code 1997, is amended to read as follows:

49.12 ELECTION BOARDS.

There shall be appointed in each election precinct an election board which shall ordinarily consist of three or five precinct election officials. ~~However, in precincts using only one voting machine at any one time, and in precincts voting by paper ballot where no more~~

~~than three hundred fifty persons cast ballots in the last preceding similar election, the board shall consist of three precinct election officials; and in precincts using more than two voting machines one additional precinct election official may be appointed for each such additional machine.~~ At the commissioner's discretion, additional precinct election officials may be appointed to work at any election. Double election boards may be appointed for any precinct as provided by chapter 51. Not more than a simple majority of the members of the election board in any precinct, or of the two combined boards in any precinct for which a double election board is appointed, shall be members of the same political party or organization if one or more registered voters of another party or organization are qualified and willing to serve on the board.

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

Sec. 5. Section 49.53, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The commissioner shall not less than four nor more than twenty days before the day of each election, except those for which different publication requirements are prescribed by law, publish notice of the election. The notice shall contain a facsimile of the portion of the ballot containing the first rotation as prescribed by section 49.31, subsection 2, and shall show the names of all candidates or nominees and the office each seeks, and all public questions, to be voted upon at the election. The sample ballot published as a part of the notice may at the discretion of the commissioner be reduced in size relative to the actual ballot but such reduction shall not cause upper case letters appearing on the published sample ballot to be less than five thirty-sixths of an inch high in candidates' names or in summaries of public measures. The notice shall also state the date of the election, the hours the polls will be open, the location of each polling place at which voting is to occur in the election, the location of the polling places designated as early ballot pick-up sites, and the names of the precincts voting at each polling place, but the statement need not set forth any fact which is apparent from the portion of the ballot appearing as a part of the same notice. The notice shall include the full text of all public measures to be voted upon at the election. The notice shall also include notice of testing required pursuant to sections 52.9, 52.35, and 52.38.

Sec. 6. Section 49.77, subsection 4, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A person who has been sent an absentee ballot by mail but for any reason has not received it shall be permitted to cast a ballot in person pursuant to section 53.19 and in the manner prescribed by section 49.81.

Sec. 7. Section 52.9, unnumbered paragraph 2, Code 1997, is amended to read as follows:

It shall be the duty of the commissioner or the commissioner's duly authorized agents to examine and test the voting machines to be used at any election, after the machines have been prepared for the election and not less than twelve hours before the opening of the polls on the morning of the election. ~~The~~ For any election to fill a partisan office, the county chairperson of each political party referred to in section 49.13 shall be notified in writing of the time said machines shall be examined and tested so that they may be present, or have a representative present. For every election, the commissioner shall include the notice in the notice of the election published as required by section 49.53. Those present for the examination and testing shall sign a certificate which shall read substantially as follows:

Sec. 8. Section 52.9, unnumbered paragraph 3, Code 1997, is amended to read as follows:

The Undersigned Hereby Certify that, having duly qualified, we were present and witnessed the testing and preparation of the following voting machines; that we believe the same to be in proper condition for use in the election of ..... 19..; that each registering counter of the machine is set at 000; that the public counter is set at 000; that the seal numbers and the protective counter numbers are as indicated below.

Signed:

.....

Republican (if applicable)

.....

Democrat (if applicable)

.....

.....

Voting machine custodian

Dated ..... 19.....

Machine Number	Protective Counter Number	Seal Number
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

Sec. 9. Section 52.35, subsections 1 and 2, Code Supplement 1997, are amended to read as follows:

1. ~~The~~ For any election to fill a partisan office, the county chairperson of each political party shall be notified in writing of the time the test will be conducted, so that they may be present or have a representative present. ~~The~~ For every election, the commissioner ~~may also~~ shall include such notice in the notice of the election published as required by section 49.53. The test shall be open to the public.

2. The test shall be conducted by processing a preaudited group of ballots punched or marked so as to record a predetermined number of valid votes for each candidate, and on each public question, on the ballot. The test group shall include for each office and each question one or more ballots having votes in excess of the number allowed by law for that office or question, in order to test the ability of the automatic tabulating equipment to reject such votes. ~~The county chairperson of a political party~~ Any observer may submit an additional test group of ballots which, if so submitted, shall also be tested. The state commissioner shall promulgate administrative rules establishing procedures for any additional test group of ballots submitted by an observer. If any error is detected, its cause shall be ascertained and corrected and an errorless count obtained before the automatic tabulating equipment is approved. When so approved, a statement attesting to the fact shall be signed by the commissioner and kept with the records of the election.

Sec. 10. Section 52.38, Code Supplement 1997, is amended to read as follows:

52.38 TESTING PORTABLE TABULATING DEVICES.

All portable tabulating devices shall be tested before any election in which they are to be used following the procedure in section 52.35, subsection 2. Testing shall be completed not later than twelve hours before the opening of the polls on the morning of the election. ~~The~~ For any election to fill a partisan office, the chairperson of each political party shall be notified in writing of the time the devices will be tested so that the chairperson or a representative may be present. For every election, the commissioner shall include the notice in the notice of the election published as required by section 49.53. Those present for the test shall sign a certificate which shall read substantially as follows:

The undersigned certify that we were present and witnessed the testing of the portable tabulating devices in the following precincts, that we believe the devices are in proper condi-

tion for use in the election of ....., 19...; that following the test the vote totals were erased from the memory of each portable tabulating device and a report was produced showing that all vote totals in the memory were set at 0000; that the devices were securely locked or sealed; and that the serial numbers and locations of the devices which were tested are listed below.

Signed .....
(name and political party affiliation, if applicable)
.....
(name and political party affiliation, if applicable)
.....
Voting equipment custodian
Dated ..... 19 ....

Precinct	Location	Serial Number
.....	.....	.....
.....	.....	.....
.....	.....	.....

Sec. 11. Section 53.19, unnumbered paragraph 3, Code Supplement 1997, is amended to read as follows:

However, any registered voter who has received an absentee ballot and not returned it, may surrender the absentee ballot to the precinct officials and vote in person at the polls. The precinct officials shall mark the uncast absentee ballot "void" and return it to the commissioner. Any registered voter who has been sent an absentee ballot by mail but for any reason has not received it may appear at the voter's precinct polling place on election day and sign an affidavit to that effect, after which the voter shall be permitted to vote in person. Such voter shall cast a ballot in accordance with section 49.81. The form of the affidavit for use in such cases shall be prescribed by the state commissioner.

Sec. 12. Section 275.18, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The area education agency administrator shall furnish to the commissioner a map of the proposed reorganized area which must be approved by the commissioner as suitable for posting. The map shall be displayed prominently in at least four places within the voting precinct, and inside each voting booth, or on the left-hand side inside the curtain of each voting machine.

Sec. 13. Section 357B.2, Code 1997, is amended to read as follows:

357B.2 BOARD OF TRUSTEES.

A benefited fire district shall be governed by a board of trustees consisting of three members who shall serve overlapping, three-year terms. Each trustee shall give bond in an amount to be determined by the board of supervisors, the premium for which shall be paid by the district of the trustee. The members of the board of trustees shall be ~~elected at an election or, if there are insufficient candidates for the office,~~ appointed by the board of supervisors from among the ~~qualified electors~~ registered voters of the district. ~~Notice of the election shall be given by publication in a newspaper having general circulation within the district. The notice shall contain the date, time and location of the election. The elections shall be conducted in accordance with chapter 49 when such provisions are not in conflict with this chapter. The precinct election officials shall be appointed by the board of supervisors from among the qualified electors of the district and shall serve without pay.~~ Any vacancy on the board shall be filled by appointment ~~of~~ by the board of supervisors for the unexpired term. If a benefited fire district is located in more than one county, joint action of the boards of supervisors of the affected counties is required to appoint the members of the board of trustees, to determine the amount of bond, or to dissolve the district as provided in this chapter.

Sec. 14. Section 357G.9, Code 1997, is amended to read as follows:

357G.9 TRUSTEES — TERM AND QUALIFICATION.

At the election, the names of up to three candidates for trustee shall be written in by the voters on blank ballots without formal nomination and the council shall appoint three from among the five receiving the highest number of votes as trustees for the district. One trustee shall be appointed to serve for one year, one for two years, and one for three years. The trustees and their successors must be residents of the district and shall give bond in the amount required by the council, the premium of which shall be paid by the district. Vacancies shall be filled by ~~election, but if there are no candidates for a trustee office, the vacancy may be filled by~~ appointment by the council. The term of succeeding trustees shall be three years.

Sec. 15. Section 364.2, subsection 4, paragraph a, Code 1997, is amended to read as follows:

a. A city may grant to any person a franchise to erect, maintain, and operate plants and systems for electric light and power, heating, telephone, telegraph, cable television, district telegraph and alarm, motor bus, trolley bus, street railway or other public transit, waterworks, or gasworks, within the city for a term of not more than twenty-five years. When considering whether to grant, amend, extend, or renew a franchise, a city shall hold a public hearing on the question. Notice of the time and place of the hearing shall be published as provided in section 362.3. The franchise may be granted, amended, extended, or renewed only by an ordinance, but no exclusive franchise shall be granted, amended, extended, or renewed.

Sec. 16. Section 368.19, Code 1997, is amended by adding the following new unnumbered paragraph after unnumbered paragraph 1:

NEW UNNUMBERED PARAGRAPH. The city shall provide to the commissioner of elections a map of the area to be incorporated, discontinued, annexed, severed, or consolidated, which must be approved by the commissioner as suitable for posting. The map shall be displayed prominently in at least four places within the voting precinct, and inside each voting booth, or on the left-hand side inside the curtain of each voting machine.

Sec. 17. Section 39.5, Code Supplement 1997, is repealed.

Sec. 18. EFFECTIVE DATE. Section 17 of this Act, repealing Code section 39.5, being deemed of immediate importance, takes effect upon enactment.

Sec. 19. EFFECTIVE DATE. Section 14 of this Act, amending section 357G.9, being deemed of immediate importance, takes effect upon enactment.

Approved April 17, 1998

CHAPTER 1124

LAW ENFORCEMENT OFFICERS' TRAINING AND PROBATIONARY PERIODS

S.F. 316

AN ACT relating to the training and probationary periods for certain law enforcement officers.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 80B.17 CERTIFICATION REQUIRED.

The council shall extend the one-year time period in which an officer candidate must become certified for up to one hundred eighty days if the officer candidate is enrolled in training within twelve months of initial appointment.

Sec. 2. Section 341A.11, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The tenure of every deputy sheriff holding an office or position of employment under the provisions of this chapter shall be conditional upon a probationary period ~~of not more than twelve months, and where such deputy sheriff attends the law enforcement academy or a regional training facility certified by the director of the Iowa law enforcement academy, a probationary period of not more than six months, during which time the appointee may be removed or discharged by the sheriff~~. ~~Thereafter~~ If the employee has successfully completed training at the Iowa law enforcement academy or a regional training facility certified by the director of the Iowa law enforcement academy prior to initial appointment as a deputy sheriff, the probationary period shall be for a period of up to nine months and shall commence with the date of initial appointment as a deputy sheriff. If the employee has not successfully completed training at the Iowa law enforcement academy or a regional training facility certified by the director of the Iowa law enforcement academy prior to initial appointment as a deputy sheriff, the probationary period shall commence with the date of initial employment as a deputy sheriff and shall continue for a period of up to nine months following the date of successful completion of training at the Iowa law enforcement academy or a regional training facility certified by the director of the Iowa law enforcement academy. During the probationary period, the appointee may be removed or discharged by the sheriff without the right of appeal to the commission. Each deputy sheriff who transfers from one jurisdiction to another shall be employed subject to a probationary period of up to nine months. After the probationary period, the deputy sheriff may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other privileges for any of the following reasons:

Sec. 3. Section 400.8, subsection 3, Code 1997, is amended to read as follows:

3. All appointments to such positions shall be conditional upon a probation period of not to exceed six months, and in the case of ~~police patrol officers,~~ police dispatchers~~,~~ and fire fighters a probation period not to exceed twelve months. In the case of police patrol officers, if the employee has successfully completed training at the Iowa law enforcement academy or another training facility certified by the director of the Iowa law enforcement academy before the initial appointment as a police patrol officer, the probationary period shall be for a period of up to nine months and shall commence with the date of initial appointment as a police patrol officer. If the employee has not successfully completed training at the Iowa law enforcement academy or another training facility certified by the director of the law enforcement academy before initial appointment as a police patrol officer, the probationary period shall commence with the date of initial employment as a police patrol officer and shall continue for a period of up to nine months following the date of successful completion of training at the Iowa law enforcement academy or another training facility certified by the director of the Iowa law enforcement academy. A police patrol officer transferring employment from one jurisdiction to another shall be employed subject to a probationary period of

up to nine months. However, in cities with a population over one hundred seventy-five thousand, appointments to the position of fire fighter shall be conditional upon a probation period of not to exceed twenty-four months. During the probation period, the appointee may be removed or discharged from such position by the appointing person or body without the right of appeal to the commission. A person removed or discharged during a probationary period shall, at the time of discharge, be given a notice in writing stating the reason or reasons for the dismissal. A copy of such notice shall be promptly filed with the commission. Continuance in the position after the expiration of such probationary period shall constitute a permanent appointment.

Approved April 20, 1998

CHAPTER 1125

DISPOSITION OF SEIZED PUBLIC NUISANCES

S.F. 347

AN ACT relating to the disposal of public nuisances seized by the department of natural resources.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 483A.32, Code 1997, is amended to read as follows:

483A.32 PUBLIC NUISANCE.

Any device, contrivance, or material used to violate a rule adopted by the commission, or any other provision of this chapter or chapters 481A, 481B, 482, 484A, or 484B, is a public nuisance~~, and the~~ and may be condemned by the state. The director, ~~and~~ the director's officers, or any peace officer, shall seize ~~such~~ the devices, contrivances, or materials ~~so~~ used as a public nuisance, without warrant or process, and deliver them to a magistrate having jurisdiction. An automobile shall not be construed to be a public nuisance under this section.

Sec. 2. Section 483A.33, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

483A.33 DISPOSITION OF PROPERTY SEIZED AS PUBLIC NUISANCE.

The disposition of property seized pursuant to section 483A.32 shall be conducted as follows:

1. The officer taking possession of property seized as a public nuisance shall make a written inventory of the property and deliver a copy of the inventory to the person from whom the property was seized. The inventory shall include the name of the person taking custody of the seized property, the date and time of seizure, location of the seizure, and the name of the seizing public agency. Property which has been seized shall be safely secured and stored by the public agency which caused its seizure unless directed otherwise by the county attorney of the county where the property was seized or by the attorney general.

2. a. The county attorney or attorney general may file with the clerk of the district court for the county in which the property was seized a notice of condemnation which shall include a description of the property claimed to be condemned by the state, the grounds upon which the state claims that the property has been condemned, the date and place of seizure, and the name of the person from whom the property was seized.

b. The notice shall be filed not later than six months after the property was seized. Failure to file within the time limit terminates the state's right to claim a condemnation of the property.

c. The state shall give notice of condemnation to the person from whom the property was seized and any person identified as an owner or lien holder, by certified mail, personal service, or publication.

3. a. The person from whom the property was seized may make application for its return in the office of the clerk of the district court for the county in which the property was seized. The application shall be filed within thirty days after the receipt of the notice of condemnation. Failure to file the application within this time period terminates the interest of the person and the ownership of the property shall be transferred to the state.

b. The application for return of condemnable property shall be written and shall state the specific item or items sought, the nature and the source of the claimant's interest in the property, and the grounds upon which the claimant seeks to avoid condemnation. The ownership of property is not sufficient grounds for its return. The written application shall be specific and the claimant shall be limited at the judicial hearing to proof of the grounds set forth is* the application for return. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return. If specific grounds for return are not provided in the application for return, or the grounds are insufficient as a matter of law, the court may enter judgment on the pleadings without further hearing.

4. If an application for return of condemnable property is timely and of sufficient grounds, the claim shall be set for hearing. The hearing shall be held not less than ten nor more than thirty days after the filing of the claim. The proceeding shall be conducted by a magistrate or a district associate judge. All claims to the same property shall be heard in one proceeding, unless it is shown that the proceeding would result in prejudice to one or more of the parties.

5. a. Upon a finding by the court that the property is condemnable, the court shall enter an order transferring title of the property to the state, and placed at the disposal of the director, who may use or sell the property, depositing the proceeds of the sale in the state fish and game protection fund.

b. Upon a finding by the court that the property should not be condemned, the property shall be returned to the person from whom it was seized. If the property is necessary for use as evidence in a criminal proceeding, the property shall not be returned until its use as evidence is no longer required.

Sec. 3. Section 483A.34, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

483A.34 RIGHT TO APPEAL.

An appeal from a denial of an application for return of condemnable property, or from an order for return of condemnable property, shall be made within ten days after the entry of a judgment order and shall be conducted in the same manner as an appeal in a small claims action. The appellant, other than the state, shall post a bond of a reasonable amount as the court may fix and approve, conditioned to pay all costs of the proceedings if the appellant is unsuccessful on appeal.

Approved April 20, 1998

* The word "in" probably intended

CHAPTER 1126

MOBILE HOME DEALERS

S.F. 2109

AN ACT relating to mobile home dealers.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 322B.2, subsections 3 and 4, Code 1997, are amended by striking the subsections.

Sec. 2. Section 322B.2, subsections 5 and 7, Code 1997, are amended to read as follows:

5. "Mobile home" means a structure, transportable in one or more sections, which exceeds eight feet in width and thirty-two feet in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to one or more utilities. "Mobile home" also includes "manufactured home" as the term is defined in section 435.1.

7. "Mobile home distributor" means a person who sells or distributes mobile homes to mobile home dealers ~~either directly or through a distributor's representative~~.

Sec. 3. Section 322B.3, subsection 3, Code 1997, is amended to read as follows:

3. SURETY BOND. Before the issuance of a mobile home dealer's license, an applicant for a license shall file with the department a surety bond executed by the applicant as principal and executed by a corporate surety company, licensed and qualified to do business within this state, which bond shall run to the state of Iowa, be in the amount of ~~twenty-five~~ fifty thousand dollars and be conditioned upon the faithful compliance by the applicant as a dealer with all of the statutes of this state regulating the business of the dealer and indemnifying any person dealing or transacting business with the dealer in connection with a mobile home from a loss or damage occasioned by the failure of the dealer to comply with this chapter, including, but not limited to, the furnishing of a proper and valid document of title to the mobile home involved in the transaction.

Sec. 4. Section 322B.3, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 5. MOBILE HOME HOOKUPS. A mobile home dealer or an employee of a mobile home dealer may perform water, gas, electrical, and other utility service connections in a mobile home, space or within ten feet of such space, located in a mobile home park, and the dealer or an employee of the dealer may install a tie-down system on a mobile home located in a mobile home park. The connections are subject to inspection and approval by local building code officials and the mobile home dealer shall pay the inspection fee, if any.

Sec. 5. Section 322B.4, subsection 2, Code 1997, is amended by striking the subsection.

Sec. 6. Section 322B.6, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The department may revoke, suspend, or refuse the license of a mobile home dealer, mobile home manufacturer, or mobile home distributor, ~~manufacturer's representative, or distributor's representative,~~ as applicable, if the department finds that the mobile home dealer, manufacturer, or distributor~~, or representative~~ is guilty of any of the following acts or offenses:

Sec. 7. Section 322B.6, subsections 2 and 3, Code 1997, are amended to read as follows:

2. Knowingly making misleading, deceptive, untrue or fraudulent representations in the business of a mobile home dealer, manufacturer, or distributor~~, manufacturer's representative or distributor's representative~~ or engaging in unethical conduct or practice harmful or detrimental to the public.

3. Conviction of a felony related to the business of a mobile home dealer, manufacturer, or distributor~~, manufacturer's representative or distributor's representative~~. A copy of the record of conviction or plea of guilty shall be sufficient evidence for the purposes of this section.

Sec. 8. Section 322B.6, subsection 6, Code 1997, is amended by striking the subsection.

Sec. 9. Section 322B.8, Code 1997, is amended to read as follows:

322B.8 UNLAWFUL PRACTICE.

It is unlawful for a person to engage in business as a mobile home dealer, mobile home manufacturer, or mobile home distributor~~, manufacturer's representative or distributor's representative~~ in this state without first acquiring and maintaining a license in accordance with this chapter. A person convicted of violating the provisions of this section is guilty of a serious misdemeanor.

Approved April 20, 1998

CHAPTER 1127

CHILD DAY CARE

S.F. 2312

AN ACT providing for child day care requirements for volunteers and for the number of children receiving care under the child care home pilot projects and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 237A.3A, subsection 3, paragraph d, Code Supplement 1997, is amended to read as follows:

d. (1) Four levels of registration requirements are applicable to registered child care homes in accordance with subsections 10 through 13 and rules adopted to implement this section. The rules shall apply requirements to each level for the amount of space available per child, provider qualifications and training, and other minimum standards.

(2) The rules shall allow a child day care home to be registered at level II, III, or IV for which the provider is qualified even though the amount of space required to be available for the maximum number of children authorized for that level exceeds the actual amount of space available in that child care home. However, the total number of children authorized for the child care home at that level of registration shall be limited by the amount of space available per child.

Sec. 2. Section 237A.3A, subsection 13, paragraph a, Code Supplement 1997, is amended to read as follows:

a. Except as otherwise provided in this subsection, not more than twelve children shall be present at any one time. If more than ~~seven~~ eight children are present, a second person must be present who meets the individual qualifications for child care home registration established by rule of the department.

Sec. 3. Section 237A.5, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 7. A person who serves as an unpaid volunteer in a child day care facility shall not be required to complete training as a mandatory reporter of child abuse under section 232.69 or under any other requirement.

Sec. 4. CHILD CARE HOME PILOT PROJECTS — TRANSITION EXCEPTION. The exception provisions of this section are applicable to child care homes registering under section 237A.3A during a transition period beginning with the effective date of this Act and ending two years from that date. During the transition period, the following provisions shall apply, notwithstanding section 237A.3A:

1. A child care home provider who is providing child day care to four infants at the time of registration in the pilot project at level I, II, or III may continue to provide care to those four infants. However, if the child care home no longer provides care to one or more of the infants or one or more of the infants reaches the age of twenty-four months, the transition period exception authorized in this section shall no longer apply. The overall limitation on the number of children authorized for the level of care remains applicable.

2. A child care home provider who at the time of registration in the pilot project at level I, II, or III is providing child day care to school age children in excess of the number of school age children authorized for the registration level may continue to provide care for those children. The child care home provider may exceed the total number of children authorized for the level of registration by the number of school age children in excess of the number authorized for the registration level. This transition period exception is subject to all of the following:

a. The provider must comply with the other requirements as to number of children which are applicable to that registration level.

b. The maximum number of children attributable to the authorization for school age children at the applicable registration level is five.

c. If more than eight children are present at any one time, the provider shall be assisted by a responsible person who is at least fourteen years of age.

d. If the child care home no longer provides care to an individual school age child who was receiving care at the time of the registration, the excess number of children allowed under the transition period exception shall be reduced accordingly.

Sec. 5. CHILD DAY CARE AVAILABILITY. The department of human services shall consult with the child day care advisory council and child day care resource and referral services in studying the availability, accessibility, affordability, and quality of child day care services in the state. The report of the study shall be submitted to the governor and the general assembly by January 1, 1999. The report shall include estimates as to the need for child day care services in all areas of the state, the availability of providers versus the need, and identification of the areas with the greatest need and the extent of the need.

Sec. 6. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 20, 1998

CHAPTER 1128

CRIME VICTIM COMPENSATION

S.F. 2329

AN ACT relating to crime victims, by expanding the compensation available from the crime victim compensation program to victims of crime and their families and providing a Code editor directive.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 912.6, Code 1997, is amended to read as follows:

912.6 COMPUTATION OF COMPENSATION.

The department shall award compensation, as appropriate, for any of the following economic losses incurred as a direct result of an injury to or death of the victim:

1. Reasonable charges incurred for medical care not to exceed ten thousand five hundred dollars. Reasonable charges incurred for mental health care not to exceed three thousand dollars which includes services provided by a psychologist licensed under chapter 154B, a person holding at least a master's degree in social work or counseling and guidance, or a victim counselor as defined in section 236A.1.

2. Loss of income from work the victim would have performed and for which the victim would have received remuneration if the victim had not been injured, not to exceed six thousand dollars.

3. Reasonable replacement value of clothing that is held for evidentiary purposes not to exceed one hundred dollars.

4. Reasonable funeral and burial expenses not to exceed ~~five~~ seven thousand five hundred dollars.

5. Loss of support for dependents resulting from death or a period of disability of the victim of sixty days or more not to exceed two thousand dollars per dependent ~~or a total of six thousand dollars~~.

6. In the event of a victim's death, reasonable charges incurred for counseling the victim's spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim if the counseling services are provided by a psychologist licensed under chapter 154B, a victim counselor as defined in section 236A.1, subsection 1, or an individual holding at least a master's degree in social work or counseling and guidance, and reasonable charges incurred by such persons for medical care counseling provided by a psychiatrist licensed under chapter 147 or 150A. The allowable charges under this subsection shall not exceed three thousand dollars per person ~~or a total of six thousand dollars per victim death~~.

7. In the event of a victim's death, reasonable charges incurred for health care for the victim's spouse, children, parents, siblings, or persons related by blood or affinity to the victim not to exceed three thousand dollars per survivor.

8. In the event of a victim's death, loss of income from work that, but for the death of the victim, would have been earned by the victim's spouse, child, parent, sibling, or person cohabiting with or related by blood or affinity to the victim, not to exceed six thousand dollars.

~~8.~~ 9. Reasonable expenses incurred for cleaning the scene of a homicide, if the scene is a residence, not to exceed one thousand dollars.

~~9.~~ 10. Reasonable charges incurred for mental health care for secondary victims which includes the services provided by a psychologist licensed under chapter 154B, a person holding at least a master's in social work, counseling, or a related field, a victim counselor as defined in section 236A.1, or a psychiatrist licensed under chapter 147, 148, or 150A. The allowable charges under this subsection shall not exceed one thousand dollars per secondary victim ~~or a total of six thousand dollars~~.

Sec. 2. PREVAILING AMENDMENTS AND CODE EDITOR DIRECTIVE.

1. Any amendments to section 232A.4, section 232.28, subsections 10 and 11, sections 232.28A, 709.10, and 709.17, section 904.108, subsection 6, and chapters 709B, 910A, and 912, Code and Code Supplement, enacted in any Acts of the Seventy-seventh General Assembly, 1998 Session, shall prevail over the repeal of those provisions in 1998 Iowa Acts, House File 2527,* as the reenactment of those provisions in new Code chapter 915 in that Act is intended to be a continuation of the prior statutes but is not intended to preclude further amendment of those provisions.

2. The Code editor is therefore directed to apply and harmonize any amendments enacted during the 1998 Session of the Seventy-seventh General Assembly to section 232A.4, section 232.28, subsections 10 and 11, sections 232.28A, 709.10, and 709.17, section 904.108, subsection 6, and chapters 709B, 910A, and 912, Code and Code Supplement, to the appropriate corresponding provisions of new Code chapter 915, as enacted in 1998 Iowa Acts, House File 2527.*

3. If amendments in other 1998 Iowa Acts to any of the repealed sections and chapters or partially stricken sections cannot easily be applied and harmonized to corresponding provisions in new Code chapter 915, the amendments may be included in a Code editor's bill to be submitted to the general assembly which convenes in January 1999.

4. Notwithstanding subsection 1, the repeal of section 232.28A in section 81 of 1998 Iowa Acts, House File 2527,* is intended to prevail over the amendment of section 232.28A in section 62 of that Act.

Approved April 20, 1998

CHAPTER 1129

SELF-SERVICE DISPLAYS FOR CIGARETTES AND TOBACCO PRODUCTS

H.F. 2120

AN ACT prohibiting the use of self-service displays in the offering for sale or sale of cigarettes or tobacco products, and providing a penalty.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. LEGISLATIVE INTENT. It is the intent of the general assembly to restrict access of minors to cigarettes and tobacco products by limiting self-service sales and self-service displays of cigarettes and tobacco products. This Act is necessary because of the widespread problem of access of minors to cigarettes and tobacco products through unsupervised sales and shoplifting. The general assembly recognizes that a large percentage of adult smokers begin smoking before they can legally purchase tobacco products. Cigarette smoking is responsible for hundreds of thousands of deaths each year and thousands of minors start smoking each day. The overall purpose of this Act is to protect the health and welfare of the citizens of this state.

Sec. 2. Section 453A.1, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 1A. "Carton" means a box or container of any kind in which ten or more packages or packs of cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

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* Chapter 1090 herein

NEW SUBSECTION. 15A. "Package" or "pack" means a container of any kind in which cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

NEW SUBSECTION. 20A. "Self-service display" means any manner of product display, placement, or storage from which a person purchasing the product may take possession of the product, prior to purchase, without assistance from the retailer or employee of the retailer, in removing the product from a restricted access location.

Sec. 3. NEW SECTION. 453A.36A SELF-SERVICE SALES PROHIBITED.

1. Beginning January 1, 1999, except as provided in section 453A.36, subsection 6, a retailer shall not sell or offer for sale cigarettes or tobacco products, in a quantity of less than a carton, through the use of a self-service display.

2. Violation of this section by a holder of a retail permit is grounds for revocation of such permit.

Approved April 20, 1998

CHAPTER 1130

SCHOOL INFRASTRUCTURE FUNDING

H.F. 2282

AN ACT authorizing the imposition of a local option sales and services tax and use of certain federal funds for school infrastructure projects and the issuance of bonds, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 422E.1 AUTHORIZATION — RATE OF TAX — USE OF REVENUES.

1. A local sales and services tax for school infrastructure purposes may be imposed by a county on behalf of school districts as provided in this chapter.

2. The maximum rate of tax shall be one percent. The tax shall be imposed without regard to any other local sales and services tax authorized in chapter 422B, and is repealed at the expiration of a period of ten years of imposition or a shorter period as provided in the ballot proposition.

3. Local sales and services tax moneys received by a county for school infrastructure purposes pursuant to this chapter shall be utilized solely for school infrastructure needs. For purposes of this chapter, "school infrastructure" means those activities for which a school district is authorized to contract indebtedness and issue general obligation bonds under section 296.1, except those activities related to a teacher's or superintendent's home or homes. These activities include the construction, reconstruction, repair, purchasing, or remodeling of schoolhouses, stadiums, gyms, fieldhouses, and bus garages and the procurement of schoolhouse construction sites and the making of site improvements. Additionally, "school infrastructure" includes the payment or retirement of outstanding bonds previously issued for school infrastructure purposes as defined in this subsection, and the payment or retirement of bonds issued under section 422E.4.

Sec. 2. NEW SECTION. 422E.2 IMPOSITION BY COUNTY.

1. A local sales and services tax shall be imposed by a county only after an election at which a majority of those voting on the question favors imposition. A local sales and

services tax approved by a majority vote shall apply to all incorporated and unincorporated areas of that county.

2. a. Upon receipt by a county board of supervisors of a petition requesting imposition of a local sales and services tax for infrastructure purposes, signed by eligible electors of the whole county equal in number to five percent of the persons in the whole county who voted at the last preceding state general election, the board shall within thirty days direct the county commissioner of elections to submit the question of imposition of the tax to the registered voters of the whole county.

b. Alternatively, the question of imposition of a local sales and services tax for school infrastructure purposes may be proposed by motion or motions, requesting such submission, adopted by the governing body of a school district or school districts located within the county containing a total, or a combined total in the case of more than one school district, of at least one-half of the population of the county, or by the county board of supervisors. Upon adoption of such motion, the governing body of a school district shall notify the board of supervisors of the adoption of the motion. The county board of supervisors shall submit the motion to the county commissioner of elections, who shall publish notice of the ballot proposition concerning the imposition of the local sales and services tax. A motion ceases to be valid at the time of the holding of the regular election for the election of members of the governing body which adopted the motion.

3. The county commissioner of elections shall submit the question of imposition of a local sales and services tax for school infrastructure purposes at a state general election or at a special election held at any time other than the time of a city regular election. The election shall not be held sooner than sixty days after publication of notice of the ballot proposition. The ballot proposition shall specify the rate of tax, the date the tax will be imposed and repealed, and shall contain a statement as to the specific purpose or purposes for which the revenues shall be expended. The rate of tax shall not be more than one percent as set by the county board of supervisors. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

4. a. The tax may be repealed or the rate increased, but not above one percent, or decreased after an election at which a majority of those voting on the question of repeal or rate change favored the repeal or rate change. The election at which the question of repeal or rate change is offered shall be called and held in the same manner and under the same conditions as provided in this section for the election on the imposition of the tax. The election may be held at any time but not sooner than sixty days following publication of the ballot proposition. However, the tax shall not be repealed before it has been in effect for one year.

b. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of the tax, the county board of supervisors shall give written notice to the director of revenue and finance of the result of the election. Election costs shall be apportioned among school districts within the county on a pro rata basis in proportion to the number of registered voters in each school district and the total number of registered voters in all of the school districts within the county.

A local option sales and services tax shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 422E.4, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose.

Sec. 3. NEW SECTION. 422E.3 COLLECTION OF TAX.

1. If a majority of those voting on the question of imposition of a local sales and services tax for school infrastructure purposes favors imposition of the tax, the tax shall be imposed by the county board of supervisors within the county pursuant to section 422E.2, at the rate specified for a ten-year duration on the gross receipts taxed by the state under chapter 422, division IV.

2. The tax shall be imposed on the same basis as the state sales and services tax and shall not be imposed on the sale of any property or on any service not taxed by the state, except the tax shall not be imposed on the gross receipts from the sale of motor fuel or special fuel as defined in chapter 452A, on the gross receipts from the rental of rooms, apartments, or sleeping quarters which are taxed under chapter 422A during the period the hotel and motel tax is imposed, on the gross receipts from the sale of equipment by the state department of transportation, and on the gross receipts from the sale of a lottery ticket or share in a lottery game conducted pursuant to chapter 99E.

3. The tax is applicable to transactions within the county where it is imposed and shall be collected by all persons required to collect state gross receipts taxes. The amount of the sale, for purposes of determining the amount of the tax, does not include the amount of any state gross receipts taxes or other local option sales taxes. A tax permit other than the state tax permit required under section 422.53 shall not be required by local authorities.

4. The director of revenue and finance shall credit tax receipts and interest and penalties from the local sales and services tax for school infrastructure purposes to an account within the county's local sales and services tax fund, as created in section 422B.10, subsection 1, maintained in the name of the school district or school districts located within the county. If the director is unable to determine from which county any of the receipts were collected, those receipts shall be allocated among the possible counties based on allocation rules adopted by the director.

5. a. The director of revenue and finance within fifteen days of the beginning of each fiscal year shall send to each school district where the tax is imposed an estimate of the amount of tax moneys each school district will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months.

b. The director shall remit ninety-five percent of the estimated tax receipts for the school district to the school district on or before August 31 of the fiscal year and on or before the last day of each following month.

c. The director shall remit a final payment of the remainder of tax moneys due for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the first payment of the new fiscal year shall be adjusted to reflect any overpayment.

If more than one school district, or a portion of a school district, is located within the county, tax receipts shall be remitted to each school district or portion of a school district in which the county tax is imposed in a pro rata share based upon the ratio which the percentage of actual enrollment for the school district that attends school in the county bears to the percentage of the total combined actual enrollments for all school districts that attend school in the county. The combined actual enrollment for a county, for purposes of this section, shall be determined for each county imposing a sales and services tax for school infrastructure purposes by the department of management based on the actual enrollment figures reported by October 1 to the department of management by the department of education pursuant to section 257.6, subsection 1. The combined actual enrollment count shall be forwarded to the director of the department of management by March 1, annually, for purposes of supplying estimated tax payment figures and making estimated tax payments pursuant to this section for the following fiscal year.

6. The local sales and services tax for school infrastructure purposes shall be administered as provided in section 422B.9.

Sec. 4. NEW SECTION. 422E.4 BONDING.

The board of directors of a school district shall be authorized to issue negotiable, interest-bearing school bonds, without election, and utilize tax receipts derived from the sales and services tax for school infrastructure purposes for principal and interest repayment. Proceeds of the bonds issued pursuant to this section shall be utilized solely for school infrastructure needs as school infrastructure is defined in section 422E.1, subsection 3.

Issuance of bonds pursuant to this section shall be permitted only in a district which has imposed a local sales and services tax for school infrastructure purposes pursuant to section 422E.2. The provisions of sections 298.22 through 298.24 shall apply regarding the form, rate of interest, registration, redemption, and recording of bond issues pursuant to this section, with the exception that the maximum period during which principal on the bonds is payable shall not exceed a ten-year period, or the date of repeal stated on the ballot proposition.

A school district in which a local option sales tax for school infrastructure purposes has been imposed shall be authorized to enter into a chapter 28E agreement with one or more cities whose boundaries encompass all or a part of the area of the school district. A city or cities entering into a chapter 28E agreement shall be authorized to expend its designated portion of the local option sales and services tax revenues for any valid purpose permitted in this chapter or authorized by the governing body of the city.

The governing body of a city may authorize the issuance of bonds which are payable from its designated portion of the revenues of the local option sales and services tax, and not from property tax, by following the authorization procedures set forth for cities in section 384.83. A city may pledge irrevocably any amount derived from its designated portions of the revenues of the local option sales and services tax to the support or payment of such bonds.

Sec. 5. NEW SECTION. 422E.5 SCHOOL INFRASTRUCTURE SAFETY FUND.

1. There shall be distributed from the federal funds allocated to the state of Iowa as described in Conference Committee Report 105-390, accompanying H.R. 2264, making federal appropriations to the United States departments of labor, health and human services, and education, to the state department of education the sum of eight million dollars to establish a school infrastructure safety fund.

2. The funds shall be allocated to the school budget review committee to develop a school infrastructure safety fund grant program, in conjunction with the state fire marshal. For purposes of reviewing grant applications and making recommendations regarding the administration of the program, the state fire marshal shall be considered an additional voting member of the school budget review committee.

3. Top priority in awarding program grants shall be the making of school infrastructure improvements relating to fire and personal safety. School districts eligible for program grants shall have received an order or citation from the state fire marshal, or a fire department chief or fire prevention officer, for one or more fire safety violations regarding a school facility, or in the opinion of the state fire marshal shall be regarded as operating facilities subject to significant fire safety deficiencies. Grant awards shall also be available for defects or violations of the state building code revealed during an inspection of school facilities by a local building department, or for improvements consistent with the standards and specifications contained in the state building code regarding ensuring that buildings and facilities are accessible to and functional for persons with disabilities. The school budget review committee shall allocate program funds to school districts which, in its discretion, are determined to be faced with the most severe deficiencies. School districts applying for program grants shall have developed and submitted to the state fire marshal or local building department a written plan to remedy fire or safety defects within a specified time frame. Approval of the written plan by the state fire marshal or local building department shall be obtained prior to receipt of a grant award by a school district.

4. Application forms, submission dates for applications and for written plans to remedy fire or safety defects, and grant award criteria shall be developed by the state department of education, in coordination with the state fire marshal, by rule.

5. The school budget review committee shall submit a progress report of the number and amount of grants awarded, and fire and safety improvements made, pursuant to the school infrastructure safety fund grant program, to the general assembly by January 1, 2000.

6. If federal rules or regulations are adopted relating to the distribution or utilization of funds allocated to the state department of education pursuant to this section which are inconsistent with the provisions of this section, the state department of education shall adopt rules to comply with the requirements of the federal rules or regulations.

Sec. 6. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 20, 1998

CHAPTER 1131

TRANSPORTATION OF PRISONERS AND SHARING HABILITATIVE SERVICES AND TREATMENT RESOURCES FOR OFFENDERS

S.F. 2331

AN ACT relating to agreements for the provision of services, by excluding persons who provide transportation of prisoners from statutory requirements pertaining to private investigators or security agents and the carrying of weapons, and providing for the sharing of certain habilitative and treatment resources by the department of corrections with the department of human services and providing for certain contractual requirements and the adoption of rules by the department of corrections.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 80A.2, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 9. A person engaged in the business of transporting prisoners under a contract with the Iowa department of corrections or a county sheriff, a similar agency from another state, or the federal government.

Sec. 2. NEW SECTION. 356.50 PRIVATE TRANSPORTATION OF PRISONERS.

If a county sheriff contracts with a private person or entity for the transportation of prisoners to or from a county jail, the contract shall include provisions which require the following:

1. The private person or any officers or employees of the private person or private entity shall not have been convicted of any of the following:

a. A felony.

b. Within the three-year period immediately preceding the date of the execution of the contract, a violation of the laws pertaining to operation of motor vehicles punishable as a serious misdemeanor or greater offense.

c. Domestic abuse assault in which bodily injury was inflicted or attempted to be inflicted.

d. A crime involving illegal manufacture, use, possession, sale, or an attempt to illegally manufacture, use, possess, or sell alcohol or a controlled substance or other drug.

2. The person or persons actually transporting the prisoners shall be trained and proficient in the safe use of firearms.

3. Any employees of a private entity which has entered into the contract for transportation of prisoners shall only possess and use security and restraint equipment, including any firearms, which has been issued by the private entity.

4. The person or persons actually transporting the prisoners shall be trained and proficient in appropriate transportation procedures.

5. The person or entity complies, within one year of publication, with any applicable standards for the transportation of prisoners promulgated by the American corrections association.

Sec. 3. Section 724.4, subsection 4, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. k. A person engaged in the business of transporting prisoners under a contract with the Iowa department of corrections or a county sheriff, a similar agency from another state, or the federal government.

Sec. 4. Section 904.108, subsection 1, paragraph d, Code Supplement 1997, is amended to read as follows:

d. Establish and maintain acceptable standards of treatment, training, education, and rehabilitation in the various state penal and corrective institutions which shall include habilitative services and treatment for offenders with mental retardation. For the purposes of this paragraph, "habilitative services and treatment" means medical, mental health, social, educational, counseling, and other services which will assist a person with mental retardation to become self-reliant. However, the director may also provide rehabilitative treatment and services to other persons who require the services. The director shall identify all individuals entering the correctional system who are persons with mental retardation, as defined in section 222.2, subsection 4. Identification shall be made by a qualified professional in the area of mental retardation. In assigning an offender with mental retardation, or an offender with an inadequately developed intelligence or with impaired mental abilities, to a correctional facility, the director shall consider both the program needs and the security needs of the offender. The director shall consult with the department of human services in providing habilitative services and treatment to offenders with mental illness or mental retardation. The director may enter into agreements with the department of human services to utilize mental health institutions and share staff and resources for purposes of providing habilitative and treatment services, as well as providing other special needs programming. Any agreement to utilize mental health institutions and to share staff and resources shall provide that the costs of the habilitative and treatment services shall be paid from state funds. Not later than twenty days prior to entering into any agreement to utilize mental health institution staff and resources, other than the use of a building or facility, for purposes of providing habilitative and treatment services, as well as other special needs programming, the directors of the departments of corrections and human services shall each notify the chairpersons and ranking members of the joint appropriations subcommittees that last handled the appropriation for their respective departments of the pending agreement. Use of a building or facility shall require approval of the general assembly if the general assembly is in session or, if the general assembly is not in session, the legislative council may grant temporary authority, which shall be subject to final approval of the general assembly during the next succeeding legislative session.

Sec. 5. NEW SECTION. 904.320 PRIVATE TRANSPORTATION OF PRISONERS.

1. If the director contracts with a private person or entity for the transportation of inmates to or from an institution, the contract shall include provisions which require the following:

a. The private person or any officers or employees of the private person or private entity shall not have been convicted of any of the following:

(1) A felony.

(2) Within the three-year period immediately preceding the date of the execution of the contract, a violation of the laws pertaining to operation of motor vehicles punishable as a serious misdemeanor or greater offense.

(3) Domestic abuse assault in which bodily injury was inflicted or attempted to be inflicted.

(4) A crime involving illegal manufacture, use, possession, sale, or an attempt to illegally manufacture, use, possess, or sell alcohol or a controlled substance or other drug.

b. The person or persons actually transporting the prisoners shall be trained and proficient in the safe use of firearms.

c. Any employees of a private entity which has entered into the contract for transportation of prisoners shall only possess and use security and restraint equipment, including any firearms, which has been issued by the private entity.

d. The person or persons actually transporting the prisoners shall be trained and proficient in appropriate transportation procedures.

e. The person or entity complies, within one year of publication, with any applicable standards for the transportation of prisoners promulgated by the American corrections association.

2. The department shall adopt rules pertaining to contracts with private persons or entities providing transportation of inmates of institutions under the control of the department.

Approved April 21, 1998

CHAPTER 1132

PAYMENT OF COSTS OF POSTCONVICTION PROCEEDINGS

S.F. 2339

AN ACT relating to an inmate's right to counsel in a postconviction proceeding pertaining to a forfeiture of a reduction in sentence or the unlawful holding of a person in custody or restraint.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 822.5, Code 1997, is amended to read as follows:

822.5 PAYMENT OF COSTS.

~~1.~~ If the applicant is unable to pay court costs and ~~expenses of legal representation, including~~ stenographic~~,~~ and printing~~, or other legal services or consultation~~ expenses, these costs and expenses shall be made available to the applicant ~~in the preparation of the application,~~ in the trial court, and on review. Unless the applicant is confined in a state institution and is seeking relief under section 822.2, subsections 5 and 6, the costs and expenses of legal representation shall also be made available to the applicant in the preparation of the application, in the trial court, and on review if the applicant is unable to pay. However, nothing in this section shall be interpreted to require payment of expenses of legal representation, including stenographic, printing, or other legal services or consultation, when the applicant is self-represented or is utilizing the services of an inmate.

~~2. If an applicant confined in a state institution seeks relief under section 822.2, subsection 6, and the court finds in favor of the applicant, or when relief is denied and costs and expenses referred to in subsection 1 cannot be collected from the applicant, these costs and expenses initially shall be paid by the county in which the application was filed. The facts of payment and the proceedings on which it is based, with a statement of the amount of costs and expenses incurred, shall be submitted to the county in a timely manner with approval in writing by the presiding or district judge appended to the statement or endorsed on it, and shall be certified by the clerk of the district court under seal to the state executive council. The executive council shall review the proceedings and authorize reimbursement for the~~

~~costs and expenses or for that part which the executive council finds justified, and shall notify the director of revenue and finance to draw a warrant to the county treasurer on the state general fund for the amount authorized.~~

Approved April 21, 1998

CHAPTER 1133

ALLOCATION OF STATE AID FOR SCHOOL-BASED YOUTH SERVICES PROGRAMS

S.F. 2353

AN ACT relating to an allocation of state aid for purposes of school-based youth services programs.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 279.51, subsection 1, paragraphs c and e, Code Supplement 1997, are amended to read as follows:

c. For each of the fiscal years during the fiscal period beginning July 1, 1996, and ending June 30, ~~1998~~ 2000, two million eight hundred thousand dollars of the funds appropriated shall be allocated for the school-based youth services education program established in subsection 3. For each of the fiscal years during the fiscal period beginning July 1, 1994, and ending June 30, ~~1998~~ 2000, twenty thousand dollars of the funds allocated in this paragraph shall be expended for staff development, research, and the development of strategies for coordination with community-based youth organizations and agencies. A school that received a grant during the fiscal year beginning July 1, 1993, or July 1, 1997, is ineligible to receive a grant under this paragraph. Subject to the approval of the state board of education, the allocation made in this paragraph may be renewed for additional four-year periods of time.

e. Notwithstanding paragraph "c", for each of the fiscal years during the fiscal period beginning July 1, ~~1994~~ 1998, and ending June 30, ~~1998~~ 2000, fifty thousand dollars of the funds allocated in paragraph "c" shall be granted to each of the ~~four~~ schools that received grants under subsection 3 during the fiscal year beginning July 1, 1993, or July 1, 1997, to allow for expansion and to include identified minimum services if the school submits a program plan pursuant to subsection 3.

Approved April 21, 1998

CHAPTER 1134

REGULATION AND OPERATION OF LOTTERY

S.F. 2376

AN ACT relating to the operation of the lottery and providing a penalty.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 99E.9, subsection 3, paragraph g, Code 1997, is amended to read as follows:

g. The frequency of selection of winning tickets or shares. Drawings shall be held in public. Drawings shall be witnessed by an independent certified public accountant. Equipment used to select winning tickets or shares or participants for prizes shall be examined by ~~lottery division employees and~~ an independent certified public accountant prior to and after each public drawing.

Sec. 2. Section 99E.18, subsection 4, Code 1997, is amended to read as follows:

4. A person who, with intent to defraud, falsely makes, alters, forges, utters, passes, redeems, or counterfeits a lottery ticket or share or attempts to falsely make, alter, forge, utter, pass, redeem, or counterfeit a lottery ticket or share, or commits theft or attempts to commit theft of a lottery ticket or share, is guilty of a class "D" felony.

Approved April 21, 1998

CHAPTER 1135

AMUSEMENT RIDE RIDER SAFETY

S.F. 2383

AN ACT relating to amusement ride rider safety, providing a penalty, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 88A.1, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 8A. "Parent or guardian" means a parent, custodian, or guardian or person responsible for the control, safety, training, or education of a rider who is a minor or person with a disability.

NEW SUBSECTION. 9A. "Rider" means a person waiting in the immediate vicinity of an amusement ride to get on the amusement ride, getting on an amusement ride, using an amusement ride, getting off an amusement ride, or leaving an amusement ride and still in the immediate vicinity of the amusement ride. "Rider" does not include an employee, agent, or servant of the amusement owner while engaged in the duties of their employment.

NEW SUBSECTION. 9B. "Sign" means any symbol or language reasonably calculated to communicate information to a rider or the rider's parent or guardian, including placards, prerecorded messages, live public address, stickers, pictures, pictograms, video, verbal information, and visual signals.

Sec. 2. Section 88A.1, subsection 2, Code 1997, is amended to read as follows:

2. "Amusement ride" means any mechanized device, ~~or~~ combination of devices which carries passengers along, around, or over a fixed or restricted course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. "Amusement ride" does not include a device or structure that is devoted principally to exhibitions related to agriculture, the arts, education, industry, religion, or science.

Sec. 3. Section 88A.10, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3. A person who fails to obey a safety related requirement listed on a sign displayed at an amusement ride pursuant to section 88A.16, subsection 2, is subject to a civil penalty of one hundred dollars.

Sec. 4. NEW SECTION. 88A.15 RIDER SAFETY.

1. A rider or the rider's parent or guardian shall report in writing to the operator or the operator's designee, on forms provided by the operator or the operator's designee, any injury sustained on an amusement ride before leaving the operator's premises. The report shall include all of the following information:

a. The name, address, and phone number of the injured person.

b. A brief description of the incident, the injury claimed, and the location, date, and time of the injury.

c. The cause of the injury, if known.

d. The name, address, and phone number of any witness to the incident.

2. If the rider or the rider's parent or guardian is unable to file a report because of the severity of the rider's injuries, the rider or the rider's parent or guardian shall file the report as soon as reasonably possible. The failure of a rider or the rider's parent or guardian to report an injury under this section does not affect the rider's right to commence a civil action related to the incident.

3. A rider shall, at a minimum, do all of the following:

a. Obey the reasonable safety rules posted in accordance with this chapter and oral instructions for an amusement ride issued by the operator or the operator's employee or agent, unless the safety rules or oral instructions are contrary to the safety rules of this chapter.

b. Refrain from acting in any manner that may cause or contribute to injuring the rider or others, including all of the following:

(1) Exceeding the limits of the rider's ability.

(2) Interfering with safety devices that are provided.

(3) Failing to engage safety devices that are provided.

(4) Disconnecting or disabling a safety device except at the express instruction of the operator.

(5) Altering or enhancing the intended speed, course, or direction of an amusement ride.

(6) Using the controls of an amusement ride designed solely to be operated by the operator.

(7) Extending arms and legs beyond the carrier or seating area except at the express direction of the operator.

(8) Throwing, dropping, or expelling an object from or toward an amusement ride except as permitted by the operator.

(9) Getting on or off an amusement ride except at the designated time and area, if any, at the direction of the operator or in an emergency.

(10) Not reasonably controlling the speed or direction of the rider's person or an amusement ride that requires the rider to control or direct the rider's person or a device.

4. A rider shall not get on or attempt to get on an amusement ride unless the rider or the rider's parent or guardian reasonably determines that, at a minimum, the rider meets all of the following criteria:

a. Has sufficient knowledge to use, get on, and get off the amusement ride safely without instruction or has requested and received sufficient information to get on, use, and get off the amusement ride safely prior to getting on the amusement ride.

b. Has located, read, and understood any signs in the vicinity of the amusement ride and meets any posted height, medical, or other requirements.

c. Knows the range and limits of the rider's ability and knows the requirements of the amusement ride will not exceed those limits.

d. Is not under the influence of alcohol or any drug that affects the rider's ability to safely use the amusement ride or obey the posted rules or oral instructions.

e. Is authorized by the operator or the operator's employee, agent, or servant to get on the amusement ride.

Sec. 5. NEW SECTION. 88A.16 NOTICE TO RIDERS.

1. An operator shall display signs indicating the applicable rider safety responsibilities provided in section 88A.15 and the location of stations to report injuries. The signs must be located in all of the following locations:

a. Each station for reporting an injury.

b. Each first aid station.

c. Any of the following locations:

(1) At least two other locations on the premises, including any premises entrance or exit most commonly used by riders, if there are no more than four entrances or exits for riders.

(2) At least four other locations on the premises, including the four premises entrances and exits most commonly used by riders, if there are more than four entrances and exits for riders.

(3) Every amusement ride.

2. An operator shall post a sign at each amusement ride. Any sign required by this subsection must be prominently displayed at a conspicuous location, clearly visible to the public, and bold and legible in design. The sign must include all of the following that apply:

a. Operational instructions.

b. Safety guidelines for riders.

c. Restrictions on the use of the amusement ride.

d. Behavior or activities that are prohibited.

e. A legend providing that, "State law requires riders to obey all warnings and directions for this amusement ride and behave in a manner that will not cause or contribute to the injury of themselves or others. Riders must report injuries prior to leaving the premises. Failure to comply is punishable by fine."

Sec. 6. NEW SECTION. 88A.17 CONSTRUCTION.

Sections 88A.15 and 88A.16 shall not be construed to preclude a criminal prosecution or civil action available under any other provision of law.

Sec. 7. EFFECTIVE DATE. This Act shall take effect on January 1, 1999.

Approved April 21, 1998

CHAPTER 1136

VIDEO RENTAL PROPERTY THEFT

S.F. 466

AN ACT relating to the theft of video rental property and making penalties applicable.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 714C.1 DEFINITIONS.

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

1. "Owner" means an owner of video rental property and includes an agent of the owner.

2. "Video rental property" means an audiovisual recording, including a videotape, videodisc, or other tangible medium of expression on which an audiovisual work is recorded or otherwise stored, or any equipment or supplies used to view the recording, and which is held out for rental to the public in the ordinary course of business.

Sec. 2. NEW SECTION. 714C.2 VIDEO RENTAL PROPERTY THEFT.

A person commits theft of video rental property if such person knowingly does any of the following:

1. Obtains the temporary use of video rental property with the intent to deprive the owner of the use and possession of the video rental property without the consent of the owner.

2. Having lawfully obtained possession for temporary use of the video rental property, fails to return the property by the agreed time with the intent to deprive the owner of the use and possession of the property without the consent of the owner.

Sec. 3. NEW SECTION. 714C.3 AGGREGATE VALUE.

The aggregate value of the property involved shall be the original retail value of the property.

Sec. 4. NEW SECTION. 714C.4 VIDEO RENTAL PROPERTY THEFT - DEGREES.

Video rental property theft shall be punishable as theft as provided in section 714.2 based on the aggregate value of the property involved.

Sec. 5. NEW SECTION. 714C.5 EVIDENCE OF INTENTION.

1. The fact that a person obtains possession of rented video property by means of deception, including but not limited to furnishing a false name, address, or other identification to the owner, is evidence that possession was obtained with intent to knowingly deprive the owner of the use and possession of the video rental property.

2. The fact that a person, having lawfully obtained possession of video rental property, fails to pay the owner the fair market value of the video rental property or to return or make arrangements acceptable to the owner to return the video rental property to the owner, within forty-eight hours after receipt of written notice and demand from the owner is evidence of an intent to knowingly deprive the owner of the use and possession of the video rental property.

Sec. 6. NEW SECTION. 714C.6 AFFIRMATIVE DEFENSE.

It shall be an affirmative defense to a prosecution under section 714C.2, subsection 2, if the defendant in possession of video rental property pays the owner the fair market value of the video rental property or returns the property to the owner within forty-eight hours of arrest, together with any standard overdue charges for the period that the owner was unlawfully deprived of possession, but not to exceed one hundred twenty days, and the value of the damage to the property, if any.

Sec. 7. NEW SECTION. 714C.7 CHAPTER NOT EXCLUSIVE.

This chapter does not preclude the applicability of any other provision of the law of this

state which is not inconsistent with this chapter and which applies or may apply to an act or transaction in violation of this chapter.

Approved April 22, 1998

CHAPTER 1137

SHERIFF UNIFORMS

S.F. 2372

AN ACT relating to the standard uniforms of sheriffs and deputy sheriffs.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 331.657, subsection 3, Code 1997, is amended to read as follows:

3. The colors and design of the standard uniform for the sheriffs and deputy sheriffs shall be designated by rule of the commissioner of public safety after consideration of the recommendations of the Iowa state association of sheriffs and deputy sheriffs. The uniform shall include standard shirts, shoulder patches, badges, nameplates, hats, trousers, neckties, jackets, socks, shoes and boots, and leather goods. The uniforms shall be readily distinguishable from the uniforms of other law enforcement agencies of the state. The rules shall allow for appropriate individual county designations on the uniforms. The rules shall be adopted and may be amended in compliance with chapter 17A.

Sec. 2. IMPLEMENTATION OF ACT. Section 25B.2, subsection 3, shall not apply to this Act.

Approved April 22, 1998

CHAPTER 1138

DRUG AND ALCOHOL OFFENSES — PENALTIES AND MISCELLANEOUS PROVISIONS

S.F. 2391

AN ACT relating to certain drug and alcohol abuse and certain offenses which carry a mandatory minimum sentence, by allowing probation for some operating-while-intoxicated offenders after service of a mandatory minimum sentence, permitting a .15 blood alcohol level to control the penalties applicable to an offender regardless of the margin of error associated with the test device, requiring the imposition of a mandatory minimum penalty for certain methamphetamine offenses, prohibiting the granting of a deferred judgment or sentence or a suspended sentence for certain methamphetamine offenses, providing that persons convicted of certain methamphetamine offenses are ineligible for bail upon appeal, requiring the deletion from motor vehicle records after twelve years of certain youth license revocations for alcohol violations, increasing and adding certain penalties for certain drug offenses, providing for the denial of federal benefits to persons convicted of drug-related offenses, providing for an operating while intoxicated offense for persons driving after taking certain controlled substances, providing privacy and notice in certain drug and alcohol testing situations, making related changes, making penalties applicable, providing effective and retroactive applicability dates.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I

Section 1. Section 321.12, subsection 4, Code Supplement 1997, is amended to read as follows:

4. The director shall not destroy any operating records pertaining to arrests or convictions for operating while intoxicated, in violation of section 321J.2 or operating records pertaining to revocations for violations of section 321J.2A, except that a conviction or revocation under section 321J.2 or 321J.2A shall be deleted from the operating records twelve years after the date of conviction or the effective date of revocation.

Sec. 2. Section 321J.2, subsection 3, paragraph a, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any ~~part of the~~ mandatory minimum sentence of incarceration applicable to the defendant under subsection 2, and shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if any of the following apply:

Sec. 3. Section 321J.2, subsection 3, paragraph a, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with this chapter exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

Sec. 4. Section 321J.4, subsection 9, Code Supplement 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Notwithstanding any provision of this chapter to the contrary, the court may order the department to issue a temporary restricted license to a person otherwise eligible for a temporary restricted license under this subsection, whose

period of revocation under this chapter has expired, but who has not met all requirements for reinstatement of the person's motor vehicle license or nonresident operating privileges.

Sec. 5. Section 321J.20, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 7. Notwithstanding any provision of this chapter to the contrary, the department may issue a temporary restricted license to a person otherwise eligible for a temporary restricted license under this section, whose period of revocation under this chapter has expired, but who has not met all requirements for reinstatement of the person's motor vehicle license or nonresident operating privileges.

Sec. 6. Section 907.3, subsection 1, paragraph g, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

Sec. 7. Section 907.3, subsection 2, paragraph c, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

Sec. 8. Section 907.3, subsection 3, paragraph c, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

A mandatory minimum sentence of incarceration imposed pursuant to a violation of section 321J.2, subsection 1~~.~~; furthermore, the court shall not suspend any part of a sentence not involving incarceration imposed pursuant to section 321J.2, subsection 2, beyond the mandatory minimum if any of the following apply:

Sec. 9. Section 907.3, subsection 3, paragraph c, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

DIVISION II

Sec. 10. Section 321J.1, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3A. "Controlled substance" means any drug, substance, or compound that is listed in section 124.204 or 124.206, or any metabolite or derivative of the drug, substance, or compound.

Sec. 11. Section 321J.2, subsection 1, Code Supplement 1997, is amended to read as follows:

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in ~~either~~ any of the following conditions:

a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.

b. While having an alcohol concentration ~~as defined in section 321J.1~~ of .10 or more.

c. While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

Sec. 12. Section 321J.2, subsections 7 and 8, Code Supplement 1997, are amended to read as follows:

7. a. Division I of this* section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy examiners, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle.

b. When charged with a violation of subsection 1, paragraph "c", a person may assert, as an affirmative defense, that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.

8. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation.

a. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to be the alcohol concentration at the time of driving or being in physical control of the motor vehicle.

b. The presence of a controlled substance or other drug established by the results of analysis of a specimen of the defendant's blood or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to show the presence of such controlled substance or other drug in the defendant at the time of driving or being in physical control of the motor vehicle.

c. The department of public safety shall adopt nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances.

Sec. 13. Section 321J.2, subsection 10, Code Supplement 1997, is amended to read as follows:

10. In any prosecution under this section, the results of a chemical test may not be used to prove a violation ~~of paragraph "b"~~ of subsection 1 if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal ~~an alcohol concentration of .10 or more~~ or exceed the level prohibited by subsection 1.

Sec. 14. Section 321J.6, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A person who operates a motor vehicle in this state under circumstances which give reasonable grounds to believe that the person has been operating a motor vehicle in violation of section 321J.2 or 321J.2A is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration or presence of a controlled substance or other drugs, subject to this section. The withdrawal of the body substances and the test or tests shall be administered at the written request of a peace officer having reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 or 321J.2A, and if any of the following conditions exist:

Sec. 15. Section 321J.6, subsection 1, paragraphs d and f, Code 1997, are amended to read as follows:

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* The words "Division I of this" erroneously substituted for word "This" in enrolling process

d. The preliminary breath screening test was administered and it indicated an alcohol concentration ~~as defined in~~ equal to or in excess of the level prohibited by section ~~321J.1 of .10 or more~~ 321J.2.

f. The preliminary breath screening test was administered and it indicated an alcohol concentration ~~of~~ less than ~~0.10~~ the level prohibited by section 321J.2, and the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.

Sec. 16. Section 321J.6, subsection 3, Code 1997, is amended to read as follows:

3. Notwithstanding subsection 2, if the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a blood or urine test ~~may~~ shall be required even after ~~a blood or breath~~ another type of test has been administered. Section 321J.9 applies to a refusal to submit to a chemical test of urine or blood requested under this subsection.

Sec. 17. Section 321J.8, subsection 2, Code 1997, is amended to read as follows:

2. If the person submits to the test and the results indicate the presence of a controlled substance or other drug, or an alcohol concentration ~~as defined in~~ equal to or in excess of the level prohibited by section ~~321J.1 of .10 or more, or the person is under the age of twenty-one and the results indicate an alcohol concentration of .02 or more, but less than .10~~ 321J.2 or 321J.2A, the person's motor vehicle license or nonresident operating privilege will be revoked by the department as required by and for the applicable period specified under section 321J.12.

Sec. 18. Section 321J.10, subsection 4, Code 1997, is amended to read as follows:

4. a. Search warrants issued under this section shall authorize and direct peace officers to secure the withdrawal of blood specimens by medical personnel under section 321J.11. Reasonable care shall be exercised to ensure the health and safety of the persons from whom specimens are withdrawn in execution of the warrants.

b. If a person from whom a specimen is to be withdrawn objects to the withdrawal of blood, ~~and~~ the warrant may be executed as follows:

(1) If the person is capable of giving a specimen of breath, and a direct breath testing instrument is readily available, the warrant may be executed by the withdrawal of a specimen of breath for chemical testing, unless the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.

(2) If the testimony in support of the warrant sets forth facts and information that the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a urine sample shall be collected in lieu of a blood sample, if the person is capable of giving a urine sample and the sample can be collected without the need to physically compel the execution of the warrant.

Sec. 19. Section 321J.11, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Only a licensed physician, licensed physician assistant as defined in section 148C.1, medical technologist, or registered nurse, acting at the request of a peace officer, may withdraw a specimen of blood for the purpose of determining the alcohol concentration or the presence of a controlled substance or other drugs. However, any peace officer, using devices and methods approved by the commissioner of public safety, may take a specimen of a person's breath or urine for the purpose of determining the alcohol concentration, or may take a specimen of a person's urine for the purpose of determining the presence of a controlled substance or other drugs. Only new equipment kept under strictly sanitary and sterile conditions shall be used for drawing blood.

Sec. 20. Section 321J.12, subsections 1, 3, 4, and 6, Code Supplement 1997, are amended to read as follows:

1. Upon certification, subject to penalty for perjury, by the peace officer that there existed reasonable grounds to believe that the person had been operating a motor vehicle in violation of section 321J.2, that there existed one or more of the necessary conditions for chemical testing described in section 321J.6, subsection 1, and that the person submitted to chemical testing and the test results indicated the presence of a controlled substance or other drug, or an alcohol concentration ~~as defined in~~ equal to or in excess of the level prohibited by section ~~321J.1 of .10 or more~~ 321J.2, or a combination of alcohol and another drug in violation of section 321J.2, the department shall revoke the person's motor vehicle license or nonresident operating privilege for the following periods of time:

a. One hundred eighty days if the person has had no revocation under this chapter.

b. One year if the person has had a previous revocation under this chapter.

3. The effective date of the revocation shall be ten days after the department has mailed notice of revocation to the person by certified mail. The peace officer who requested or directed the administration of the chemical test may, on behalf of the department, serve immediate notice of revocation on a person whose test results indicated the presence of a controlled substance or other drug, or an alcohol concentration ~~of .10 or more~~ equal to or in excess of the level prohibited by section 321J.2, or a combination of alcohol and another controlled substance or drug in violation of section 321J.2.

4. If the peace officer serves that immediate notice, the peace officer shall take the person's Iowa license or permit, if any, and issue a temporary license valid only for ten days. The peace officer shall immediately send the person's driver's license to the department along with the officer's certificate indicating that the test results indicated the presence of a controlled substance or other drug, or an alcohol concentration ~~of .10 or more~~ equal to or in excess of the level prohibited by section 321J.2.

6. The results of a chemical test may not be used as the basis for a revocation of a person's motor vehicle license or nonresident operating privilege if the alcohol or drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test ~~does~~ is not equal ~~an alcohol concentration of .10 or more for violations under~~ to or in excess of the level prohibited by section 321J.2 or ~~of .02 or more for violations of section~~ 321J.2A.

Sec. 21. Section 321J.13, subsection 2, Code Supplement 1997, is amended to read as follows:

2. The department shall grant the person an opportunity to be heard within forty-five days of receipt of a request for a hearing if the request is made not later than ten days after receipt of notice of revocation served pursuant to section 321J.9 or 321J.12. The hearing shall be before the department in the county where the alleged events occurred, unless the director and the person agree that the hearing may be held in some other county, or the hearing may be held by telephone conference at the discretion of the agency conducting the hearing. The hearing may be recorded and its scope shall be limited to the issues of whether a peace officer had reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 or ~~section~~ 321J.2A and ~~either~~ one or more of the following:

a. Whether the person refused to submit to the test or tests.

b. Whether a test was administered and the test results indicated an alcohol concentration ~~as defined in~~ equal to or in excess of the level prohibited under section ~~321J.1 of .10 or more or whether a test was administered and the test results indicated an alcohol concentration as defined in section 321J.1 of .02 or more pursuant to section~~ 321J.2 or 321J.2A.

c. Whether a test was administered and the test results indicated the presence of alcohol, a controlled substance or other drug, or a combination of alcohol and another drug, in violation of section 321J.2.

Sec. 22. Section 321J.15, Code 1997, is amended to read as follows:

321J.15 EVIDENCE IN ANY ACTION.

Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating a motor vehicle in violation of section 321J.2 or 321J.2A, evidence of the alcohol concentration or the presence of a controlled substance or other drugs in the person's body substances at the time of the act alleged as shown by a chemical analysis of the person's blood, breath, or urine is admissible. If it is established at trial that an analysis of a breath specimen was performed by a certified operator using a device intended to determine alcohol concentration and methods approved by the commissioner of public safety, no further foundation is necessary for introduction of the evidence.

Sec. 23. Section 321J.18, Code 1997, is amended to read as follows:

321J.18 OTHER EVIDENCE.

This chapter does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug, including the results of chemical tests of specimens of blood, breath, or urine obtained more than two hours after the person was operating a motor vehicle.

DIVISION III

Sec. 24. Section 124.401, subsection 1, paragraph d, Code Supplement 1997, is amended to read as follows:

d. Violation of this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in schedule IV or V is an aggravated misdemeanor. However, violation of this subsection involving fifty kilograms or less of marijuana, is a class "D" felony, and in addition to the provisions of section 902.9, subsection 4, shall be punished by a fine of not less than one thousand dollars nor more than ~~five~~ seven thousand five hundred dollars.

Sec. 25. Section 124.401, subsection 5, Code Supplement 1997, is amended to read as follows:

5. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a serious misdemeanor for a first offense. A person who commits a violation of this subsection and who has previously been convicted of violating this subsection is guilty of an aggravated misdemeanor. A person who commits a violation of this subsection and has previously been convicted two or more times of violating this subsection is guilty of a class "D" felony.

PARAGRAPH DIVIDED. If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment for a first offense. If the controlled substance is marijuana and the person has been previously convicted of a violation of this subsection in which the controlled substance was marijuana, the punishment shall be as provided in section 903.1, subsection 1, paragraph "b". If the controlled substance is marijuana and the person has been previously convicted two or more times of a violation of this subsection in which the controlled substance was marijuana, the person is guilty of an aggravated misdemeanor.

PARAGRAPH DIVIDED. All or any part of a sentence imposed pursuant to this ~~section~~ subsection may be suspended and the person placed upon probation upon such terms and conditions as the court may impose including the active participation by such person in a drug treatment, rehabilitation or education program approved by the court.

DIVISION IV

Sec. 26. Section 901.5, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 11. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the provisions of 21 U.S.C. § 862, regarding the denial of federal benefits to drug traffickers and possessors convicted under state or federal law, and may enter an order specifying the range and scope of benefits to be denied to the defendant, according to the provisions of 21 U.S.C. § 862. For the purposes of this subsection, "federal benefit" means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or through the appropriation of funds of the United States, but does not include any retirement, welfare, social security, health, disability, veterans, public housing, or similar benefit for which payments or services are required for eligibility. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to the denial of federal benefits program of the United States department of justice, along with any other forms and information required by the department.

NEW SUBSECTION. 12. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the denial of state benefits to the defendant, and may enter an order specifying the range and scope of benefits to be denied to the defendant, comparable to the federal benefits denied under subsection 11. For the purposes of this subsection, "state benefit" means the issuance of any grant, contract, loan, professional license, or commercial license provided by a state agency, department, program, or otherwise through the appropriation of funds of the state, but does not include any retirement, welfare, health, disability, veterans, public housing, or similar benefit. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and comparable to the guidelines for denial of federal benefits in 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to each state agency, department, or program required to deny benefits pursuant to such an order.

DIVISION V

Sec. 27. Section 811.1, subsection 2, Code Supplement 1997, is amended to read as follows:

2. A defendant appealing a conviction of a class "A" felony, murder, any class "B" felony included in section 707.6A, felonious assault, felonious child endangerment, sexual abuse in the second degree, sexual abuse in the third degree, kidnapping, robbery in the first degree, arson in the first degree, or burglary in the first degree, ~~or~~ any felony included in section 124.401, subsection 1, paragraph "a", or a violation of section 124.401, subsection 1, paragraph "b".

Sec. 28. Section 901.10, Code 1997, is amended to read as follows:

901.10 IMPOSITION OF MANDATORY MINIMUM SENTENCES.

1. A court sentencing a person for the person's first conviction under section 124.406, 124.413, or 902.7 may, at its discretion, sentence the person to a term less than provided by the statute if mitigating circumstances exist and those circumstances are stated specifically in the record. ~~However, the~~

2. Notwithstanding subsection 1, if the sentence under section 124.413 involves a methamphetamine offense under section 124.401, subsection 1, paragraph "a" or "b", the court shall not grant any reduction of sentence unless the defendant pleads guilty. If the defendant pleads guilty, the court may, at its discretion, reduce the mandatory minimum sentence by up to one-third. If the defendant additionally cooperates in the prosecution of other persons involved in the sale or use of controlled substances, and if the prosecutor requests an additional reduction in defendant's sentence because of such cooperation, the court may

grant a further reduction in defendant's mandatory minimum sentence, up to one-half of the remaining mandatory minimum sentence.

3. The state may appeal the discretionary decision on the grounds that the stated mitigating circumstances do not warrant a reduction of the sentence.

Sec. 29. Section 907.3, subsection 1, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. k. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

Sec. 30. Section 907.3, subsection 2, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

Sec. 31. Section 907.3, subsection 3, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

DIVISION VI

Sec. 32. Section 730.5, subsection 7, paragraph a, as enacted in 1998 Iowa Acts, House File 299,* section 1, is amended to read as follows:

a. The collection of samples shall be performed under sanitary conditions and with regard for the privacy of the individual from whom the specimen is being obtained and in a manner reasonably calculated to preclude contamination or substitution of the specimen. If the sample collected is urine, procedures shall be established to provide for individual privacy in the collection of the sample unless there is a reasonable suspicion that a particular individual subject to testing may alter or substitute the urine specimen to be provided, or has previously altered or substituted a urine specimen provided pursuant to a drug or alcohol test. For purposes of this paragraph, "individual privacy" means a location at the collection site where urination can occur in private, which has been secured by visual inspection to ensure that other persons are not present, which provides that undetected access to the location is not possible during urination, and which provides for the ability to effectively restrict access to the location during the time the specimen is provided. If an individual is providing a sample and collection of the sample is directly monitored or observed by another individual, the individual who is directly monitoring or observing the collection shall be of the same gender as the individual from whom the sample is being collected.

Sec. 33. Section 730.5, subsection 9, paragraph a, as enacted in 1998 Iowa Acts, House File 299,* section 1, is amended to read as follows:

a. (1) Drug or alcohol testing or retesting by an employer shall be carried out within the terms of a written policy which has been provided to every employee subject to testing, and is available for review by employees and prospective employees. If an employee or prospective employee is a minor, the employer shall provide a copy of the written policy to a parent of the employee or prospective employee and shall obtain a receipt or acknowledgement from the parent that a copy of the policy has been received. Providing a copy of the written policy to a parent of a minor by certified mail, return receipt requested, shall satisfy the requirements of this subparagraph.

(2) In addition, the written policy shall provide that any notice required by subsection 7, paragraph "i", to be provided to an individual pursuant to a drug or alcohol test conducted pursuant to this section, shall also be provided to the parent of the individual by certified mail, return receipt requested, if the individual tested is a minor.

(3) In providing information or notice to a parent as required by this paragraph, an

* Chapter 1011 herein

employer shall rely on the information regarding the identity of a parent as provided by the minor.

(4) For purposes of this paragraph, "minor" means an individual who is under eighteen years of age and is not considered by law to be an adult, and "parent" means one biological or adoptive parent, a stepparent, or a legal guardian or custodian of the minor.

DIVISION VII

Sec. 34. IMPLEMENTATION OF ACT. Section 25B.2, subsection 3, shall not apply to this Act.

Sec. 35. EFFECTIVE DATES. Division VI of this Act takes effect upon enactment or April 16, 1998, whichever is later.

Sec. 36. RETROACTIVE APPLICABILITY. Sections 4 and 5 of this Act are retroactively applicable to July 1, 1997, and are applicable on and after that date.

Sec. 37. EFFECTIVE DATE. Division I of this Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 22, 1998

CHAPTER 1139

SANITARY DISTRICTS — CREATION AND ANNEXATION

H.F. 2175

AN ACT relating to the creation of, and annexation of property to, a sanitary sewer district.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 358.5, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The board of supervisors to whom the petition is addressed shall preside at the hearing provided for in section 358.4 and shall continue the hearing in session, with adjournments from day to day, if necessary, until completed, without being required to give any further notice of the hearing. Proof of the residences and qualifications of the petitioners as eligible electors shall be made by affidavit or otherwise as the board may direct. The board may consider the boundaries of a proposed sanitary district, whether they shall be as described in the petition or otherwise, and for that purpose may alter and amend the petition and limit or change the boundaries of the proposed district as stated in the petition. The board shall adjust the boundaries of a proposed district as needed to exclude land that has no reasonable likelihood of benefit from inclusion in the proposed district. The boundaries of a proposed district shall not be changed to incorporate property not included in the original petition and published notice until the owner of the property is given notice of inclusion as on the original hearing. All persons in the proposed district shall have an opportunity to be heard regarding the location and boundaries of the proposed district and to make suggestions regarding the location and boundaries~~, and the~~. The board of supervisors, after hearing the statements, evidence and suggestions made and offered at the hearing, shall enter an order fixing and determining the limits and boundaries of the proposed district and directing that an election be held for the purpose of submitting to the registered voters ~~owning~~

~~land~~ residing within the boundaries of the proposed district the question of organization and establishment of the proposed sanitary district as determined by ~~said~~ the board of supervisors. The order shall fix a date for the election not more than sixty days after the date of the order.

Sec. 2. NEW SECTION. 358.26 ANNEXATION.

1. In a county which has more than seven thousand five hundred acres of natural lakes, the board of trustees may, or upon request of property owners representing twenty-five percent of the valuation of the property to be annexed shall file a petition in the office of county auditor of the county in which the property to be annexed or the major part of the property is located, requesting that there be submitted to the voters of the existing district and the area to be annexed the question whether the territory proposed to be annexed should be annexed to the sanitary district. The property to be annexed must be located within the watershed of a natural lake or navigable water as defined in section 462A.2 in the existing district. The board of supervisors of the county in which the property to be annexed, or the major part of the property is located, shall have jurisdiction of the proceedings on the petition.

2. The petition shall be addressed to the board of supervisors of the county in which the property to be annexed or the major part of the property is located and shall include the following:

a. An intelligible description of the property to be annexed to the sanitary district.

b. A statement that the public health, comfort, convenience, or welfare will be promoted by the annexation of the property.

c. The signatures of the president and the clerk of the board of trustees.

Sec. 3. NEW SECTION. 358.27 HEARING ON ANNEXATION — DATE AND NOTICE.

1. The board of supervisors to which a petition filed pursuant to section 358.26 is addressed, at its next meeting, shall set the time and place for a public hearing on the petition. The board of supervisors shall direct the county auditor to give notice to interested persons of the pendency and content of the petition and of the public hearing by publication of a notice as provided in section 331.305. Proof of publication shall be filed with and preserved by the county auditor. The notice of the public hearing shall include the following information:

a. That a petition has been filed with the county auditor proposing to annex property to the district.

b. An intelligible description of the property to be annexed to the district.

c. The date, time, and place of the public hearing at which the petition shall be considered by the county board of supervisors.

d. That the county board of supervisors shall determine the property to be annexed as described in the petition or otherwise described and, for the purpose of describing the property, the county board of supervisors may alter and amend the petition.

2. A copy of the notice shall also be sent by mail to each owner of each tract of land within the area to be annexed as shown by the transfer books of the county auditor's office. The mailings shall be to the last known address unless there is on file an affidavit of the county auditor or of a person designated by the board of supervisors to make the necessary investigation, stating that an address is not known and that diligent inquiry has been made to ascertain the address. The copy of the notice shall be mailed not less than twenty days before the date of the public hearing and the proof of service shall be made by affidavit of the county auditor. The proof of service shall be on file at the commencement of the public hearing.

3. In lieu of the mailing to the last known address, a person owning land to be annexed may file with the county auditor a written instrument designating the owner's mailing address for annexation purposes. The designated address is effective for five years and applies to all annexation proceedings pursuant to sections 358.26 through 358.29.

4. In lieu of publication or notice by mail, personal service of the notice may be made upon an owner of land proposed for annexation in the same manner as required for the service of original notices in the district court.

Sec. 4. NEW SECTION. 358.28 ANNEXATION HEARING.

The board of supervisors to whom a petition filed pursuant to section 358.26 is addressed shall preside at the public hearing provided for in section 358.27 and shall continue the hearing with adjournments from day to day until completed without giving further notice of the hearing. A representative of the sanitary district board of trustees shall attend the public hearing and be available to answer questions regarding the proposed annexation. The board of supervisors may consider the property to be annexed, whether the property shall be described as provided in the petition or be otherwise described, and for the purpose of describing the property, may amend the petition by limiting or changing the property to be annexed as stated in the petition. The board of supervisors shall adjust the property to be annexed as needed to exclude land that has no reasonable likelihood of benefit from inclusion in the area to be annexed. The boundaries of the area to be annexed shall not be changed to incorporate property which is not included in the petition until the owner of the property is given notice of the proposed annexation as provided in section 358.27.

All persons in the district and in the area to be annexed shall have an opportunity to be heard regarding the proposed annexation and make suggestions regarding the property to be annexed. The board of supervisors, after hearing the statements, evidence, and suggestions at the public hearing, shall enter an order determining the property to be annexed and directing that the question of annexation be submitted at an election to the registered voters residing within the district and within the area to be annexed. The order shall fix a date for the election which shall be held not more than sixty days after the date of the order.

Sec. 5. NEW SECTION. 358.29 NOTICE, ELECTION, AND EXPENSES — COSTS.

1. In the order for the election pursuant to section 358.28, the board of supervisors shall direct the county commissioner of elections to give notice of the election at least twenty days before the date of election by publication of the notice as provided in section 331.305. The notice shall state the time and place of the election, the hours when the polls will be open, the purpose of the election including a description of the property to be annexed, a brief description of the limits of each voting precinct, and the location of polling places. Proof of publication shall be made in the same manner as provided in section 358.27 and filed with the county auditor.

2. Each registered voter who resides within the sanitary district and each registered voter who resides in the area to be annexed shall have the right to cast a ballot at the election. A registered voter shall not vote in any precinct except the precinct in which the voter resides. The ballots at the election shall be in substantially the following form:

For annexation _____

Against annexation _____

3. The results of an election shall be noted on the records of the county auditor. If a majority of the votes cast on the question of annexation favors annexation, the property contained in the area to be annexed shall be included in the sanitary district.

4. An election held pursuant to this section shall be conducted by the county commissioner of elections. All expenses incurred in implementing sections 358.26 through 358.29, including the costs of an election as determined by the county commissioner of elections, shall be paid by the sanitary district.

Approved April 22, 1998

CHAPTER 1140

OUT-OF-STATE PEACE OFFICERS

H.F. 2262

AN ACT to permit out-of-state peace officers to act within this state pursuant to agreements with state or local authorities.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 804.7B ARRESTS BY OUT-OF-STATE PEACE OFFICERS.

1. For purposes of this section, "out-of-state peace officer" means a person employed full time as a peace officer by a state other than Iowa or a political subdivision of a state other than Iowa who is empowered to effect an arrest with or without a warrant under the laws of that jurisdiction, who is authorized to carry a firearm in the performance of the person's duties, and who is certified or licensed as a regular peace officer in the jurisdiction in which the person's employing agency or appointing authority is located. Notwithstanding section 804.7A, for purposes of this section "out-of-state peace officer" also means a person employed full-time by the United States government who is empowered to effect an arrest with or without a warrant for a violation of the United States Code and who is authorized to carry a firearm in the performance of the person's duties as a federal law enforcement officer.

2. a. An out-of-state peace officer may make arrests and conduct other law enforcement activities in this state pursuant to an agreement entered into under chapter 28E by the peace officer's employing agency or appointing authority and the state of Iowa or a political subdivision of the state of Iowa. Any arrests made or activities conducted by an out-of-state peace officer shall be in accordance with any conditions and specifications contained in the agreement and shall be in accordance with Iowa law. An out-of-state peace officer who makes an arrest or conducts an activity in this state shall immediately contact and cooperate with a law enforcement agency having jurisdiction over the area in which the activities have occurred. An out-of-state peace officer who acts in accordance with an agreement entered into pursuant to this section and Iowa law has the same immunity from suit in this state as a peace officer, as defined in section 801.4.

b. Out-of-state peace officers making arrests or conducting law enforcement activities in this state pursuant to a 28E agreement are not employees or agents of the state of Iowa or any political subdivision of the state of Iowa. To the extent permitted by law, the employing agency or appointing agency of the out-of-state peace officer and the out-of-state peace officer are liable for any acts or omissions which arise out of the arrests or law enforcement activities of the out-of-state peace officer.

c. Agreements made under this section shall not exceed any jurisdictional limitations to which the state or the political subdivision of this state are subject. Agreements made under this section shall not permit out-of-state peace officers to perform regularly scheduled or routine patrol functions. This section shall not be construed to limit the authority of an employing agency or appointing authority to restrict the exercise of power or authority of peace officers who are employed by or are the agents of the agency or authority.

Approved April 22, 1998

CHAPTER 1141

HEALTH CARE FACILITY INSPECTION RECORDS AND HEALTH CARE PROVIDER RECORD CHECKS

H.F. 2275

AN ACT relating to health care providers including the application of records checks to additional providers and the recording and availability of the records of the facility inspections and providing for a repeal.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 135C.20A REPORT CARDS — FACILITY INSPECTIONS — COMPLAINT PROCEDURES — AVAILABILITY TO PUBLIC — ELECTRONIC ACCESS.

1. The department shall develop and utilize a report card system for the recording of the findings of any inspection of a health care facility. The report card shall include but is not limited to a summary of the findings of the inspection, any violation found, any enforcement action taken including any citations issued and penalties assessed, any actions taken to correct violations or deficiencies, and the nature and status of any action taken with respect to any uncorrected violation for which a citation was issued.

2. The report card form shall be developed by the department in cooperation with representatives of the department of elder affairs, the state long-term care resident's advocate, representatives of care review committees, representatives of protection and advocacy entities, consumers, and other interested persons.

3. The department shall make any completed report cards electronically accessible to the public, on a monthly basis, and shall compile the report cards on an annual basis and make the compilation electronically accessible to the public. The annual compilation shall also be available at the office of the department at the seat of government and shall be available to the public by mail, upon request and at the department's expense.

4. In addition to the monthly and annual compilations, the department shall provide compilations of the report cards on a cumulative basis. The cumulative compilation shall reflect the report cards of health care facilities during the four-year period prior to the production of the cumulative compilation. The cumulative compilation shall be applicable to a particular health care facility as a four-year report card history of that facility becomes available. The cumulative compilation shall be available to the public in the same manner as the annual compilation.

Sec. 2. Section 135C.33, Code Supplement 1997, is amended to read as follows:

135C.33 CHILD OR DEPENDENT ADULT ABUSE INFORMATION AND CRIMINAL RECORDS — EVALUATIONS — APPLICATION TO OTHER PROVIDERS.

1. Beginning July 1, 1997, prior to employment of a person in a facility, the facility shall request that the department of public safety perform criminal and dependent adult abuse record checks of the person in this state. In addition, the facility may request that the department of human services perform a child abuse record check in this state. Beginning July 1, 1997, a facility shall inform all persons prior to employment regarding the performance of the records checks and shall obtain, from the persons, a signed acknowledgment of the receipt of the information. Additionally, a facility shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?" If the person has been convicted of a crime under a law of any state or has a record of founded child or dependent adult abuse, the department of human services shall perform an evaluation to determine whether the crime or founded child or dependent adult abuse warrants prohibition of employment in the facility. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department of human services. If a person

owns or operates more than one facility, and an employee of one of such facilities is transferred to another such facility without a lapse in employment, the facility is not required to request additional criminal and dependent adult abuse record checks of that employee.

2. If the department of public safety determines that a person has committed a crime or has a record of founded dependent adult abuse and is to be employed in a facility licensed under this chapter, the department of public safety shall notify the licensee that an evaluation will be conducted by the department of human services to determine whether prohibition of the person's employment is warranted. If a department of human services child abuse record check determines the person has a record of founded child abuse, the department shall inform the licensee that an evaluation will be conducted to determine whether prohibition of the person's employment is warranted.

3. In an evaluation, the department of human services shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child or dependent adult abuse, the circumstances under which the crime or founded child or dependent adult abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child or dependent adult abuse again, and the number of crimes or founded child or dependent adult abuses committed by the person involved. The department of human services has final authority in determining whether prohibition of the person's employment is warranted.

4. If the department of human services determines that the person has committed a crime or has a record of founded child or dependent adult abuse which warrants prohibition of employment, the person shall not be employed in a facility licensed under this chapter.

5. Beginning July 1, 1998, this section shall apply to prospective employees of all of the following, if the provider is regulated by the state or receives any state or federal funding:

a. An employee of a homemaker, home-health aide, home-care aide, adult day care, or other provider of in-home services if the employee provides direct services to consumers.

b. An employee of a hospice, if the employee provides direct services to consumers.

c. An employee who provides direct services to consumers under a federal home and community-based services waiver.

In substantial conformance with the provisions of this section, prior to the employment of such an employee, the provider shall request the performance of the criminal and dependent adult abuse record checks and may request the performance of the child abuse record. The provider shall inform the prospective employee and obtain the prospective employee's signed acknowledgment. The department of human services shall perform the evaluation of any criminal record or founded child or dependent adult abuse record and shall make the determination of whether a prospective employee of a provider shall not be employed by the provider.

Sec. 3. Section 135C.47, Code 1997, is repealed.

Approved April 22, 1998

CHAPTER 1142

MECHANIC'S LIENS

H.F. 2400

AN ACT providing a procedure for the preservation of a mechanic's lien for materials or labor furnished to a subcontractor and providing for related matters.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 572.1, subsection 2, Code 1997, is amended to read as follows:

2. "Material" shall, in addition to its ordinary meaning, ~~embrace and~~ include machinery, tools, fixtures, trees, evergreens, vines, plants, shrubs, tubers, bulbs, hedges, bushes, sod, soil, dirt, mulch, peat, fertilizer, fence wire, fence material, fence posts, tile, and the use of forms, accessories, and equipment.

Sec. 2. Section 572.2, Code 1997, is amended to read as follows:

572.2 PERSONS ENTITLED TO LIEN.

1. Every person who shall furnish any material or labor for, or perform any labor upon, any building or land for improvement, alteration, or repair thereof, including those engaged in the construction or repair of any work of internal or external improvement, and those engaged in grading, sodding, installing nursery stock, landscaping, sidewalk building, fencing on any land or lot, by virtue of any contract with the owner, the owner's agent, trustee, contractor, or subcontractor shall have a lien upon such building or improvement, and land belonging to the owner on which the same is situated or upon the land or lot so graded, landscaped, fenced, or otherwise improved, altered, or repaired, to secure payment for the material or labor furnished or labor performed.

2. If material is rented by a person to the owner, the owner's agent, trustee, contractor, or subcontractor, the person shall have a lien upon such building, improvement, or land to secure payment for the material rental. The lien is for the reasonable rental value during the period of actual use of the material and any reasonable periods of nonuse of the material taken into account in the rental agreement. The delivery of material to such building, improvement, or land, whether or not delivery is made by the person, creates a presumption that the material was used in the course of alteration, construction, or repair of the building, improvement, or land. However, this presumption shall not pertain to recoveries sought under a surety bond.

Sec. 3. Section 572.14, subsection 2, Code 1997, is amended to read as follows:

2. In the case of an owner-occupied dwelling, a mechanic's lien perfected under this chapter is enforceable only to the extent of the ~~balance due from the owner to the principal contractor at the time written notice, in the form~~ amount due the principal contractor by the owner-occupant under the contract, less any payments made by the owner-occupant to the principal contractor prior to the owner-occupant being served with the notice specified in subsection 3, ~~is served on the owner~~. This notice may be served by delivering it to the owner or the owner's spouse personally, or by mailing it to the owner by certified mail with restricted delivery and return receipt to the person mailing the notice, or by personal service as provided in the rules of civil procedure.

Sec. 4. Section 572.33, Code 1997, is amended to read as follows:

572.33 REQUIREMENT OF NOTIFICATION.

Notwithstanding ~~any provision to the contrary, a claim by~~ other provisions of this chapter, and in addition to all other requirements of this chapter, a person furnishing ~~only~~ labor or materials to a subcontractor ~~who is furnishing only materials~~ shall not be entitled to a lien under this chapter unless the person furnishing labor or materials ~~had notified~~ does all of the following:

a. Notifies the owner and the principal contractor within thirty days of the furnishing of the labor or materials ~~and the lien claim is supported by~~ for which a lien claim is made, including the amount, kind, and value of the labor or materials furnished.

b. Supports the lien claim with a certified statement that the principal contractor ~~had been~~ was notified within thirty days after the labor or materials were furnished of the amount, kind, and value of the labor or materials furnished. ~~This requirement is in addition to all other requirements of this chapter.~~

Approved April 22, 1998

CHAPTER 1143

COUNTY ISSUANCE OF MOTOR VEHICLE LICENSES

H.F. 2424

AN ACT providing for the expansion of the system of issuance of motor vehicle licenses by county treasurers.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 321M.1 DEFINITIONS.

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

1. "Cluster" means a group of four to six contiguous counties serving a population area comparable to an area served by a department itinerant team, that is subject to an agreement among the participating counties that is executed pursuant to chapter 28E.

2. "Commercial driver's license" means a motor vehicle license valid for the operation of a commercial motor vehicle, as regulated by chapter 321.

3. "County issuance" means the system or process of issuing motor vehicle licenses, nonoperator identification cards, and persons with disabilities identification devices, including all related testing, to the same extent that such items are issued by the department.

4. "Department" means the state department of transportation.

5. "Digitized photolicensing equipment" means the machines and related materials, obtained pursuant to contract, the use of which results in the on-site production of motor vehicle licenses and nonoperator identification cards.

6. "Digitized photolicensing equipment contract period" means the period of time that the contract for the digitized photolicensing equipment is in effect, including any contract extensions elected by the department under the terms of the contract.

7. "Initial opt-in period" means the first opportunity for a county to indicate its interest in being authorized to participate in county issuance.

8. "Issuing county" means a county that is participating in county issuance.

9. "Itinerant team" means a traveling team of department personnel assigned to license issuance activities in a specified geographic area.

10. "Motor vehicle" means a vehicle which is self-propelled, including but not limited to automobiles, cars, motor trucks, semitrailers, motorcycles, and similar vehicles regulated under chapter 321.

11. "Motor vehicle license" means any license or permit issued to a person to operate a motor vehicle on the highways of this state, including but not limited to a driver's, commercial driver's, temporary restricted, or temporary license and an instruction, chauffeur's instruction, commercial driver's instruction, temporary restricted, or temporary permit.

12. "Nonoperator identification card" means the card issued pursuant to section 321.190 that contains information pertaining to the personal characteristics of the applicant but does not convey to the person issued the card any operating privileges for any motor vehicle.

13. "Opt in" means a county's indication of its interest in being authorized to participate in county issuance, or to continue participating in county issuance.

14. "Opt-in period" means a time period when a county may indicate its interest in being authorized to participate in county issuance, or to continue participating in county issuance.

15. "Opt out" means the choice of a county that is authorized to issue licenses to terminate that authorization and its participation in county issuance.

16. "Opt-out period" means a time period when a county that is authorized to issue licenses may terminate that authorization and its future participation in county issuance.

17. "Persons with disabilities identification devices" means those devices issued pursuant to chapter 321L.

Sec. 2. NEW SECTION. 321M.2 RELATION TO OTHER LAWS.

Notwithstanding provisions of chapter 321 or 321L that grant sole authority to the department for the issuance of motor vehicle licenses, nonoperator identification cards, and persons with disabilities identification devices, certain counties shall be authorized to issue motor vehicle licenses, nonoperator identification cards, and persons with disabilities identification devices, according to the requirements of this chapter.

Sec. 3. NEW SECTION. 321M.3 AUTHORIZATION TO ISSUE LICENSES — INITIAL OPT-IN.

1. Adams, Cass, Fremont, Mills, Montgomery, and Page counties shall be authorized to issue motor vehicle licenses, nonoperator identification cards, and persons with disabilities identification devices on a permanent basis, provided that such counties continue to meet the department's standards for issuance.

a. Any county desiring to opt out of county issuance effective with the beginning of the next digitized photolicensing equipment contract period may do so if the cluster, minus the county opting out, is approved by the department, or if one of the alternatives for continued service by the remaining counties in the cluster is arranged pursuant to section 321M.4.

b. A county shall submit in writing to the department its election either to continue participation in county issuance, or to opt out, during the opt-out period established by the department prior to the beginning of the next digitized photolicensing equipment contract period.

2. No more than forty-two additional counties shall be authorized to issue motor vehicle licenses, nonoperator identification cards, and persons with disabilities identification devices, effective with the beginning of the next digitized photolicensing equipment contract period.

a. A county that is served by a permanent department facility is not eligible to opt in to county issuance.

b. An initial opt-in period shall be designated by the department for an eligible county to indicate its desire to participate in county issuance at the time when the next contract for digitized photolicensing equipment is implemented. The department may designate an opt-in period at a time sufficiently in advance of the time for submission of request for proposals related to the next digitized photolicensing equipment contract period, so that the department may accurately estimate the number of sets of equipment that will be needed under the new contract.

c. Initial participation by a county in county issuance requires prior approval in writing by the county treasurer and the board of supervisors.

d. If more than forty-two counties indicate an interest in participating in county issuance, the department shall give preference to the first forty-two counties that are approved as proposed clusters according to section 321M.4, provided that such counties have also filed the written authorizations required under paragraph "c".

3. A county may opt in to county issuance only during the initial opt-in period, unless a county is requested to participate in an existing cluster pursuant to section 321M.4. A county that is so approved by the department to join an existing cluster shall satisfy all requirements under this chapter for a county in an initial opt-in period.

Sec. 4. NEW SECTION. 321M.4 CLUSTERING.

1. The system of county issuance shall be implemented through the use of clusters.

2. A proposed cluster shall replace one department itinerant team. However, the proposed cluster need not be composed of precisely the same counties served by an existing department itinerant team.

3. The department shall have authority to approve proposed clusters, in accordance with the following principles:

a. Proposed clusters should avoid reducing service availability to any neighboring county not part of the cluster, below service levels offered to such county by the department. This principle applies, but is not limited to, situations where service to the neighboring county by a department itinerant team would become exceedingly difficult, or would result in reduced annual hours of service availability due to the need for changes in itinerant team assignments.

b. A cluster may elect to offer service to a neighboring county outside of the proposed cluster, if approval of a cluster by the department is opposed because of difficulties in servicing one or more counties that surround the cluster, or because the cluster would require a reduction in annual hours of service availability by the department to such counties.

c. The department shall exercise its approval authority under this section in good faith, and shall consult with the Iowa county treasurers association in making its decision regarding approval of individual clusters.

4. Prior to issuing any licenses, an approved cluster shall execute an agreement among participating counties pursuant to chapter 28E, addressing the relative rights and liabilities associated with cluster activity. A copy of this agreement, as well as any subsequent alterations or addendum, shall be filed with the department within thirty days of execution.

5. If a county within a cluster opts out of county issuance during a designated opt-out period under section 321M.3 or 321M.8, or is otherwise subject to termination of all or part of its county issuance authorization, the remaining counties in the cluster may pursue one or more of the following alternatives:

a. The counties may request that one or more counties contiguous to the counties remaining in the cluster join the cluster, in accordance with this section and other provisions of this chapter.

b. The counties may elect to provide service to the terminated county, in accordance with this section and other provisions of this chapter.

6. If a cluster subject to the provisions of subsection 5 is not approved by the department for continued service as a cluster, the individual counties in the cluster shall revert to service by the department.

Sec. 5. NEW SECTION. 321M.5 CONTRACT BETWEEN THE DEPARTMENT AND ISSUING COUNTIES.

1. The department and each county participating in county issuance shall execute an agreement pursuant to chapter 28E, detailing the relative responsibilities and liabilities of each party to the agreement.

2. The agreement required by subsection 1 shall specifically address the following issues, in addition to other issues that may be required by chapter 28E or that may otherwise be deemed necessary for inclusion in the agreement by the parties to the agreement:

a. Responsibility for collection of, and accounting for, any fees associated with the licensing process.

b. Oversight guidelines.

c. Performance standards.

d. Progressive discipline standards and measures, including appeals.

e. Rights and responsibilities during any extensions of a digitized photolicensing contract.

f. A specified opt-out period prior to each future request for proposals for digitized photolicensing equipment contracts, and procedures related to a decision to opt out by a county within a particular cluster.

3. An addendum to such an agreement may be executed by the parties, in accordance with chapter 28E.

Sec. 6. NEW SECTION. 321M.6 CERTIFICATION OF COMMERCIAL DRIVER'S LICENSE ISSUANCE.

1. A county shall be authorized to issue commercial driver's licenses if certified to do so by the department.

2. The department shall certify the commercial driver's license issuance in a county authorized to issue licenses pursuant to section 321M.3 if all of the following conditions are met:

a. The driving skills test is the same as that which would otherwise be administered by the state.

b. The county examiner contractually agrees to comply with the requirements of 49 C.F.R. § 383.75, adopted as of a specific date by rule by the department.

c. The department provides supervision over the issuance of commercial driver's licenses, including the administration of written and driving skills tests by the county treasurer. However, the failure of the department to provide appropriate supervision shall not alone be used as a reason to deny certification.

d. The county otherwise complies with the procedures for issuance of commercial driver's licenses as provided in chapter 321.

3. If a county fails to meet the standards for certification under this section, and fails to correct deficiencies according to the department's operating standards, the county's right to issue commercial driver's licenses shall be terminated, and the county shall cease issuing commercial driver's licenses. Procedures and conditions for recertification shall be addressed in the operating standards for the department.

4. The issuance of commercial driver's licenses for residents of a county whose issuance rights have been terminated under subsection 3 may be provided by other counties in the relevant cluster, according to the provisions of section 321M.5. The department is not obligated to provide service in a county for issuance of commercial driver's licenses if the county fails to meet certification standards under this section. However, the department shall facilitate appropriate arrangements for availability of such services as it deems necessary.

Sec. 7. NEW SECTION. 321M.7 TRAINING.

1. The department shall provide a minimum of eight weeks of initial training for county personnel participating in county issuance. The maximum class size for this initial training shall be twenty people.

2. The department shall also provide individualized additional training for county personnel within each participating county office following initial training.

3. The department shall periodically offer continuing education and training opportunities to county personnel.

4. The department shall not segregate training sessions for county personnel and department employees.

5. New county personnel, including new county treasurers, who will participate in county issuance, shall complete the initial training session prior to engaging in any licensing activities. A county treasurer shall use best efforts to complete initial training as soon as possible. A county treasurer who does not make reasonable attempts to begin initial training within three months of taking office may be subject to having the county issuance program in that county placed on probation.

Sec. 8. NEW SECTION. 321M.8 NEW OR SUBSEQUENT CONTRACTS - OPT-OUT PERIOD.

1. If entering into a new digitized photolicensing equipment contract is anticipated by the department, the department shall provide an opt-out period sufficiently prior to the issuance of a request for proposals related to such contract by the department.

2. According to the time frame established by the agreement executed pursuant to section 321M.5, during an opt-out period described in subsection 1, each issuing county shall indicate in writing to the department one of the following:

a. That the county elects to continue to participate in county issuance for the duration of the next digitized photolicensing contract period, subject to the other provisions of this chapter.

b. That the county elects to opt out of county issuance, effective at the end of the present digitized photolicensing contract period.

3. An issuing county may opt out of county issuance only during an opt-out period described under subsection 1.

Sec. 9. NEW SECTION. 321M.9 FINANCIAL RESPONSIBILITY.

1. FEES TO COUNTIES. Notwithstanding any other provision in the Code to the contrary, the county treasurer of any county authorized to issue motor vehicle licenses under this chapter shall retain for deposit in the county general fund three dollars and seventy-five cents of fees received for each issuance or renewal of motor vehicle licenses and nonoperator identification cards, but shall not retain any moneys for the issuance of any persons with disabilities identification devices. The county treasurer shall remit the balance of fees to the department.

2. DIGITIZED PHOTOLICENSING EQUIPMENT.

a. The department shall pay for all digitized photolicensing equipment, including that used by the department and authorized for use by issuing counties under this subsection. Moneys from the road use tax fund shall be used, subject to appropriation by the general assembly, for payment of costs associated with the purchase or lease of digitized photolicensing equipment.

b. An issuing county shall be entitled to one set of digitized photolicensing equipment, unless the county was served at multiple sites by the department, in which case the county shall be entitled to two sets of digitized photolicensing equipment. A county shall indicate at the time of opting in how many sets of equipment are needed by the county.

3. OTHER EQUIPMENT. The department shall pay for all other equipment needed by a county to participate in county issuance, comparable to the equipment provided for issuance activities by a department itinerant team, with the exception of the following:

a. Office furniture.

b. Computer hardware needed to access department computer databases, facsimile machines used to transmit documents between the department and the county, and similar office equipment of a general nature that is not dedicated solely or primarily to the issuance process.

Sec. 10. NEW SECTION. 321M.10 SUPERVISORY AUTHORITY OF DEPARTMENT.

1. The department shall retain all supervisory authority over the county treasurers who shall be subject to the supervision of the department and shall be considered agents of the department when performing motor vehicle licensing functions.

2. Approximately one supervisor shall be assigned from the department to every six issuance sites participating in county issuance.

3. Approximately one technical computer support employee shall be assigned from the department to every twenty-four counties participating in county issuance.

4. The department shall provide issuing counties access to computer databases at a level equal to that provided to comparable department employees.

5. The department may adopt rules pursuant to chapter 17A as necessary to administer this chapter. The department may also develop operating standards as necessary to administer this chapter. The department shall consult with the Iowa county treasurers association in developing operating standards and proposed rules.

Sec. 11. NEW SECTION. 321M.11 GOOD FAITH EFFORTS REQUIRED.

The department and issuing counties shall use their best good faith efforts to work in cooperation in implementing and maintaining an effective system of county issuance.

The department and all persons involved with administration of this chapter, department procedures, and related administrative rules shall use their best good faith efforts to ensure that the application of the laws, rules, and procedures related to county issuance shall not be used to impede county issuance.

Sec. 12. Section 48A.7, Code 1997, is amended to read as follows:

48A.7 REGISTRATION IN PERSON.

An eligible elector may register to vote by appearing personally and completing a voter registration form at the office of the commissioner in the county in which the person resides, at a motor vehicle driver's license station, including any county treasurer's office that is participating in county issuance of motor vehicle licenses under chapter 321M, or at any voter registration agency. A separate registration form shall be signed by each individual registrant.

Sec. 13. Section 48A.9, subsection 4, Code 1997, is amended to read as follows:

4. Registration forms submitted to voter registration agencies, ~~or~~ to motor vehicle driver's license stations, and to county treasurer's offices participating in county issuance of motor vehicle licenses under chapter 321M shall be considered on time if they are received no later than five p.m. on the day registration closes for that election. Offices or agencies other than the county commissioner's office are not required to be open for voter registration purposes at times other than their usual office hours.

Sec. 14. Section 48A.18, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 5. A county treasurer's office participating in county issuance of motor vehicle licenses pursuant to chapter 321M shall participate in voter registration under this section to the same extent as a license facility of the state department of transportation.

Sec. 15. Section 48A.21, Code 1997, is amended to read as follows:

48A.21 TRANSMISSION OF FORMS FROM AGENCIES AND DRIVER'S LICENSE STATIONS.

The state registrar of voters shall adopt administrative rules regulating the transmission of completed voter registration forms from voter registration agencies and from driver's license stations, including county treasurer's offices participating in county issuance of motor vehicle licenses under chapter 321M. All completed voter registration applications in the possession of a voter registration agency, ~~or~~ a driver's license station, or a county treasurer's office that is participating in county issuance of motor vehicle licenses at five p.m. on the last work day of each week shall be transmitted to the location designated by the state registrar of voters by rule. Procedures or requirements for more frequent transmissions may be specified by rule.

Sec. 16. Section 48A.27, subsection 1, Code Supplement 1997, is amended to read as follows:

1. Any voter registration form received by any voter registration agency, driver's license station, including county treasurer's offices participating in county issuance of motor vehicle licenses under chapter 321M, or the commissioner shall be considered as updating the registrant's previous registration.

Sec. 17. Section 48A.27, subsection 2, paragraph a, subparagraph (4), Code Supplement 1997, is amended to read as follows:

(4) A change of address form to the office of driver services of the state department of transportation, or to a county treasurer's office that is participating in county issuance of motor vehicle licenses under chapter 321M.

Sec. 18. Section 321.151, Code 1997, is amended to read as follows:

321.151 DUTY AND LIABILITY OF TREASURER.

The county treasurer shall collect the registration fee and penalties on each vehicle registered by the county treasurer and shall be responsible on the county treasurer's bond for such amount. The county treasurer shall remit such amount to the treasurer of state as ~~herein~~ provided in this chapter. Fees collected pursuant to participation in county issuance of motor vehicle licenses under chapter 321M shall be governed by the provisions of that chapter.

Sec. 19. Section 321.152, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. This section does not apply to fees collected or retained by a county treasurer pursuant to participation in county issuance of motor vehicle licenses under chapter 321M.

Sec. 20. Section 321.153, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. This section does not apply to fees collected or retained by a county treasurer pursuant to participation in county issuance of motor vehicle licenses under chapter 321M.

Sec. 21. NEW SECTION. 331.557A DUTIES RELATING TO ISSUANCE OF MOTOR VEHICLE LICENSES.

The treasurer of any county participating in county issuance of motor vehicle licenses under chapter 321M shall:

1. Issue, renew, and replace lost or damaged nonoperator identification cards and motor vehicle licenses, including commercial driver's licenses, according to the provisions of chapter 321M.
2. Issue persons with disabilities parking permits under chapter 321L.
3. Collect fees associated with nonoperator identification cards and motor vehicle licenses, including commercial driver's licenses, and pay to the state amounts in excess of the amount the treasurer is permitted to retain for deposit in the county general fund for license issuance.
4. Participate in voter registration according to the terms of chapter 48A, and submit completed voter registration forms to the state registrar of voters.
5. Attend initial training as required by chapter 321M, and participate in continuing education as offered by the state department of transportation.
6. Comply with the terms of any applicable agreements created pursuant to chapter 28E, and state department of transportation operating standards for license issuance.

Sec. 22. Section 321.179, Code Supplement 1997, is repealed.

Sec. 23. 1995 Iowa Acts, chapter 220, section 27, is repealed.

Sec. 24. DISPLACED DEPARTMENTAL EMPLOYEES. State department of transportation employees, who are members of a collective bargaining unit and who are displaced as a result of the implementation of this Act, shall be covered by and dealt with according to the provisions of the applicable collective bargaining agreement relating to contracting, subcontracting, outsourcing, privatization, and layoffs.

Sec. 25. REQUEST FOR PROPOSALS AND RESPONSES. The state department of transportation, in conjunction with the auditor of state, shall prepare, and the department shall issue a request for proposals for the digitized photolicensing equipment contract period beginning January 1, 2000, on a schedule that shall make available responses to the request for proposals, and an analysis of the response from the successful bidder, to the first session of the Seventy-eighth General Assembly no later than January 2, 1999. The proposal shall require responses on two options. One option shall be issuance of motor vehicle licenses by Adams, Cass, Fremont, Mills, Montgomery, and Page counties with the department authorized to issue motor vehicle licenses in all remaining ninety-three counties. Option two shall be issuance of motor vehicle licenses by Adams, Cass, Fremont, Mills, Montgomery, and Page counties, and up to forty-two additional counties who have met the conditions of section 3 of this Act, with the department authorized to issue motor vehicle licenses in the remaining fifty-one counties. The first session of the Seventy-eighth General Assembly may use the results of the responses in making a determination on expanding county issuance of motor vehicle licenses and shall do so before March 1, 1999. If the general assembly does not act in response to such information before March 1, 1999, then the department of transportation shall proceed with implementation of county issuance as detailed in this Act.

Sec. 26. CODE EDITOR DIRECTIVE. The Code Editor is instructed to change all references to "motor vehicle license" contained in chapter 321M and in this bill to "driver's license" if Senate File 2113 is enacted by the Seventy-seventh General Assembly, 1998 Session.* This directive includes authority to change plural forms of the terms, and to reorganize definitions in section 321M.1, as enacted by this Act, so that the subsections remain in alphabetical order following any change of a defined term according to this directive.

Approved April 22, 1998

CHAPTER 1144

PENALTIES FOR VIOLATIONS OF CITY OR COUNTY ORDINANCES AND CITY OR COUNTY INFRACTIONS

H.F. 2472

AN ACT relating to civil penalties imposed for violations of city or county ordinances or city or county infractions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 331.302, subsection 15, Code 1997, is amended to read as follows:

15. A county shall not provide a civil penalty in excess of ~~one~~ five hundred dollars for the violation of an ordinance which is classified as a county infraction or if the infraction is a repeat offense, a civil penalty not to exceed ~~two~~ seven hundred fifty dollars for each repeat offense. A county infraction is not punishable by imprisonment.

Sec. 2. Section 331.307, subsection 1, Code 1997, is amended to read as follows:

1. A county infraction is a civil offense punishable by a civil penalty of not more than ~~one~~ five hundred dollars for each violation or if the infraction is a repeat offense a civil penalty not to exceed ~~two~~ seven hundred fifty dollars for each repeat offense.

Sec. 3. Section 364.3, subsection 6, Code 1997, is amended to read as follows:

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* See chapter 1073 herein

6. A city shall not provide a civil penalty in excess of ~~one~~ five hundred dollars for the violation of an ordinance which is classified as a municipal infraction or if the infraction is a repeat offense, a civil penalty not to exceed ~~two~~ seven hundred fifty dollars for each repeat offense. A municipal infraction is not punishable by imprisonment.

Sec. 4. Section 364.22, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A municipal infraction is a civil offense punishable by a civil penalty of not more than ~~one~~ five hundred dollars for each violation or if the infraction is a repeat offense, a civil penalty not to exceed ~~two~~ seven hundred fifty dollars for each repeat offense. However, notwithstanding section 364.3, a municipal infraction arising from noncompliance with a pretreatment standard or requirement, referred to in 40 C.F.R. § 403.8, by an industrial user may be punishable by a civil penalty of not more than one thousand dollars for each day a violation exists or continues.

Approved April 22, 1998

CHAPTER 1145

BULK DRY ANIMAL NUTRIENT PRODUCTS

H.F. 2542

AN ACT regulating bulk dry animal nutrient products, providing for fees and an appropriation, providing penalties, and providing for an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 200A.1 TITLE.

This chapter shall be known and may be cited by the short title of "Bulk Dry Animal Nutrient Products Law".

Sec. 2. NEW SECTION. 200A.2 PURPOSE.

The purpose of this chapter is to regulate certain bulk dry animal manure for use as a fertilizer or soil conditioner, which is unmanipulated and therefore not subject to regulation under chapter 200.

Sec. 3. NEW SECTION. 200A.3 DEFINITIONS.

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

1. "Advertise" means to present a commercial message in any medium including but not limited to print, radio, television, sign, display, label, tag, or articulation.
2. "Bulk dry animal nutrient product" or "bulk product" means an animal nutrient product delivered to a purchaser in bulk form to which a label cannot be attached.
3. "Department" means the department of agriculture and land stewardship.
4. "Distribute" means to offer for sale, sell, hold out for sale, exchange, barter, or supply or furnish a bulk dry animal nutrient product on a commercial basis.
5. "Distributor" means a person who distributes a bulk dry animal nutrient product.
6. "Dry animal nutrient product" means any unmanipulated animal manure composed primarily of animal excreta, if all of the following apply:

a. The manure contains one or more recognized plant nutrients which are used for their plant nutrient content.

b. The manure promotes plant growth.

c. The manure does not flow perceptibly under pressure.

d. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.

e. The constituent molecules of the manure do not flow freely among themselves but do show the tendency to separate under stress.

7. "Guaranteed analysis" means the minimum percentage of plant nutrients claimed and reported to the department pursuant to section 200A.6.

8. "Official sample" means any sample of a bulk dry animal nutrient product taken by the department, according to procedures established by the department consistent with this chapter.

9. "Percent" or "percentage" means percentage by weight.

10. "Purchaser" means a person to whom a dry animal nutrient product is distributed.

11. "Ton" means a net weight of two thousand pounds avoirdupois.

Sec. 4. NEW SECTION. 200A.4 RULEMAKING.

The department shall adopt all rules necessary to administer this chapter, including but not limited to rules regulating licensure, labeling, registration, distribution, and storage of bulk dry animal nutrient products. A violation of this chapter includes a violation of any rule adopted pursuant to this section as provided in chapter 17A.

Sec. 5. NEW SECTION. 200A.5 LICENSE.

A person who distributes a bulk dry animal nutrient product in this state must first obtain a license from the department. A license application must be submitted to the department on a form furnished by the department according to procedures required by the department. A license shall expire on July 1 of each year.

Sec. 6. NEW SECTION. 200A.6 REGISTRATION.

1. A person shall not distribute a bulk dry animal nutrient product, unless the bulk product is registered with the department under this section. The department shall register each bulk product which complies with the requirements of this chapter. If the department determines that a registration application does not comply with the requirements of this chapter, the department shall notify the applicant of the department's determination and the reasons why the application failed to comply with the requirements of this chapter. The department shall provide the applicant with an opportunity to make the necessary corrections before resubmitting the application.

2. A registration application must be submitted to the department on a form furnished by the department according to procedures required by the department. A completed application shall include all of the following:

a. An accompanying label setting forth the guaranteed analysis of the bulk product, in the following form:

Total Nitrogen (N)	____ percent
Available Phosphate (P) or P[2]0[5] or both	____ percent
Soluble Potassium (K) or K[2]0 or both	____ percent

Registration and guarantee of water soluble phosphate (P) or (P[2]0[5]) shall be permitted.

b. A description of how the distributor plans to obtain the acres necessary for proper application of the bulk product which is not distributed.

c. Evidence of favorable effects and safety of the bulk product necessary to satisfy the department according to rules adopted by the department.

d. Additional data about a bulk product necessary to support claims made about the product, if required by the department.

3. A distributor shall not be required to register any bulk product which is already registered under this chapter by another person.

4. Upon request of the department, the advisory committee created in section 206.23 may advise and assist the department regarding the registration of bulk dry animal nutrient products under the provisions of this chapter.

Sec. 7. NEW SECTION. 200A.7 DISTRIBUTION STATEMENT REQUIRED.

1. The distribution of a bulk dry animal nutrient product must be accompanied by a written or printed distribution statement which may be prepared on a form furnished by the department. The distribution statement shall include all of the following information:

a. The bulk product's guaranteed analysis in the same form as required pursuant to section 200A.6.

b. The name and address of the bulk product's purchaser.

c. A notice to the bulk product's purchaser stating the number of acres needed to apply the purchased bulk product based on the average corn yields in the county where the bulk product is to be applied.

d. A warning that application of a bulk product should not exceed the nitrogen levels necessary to obtain optimum crop yields for the crop being grown based on crop nitrogen usage rate factors.

2. Before transferring possession of a bulk product, the distributor shall present the purchaser with an acknowledgment for the purchaser's signature or initials indicating that the purchaser has read the distribution statement and understands the number of acres required to apply the product according to the information in the distribution statement.

Sec. 8. NEW SECTION. 200A.8 DISTRIBUTION REPORTS.

1. A person required to be licensed pursuant to section 200A.5 shall file a distribution report with the department on forms furnished by the department reporting information regarding the person's distribution of bulk products.

2. The report shall be filed with the department not later than the last day of January and the last day of July excluding weekends and state-recognized holidays as provided in section 1C.2.

3. The report shall include all of the following:

a. The number of tons of bulk products distributed by the person in the state during the preceding six-month period. The report shall include the number of tons distributed to each county named in the report and the grade of the distributed bulk product.

b. The name and address of each purchaser and the number of tons purchased.

c. An inspection fee as provided in section 200A.9.

Sec. 9. NEW SECTION. 200A.9 FEES.

1. A person required to obtain a license as provided in section 200A.5 shall pay a ten-dollar fee for each place from which a bulk product is distributed in this state.

2. a. The first person who distributes a bulk product, who is required to be licensed pursuant to section 200A.5, shall pay an inspection fee twice each year. The inspection fee shall be paid at the time of filing each distribution report as required in section 200A.8. The amount of the fee shall be calculated based on the number of tons of bulk dry animal nutrient product distributed by the person as reported in the distribution report.

b. The rate for inspection fees shall be established by the department not more than once each year and shall be not more than twenty cents per ton.

c. An inspection fee shall not be imposed upon a purchaser, regardless of whether the purchaser subsequently distributes the product.

3. An inspection fee is delinquent after ten days following the date that a distribution report and fee are due as provided in section 200A.8. A delinquency penalty of not more than ten percent of the amount due shall be assessed against the person who is delinquent. However, the penalty shall be at least fifty dollars. The amount of fees and delinquency penalties due shall constitute a debt and become the basis of a judgment against the delinquent person.

Sec. 10. NEW SECTION. 200A.10 EXAMINATIONS.

1. The department shall maintain a laboratory with the equipment and employees necessary to conduct examinations of bulk dry animal nutrient products and to effectively administer and enforce this chapter.

2. The department, or a person authorized as an agent by the department, shall examine bulk products distributed in this state. An examination may include taking samples, conducting inspections and tests, and analyzing the bulk product.

3. The department shall conduct the examinations to the extent that the department determines necessary in order to conclude whether a bulk product is in compliance with the provisions of this chapter.

a. The department may enter upon any public or private premises during regular business hours in a manner consistent with the laws of this state and the United States, including Article I, section 8, of the Constitution of the State of Iowa, and the fourth amendment to the Constitution of the United States, for purposes of carrying out an examination.

b. The methods for examination shall be the official methods of the association of official agricultural chemists in all cases where methods have been adopted by the association.

c. A sworn statement by the state chemist or the state chemist's deputy stating the results of an analysis of an official sample from a lot of a bulk dry animal nutrient product shall constitute prima facie evidence of the correctness of the analysis of that lot in courts of this state.

d. The department, in determining for administrative purposes whether a bulk product is deficient in guaranteed active ingredients, shall rely upon the official sample obtained and analyzed by the state chemist or the state chemist's deputy.

e. The results of an official analysis of a bulk product which has been found to be in violation of any provision of this chapter shall be forwarded by the department to the registrant. Upon request, the department shall furnish the registrant a portion of any official sample.

Sec. 11. NEW SECTION. 200A.11 PROHIBITED ACTS.

1. A person shall not distribute a bulk dry animal nutrient product containing any substance used as filler material, if any of the following applies:

a. The filler injures plant growth or is deleterious to soil.

b. The person distributing the bulk product misrepresents or deceives the person receiving the bulk product regarding the attributes of the filler material or its effect upon plant growth or soil condition.

2. A person shall not advertise a bulk product by making false or misleading statements regarding the bulk product.

3. A person shall not misbrand a bulk product by providing a distribution statement to a purchaser which fails to identify a substance promoting plant growth according to the bulk product's guaranteed analysis as provided in section 200A.6.

4. The burden of proof regarding a claim made by a person distributing a bulk product, including but not limited to the positive effects of the bulk product on plant growth, shall be the responsibility of the distributor.

5. A distributor shall not store a bulk product in a manner which pollutes the waters of the state.

Sec. 12. NEW SECTION. 200A.12 ENFORCEMENT.

In enforcing this chapter the department may do any of the following:

1. a. Take disciplinary action concerning a registration of a bulk dry animal nutrient product as provided in section 200A.6 or the license of a person distributing a bulk product as provided in section 200A.5. The department may do any of the following:

(1) Cancel the registration or deny an application for registration.

(2) Suspend or terminate the license or deny an application for a license.

b. The disciplinary action must be based upon evidence satisfactory to the department that the registrant, licensee, or applicant has used fraudulent or deceptive practices in violation of this chapter or has willfully disregarded the requirements of this chapter.

2. Issue and enforce a "stop sale, use, or removal" order against the owner or distributor of any lot of a bulk product.

a. The order may require that the bulk product be held at a designated place until released by the department.

b. The department shall release the bulk product pursuant to a release order upon satisfaction that legal issues compelling the issuance of the "stop sale, use, or removal order" have been resolved and all expenses incurred by the department in connection with the bulk product's removal have been paid to the department.

3. Seize and dispose of any lot of a bulk product which is not in compliance with the provisions of this chapter, upon petition to the district court in the county or adjoining county in which the bulk product is located.

a. If the court finds that the bulk product is in violation of this chapter, the court may order the condemnation of the bulk product. However, the court shall not order the seizure and disposition of a bulk product without first providing the owner of the bulk product with an opportunity to apply to the court for release of the bulk product, consent to reprocess the bulk product, or consent to amend a legal record to accurately describe the composition of the bulk product, including a distribution statement as provided in section 200A.7.

b. The department shall, as provided in the court order, dispose of the bulk product in a manner consistent with the quality of the bulk product and the laws of this state.

4. Apply to the district court in the county where a violation of this chapter occurs for a temporary or permanent injunction restraining a person from violating or continuing to violate this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without a bond.

5. This section does not require the department to institute a proceeding for a minor violation if the department concludes that the public interest will be best served by a suitable written warning.

Sec. 13. NEW SECTION. 200A.13 VIOLATIONS.

1. A person violating a provision of this chapter is guilty of a simple misdemeanor.

2. a. If, after a departmental investigation, it appears that a person is in violation of this chapter, the department shall notify the person of the violation and provide the person with an opportunity to be heard under rules adopted by the department consistent with chapter 17A contested case proceedings.

b. If, after a hearing, the department determines that a violation has occurred, the department may report the violation to the appropriate county attorney for prosecution. The report shall include a certified copy of evidence presented during the hearing. This section does not require the department to report a minor violation for prosecution if the department concludes that the public interest will be best served by a suitable written warning.

c. A county attorney who receives a report of a violation from the department shall institute and prosecute the case in district court without delay.

Sec. 14. NEW SECTION. 200A.14 EXCHANGE BETWEEN PRODUCERS.

Nothing in this chapter shall be construed to restrict or prohibit any of the following:

1. The distribution of a bulk product to importers, manufacturers, or manipulators who mix bulk dry animal nutrient products for distribution.

2. The shipment of a bulk product to a person licensed as a distributor pursuant to section 200A.5 who has registered the bulk product as provided in section 200A.6.

Sec. 15. NEW SECTION. 200A.15 USE OF FEES.

Fees and delinquency penalties collected by the department pursuant to this chapter, including section 200A.9, shall be deposited in the general fund of the state. However, the

department may allocate moneys to the Iowa agricultural experiment station for research, work projects, and investigations as needed for the specific purpose of improving the regulatory functions to improve the enforcement of this chapter.

Approved April 22, 1998

CHAPTER 1146

DEBT COLLECTION

S.F. 2188

AN ACT relating to debt collection.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 537.7103, subsection 4, paragraph b, Code Supplement 1997, is amended to read as follows:

b. The failure to disclose in the initial written communication with the debtor and, in addition, if the initial communication with the debtor is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph does not apply to ~~a~~ either of the following:

(1) A formal pleading made in connection with a legal action.

(2) Communications issued directly by a state bank as defined in section 524.103, a state bank chartered under the laws of any other state, a national banking association, a trust company, a federally chartered savings and loan association or savings bank, an out-of-state chartered savings and loan association or savings bank, a financial institution chartered by the federal home loan bank board, an association incorporated or authorized to do business under chapter 534, a state or federally chartered credit union, or a company or association organized or authorized to do business under chapter 515, 518, 518A, or 520, or an officer, employee, or agent of such company or association, provided the communication does not deceptively conceal its origin or its purpose.

Approved April 23, 1998

CHAPTER 1147

CIVIL LITIGATION BY INMATES AND PRISONERS

S.F. 2330

AN ACT relating to the filing of civil litigation by prisoners and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 610.1, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Notwithstanding the provisions of this section, the court shall deny the application and affidavit of an inmate who has had three or more actions dismissed pursuant to section 610A.2. Such inmate shall not be permitted to proceed without prepayment of fees, cost, or security pursuant to this chapter.

Sec. 2. Section 610A.1, subsection 1, Code 1997, is amended by adding the following new paragraphs:

NEW PARAGRAPH. e. If the inmate has unsuccessfully prosecuted three or more frivolous actions in the preceding five-year period, the court may stay the proceeding in accordance with section 617.16.

NEW PARAGRAPH. f. If the inmate has had three or more actions dismissed pursuant to section 610A.2, the inmate shall not be permitted to file an action pursuant to chapter 610.

Sec. 3. Section 610A.1, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3. In any civil case filed by a petitioner who is an inmate or prisoner, the respondent may review the petition and, if applicable, file a pre-answer motion asserting, in addition to any other defense that must be asserted in such a motion under the rules of civil procedure, that the action or any portion of the action should be dismissed pursuant to this chapter because the action or any portion of the action is frivolous or malicious, fails to state a claim upon which relief can be granted, or is otherwise subject to dismissal under section 610A.2.

Sec. 4. Section 610A.2, subsections 1 and 2, Code 1997, are amended to read as follows:

1. In addition to the penalty provided in section 610.5, if applicable, or any other applicable penalty under the Code, the court ~~in which an affidavit of inability to pay has been filed~~ may dismiss ~~the~~ an action or appeal that is subject to this chapter, in whole or in part, on a finding of ~~either~~ any of the following:

a. The allegation of inability to pay asserted in an accompanying affidavit is false.

b. The action, claim, defense, or appeal is frivolous or malicious in whole or in part.

c. The inmate or prisoner has knowingly presented false testimony or evidence, or has attempted to create or present false testimony or evidence in support of the action, claim, defense, or appeal.

d. The actions of the inmate or prisoner in pursuing the action, claim, defense, or appeal constitute an abuse of the discovery process.

2. In determining whether an action or appeal is frivolous or malicious, the court may consider ~~whether the claim~~ the following:

a. Whether the action, claim, defense, or appeal is without substantial justification, or otherwise has no arguable basis in law or fact, including that the action, claim, defense, or appeal fails to state a claim upon which relief could be granted, or the action, claim, defense, or appeal cannot be supported by a reasonable argument for a change in existing law.

b. Whether the action, claim, defense, or appeal is substantially similar to a previous action, claim, defense, or appeal, that was determined to be frivolous or malicious, either in that it is brought against the same party or in that the claim arises from the same operative facts ~~as a previous claim which was determined to be frivolous or malicious~~.

c. Whether the action, claim, defense, or appeal is intended solely or primarily for harassment.

d. The fact that evidentiary support for the action, claim, defense, or appeal is unavailable, or is not likely to be discovered after investigation.

e. Whether the action, claim, defense, or appeal is asserted with an improper purpose, including but not limited to, causing an unnecessary expansion or delay in proceedings, increasing the cost of proceedings, or harassing an opponent.

f. Whether the defendant is immune from providing the relief sought.

Sec. 5. Section 610A.3, Code 1997, is amended to read as follows:

610A.3 ~~LOSS OF GOOD CONDUCT TIME~~ PENALTIES.

1. If an action or appeal brought by an inmate or prisoner in state ~~or federal~~ court is ~~determined to be malicious or filed solely to harass or if the inmate or prisoner testifies falsely or otherwise presents false evidence or information to the court in such an action~~ dismissed pursuant to section 610A.2, or, if brought in federal court, is dismissed under any of the principles enumerated in section 610A.2, the inmate shall ~~lose~~ be subject to the following penalties:

a. The loss of some or all of the good conduct time credits acquired by the inmate or prisoner. Previous dismissals under section 610A.2 may be considered in determining the appropriate level of penalty.

b. If the inmate or prisoner has no good conduct time credits to deduct, the order of the court or the disciplinary hearing may deduct up to fifty percent of the average balance of the inmate account under section 904.702 or of any prisoner account.

2. The court may make an order deducting the credits or the credits may be deducted pursuant to a disciplinary hearing pursuant to chapter 903A at the facility at which the inmate is held.

Sec. 6. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Sec. 7. SEVERABILITY. If this Act, or any portion of this Act, is held to be unconstitutional, the remainder of this Act shall remain in effect to the fullest extent possible.

Approved April 23, 1998

CHAPTER 1148

PUBLIC UTILITY FACILITIES IN LOCAL GOVERNMENT RIGHTS-OF-WAY AND TELECOMMUNICATIONS FRANCHISES IN CITIES

S.F. 2368

AN ACT relating to the management of public rights-of-way by local government units, eliminating the power of cities to grant franchises to erect, maintain, and operate plants and systems for telecommunications services within the city, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 364.2, subsection 4, paragraph a, Code 1997, is amended to read as follows:

a. A city may grant to any person a franchise to erect, maintain, and operate plants and systems for electric light and power, heating, ~~telephone,~~ telegraph, cable television, district telegraph and alarm, motor bus, trolley bus, street railway or other public transit, waterworks, or gasworks, within the city for a term of not more than twenty-five years. The franchise may be granted, amended, extended, or renewed only by an ordinance, but no exclusive franchise shall be granted, amended, extended, or renewed.

Sec. 2. Section 476.6, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 22. A public utility which is assessed management costs by a local government pursuant to chapter 480A is entitled to recover those costs. If the public utility

serves customers within the boundaries of the local government imposing the management costs, such costs shall be recovered exclusively from those customers.

Sec. 3. NEW SECTION. 480A.1 PURPOSE.

The general assembly finds that it is in the public interest to define the right of local governments to charge public utilities for the location and operation of public utility facilities in local government rights-of-way.

Sec. 4. NEW SECTION. 480A.2 DEFINITIONS.

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

1. "Local government" means a county, city, township, school district, or any special-purpose district or authority.

2. "Management costs" means the reasonable costs a local government actually incurs in managing public rights-of-way.

3. "Public right-of-way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which the local government has an interest, including other dedicated rights-of-way for travel purposes and utility easements. A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcasts service or utility poles owned by a local government or a municipal utility.

4. "Public utility" means a person owning or operating a facility used for furnishing natural gas by piped distribution system, electricity, communications services not including cable television systems, or water by piped distribution system, to the public for compensation.

Sec. 5. NEW SECTION. 480A.3 FEES.

A local government shall not recover any fee from a public utility for the use of its right-of-way, other than a fee for its management costs. A local government may recover from a public utility only those management costs caused by the public utility's activity in the public right-of-way. A fee or other obligation under this section shall be imposed on a competitively neutral basis. When a local government's management costs cannot be attributed to only one entity, those costs shall be allocated among all users of the public rights-of-way, including the local government itself. The allocation shall reflect proportionately the costs incurred by the local government as a result of the various types of uses of the public rights-of-way.

This section does not prohibit the collection of a franchise fee as permitted in section 480A.6.

Sec. 6. NEW SECTION. 480A.4 IN-KIND SERVICES.

A local government, in lieu of a fee imposed under this chapter, shall not require in-kind services by a public utility right-of-way user, or require in-kind services as a condition of the use of the local government's public right-of-way.

Sec. 7. NEW SECTION. 480A.5 ARBITRATION.

1. A public utility that is denied registration, denied a right-of-way permit, that has its right-of-way permit revoked, or that believes that the fees imposed on such user by the local government do not conform to the requirements of this chapter may request in writing that such denial, revocation, or fee imposition be reviewed by the governing body of the local government. The governing body of the local government shall act within sixty days on a timely written request. A decision by the governing body affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.

2. Upon affirmation by the governing body of the denial, revocation, or fee imposition, the public utility may do either of the following:

a. With the consent of the governing body, have the matter finally resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the local government and the public utility. If the parties are unable to agree on an arbitrator, the matter shall be resolved by a three-person arbitration panel made up of one arbitrator selected by the local government, one arbitrator selected by the public utility, and one arbitrator selected by the other two arbitrators. The cost and expense of a single arbitrator shall be borne equally by the local government and the public utility. If a three-person arbitration panel is selected, each party shall bear the expense of its own arbitrator and the parties shall jointly and equally bear the cost and expense of the third arbitrator, and of the arbitration. Each party to the arbitration shall pay its own costs, disbursements, and attorney fees.

b. Bring an action in district court to review a decision of the governing body made under this section.

Sec. 8. NEW SECTION. 480A.6 FRANCHISE ORDINANCE NOT SUPERSEDED.

This chapter does not modify or supersede the rights and obligations of a local government and the public utility established by the terms of any existing or future franchise granted, approved, and accepted pursuant to section 364.2, subsection 4. A city which collects a city franchise fee from an entity pursuant to section 364.2, subsection 4, under an existing or future franchise, shall not also collect a fee from that entity under section 480A.3.

Sec. 9. EFFECTIVE DATE. This Act applies retroactively to January 1, 1998, and supersedes the provisions of any ordinances contrary to this Act in effect on or after that date.

Approved April 23, 1998

CHAPTER 1149

BAIL ENFORCEMENT BUSINESSES, PRIVATE INVESTIGATIVE AGENCIES AND SECURITY AGENTS

S.F. 2374

AN ACT providing for the regulation of bail enforcement businesses and their agents, limiting their actions, establishing fees, eliminating temporary county-issued identification for private security agents and investigators, and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 80A.1, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 0A. "Bail enforcement agent" means a person engaged in the bail enforcement business, including licensees and persons engaged in the bail enforcement business whose principal place of business is in a state other than Iowa.

NEW SUBSECTION. 0B. "Bail enforcement business" means the business of taking or attempting to take into custody the principal on a bail bond issued or a deposit filed in relation to a criminal proceeding to assure the presence of the defendant at trial, but does not include such actions that are undertaken by a peace officer or a law enforcement officer in the course of the officer's official duties.

NEW SUBSECTION. 0C. "Chief law enforcement officer" means the county sheriff, chief of police, or other chief law enforcement officer in the local governmental unit where a defendant is located.

NEW SUBSECTION. 1A. "Defendant" means the principal on a bail bond issued or deposit filed in relation to a criminal proceeding in order to assure the presence of the defendant at trial.

Sec. 2. Section 80A.3, Code 1997, is amended to read as follows:

80A.3 LICENSE REQUIRED.

1. A person shall not operate a bail enforcement business, private investigation business, or private security business, or otherwise employ persons in the operation of such a business located within this state unless the person is licensed by the commissioner in accordance with this chapter.

2. A license issued under this chapter expires two years from the date issued.

Sec. 3. NEW SECTION. 80A.3A NOTIFICATION OF AND REGISTRATION WITH LOCAL LAW ENFORCEMENT.

1. A bail enforcement agent employed by a licensee shall not take or attempt to take into custody the principal on a bail bond without notifying the chief law enforcement officer of the local governmental subdivision where the defendant is believed to be present. The bail enforcement agent shall disclose the location where the defendant is believed to be and the bail enforcement agent's intended actions.

2. A person or employee of a person who operates a bail enforcement business in a state other than Iowa and who enters Iowa in pursuit of a defendant who has violated the conditions of a bail bond issued in a state other than Iowa or has otherwise violated conditions of bail imposed by a court in a state other than Iowa shall not take or attempt to take the defendant into custody without first registering with the chief law enforcement officer of the local governmental subdivision where the defendant is believed to be present.

a. Registration shall require presentation of the following documents:

(1) A license to operate a bail enforcement business in the state of origin, if the state licenses such businesses. Otherwise, the person or employee shall present other documentation relating to the location of the principal place of business of the bail enforcement business.

(2) The bail bond, order from the local prosecuting authority in the state of origin, or other documents relating to the authority of the person under the laws of the state of origin to pursue the defendant.

(3) A copy of any bond for liability for actions of the person or employee.

b. A bail enforcement agent who registers with the chief law enforcement officer of the local governmental subdivision in accordance with this section and complies with requirements, other than licensure, for acts by a bail enforcement agent within this state, including the limitations imposed by sections 811.8 and 811.12, shall not be subject to civil liability in this state other than as prescribed in this chapter, notwithstanding any other provision under the Code or common law.

Sec. 4. Section 80A.5, Code 1997, is amended to read as follows:

80A.5 LICENSEE FEE.

1. An applicant for a license shall deposit with each application the fee for the license.

2. If the application is approved the deposited amount shall be applied on the license fee. If the application is disapproved, the deposited amount shall be refunded to the applicant.

3. The fee for a two-year license for a bail enforcement business, a private investigative agency, ~~and~~ or a private security agency ~~license~~ is one hundred dollars.

Sec. 5. Section 80A.6, Code 1997, is amended to read as follows:

80A.6 DISPLAY OF LICENSE.

A ~~private investigation agency and private security agency~~ licensee shall conspicuously display the license in the principal place of business of the agency or business.

Sec. 6. Section 80A.7, Code 1997, is amended to read as follows:

80A.7 IDENTIFICATION CARDS.

1. The department shall issue to each licensee and to each employee of the licensee an identification card in a form approved by the commissioner. The application for a permanent identification card shall include a temporary identification card valid for fourteen days from the date of receipt of the application by the applicant.

2. The fee for each identification card is ten dollars.

3. It is unlawful for an agency licensed under this chapter to employ a person to act in the bail enforcement business, private investigation business, or private security business unless the person has in the person's immediate possession an identification card issued under this section.

4. The licensee is responsible for the use of identification cards by the licensee's employees and shall return an employee's card to the department upon termination of the employee's service. Identification cards remain the property of the department. ~~The fee for each card is ten dollars.~~

~~A county sheriff may issue temporary identification cards valid for fourteen days to a person employed by an agency licensed as a private security business or private investigation business on a temporary basis in the county. The fee for each card is five dollars. The form of the temporary identification cards shall be approved by the commissioner.~~

Sec. 7. Section 80A.9, Code 1997, is amended to read as follows:

80A.9 BADGES — UNIFORMS.

1. A licensee or an employee of a licensee shall not use a badge in connection with the activities of the licensee's business unless the badge has been prescribed or approved by the commissioner.

2. A licensee or an employee of a licensee shall not use an identification card other than the card issued by the department or make a statement with the intent to give the impression that the licensee or employee is a peace officer.

3. A uniform worn by a licensee or employee of a licensee shall conform with rules adopted by the commissioner.

4. A bail enforcement agent other than a licensee shall not do any of the following:

a. Use a badge or identification card other than one which is in accordance with the laws of the state of origin.

b. Wear a uniform or make a statement that gives the impression that the agent is a peace officer.

Sec. 8. Section 80A.10, Code 1997, is amended to read as follows:

80A.10 LICENSEE'S BOND.

1. A license shall not be issued unless the applicant files with the department a surety bond, in ~~an~~ a minimum amount ~~of five~~ as follows:

a. Five thousand dollars in the case of an agency licensed to conduct only a bail enforcement business, private security business, or a private investigation business~~, or in the amount of ten~~.

b. Ten thousand dollars in the case of an agency licensed to conduct ~~both~~ more than one type of business licensed under this chapter.

2. The bond shall be issued by a surety company authorized to do business in this state and shall be conditioned on the faithful, lawful, and honest conduct of the applicant and those employed by the applicant in carrying on the business licensed.

3. The bond shall provide that a person injured by a breach of the conditions of the bond may bring an action on the bond to recover legal damages suffered by reason of the breach. However, the aggregate liability of the surety for all damages shall not exceed the amount of the bond.

4. Bonds issued and filed with the department shall remain in force and effect until the surety has terminated future liability by a written thirty days' notice to the department.

Sec. 9. Section 80A.10A, Code 1997, is amended to read as follows:

80A.10A LICENSEE'S PROOF OF FINANCIAL RESPONSIBILITY.

~~A~~ Notwithstanding the minimum bond amount that must be filed in accordance with section 80A.10, a license shall not be issued unless the applicant furnishes proof acceptable to the commissioner of the applicant's ability to respond in damages for liability on account of accidents or wrongdoings occurring subsequent to the effective date of the proof, arising out of the ownership and operation of a private security business, ~~or a~~ private investigation business, or bail enforcement business.

Sec. 10. Section 80A.16, Code 1997, is amended to read as follows:

80A.16 PENALTIES.

1. A person who violates any of the provisions of this chapter where no other penalty is provided is guilty of a simple misdemeanor.

2. A person who ~~makes~~ does any of the following is guilty of a fraudulent practice:

a. Makes a false statement or representation in an application or statement filed with the commissioner, as required by this chapter~~, or a person who falsely~~.

b. Falsely states, ~~or~~ represents, or fails to disclose as required by this chapter, that the person has been or is a private investigator, ~~or~~ private security agent, or ~~advertises as such is guilty of a fraudulent practice~~ bail enforcement agent.

c. Falsely advertises that the person is a licensed private investigator, private security agent, or bail enforcement agent.

3. A person who is subject to the licensing requirements of this chapter and who engages in a private investigation or private security business as defined in this chapter, without possessing a current valid license as provided by this chapter, is guilty of a serious misdemeanor.

4. A person who is subject to the licensing requirements of this chapter for a bail enforcement business or bail enforcement agent, and who operates a bail enforcement business or who acts as a bail enforcement agent for a bail enforcement business, without possessing a current valid license, is guilty of a class "D" felony.

Sec. 11. NEW SECTION. 80A.16A CIVIL LIABILITY OF BAIL ENFORCEMENT AGENTS.

1. A person other than a defendant who is injured in person or property by the actions of a bail enforcement agent in taking or attempting to take a defendant into custody may bring a civil action for damages against such agent and the bail enforcement business for breach of any applicable standard of care.

2. Notwithstanding the limitation of liability of any surety for the actions of a bail enforcement agent or bail enforcement business, the court shall enter a judgment against a bail enforcement agent or bail enforcement business determined to have breached the applicable standard of care. The judgment shall include an award of treble damages, and recovery of costs and reasonable attorney fees.

Sec. 12. Section 811.8, subsection 3, Code 1997, is amended to read as follows:

3. For the purpose of surrendering the defendant, the surety, subject to the limitations of section 811.12 and chapter 80A, at any time ~~before finally charged and at any place within the state,~~ may arrest the defendant, or, by a written authority endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so. In making an arrest pursuant to this subsection, the surety or any person empowered by the surety shall possess no more authority than a peace officer would possess in making a lawful arrest under section 804.8, 804.13, 804.14, or 804.15.

Sec. 13. NEW SECTION. 811.12 LIMITATIONS.

1. A person shall not take or attempt to take into custody the principal on a bail bond, either as a surety on a bail bond in a criminal proceeding or as an agent of such surety, unless such person has complied with all of the following, if applicable:

a. Notification or registration with a chief law enforcement officer under section 80A.3A.

b. Licensing requirements for bail enforcement businesses and bail enforcement agents under chapter 80A.

2. A person other than a certified peace officer shall not be authorized to apprehend, detain, or arrest a principal on a bail bond, wherever issued, unless one of the following applies:

a. The person is a bail enforcement agent licensed under chapter 80A and has notified the chief law enforcement officer under section 80A.3A.

b. The person is a bail enforcement agent licensed under the laws of another state and has registered with the chief law enforcement officer under section 80A.3A.

c. The person is a bail enforcement agent from a state that does not license such businesses who has registered with the chief law enforcement officer under section 80A.3A.

Sec. 14. IMPLEMENTATION OF ACT. Section 25B.2, subsection 3, shall not apply to this Act.

Approved April 23, 1998

CHAPTER 1150

REAL ESTATE TITLES INVOLVING BANKRUPTCY

S.F. 2378

AN ACT relating to real estate titles involving bankruptcy.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 626C.1 DEFINITION.

As used in this chapter, unless the context otherwise requires, "bankruptcy transcript" means a document or documents certified by the clerk or deputy clerk of any United States bankruptcy court as being true and correct copies of documents on file with the United States bankruptcy court of any district in the United States which is entitled to full faith and credit in this state. "Bankruptcy transcript" includes a bankruptcy court clerk's certificate of the proceedings that have transpired in a bankruptcy as is necessary to satisfy all applicable title standards of this state.

Sec. 2. NEW SECTION. 626C.2 FILING AND STATUS OF BANKRUPTCY TRANSCRIPTS.

A bankruptcy transcript authenticated in accordance with an Act of Congress or the statutes of the state may be filed in the office of the clerk of the district court of a county in which real estate affected by the bankruptcy is located.

Sec. 3. NEW SECTION. 626C.3 NOTICE OF FILING.

1. At the time of the filing of the bankruptcy transcript, the person filing the transcript shall make and file with the clerk of the district court an affidavit setting forth the name and last known post office address of the owner of the affected real estate and of the person filing the bankruptcy transcript.

2. Within three business days upon the filing of the bankruptcy transcript and the affidavit as provided in subsection 1, the clerk shall mail notice of the filing of the bankruptcy transcript to the owner of the affected real estate at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the person filing the bankruptcy transcript and the attorney for that person, if any, in this state.

Sec. 4. NEW SECTION. 626C.4 STAY.

1. If the real estate owner files an application for stay within twenty days of the date of mailing the notice of filing the bankruptcy transcript by the clerk with the district court in which the bankruptcy transcript is filed that an appeal from any portion of the bankruptcy transcript is pending or will be taken, or that a stay of execution has been granted, the court shall stay the effect of the bankruptcy transcript until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

2. The district court for the county in which the bankruptcy transcript is filed has no jurisdiction to stay the effects of the bankruptcy transcript either as initially filed or as amended if the transcript contains a certificate by the clerk of the bankruptcy court of any of the following:

a. The order affecting real estate has not been appealed and the time for filing an appeal has expired.

b. The order affecting real estate has been appealed and the order has been affirmed on appeal and is not further appealable.

c. An appeal from the order affecting real estate has been filed and no stay from that order has been granted by the bankruptcy court to the appealing party.

3. An amendment to the bankruptcy transcript demonstrating the finality of the bankruptcy court proceedings shall terminate any jurisdiction of the district court to stay the effects of the bankruptcy transcript.

Sec. 5. NEW SECTION. 626C.5 AMENDMENT.

A bankruptcy transcript may be amended as necessary to clear title to all real estate located in the county of filing which is affected by any bankruptcy without payment of any additional fee.

Sec. 6. NEW SECTION. 626C.6 FEE.

For filing a bankruptcy transcript, the clerk shall collect a fee in the amount collected for filing and docketing a petition under section 602.8105, subsection 1, paragraph "a".

Sec. 7. NEW SECTION. 626C.7 OPTIONAL PROCEDURE.

The right of a party in interest or the owner of real estate to record all documents necessary to clear title to real estate involved in a bankruptcy case, instead of proceeding under this chapter, remains unimpaired.

Approved April 23, 1998

CHAPTER 1151

PRICE REGULATION FOR TELECOMMUNICATIONS SERVICES PROVIDERS

S.F. 2380

AN ACT relating to the election of a local exchange carrier to be price-regulated.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 476.97, subsection 2, Code 1997, is amended to read as follows:

2. The board, after notice and opportunity for hearing, may approve, modify, or reject the plan. The board shall approve, modify, or reject the plan by no later than ninety days after the date the plan is filed. The local exchange carrier shall have ten days to accept or reject any board modifications to its plan. If the local exchange carrier rejects a modification to its

plan, the board shall reject the plan without prejudice to the local exchange carrier to submit another plan.

Sec. 2. Section 476.97, subsection 3, paragraph a, subparagraphs (1), (3), and (4), Code 1997, are amended to read as follows:

(1) Establishing and changing prices, terms, and conditions for basic communications services. The initial plan for price regulation must include a proposal, which the board shall approve, for reducing the local exchange carrier's average intrastate access service rates to the local exchange carrier's average interstate access service rates in effect as of the last day of the calendar year immediately preceding the date of filing of the plan, as follows:

(a) A local exchange carrier with five hundred thousand or more access lines in this state shall reduce its average intrastate access service rates by at least ~~fifty~~ one hundred percent of the difference between average intrastate access service rates and average interstate access service rates as of the date that the plan ~~is filed and further reduce such rates to the average interstate access service rates within ninety days of the date that the plan~~ becomes effective.

(b) A local exchange carrier with fewer than five hundred thousand but seventy-five thousand or more access lines in this state shall reduce its average intrastate access service rates to its average interstate access service rates in increments of at least twenty-five percent, with the initial reduction to take effect on approval of the plan and equal annual reductions on each anniversary of the approval during the first three years that its plan is in effect.

(c) A local exchange carrier with fewer than seventy-five thousand access lines in this state shall reduce its average intrastate access service rates to its average interstate access service rates with equal annual reductions during a period beginning no more than two years and ending no more than five years from the plan's inception.

(3) The plan shall also provide that the initial prices for basic communications services shall be ~~six~~ three percent less than the rates approved and in effect at the time the local exchange carrier files its plan. A local exchange carrier which elects to reduce its rates by ~~six~~ three percent shall not, at a later time, increase its rates for basic communications services as a result of the carrier's compliance with the board's rules relating to unbundling. In lieu of the ~~six~~ three percent reduction, and prior to the adoption of rules relating to unbundling pursuant to section 476.101, subsection 4, paragraph "a", subparagraph (1), the local exchange carrier may request and the board may establish a regulated revenue requirement in a rate proceeding under section 476.3 or 476.6 commenced after July 1, 1995. After the determination of the local exchange carrier's regulated revenue requirement pursuant to the rate proceeding, the local exchange carrier shall not immediately implement rates designed to recover that regulated revenue requirement. Following the adoption of rules relating to unbundling pursuant to section 476.101, subsection 4, paragraph "a", subparagraph (1), the local exchange carrier shall commence a tariff proceeding for the approval of tariffs implementing such unbundling. The board has six months to complete this tariff proceeding and determine the local exchange carrier's final unbundled rates. The local exchange carrier shall carry forward the regulated revenue requirement determined by the board pursuant to the rate proceeding and design rates that comply with the board's rules relating to unbundling that recover the regulated revenue requirement, and that implement the board's approved rate design established in the tariff proceeding.

In lieu of taking the ~~six~~ three percent reduction, a local exchange carrier that submits a plan for price regulation after the board adopts rules relating to unbundling may file a rate proceeding under section 476.3 or 476.6 and the board may approve rates designed to comply with those rules which allow the carrier to recover the established regulated revenue requirement and that implement the board's approved rate design established in the tariff proceeding.

(4) The plan shall provide for both increases and decreases in the prices for basic communications services reflecting annual changes in inflation and productivity. Prior to January 1, ~~1998~~ 2000, the board shall use the gross domestic product price index, as published by the federal government, for an inflation measure, and two and six-tenths percentage points for

a productivity measure. ~~After~~ On or after January 1, ~~1998~~ 2000, the board by rule may adopt current measures of inflation and productivity.

Sec. 3. Section 476.97, subsection 3, paragraph a, Code 1997, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (1A) The board, during the term of the plan for a local exchange carrier with five hundred thousand or more access lines in this state, may consider further reductions toward economic costs in the local exchange carrier's average intrastate access service rates. The board may consider offsetting such reductions by an explicit subsidy replacement to the extent that such offsets are competitively neutral. In determining economic costs of access service the board shall consider all relevant costs of the service including shared and common costs of the local exchange carrier.

Sec. 4. Section 476.98, Code 1997, is amended to read as follows:

476.98 EARNINGS CALCULATION AND REPORT.

The consumer advocate shall calculate an estimate of the return of a local exchange carrier operating under price regulation pursuant to section 476.97 as if the carrier were subject to rate-of-return regulation. The calculation shall be based upon the annual report of such carrier and other information provided to the consumer advocate by the carrier. The calculation shall be made every two years beginning following the end of the second calendar year after the year in which the plan becomes effective. Notwithstanding section 476.1D, subsection 4, the consumer advocate shall make two calculations pursuant to this section with one calculation taking into account the investment, revenues, and expenses associated with the sale of classified directory advertising, and one calculation not taking into account such investment, revenues, and expenses. The consumer advocate shall provide a written report to the general assembly including the results of this calculation on or before July 1 of the year immediately following the two-year period for which a calculation is made. If, after a review of the information used to make the calculation required in this section, the consumer advocate determines that the public interest would be better served by a different form of rate regulation, the consumer advocate shall provide a recommendation that the general assembly direct the utilities board to implement a different form of rate regulation.

Sec. 5. Section 476.101, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 9. A telecommunications carrier, as defined in the federal Telecommunications Act of 1996, shall not do any of the following:

a. Use customer information in a manner which is not in compliance with 47 U.S.C. § 222.

b. Disparage the services offered by another telecommunications carrier through false or misleading statements.

c. Take any action that disadvantages a customer who has chosen to receive services from another telecommunications carrier.

Approved April 23, 1998

CHAPTER 1152

COOPERATIVES

S.F. 2404

AN ACT relating to cooperatives organized under Code chapter 501 and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 501.101, subsection 1, Code 1997, is amended to read as follows:

1. "Articles" means the cooperative's articles of ~~incorporation~~ association.

Sec. 2. Section 501.101, subsection 2, paragraph b, Code 1997, is amended to read as follows:

b. ~~An individual or general partnership that~~ A person who owns at least one hundred fifty acres of agricultural land and receives as rent a share of the crops or the animals raised on the land if ~~those crops or animals are a significant component of the cooperative's business operations~~ that person is a natural person or a general partnership as organized under chapter 486 in which all partners are natural persons.

Sec. 3. Section 501.101, subsection 4, Code 1997, is amended to read as follows:

4. "Cooperative" means a cooperative ~~corporation~~ association organized under this chapter or converted to this chapter pursuant to section 501.601.

Sec. 4. Section 501.101, subsection 6, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. A general partnership as organized under chapter 486 in which all the partners are natural persons actively engaged in farming as provided in section 9H.1.

Sec. 5. Section 501.101, subsections 7 through 9, Code 1997, are amended to read as follows:

7. "Member" means a person who owns a voting ~~stock~~ interest in a cooperative.

8. ~~"Shareholder"~~ "Interest holder" means a person who owns ~~stock~~ an interest in a cooperative, whether or not that ~~stock~~ interest has voting rights.

9. "Voting ~~stock~~ interest" means ~~stock~~ an interest in a cooperative that has voting rights.

Sec. 6. Section 501.101, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 6A. "Interest" means a voting interest or other interest in a cooperative as described in the cooperative's articles of association.

NEW SUBSECTION. 7A. "Membership" means the interest established by a member owning a voting interest.

Sec. 7. Section 501.102, subsection 2, Code 1997, is amended to read as follows:

2. Unless its articles provide otherwise, a cooperative has perpetual duration and succession in its ~~corporate~~ cooperative name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, ~~without limitation, all of the powers enumerated in sections 490.302 and 490.303~~ but not limited to, all of the following:

a. Sue and be sued, complain, and defend in its name.

b. Have a seal, which may be altered at will, and use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.

c. Make and amend bylaws, not inconsistent with its articles of association or with the laws of this state, for managing the business and regulating the affairs of the cooperative.

d. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and other-

wise deal with, real or personal property, or any legal or equitable interest in property, wherever located.

e. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

f. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity.

g. Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other interests of the cooperative, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.

h. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

i. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

j. Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.

k. Elect directors and appoint officers, employees, and agents of the cooperative, define their duties, fix their compensation, and lend them money and credit.

l. Pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents.

m. Make donations for the public welfare or for charitable, scientific, or educational purposes.

n. Transact any lawful business that will aid governmental policy.

o. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the cooperative.

Sec. 8. Section 501.103, subsections 1, 2, and 5, Code Supplement 1997, are amended to read as follows:

1. Notwithstanding section 9H.4, any person or entity, subject to the limitations set forth in section 501.305, and subject to the cooperative's articles and bylaws, is permitted to own ~~stock~~ interests, including voting ~~stock~~ interests, in a cooperative.

2. Notwithstanding section 9H.4, a cooperative may, directly or indirectly, acquire or otherwise obtain or lease agricultural land in this state, for as long as the cooperative continues to meet the following requirements:

a. Farming entities own sixty percent of the ~~stock~~ interests and are eligible to cast sixty percent of the votes at member meetings.

b. Authorized persons own at least seventy-five percent of the ~~stock~~ interests and are eligible to cast at least seventy-five percent of the votes at member meetings.

c. The cooperative does not, either directly or indirectly, acquire or otherwise obtain or lease agricultural land, if the total agricultural land either directly or indirectly owned or leased by the cooperative would then exceed six hundred forty acres.

5. In the event of a transfer of ~~stock~~ an interest in a cooperative by operation of law as a result of death, divorce, bankruptcy, or pursuant to a security interest, the cooperative may disregard the transfer for purposes of determining compliance with subsection 2 for a period of two years after the transfer.

Sec. 9. Section 501.105, subsection 2, Code 1997, is amended to read as follows:

2. Articles must be signed by all of the ~~incorporators~~ organizers; and all other documents filed with the secretary of state must be signed by one of the cooperative's officers. The printed name and capacity of each signatory must appear in proximity to the signatory's signature. The secretary of state may accept a document containing a copy of the signature. A document is not required to contain a ~~corporate~~ seal, an acknowledgment, or a verification.

Sec. 10. Section 501.106, subsection 2, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A ~~corporation~~ cooperative may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

Sec. 11. Section 501.106, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 5. a. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing the signed original statement of resignation. The statement may include a statement that the registered office is also discontinued. The registered agent shall send a copy of the statement of resignation by certified mail to the cooperative at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that the copies have been sent to the cooperative, including the date the copies were sent.

b. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement was filed.

NEW SUBSECTION. 6. a. A cooperative's registered agent is the cooperative's agent for service of process, notice, or demand required or permitted by law to be served on the cooperative.

b. If a cooperative has no registered agent, or the agent cannot with reasonable diligence be served, the cooperative may be served by registered or certified mail, return receipt requested, addressed to the secretary of the cooperative at its principal office. Service is perfected under this paragraph at the earliest of any of the following:

(1) The date that the cooperative receives the mail.

(2) The date shown on the return receipt, if signed on behalf of the cooperative.

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

c. A cooperative may be served pursuant to this section or as provided in other provisions of this chapter, unless the manner of service is otherwise specifically provided for by statute.

Sec. 12. Section 501.202, subsection 1, paragraph a, Code 1997, is amended to read as follows:

a. The name, address, and occupation of each ~~incorporator~~ organizer.

Sec. 13. Section 501.202, subsection 2, paragraph d, Code 1997, is amended to read as follows:

d. The classes of ~~stock~~ interests and the authorized number of ~~shares~~ interests of each class.

Sec. 14. Section 501.306, Code 1997, is amended to read as follows:

501.306 NUMBER OF VOTES.

A person who is a member ~~or shareholder~~ shall not own more than one membership ~~or share of voting stock~~. The person shall be entitled to cast not more than one vote regarding any matter in which a vote is conducted, including any matter subject to a vote during a cooperative meeting.

Sec. 15. Section 501.403, subsection 2, paragraph e, Code 1997, is amended to read as follows:

e. Action required or permitted by this chapter to be taken at a board meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the ~~corporate~~ cooperative's records reflecting the action taken. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Sec. 16. Section 501.403, subsection 3, Code 1997, is amended to read as follows:

3. A director may waive any notice required by this chapter, the articles, or the bylaws before or after the date and time stated in the notice. The waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or ~~corporate~~ records of the cooperative. A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless the director at the beginning of the meeting or promptly upon the director's arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Sec. 17. Section 501.404, subsection 1, paragraph b, Code Supplement 1997, is amended to read as follows:

b. The material facts of the transaction and the director's interest were disclosed or known to the ~~shareholders~~ members entitled to vote and they authorized, approved, or ratified the transaction. For purposes of this paragraph, a conflict of interest transaction is authorized, approved, or ratified if it receives a majority of the votes entitled to be counted under this paragraph. ~~Shares~~ Voting interests owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and ~~shares~~ voting interests owned by or voted under the control of an entity described in subsection 2, paragraph "a", shall not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under this paragraph. The vote of those ~~shares~~ voting interests, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the votes, whether or not the ~~shareholders~~ members are present, that are entitled to be counted in a vote on the transaction under this paragraph constitutes a quorum for the purpose of taking action under this paragraph.

Sec. 18. Section 501.407, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The articles may contain a provision eliminating or limiting the personal liability of a director, officer, or ~~shareholder~~ interest holder of the cooperative for monetary damages for breach of a fiduciary duty as a director, officer, or ~~shareholder~~ interest holder, provided that the provision does not eliminate or limit liability for any of the following:

Sec. 19. Section 501.407, subsections 1 and 3, Code 1997, are amended to read as follows:

1. A breach of the duty of loyalty to the cooperative or its ~~shareholders~~ interest holders.

3. A transaction from which the director, officer, or ~~shareholder~~ interest holder derives an improper personal benefit.

PART B
INDEMNIFICATION

Sec. 20. NEW SECTION. 501.411 DEFINITIONS.

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

1. "Cooperative" includes any domestic or foreign predecessor entity of a cooperative in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

2. "Director" means an individual who is or was a director of a cooperative or an individual who, while a director of a cooperative, is or was serving at the cooperative's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic cooperative, corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the cooperative's request if the director's duties to the cooperative also impose duties on, or otherwise involve services by, that director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

3. "Expenses" include counsel fees.

4. "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

5. "Official capacity" means:

a. When used with respect to a director, the office of director in a cooperative.

b. When used with respect to an individual other than a director, as contemplated in section 501.417, the office in a cooperative held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the cooperative.

"Official capacity" does not include service for any other foreign or domestic cooperative or any corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise.

6. "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

7. "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Sec. 21. NEW SECTION. 501.412 AUTHORITY TO INDEMNIFY.

1. Except as provided in subsection 4, a cooperative may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if all of the following apply:

a. The individual acted in good faith.

b. The individual reasonably believed either of the following:

(1) In the case of conduct in the individual's official capacity with the cooperative, that the individual's conduct was in the cooperative's best interests.

(2) In all other cases, that the individual's conduct was at least not opposed to the cooperative's best interests.

c. In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

2. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection 1, paragraph "b", subparagraph (2).

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

4. A cooperative shall not indemnify a director under this section in either of the following circumstances:

a. In connection with a proceeding by or in the right of the cooperative in which the director was adjudged liable to the cooperative.

b. In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

5. Indemnification permitted under this section in connection with a proceeding by or in the right of the cooperative is limited to reasonable expenses incurred in connection with the proceeding.

Sec. 22. NEW SECTION. 501.413 MANDATORY INDEMNIFICATION.

Unless limited by its articles of association, a cooperative shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the cooperative against reasonable expenses incurred by the director in connection with the proceeding.

Sec. 23. NEW SECTION. 501.414 ADVANCE FOR EXPENSES.

1. A cooperative may pay for or reimburse the reasonable expenses incurred by a director

who is a party to a proceeding in advance of final disposition of the proceeding if any of the following apply:

a. The director furnishes the cooperative a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 501.412.

b. The director furnishes the cooperative a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct described in section 501.412.

c. A determination is made pursuant to section 501.416 that the facts then known to those making the determination would not preclude indemnification under this part.

2. The undertaking required by subsection 1, paragraph "b", must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

3. Determinations and authorizations of payments under this section shall be made in the manner specified in section 501.416.

Sec. 24. NEW SECTION. 501.415 COURT-ORDERED INDEMNIFICATION.

Unless a cooperative's articles of association provide otherwise, a director of the cooperative who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if it determines either of the following:

1. The director is entitled to mandatory indemnification under section 501.413, in which case the court shall also order the cooperative to pay the director's reasonable expenses incurred to obtain court-ordered indemnification.

2. The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 501.412 or was adjudged liable as described in section 501.412, subsection 4, but if the director was adjudged so liable the director's indemnification is limited to reasonable expenses incurred.

Sec. 25. NEW SECTION. 501.416 DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION.

1. A cooperative shall not indemnify a director under section 501.412 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 501.412.

2. The determination shall be made by any of the following:

a. By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding.

b. If a quorum cannot be obtained under paragraph "a", by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding.

c. By special legal counsel.

(1) The special legal counsel shall be selected by the board of directors or its committee in the manner prescribed in paragraph "a" or "b".

(2) If a quorum of the board of directors cannot be obtained under paragraph "a" and a committee cannot be designated under paragraph "b", the special legal counsel shall be selected by majority vote of the full board of directors, in which selection directors who are parties may participate.

d. By the members, but voting interests owned by or voted under the control of directors who are at the time parties to the proceeding shall not be voted on the determination.

3. Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible,

except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection 2, paragraph "c", to select counsel.

Sec. 26. NEW SECTION. 501.417 INDEMNIFICATION OF OFFICERS, EMPLOYEES, AND AGENTS.

Unless a cooperative's articles of association provide otherwise, all of the following apply:

1. An officer of the cooperative who is not a director is entitled to mandatory indemnification under section 501.413, and is entitled to apply for court-ordered indemnification under section 501.415, in each case to the same extent as a director.

2. The cooperative may indemnify and advance expenses under this part to an officer, employee, or agent of the cooperative who is not a director to the same extent as to a director.

3. A cooperative may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent consistent with law that may be provided by its articles of association, bylaws, general or specific action of its board of directors, or contract.

Sec. 27. NEW SECTION. 501.418 INSURANCE.

A cooperative may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the cooperative, or who, while a director, officer, employee, or agent of the cooperative, is or was serving at the request of the cooperative as a director, officer, partner, trustee, employee, or agent of another foreign or domestic cooperative, corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by that individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the cooperative would have power to indemnify that individual against the same liability under section 501.412 or 501.413.

Sec. 28. NEW SECTION. 501.419 APPLICATION OF THIS PART.

Except as limited in section 501.412, subsection 4, paragraph "a", and subsection 5 with respect to proceedings by or in the right of the cooperative, the indemnification and advancement of expenses provided by, or granted pursuant to, sections 501.411 through 501.418 are not exclusive of any other rights to which persons seeking indemnification or advancement of expenses are entitled under a provision in the articles of association or bylaws, agreements, vote of the members or disinterested directors, or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding the office. However, such provisions, agreements, votes, or other actions shall not provide indemnification for a breach of a director's duty of loyalty to the cooperative or its interest holders, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person seeking indemnification derives an improper personal benefit.

Sec. 29. Section 501.501, Code Supplement 1997, is amended to read as follows:

501.501 ISSUANCE AND TRANSFER OF ~~STOCK~~ INTERESTS.

1. A cooperative may issue the number of ~~shares~~ interests of each class authorized by its articles. A cooperative may issue fractional ~~shares~~ interests. ~~Stock~~ Interests may be represented by certificates or by entry on the cooperative's ~~stock~~ interest record books.

2. A member shall not sell or otherwise transfer voting ~~stock~~ interests to any person. A member may be restricted or limited from selling or otherwise transferring any other class of ~~stock~~ interests of the cooperative as provided by the cooperative's articles of ~~incorporation~~ association or bylaws or an agreement executed between the cooperative and the member.

3. A cooperative may acquire its own ~~stock~~ interests, and ~~shares~~ interests so acquired constitute authorized but unissued ~~shares~~ interests.

Sec. 30. Section 501.502, subsection 2, paragraph a, Code Supplement 1997, is amended to read as follows:

a. The member has attempted to transfer ~~stock~~ any interest to a person who is not a member and has not been approved for membership.

Sec. 31. Section 501.502, subsection 4, Code Supplement 1997, is amended to read as follows:

4. The cooperative shall redeem, without interest, the voting ~~stock~~ interest of a terminated member within one year after the termination of the membership for the fair market value of the ~~stock~~ interest. If the amount originally paid by the member for the voting ~~stock~~ interest was less than ten percent of the total amount the member paid for all classes of ~~stock~~ interests, the cooperative may redeem the voting ~~stock~~ interest for its issue price if the cooperative's articles of ~~incorporation~~ association grant the cooperative this authority.

Sec. 32. Section 501.502, subsection 5, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

The cooperative shall redeem, without interest, all of the terminated member's allocated patronage refunds and preferred ~~stock~~ interests originally issued as allocated patronage refunds for the issue price as follows:

Sec. 33. Section 501.503, subsections 1 and 4, Code 1997, are amended to read as follows:

1. If the articles authorize the payment of ~~dividends~~ distributions on a class of ~~stock~~ interests, then the directors may declare ~~dividends~~ a distribution pursuant to the articles. ~~Dividends may~~ Distributions shall not exceed eight percent of the value of the ~~stock~~ interest in each fiscal year. The members may control the amount that is allocated under this subsection.

4. The cooperative shall have an unconditional binding obligation to distribute to the members all remaining net savings as determined under the United States Internal Revenue Code. These net savings shall be allocated to each member in proportion to the business the member did with the cooperative during the preceding fiscal year. The net savings may be separately calculated for two or more categories of business, and allocated to the members on the basis of business done within each of these categories. Net savings shall be distributed in the form of cash or ~~stock~~ interests, or a combination of cash and ~~stock~~ interests, as determined by the board.

Sec. 34. Section 501.603, subsection 2, Code 1997, is amended to read as follows:

2. A cooperative may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the good will, on the terms and conditions and for the consideration determined by the board, which consideration may include the ~~preferred stock~~ interests of another cooperative, if the board recommends the proposed transaction to the members, and the members approve it by the vote of two-thirds of the votes cast on a ballot in which a majority of all votes are cast. The board may condition its submission of the proposed transaction on any basis.

PART B
MERGER AND CONSOLIDATION BETWEEN COOPERATIVES
ORGANIZED UNDER THIS CHAPTER

Sec. 35. NEW SECTION. 501.611 DEFINITIONS.

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

1. "Consolidation" means the uniting of two or more cooperatives organized under this chapter into one cooperative organized under this chapter, in such manner that a new cooperative is formed, and the new cooperative absorbs the others, which cease to exist as separate entities.

2. "Dissenting member" means a voting member who votes in opposition to the plan of merger or consolidation and who makes a demand for payment of the fair value under section 501.615.

3. "Fair value" means the cash price that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell.

4. "Issue price" means the amount paid for an interest in the old cooperative or the amount stated in a notice of allocation of patronage distributions.

5. "Merger" means the uniting of two or more cooperatives organized under this chapter into one cooperative organized under this chapter, in such manner that one of the merging associations continues to exist and absorbs the others, which cease to exist as entities. "Merger" does not include the acquisition, by purchase or otherwise, of the assets of one cooperative by another, unless the acquisition only becomes effective by the filing of articles of merger by the cooperatives and the issuance of a certificate of merger pursuant to sections 501.617 and 501.618.

6. "New cooperative" is the cooperative resulting from the consolidation of two or more cooperatives organized under this chapter.

7. "Old cooperative" means the cooperative in which the member owns or owned a membership prior to merger or consolidation.

8. "Surviving cooperative" is the cooperative resulting from the merger of two or more cooperatives organized under this chapter.

Sec. 36. NEW SECTION. 501.612 MERGER.

Any two or more cooperatives may merge into one cooperative in the manner provided in this section. The board of directors of each cooperative shall, by resolution adopted by a majority vote of all members of each board, approve a plan of merger which shall set forth all of the following:

1. The names of the cooperatives proposing to merge and the name of the surviving cooperative.

2. The terms and conditions of the proposed merger.

3. A statement of any changes in the articles of association of the surviving cooperative.

4. Other provisions deemed necessary or desirable.

Sec. 37. NEW SECTION. 501.613 CONSOLIDATION.

Any two or more cooperatives may be consolidated into a new cooperative as provided in this section. The board of directors of each cooperative shall, by resolution adopted by a majority vote of all members of each board, approve a plan of consolidation setting forth:

1. The names of the cooperatives proposing to consolidate and the name of the new cooperative.

2. The terms and conditions of the proposed consolidation.

3. With respect to the new cooperative, all of the statements required to be set forth in articles of association for cooperatives.

4. Other provisions deemed necessary or desirable.

Sec. 38. NEW SECTION. 501.614 VOTE OF MEMBERS.

1. The board of directors of a cooperative, upon approving a plan of merger or consolidation, shall, by motion or resolution, direct that the plan be submitted to a vote at a meeting of members, which may be either an annual or special meeting. Written notice shall be given not less than twenty days prior to the meeting, either personally or by mail, to each voting member of record. The notice shall state the time, place, and purpose of the meeting, and a summary of the plan of merger or consolidation shall be included in or enclosed with the notice.

2. At the meeting, a ballot of the members who are entitled to vote in the affairs of the association shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved if two-thirds of the members vote affirmatively on

a ballot in which a majority of all voting members participate. Voting may be by mail ballot notwithstanding any contrary provision in the articles of association or bylaws.

Sec. 39. NEW SECTION. 501.615 OBJECTION OF MEMBERS — PURCHASE OF INTERESTS UPON DEMAND.

1. If a member of a cooperative which is a party to a merger or consolidation files with the cooperative, prior to or at the meeting of members at which the plan is submitted to a vote, a written objection to the plan of merger or consolidation, and votes in opposition to the plan, and the member, within twenty days after the merger or consolidation is approved by the other members, makes written demand on the surviving or new cooperative for payment of the fair value of that member's interest as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new cooperative shall pay to the member, upon surrender of that person's certificate of membership or interests in the cooperative, the fair value of that person's interest as provided in section 501.616. A member who fails to make demand within the twenty-day period is conclusively presumed to have consented to the merger or consolidation and is bound by its terms.

2. In the event that a dissenting member does business with the surviving or new cooperative before payment has been made for that person's membership, the dissenting member is deemed to have consented to the merger or consolidation and to have waived all further rights as a dissenting member.

Sec. 40. NEW SECTION. 501.616 VALUE DETERMINED.

1. Within twenty days after the merger or consolidation is effected, the surviving or new cooperative shall make a written offer to each dissenting member to pay a specified sum deemed by the surviving or new cooperative to be the fair value of that dissenting member's interest in the old cooperative. This offer shall be accompanied by a balance sheet of the old cooperative as of the latest available date, a profit and loss statement of the old cooperative for the twelve-month period ending on the date of the balance sheet, and a list of the dissenting member's interests in the old cooperative. If the dissenting member does not agree that the sum stated in the notice represents the fair value of the member's interest, then the member may file a written objection with the surviving or new cooperative within twenty days after receiving the notice. A dissenting member who fails to file the objection within the twenty-day period is conclusively presumed to have consented to the fair value stated in the notice.

2. If the surviving or new cooperative receives any objections to fair values, then within ninety days after the merger or consolidation is effected, the surviving or new cooperative shall file a petition in district court asking for a finding and determination of the fair value of each type of equity. The action shall be tried as an equitable action.

3. The fair value of a dissenting member's interest in the old cooperative shall be determined as of the day preceding the merger or consolidation by taking the lesser of either the issue price of the dissenting member's membership, deferred patronage, and any other interests in the cooperative, or the amount determined by subtracting the old cooperative's debts from the fair market value of the old cooperative's assets, dividing the remainder by the total issue price of all memberships, deferred patronage and all other interests, and then multiplying the quotient from this division by the total issue price of a dissenting member's membership, deferred patronage, and other interests.

4. The surviving or new cooperative shall pay to each dissenting member in cash within sixty days after the merger or consolidation the amount paid in cash by the dissenting member for that member's interest in the old cooperative. The surviving or new cooperative shall pay the remainder of each dissenting member's fair value in ten annual equal payments. The final payment must be made not later than fifteen years after the merger or consolidation. The value of the deferred patronage or interests issued to evidence deferred patronage shall be considered a liability of the surviving or new cooperative as reflected in the accounts of the surviving or new cooperative until the value of the deferred patronage or

interests issued to evidence deferred patronage is paid in full to the dissenting member. A dissenting member who is a natural person who dies before receiving the fair value shall have all of the person's fair value paid with the same priority as if the person was a member at the time of death.

Sec. 41. NEW SECTION. 501.617 ARTICLES OF MERGER OR CONSOLIDATION.

Upon approval, articles of merger or articles of consolidation shall be executed by each cooperative as provided in section 501.105. The articles must include the following:

1. The plan of merger or the plan of consolidation.
2. As to each cooperative, the number of members.
3. As to each cooperative, the number of members who voted for and against the plan at the meeting called for that purpose.

The articles of merger or articles of consolidation shall be delivered to the secretary of state for filing.

The secretary of state, upon the filing of articles of merger or articles of consolidation, shall issue a certificate of merger or a certificate of consolidation and send the certificate to the surviving or new cooperative, or to its representative.

Sec. 42. NEW SECTION. 501.618 WHEN EFFECTIVE — EFFECT.

A merger or consolidation shall become effective upon the date that the certificate of merger or the certificate of consolidation is issued by the secretary of state, or the effective date specified in the articles of merger or articles of consolidation, whichever is later.

When a merger or consolidation has become effective:

1. The several cooperatives which are parties to the plan of merger or consolidation shall be a single cooperative, which, in the case of a merger, shall be that cooperative designated in the plan of merger as the surviving cooperative, and, in the case of consolidation, shall be that cooperative designated in the plan of consolidation as the new cooperative.
2. The separate existence of all cooperatives which are parties to the plan of merger or consolidation, except the surviving or new cooperative, shall cease.
3. The surviving or new cooperative shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a cooperative organized under this chapter.
4. The surviving or new cooperative shall possess all the rights, privileges, immunities, and franchises, public as well as private, of each of the merging or consolidating cooperatives.
5. All property, real, personal, and mixed, and all debts due on whatever account, including all choses in action, and all and every other interest, of or belonging to or due to each of the cooperatives merged or consolidated, shall be transferred to and vested in the surviving or new cooperative without further act or deed. The title to any real estate, or any interest in real estate vested in any of the cooperatives merged or consolidated, shall not revert or be in any way impaired by reason of the merger or consolidation.
6. A surviving or new cooperative shall be responsible and liable for all obligations and liabilities of each of the cooperatives merged or consolidated.
7. Any claim existing or action or proceeding pending by or against any of the cooperatives merged or consolidated may be prosecuted as if the merger or consolidation had not taken place, or the surviving or new cooperative may be substituted for the merged or consolidated cooperative. Neither the rights of creditors nor any liens upon the property of any cooperative shall be impaired by a merger or consolidation.
8. In the case of a merger, the articles of association of the surviving cooperative shall be deemed to be amended to the extent that changes in its articles of association are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation which are required or permitted to be set forth in the articles of association of a cooperative shall be deemed to be the original articles of association of the new cooperative.

9. The aggregate amount of the net assets of the merging or consolidating cooperative which was available for the payment of distributions immediately prior to the merger or consolidation, to the extent that the amount is not transferred to stated capital by the issuance of interests or otherwise, shall continue to be available for the payment of distributions by the surviving or new cooperative.

Sec. 43. NEW SECTION. 501.619 ABANDONMENT BEFORE FILING.

At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions set forth in the plan of merger or consolidation.

SUBCHAPTER VII
RECORDS AND REPORTS
PART A
RECORDS

Sec. 44. NEW SECTION. 501.701 RECORDS.

1. A cooperative shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the cooperative.

2. A cooperative shall maintain appropriate accounting records.

3. A cooperative or its agent shall maintain a record of its interest holders in a form that permits preparation of a list of the names and addresses of all interest holders in alphabetical order by class of interests showing the number and class of interests held by each.

4. A cooperative shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. A cooperative shall keep a copy of the following records:

a. Its articles or restated articles of association and all amendments to them currently in effect.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. Resolutions adopted by its board of directors creating one or more classes or series of interests, and fixing their relative rights, preferences, and limitations, if the interests issued pursuant to those resolutions are outstanding.

d. The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years.

e. All written communications to interest holders generally within the past three years, including the financial statements furnished for the past three years under section 501.711.

f. A list of the names and business addresses of its current directors and officers.

g. Its most recent biennial* report delivered to the secretary of state under section 501.713.

Sec. 45. NEW SECTION. 501.702 INSPECTION OF RECORDS BY INTEREST HOLDERS.

1. An interest holder of a cooperative is entitled to inspect and copy, during regular business hours at the cooperative's principal office, any of the records of the cooperative described in section 501.701, subsection 5, if the interest holder gives the cooperative written notice of the interest holder's demand at least five business days before the date on which the interest holder wishes to inspect and copy.

2. An interest holder of a cooperative is entitled to inspect and copy, during regular business hours at a reasonable location specified by the cooperative, any of the following records of the cooperative if the interest holder meets the requirements of subsection 3 and gives the cooperative written notice of the interest holder's demand at least five business days before the date on which the interest holder wishes to inspect and copy any of the following:

* The word "annual" probably intended

a. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the cooperative, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection 1 of this section.

b. Accounting records of the cooperative.

c. The record of interest holders.

3. An interest holder may inspect and copy the records described in subsection 2 only if:

a. The interest holder's demand is made in good faith and for a proper purpose.

b. The interest holder describes with reasonable particularity the interest holder's purpose and the records the interest holder desires to inspect.

c. The records are directly connected with the interest holder's purpose.

4. The right of inspection granted by this section shall not be abolished or limited by a cooperative's articles of association or bylaws.

5. This section does not affect either of the following:

a. The right of a member to obtain information under section 501.702 or the right of an interest holder to obtain information, if the interest holder is in litigation with the cooperative, to the same extent as any other litigant.

b. The power of a court, independently of this chapter, to compel the production of cooperative records for examination.

Sec. 46. NEW SECTION. 501.703 SCOPE OF INSPECTION RIGHT.

1. An interest holder's agent or attorney has the same inspection and copying rights as the interest holder the agent or attorney represents.

2. The right to copy records under section 501.702 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other technological means.

3. The cooperative may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the interest holder. The charge shall not exceed the estimated cost of production or reproduction of the records.

4. The cooperative may comply with an interest holder's demand to inspect the record of interest holders under section 501.702, subsection 2, paragraph "c", by providing the interest holder with a list of its interest holders that was compiled no earlier than the date of the interest holder's demand.

Sec. 47. NEW SECTION. 501.704 COURT-ORDERED INSPECTION.

1. If a cooperative does not allow an interest holder who complies with section 501.702, subsection 1, to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the cooperative's principal office or, if none in this state, its registered office is located may summarily order inspection and copying of the records demanded at the cooperative's expense upon application of the interest holder.

2. If a cooperative does not within a reasonable time allow an interest holder to inspect and copy any other records, the interest holder who complies with section 501.702, subsections 2 and 3, may apply to the district court in the county where the cooperative's principal office or, if not in this state, its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

3. If the court orders inspection and copying of the records demanded, it shall also order the cooperative to pay the interest holder's costs, including reasonable counsel fees, incurred to obtain the order unless the cooperative proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the interest holder to inspect the records demanded.

4. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding interest holder.

PART B
REPORTS

Sec. 48. NEW SECTION. 501.711 FINANCIAL STATEMENTS FOR INTEREST HOLDERS.

A cooperative shall prepare annual financial statements, which may be consolidated or combined statements of the cooperative and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and an income statement for that year. Upon written request from an interest holder, a cooperative, at its expense, shall furnish to that interest holder the financial statements requested. If the annual financial statements are reported upon by a public accountant, the report must accompany the financial statements.

Sec. 49. NEW SECTION. 501.712 OTHER REPORTS TO INTEREST HOLDERS.

1. If a cooperative indemnifies or advances expenses to a director under sections 501.412 through 501.415 in connection with a proceeding by or in the right of the cooperative, the cooperative shall report the indemnification or advance in writing to the members with or before the notice of the next members' meeting.

2. If a cooperative issues or authorizes the issuance of interests for promissory notes or for promises to render services in the future, the cooperative shall report in writing to the members the number of interests authorized or issued, and the consideration received by the cooperative, with or before the notice of the next members' meeting.

Sec. 50. NEW SECTION. 501.713 ANNUAL REPORT FOR SECRETARY OF STATE.

1. Each cooperative authorized to transact business in this state shall deliver to the secretary of state for filing an annual report that sets forth all of the following:

a. The name of the cooperative.

b. The address of its registered office and the name of its registered agent at that office in this state, together with the consent of any new registered agent.

c. The address of its principal office.

d. The names and addresses of the president, secretary, treasurer, and one member of the board of directors.

2. Information in the annual report must be current as of the first day of January of the year in which the report is due. The report shall be executed on behalf of the cooperative and signed as provided in section 501.105 or by any other person authorized by the board of directors of the cooperative.

3. The first annual report shall be delivered to the secretary of state between January 1 and April 1 of the first even-numbered year following the calendar year in which a cooperative was organized. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 1 of the following calendar years. A filing fee for the annual report shall be determined by the secretary of state.

4. If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting cooperative in writing and return the report to the cooperative for correction.

5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the annual report, provided that the form contains the information required in section 501.106. If the secretary of state determines that an annual report does not contain the information required by this section but otherwise meets the requirements of section 501.106 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent, effective as provided in section 501.105, before returning the biennial* report to the cooperative as provided in this section. A statement of change of registered office or agent pursuant to this subsection shall be executed by a person authorized to execute the annual report.

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* The word "annual" probably intended

DIVISION VIII
DISSOLUTION
PART A
GENERAL

Sec. 51. NEW SECTION. 501.801 DISSOLUTION BY ORGANIZERS OR INITIAL DIRECTORS.

A majority of the organizers or initial directors of a cooperative that has not issued interests or has not commenced business may dissolve the cooperative by delivering to the secretary of state for filing articles of dissolution that set forth all of the following:

1. The name of the cooperative.
2. The date of its organization.
3. Either of the following:
a. That none of the cooperative's interests have been issued.
b. That the cooperative has not commenced business.
4. That no debt of the cooperative remains unpaid.
5. That the net assets of the cooperative remaining after winding up have been distributed in accordance with this chapter and the articles of association of the cooperative.
6. That a majority of the organizers or initial directors authorized the dissolution.

Sec. 52. NEW SECTION. 501.802 DISSOLUTION BY BOARD OF DIRECTORS AND MEMBERS.

1. A cooperative's board of directors may propose dissolution for submission to the members.
2. For a proposal to dissolve to be adopted both of the following must apply:
a. The board of directors must recommend dissolution to the members unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members.
b. The members entitled to vote must approve the proposal to dissolve as provided in subsection 5.
3. The board of directors may condition its submission of the proposal for dissolution on any basis.
4. The cooperative shall notify each member of a meeting to consider dissolution in accordance with section 501.302. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the cooperative.
5. Unless the articles of association or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by voting groups, the proposal to dissolve must be approved by a majority of all the votes entitled to be cast on that proposal in order to be adopted.

Sec. 53. NEW SECTION. 501.803 ARTICLES OF DISSOLUTION.

1. At any time after dissolution is authorized, the cooperative may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth all of the following:
a. The name of the cooperative.
b. The date dissolution was authorized.
c. If dissolution was approved by the members, both of the following:
(1) The number of votes entitled to be cast on the proposal to dissolve.
(2) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.
2. A cooperative is dissolved upon the effective date of its articles of dissolution.

Sec. 54. NEW SECTION. 501.804 REVOCATION OF DISSOLUTION.

1. A cooperative may revoke its dissolution within one hundred twenty days of the effective date of the dissolution.

2. Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without member action.

3. After the revocation of dissolution is authorized, the cooperative may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth all of the following:

a. The name of the cooperative.

b. The effective date of the dissolution that was revoked.

c. The date that the revocation of dissolution was authorized.

d. If the cooperative's board of directors or organizers revoked the dissolution, a statement to that effect.

e. If the cooperative's board of directors revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

f. If member action was required to revoke the dissolution, the information required by section 501.803, subsection 1, paragraph "c".

4. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

5. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution as if the dissolution had never occurred.

Sec. 55. NEW SECTION. 501.805 EFFECT OF DISSOLUTION.

1. A dissolved cooperative continues its existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs, including any of the following:

a. Collecting its assets.

b. Disposing of its properties that will not be distributed in kind in accordance with this chapter and the cooperative's articles of association.

c. Discharging or making provision for discharging its liabilities.

d. Distributing its remaining property in accordance with this chapter and the cooperative's articles of association.

e. Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution of a cooperative does not do any of the following:

a. Transfer title to the cooperative's property.

b. Prevent transfer of its interests, although the authorization to dissolve may provide for closing the cooperative's interest transfer records.

c. Subject its directors or officers to standards of conduct different from those prescribed in section 501.406.

d. Change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws.

e. Prevent commencement of a proceeding by or against the cooperative in its name.

f. Abate or suspend a proceeding pending by or against the cooperative on the effective date of dissolution.

g. Terminate the authority of the registered agent of the cooperative.

Sec. 56. NEW SECTION. 501.805A DISTRIBUTION OF ASSETS.

Upon the cooperative's dissolution, the cooperative's assets shall first be used to pay expenses necessary to carry out the dissolution and liquidation of assets, then be used to pay the cooperative's obligations other than the payment of deferred patronage or interests issued as deferred patronage, and the remainder shall be paid in the manner set forth in the cooperative's articles of association.

Sec. 57. NEW SECTION. 501.806 KNOWN CLAIMS AGAINST DISSOLVED COOPERATIVE.

1. A dissolved cooperative may dispose of the known claims against it by following the procedure described in this section.

2. The dissolved cooperative shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must do all of the following:

a. Describe information that must be included in a claim.

b. Provide a mailing address where a claim may be sent.

c. State the deadline, which shall not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved cooperative must receive the claim.

d. State that the claim will be barred if not received by the deadline.

3. A claim against the dissolved cooperative is barred if either of the following occur:

a. A claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved cooperative by the deadline.

b. A claimant whose claim was rejected by the dissolved cooperative does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

4. For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Sec. 58. NEW SECTION. 501.807 UNKNOWN CLAIMS AGAINST DISSOLVED COOPERATIVE.

1. A dissolved cooperative may also publish notice of its dissolution and request that persons with claims against the cooperative present them in accordance with the notice.

2. The notice must meet all of the following requirements:

a. Be published one time in a newspaper of general circulation in the county where the dissolved cooperative's principal office or, if not in this state, its registered office is or was last located.

b. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. State that a claim against the cooperative will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

3. If the dissolved cooperative publishes a newspaper notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved cooperative within five years after the publication date of the newspaper notice:

a. A claimant who did not receive written notice under section 501.806.

b. A claimant whose claim was timely sent to the dissolved cooperative but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim may be enforced under this section in either of the following ways:

a. Against the dissolved cooperative, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against an interest holder of the dissolved cooperative to the extent of the interest holder's pro rata share of the claim or the cooperative assets distributed to the interest holder in liquidation, whichever is less, but an interest holder's total liability for all claims under this section shall not exceed the total amount of assets distributed to the interest holder in liquidation.

PART B
ADMINISTRATIVE DISSOLUTION

Sec. 59. NEW SECTION. 501.811 GROUNDS FOR ADMINISTRATIVE DISSOLUTION.

The secretary of state may commence a proceeding under section 501.812 to administratively dissolve a cooperative if any of the following apply:

1. The cooperative has not delivered an annual report to the secretary of state in a form that meets the requirements of section 501.713, within sixty days after it is due, or has not paid the filing fee as determined by the secretary of state, within sixty days after it is due.

2. The cooperative is without a registered agent or registered office in this state for sixty days or more.

3. The cooperative does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

4. The cooperative's period of duration stated in its articles of association expires.

Sec. 60. NEW SECTION. 501.812 PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE DISSOLUTION.

1. If the secretary of state determines that one or more grounds exist under section 501.811 for dissolving a cooperative, the secretary of state shall serve the cooperative with written notice of the secretary of state's determination under section 501.106.

2. If the cooperative does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section 501.106, the secretary of state shall administratively dissolve the cooperative by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the cooperative under section 501.106.

3. A cooperative administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs under section 501.805 and notify claimants under sections 501.806 and 501.807.

4. The administrative dissolution of a cooperative does not terminate the authority of its registered agent.

5. The secretary of state's administrative dissolution of a cooperative pursuant to this section appoints the secretary of state the cooperative's agent for service of process in any proceeding based on a cause of action which arose during the time the cooperative was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the cooperative. Upon receipt of process, the secretary of state shall serve a copy of the process on the cooperative as provided in section 501.106. This subsection does not preclude service on the cooperative's registered agent, if any.

Sec. 61. NEW SECTION. 501.813 REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

1. A cooperative administratively dissolved under section 501.812 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the cooperative at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution have been eliminated.

c. State a name that satisfies the requirements of section 501.104.

d. State the federal tax identification number of the cooperative.

2. a. The secretary of state shall refer the federal tax identification number contained in the application for reinstatement to the department of revenue and finance. The department of revenue and finance shall report to the secretary of state the tax status of the cooperative. If the department reports to the secretary of state that a filing delinquency or liability exists

against the cooperative, the secretary of state shall not cancel the certificate of dissolution until the filing delinquency or liability is satisfied.

b. If the secretary of state determines that the application contains the information required by subsection 1, and that a delinquency or liability reported pursuant to paragraph "a" has been satisfied, and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the cooperative under section 501.106. If the name of the cooperative as provided in subsection 1, paragraph "c", is different than the name in subsection 1, paragraph "a", the certificate of reinstatement shall constitute an amendment to the articles of association insofar as it pertains to the name.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

Sec. 62. NEW SECTION. 501.814 APPEAL FROM DENIAL OF REINSTATEMENT.

1. If the secretary of state denies a cooperative's application for reinstatement following administrative dissolution, the secretary of state shall serve the cooperative under section 501.106 with a written notice that explains the reason or reasons for denial.

2. The cooperative may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The cooperative appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the cooperative's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved cooperative or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

PART C
JUDICIAL DISSOLUTION

Sec. 63. NEW SECTION. 501.821 GROUNDS FOR JUDICIAL DISSOLUTION.

The district court may dissolve a cooperative in any of the following ways:

1. A proceeding by the attorney general, if it is established that either of the following apply:

a. The cooperative obtained its articles of association through fraud.

b. The cooperative has continued to exceed or abuse the authority conferred upon it by law.

2. A proceeding by a member if it is established that any of the following conditions exist:

a. The directors are deadlocked in the management of the cooperative's affairs, the members are unable to break the deadlock, and either irreparable injury to the cooperative is threatened or being suffered, or the business and affairs of the cooperative can no longer be conducted to the advantage of the interest holders generally, because of the deadlock.

b. The directors or those in control of the cooperative have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.

c. The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired.

d. The cooperative's assets are being misapplied or wasted.

3. A proceeding by a creditor if it is established that either of the following apply:

a. The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the cooperative is insolvent.

b. The cooperative has admitted in writing that the creditor's claim is due and owing and the cooperative is insolvent.

4. A proceeding by the cooperative to have its voluntary dissolution continued under court supervision.

Sec. 64. NEW SECTION. 501.822 PROCEDURE FOR JUDICIAL DISSOLUTION.

1. Venue for a proceeding by the attorney general to dissolve a cooperative lies in Polk county district court. Venue for a proceeding brought by any other party named in section 501.821 lies in the county where a cooperative's principal office or, if not in this state, its registered office is or was last located.

2. It is not necessary to make interest holders parties to a proceeding to dissolve a cooperative unless relief is sought against them individually.

3. A court in a proceeding brought to dissolve a cooperative may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the cooperative's assets wherever located, and carry on the business of the cooperative until a full hearing can be held.

Sec. 65. NEW SECTION. 501.823 RECEIVERSHIP OR CUSTODIANSHIP.

1. A court in a judicial proceeding brought to dissolve a cooperative may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the cooperative. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the cooperative and all its property wherever located.

2. The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

3. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time.

a. Among other powers, the receiver may do any of the following:

(1) Dispose of all or any part of the assets of the cooperative wherever located, at a public or private sale, if authorized by the court.

(2) Sue and defend in the receiver's own name as receiver of the cooperative in all courts of this state.

b. The custodian may exercise all of the powers of the cooperative, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the cooperative in the best interests of its interest holders and creditors.

4. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the cooperative, its interest holders, and creditors.

5. The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the cooperative or proceeds from the sale of the assets.

Sec. 66. NEW SECTION. 501.824 DECREE OF DISSOLUTION.

1. If after a hearing the court determines that one or more grounds for judicial dissolution described in section 501.821 exist, it may enter a decree dissolving the cooperative and specifying the effective date of the dissolution, and the clerk of the district court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

2. After entering the decree of dissolution, the court shall direct the winding up and liquidation of the cooperative's business and affairs in accordance with section 501.805 and the notification of claimants in accordance with sections 501.806 and 501.807.

PART D
STATE TREASURER

Sec. 67. NEW SECTION. 501.831 DEPOSIT WITH STATE TREASURER.

Assets of a dissolved cooperative that should be transferred to a creditor, claimant, or interest holder of the cooperative who cannot be found or who is not competent to receive

them shall be reduced to cash and deposited with the treasurer of state or other appropriate state official for safekeeping. When the creditor, claimant, or interest holder furnishes satisfactory proof of entitlement to the amount deposited, the treasurer of state or other appropriate state official shall pay the creditor, claimant, or interest holder or that person's representative the amount.

Sec. 68. Sections 501.107 and 501.602, Code 1997, are repealed. Sections 501.408 and 501.604, Code Supplement 1997, are repealed.

Sec. 69. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 23, 1998

CHAPTER 1153

COUNTY CONTRACTS FOR PUBLIC IMPROVEMENTS AND REDEMPTION OF PARCELS AT PROPERTY TAX SALES

H.F. 2049

AN ACT relating to redemption by a county of certain parcels sold at property tax sale.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 331.341, subsection 4, Code 1997, is amended to read as follows:

4. If the contract price for a public improvement is ~~five~~ fifteen thousand dollars or more, the board shall require a contractor's bond in accordance with chapter 573.

Sec. 2. Section 447.9, Code Supplement 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The county in which the parcel is located has the right of redemption for owner-occupied residential parcels as provided in this paragraph. If a person is unable to contribute to the public revenue, the person may file a petition, duly sworn to, with the board of supervisors, stating that fact and giving a statement of parcels, as defined in section 445.1, owned or possessed by the petitioner, and other information as the board may require. The board of supervisors may order the county auditor to redeem a parcel owned or possessed by the petitioner from the holder of a certificate of purchase upon payment by the county to the certificate holder of the amount necessary to redeem under section 447.1. Each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price, and that amount shall be deducted from the next month's disbursement made by the county to the tax-levying or tax-certifying body. Interest paid by the county to the certificate holder pursuant to section 447.1 shall be paid solely by the county and shall not be charged against the other tax-levying and tax-certifying bodies. Taxes charged and paid by the tax-levying or tax-certifying body in this manner shall be treated as suspended taxes pursuant to sections 427.8 through 427.12. Notwithstanding section 447.14, a county may redeem pursuant to this paragraph for tax sales held before, on, or after July 1, 1998. A county may limit the number of times a taxpayer may file a petition for assistance under this paragraph.

Approved April 23, 1998

CHAPTER 1154

USE TAX EXEMPTION FOR VEHICLES USED IN INTERSTATE COMMERCE

H.F. 2541

AN ACT relating to the use tax exemption for vehicles used substantially in interstate commerce.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 423.4, subsection 10, Code Supplement 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. For the purposes of this subsection, if a vehicle meets the requirement that twenty-five percent of the miles operated accrues in states other than Iowa in each year of the first four-year period of operation, the exemption from use tax shall continue until the vehicle is sold or transferred. If the vehicle is found to have not met the exemption requirements or the exemption was revoked, the value of the vehicle upon which the use tax shall be imposed is the book or market value, whichever is less, at the time the exemption requirements were not met or the exemption was revoked.

Approved April 23, 1998

CHAPTER 1155

DEPARTMENT OF HUMAN SERVICES INSTITUTIONS AND SERVICES — MISCELLANEOUS PROVISIONS

H.F. 2348

AN ACT relating to institutions and facilities administered by the department of human services and to similar and related services.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. INSTITUTIONS ADMINISTERED BY THE DEPARTMENT OF HUMAN SERVICES — LEGISLATIVE FINDINGS AND INTENT. During the 1997 legislative interim, the human services restructuring task force of the general assembly visited the state institutions administered by the department of human services. The task force members heard from concerned parents, service consumers, service system administrators, state and community-based providers, advocates for the needs of persons with disabilities, and many other persons interested in the service system for persons with disabilities and juveniles. Based upon the task force's review and recommendations, the general assembly makes the following findings concerning these institutions:

1. While the department of human services institutions were originally established as single-purpose care facilities, they are evolving into diversified, multiuse regional resource centers with a mixture of public and private providers.

2. Department of human services facilities provide high quality care at a relatively reasonable cost.

3. The buildings at the department of human services institutions have been well maintained and are located to serve as community resource centers.

4. Community-based approaches and individually designed services and support are recognized as the most desirable means of meeting the needs of persons with disabilities. A

movement from an institution-oriented system to a community and individual-oriented system has occurred over time while community resources and individualized services have been developed. The general assembly recognizes the role of the department of human services and others in furthering this movement. As part of this movement, the state institutions are evolving to be state-of-the-art service providers for persons with chronic, complex, or difficult-to-treat conditions for which local services are not adequately available, while continuing to make residential services available to accommodate individual family choices.

5. There is a need to foster better understanding of the evolving role of the institutions.

6. The employees of the institutions are a talented, dedicated resource available to support community-based providers of services to similar populations.

Institution administrators and employees are encouraged to take every opportunity to work with local governments, school districts, other state agencies, and private providers to invite new uses and fill service gaps compatible with an institution's resources.

It is the intent of the general assembly that the department of human services shall provide ongoing training to the institutions' employees as necessary to maintain the quality of the support made available to community-based providers of services.

Sec. 2. STATUTORY REVISIONS. The legislative council is requested to authorize the legislative service bureau to work during the 1998 interim with representatives of the state institutions administered by the department of human services, the governor's developmental disabilities council, a certified employee organization that represents residential treatment workers, the Iowa association of rehabilitation and residential facilities, the Iowa state association of counties, the arc of Iowa which was formerly known as the association for retarded citizens of Iowa, the alliance for the mentally ill of Iowa, and other service system consumers, administrators, providers, and advocates in a project of reviewing the Iowa Code chapters and other laws pertaining to the institutions. The purpose of the project is to develop proposed legislation for revising the law to more accurately reflect the changed role for these institutions consistent with the provisions of this Act. If the project is authorized, any proposed legislation should be submitted for consideration in the 1999 legislative session by the chairpersons and ranking members of the human resources committees of the senate and house of representatives and of the joint appropriations subcommittee on human services.

Sec. 3. OUT-OF-STATE SERVICES.

1. The department of human services shall work with county central point of coordination administrators, Iowa protection and advocacy, inc., state hospital-school staff, service providers, the legal clinic at the state university of Iowa, centers for independent living, and service advocates, in reviewing services provided to Iowa citizens with mental illness or mental retardation or other developmental disabilities who are placed outside of this state. The purpose of the review is to develop options for implementing services and revising admissions requirements to facilitate the return of citizens who may be appropriate for placement in this state and for ensuring the availability of in-state services for placement of any citizen with developmental disabilities or mental illness in the future. The department shall submit a report containing findings and recommendations to the governor and general assembly on or before December 15, 1998.

2. The department may enter into discussions with the states of Nebraska and Illinois and other states bordering Iowa for the states to utilize resources for making appropriate services available to citizens of the other states. The institutions administered by the department may hold preliminary discussions with their counterparts in the other states concerning options which may include creation of appropriate services to serve citizens from the other state. Any proposals developed under this subsection shall be cost neutral to the state of Iowa and its political subdivisions.

Sec. 4. SUBSTANCE ABUSE TREATMENT — METHAMPHETAMINE ADDICTION — DUAL DIAGNOSIS PROGRAM. The Iowa department of public health shall work with the

drug enforcement and abuse prevention coordinator, governor's alliance on substance abuse, department of human services, and county representatives in reviewing the extent of methamphetamine use in the state. The review shall identify statistical information concerning the prevalence of methamphetamine use affecting infants, toddlers, school children, adolescents, young adults, and adults. The review report shall provide the statistical information and options for early intervention to prevent the need for costly long-term interventions such as lengthy drug rehabilitation or prison stays. In addition, the review shall address the availability of dual diagnosis treatment for substance abuse and mental illness, recommend whether additional treatment capacity should be developed, identify the regional capacity needed, consider separate substance abuse and mental illness treatment costs, and identify an appropriate per diem cost to be charged for the treatment. The review of the current reimbursement rate structure shall address the effects of current rate caps on state institutions and the amounts paid by managed care contractors. The review report shall be submitted to the governor and the general assembly on or before December 15, 1998.

Sec. 5. STATE INSTITUTIONS — COST RECOVERY. The department of human services shall review the degree of cost recovery and other financial aspects of the practices applied to contracts for use of facilities and other resources of the state institutions administered by the department. The department shall consult with the department of general services, department of corrections, state board of regents, auditor of state, and other public and private entities knowledgeable concerning facility leasing practices in performing the review. The department shall include findings and provide other options for cost recovery in a report to the governor and general assembly which shall be submitted on or before December 15, 1998.

Sec. 6. Section 18.6, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 15. The state shall purchase those products produced for sale by sheltered workshops, work activity centers, and other special programs funded in whole or in part by public moneys that employ persons with mental retardation or other developmental disabilities or mental illness if the products meet the required specifications.

NEW SUBSECTION. 16. The state shall make every effort to purchase products produced for sale by employers of persons in supported employment.

Sec. 7. Section 217.3, subsection 4, Code 1997, is amended to read as follows:

4. Approve the budget of the department of human services prior to submission to the governor. Prior to approval of the budget, the council shall publicize and hold a public hearing to provide explanations and hear questions, opinions, and suggestions regarding the budget. Invitations to the hearing shall be extended to the governor, the governor-elect, the director of the department of management, and other persons deemed by the council as integral to the budget process. The budget materials submitted to the governor shall include a review of options for revising the medical assistance program made available by federal action or by actions implemented by other states as identified by the department, the medical assistance advisory council created in section 249A.4, subsection 8, and by county representatives. The review shall address what potential revisions could be made in this state and how the changes would be beneficial to Iowans.

Sec. 8. Section 222.1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The Glenwood state hospital-school and the Woodward state hospital-school shall be maintained as regional resource centers for the purpose of providing treatment, training, instruction, care, habilitation, and support of persons with mental retardation or other disabilities in this state, and providing facilities, services, and other support to the communities located in the region being served by a state hospital-school. In addition, the state hospital-schools are encouraged to serve as a training resource for community-based program staff, medical students, and other participants in professional education programs. A

hospital-school may request the approval of the council of human services to change the name of the institution for use in communication with the public, in signage, and in other forms of communication.

Sec. 9. Section 222.73, subsection 5, Code 1997, is amended to read as follows:

5. A superintendent of a hospital-school or special unit may request that the director of human services enter into a contract with a person for the hospital-school or special unit to provide consultation or treatment services or for fulfilling other purposes which are consistent with the purposes stated in section 222.1. The contract provisions shall include charges which reflect the actual cost of providing the services. Any income from a contract authorized under this subsection may be retained by the hospital-school or special unit to defray the costs of providing the services or fulfilling the other purposes. Except for a contract voluntarily entered into by a county under this subsection, the costs or income associated with a contract authorized under this subsection shall not be considered in computing charges and per diem costs in accordance with the provisions of subsections 1 through 4 ~~of this section~~.

Sec. 10. Section 226.1, Code 1997, is amended to read as follows:

226.1 OFFICIAL DESIGNATION.

1. The state hospitals for persons with mental illness shall be designated as follows:

~~1.~~ a. Mental Health Institute, Mount Pleasant, Iowa.

~~2.~~ b. Mental Health Institute, Independence, Iowa.

~~3.~~ c. Mental Health Institute, Clarinda, Iowa.

~~4.~~ d. Mental Health Institute, Cherokee, Iowa.

2. The purpose of the mental health institutes is to operate as regional resource centers providing one or more of the following:

a. Treatment, training, care, habilitation, and support of persons with mental illness or a substance abuse problem.

b. Facilities, services, and other support to the communities located in the region being served by a mental health institute so as to maximize the usefulness of the mental health institutes while minimizing overall costs.

In addition, the mental health institutes are encouraged to act as a training resource for community-based program staff, medical students, and other participants in professional education programs.

3. A mental health institute may request the approval of the council of human services to change the name of the institution for use in communication with the public, in signage, and in other forms of communication.

Sec. 11. Section 230.20, subsection 7, Code 1997, is amended to read as follows:

7. A superintendent of a mental health institute may request that the director of human services enter into a contract with a person for the mental health institute to provide consultation or treatment services or for fulfilling other purposes which are consistent with the purposes stated in section 226.1. The contract provisions shall include charges which reflect the actual cost of providing the services or fulfilling the other purposes. Any income from a contract authorized under this subsection may be retained by the mental health institute to defray the costs of providing the services. Except for a contract voluntarily entered into by a county under this subsection, the costs or income associated with a contract authorized under this subsection shall not be considered in computing charges and per diem costs in accordance with the provisions of subsections 1 through 6 of this section.

Approved April 27, 1998

CHAPTER 1156

SALES AND USE TAX EXEMPTION FOR ORGAN PROCUREMENT ORGANIZATIONS

H.F. 2374

AN ACT exempting sales made to and services performed for organ procurement organizations from the state sales, services, and use taxes.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 422.45, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 52. The gross receipts from the sale of tangible property or from services performed, rendered, or furnished to a statewide nonprofit organ procurement organization, as defined in section 142C.2.

Approved April 27, 1998

CHAPTER 1157

INTERCEPTION OF COMMUNICATIONS — SUNSET PROVISION REPEAL

H.F. 2480

AN ACT to repeal the future repeal of the interception of communications chapter.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 808B.9, Code 1997, is repealed.

Approved April 27, 1998

CHAPTER 1158

UNEMPLOYMENT COMPENSATION BENEFITS — PROOF OF VOLUNTARY QUIT

S.F. 492

AN ACT relating to unemployment compensation benefits concerning proof of whether a person has voluntarily quit employment.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 96.6, subsection 2, Code 1997, is amended to read as follows:

2. INITIAL DETERMINATION. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall

determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. ~~However, the~~ The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, ~~subsection 1, paragraphs "a" through "h", and~~ subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Approved May 5, 1998

CHAPTER 1159

MUNICIPAL TORT LIABILITY EXCEPTIONS FOR SKATEBOARDING AND IN-LINE SKATING

S.F. 2277

AN ACT providing for exceptions to municipal tort liability for skateboarding and in-line skating.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 670.4, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 14. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a public facility designed for purposes of skateboarding or in-line skating that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction.

NEW SUBSECTION. 15. Any claim based upon or arising out of an act or omission of an officer or employee of the municipality or the municipality's governing body by a person skateboarding or in-line skating on public property when the person knew or reasonably should have known that the skateboarding or in-line skating created a substantial risk of injury to the person and was voluntarily in the place of risk. The exemption from liability contained in this subsection shall only apply to claims for injuries or damage resulting from the risks inherent in the activities of skateboarding or in-line skating.

Approved May 5, 1998

CHAPTER 1160

OCCUPATIONAL HEARING LOSS

S.F. 2333

AN ACT relating to occupational hearing loss recovery, providing definitions, and providing for the apportionment and measurement of hearing loss.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 85.34, subsection 2, paragraph r, Code Supplement 1997, is amended to read as follows:

r. (1) For the loss of hearing, other than occupational hearing loss as defined in section 85B.4, ~~subsection 1,~~ weekly compensation during fifty weeks, and for the loss of hearing in both ears, weekly compensation during one hundred seventy-five weeks.

(2) For occupational hearing loss, weekly compensation as provided in ~~the Iowa occupational hearing loss Act~~ [chapter 85B].

Sec. 2. Section 85B.4, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

85B.4 DEFINITIONS.

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

1. "Excessive noise exposure" means exposure to sound capable of producing occupational hearing loss.

2. "Hearing level" means the measured threshold of hearing sensitivity using audiometric instruments properly calibrated to the American national standards institute audiometric zero reference level.

3. "Occupational hearing loss" means that portion of a permanent sensorineural loss of hearing in one or both ears that exceeds an average hearing level of twenty-five decibels for the frequencies five hundred, one thousand, two thousand, and three thousand Hertz, arising out of and in the course of employment caused by excessive noise exposure. "Occupational hearing loss" does not include loss of hearing attributable to age or any other condition or exposure not arising out of and in the course of employment.

Sec. 3. Section 85B.5, unnumbered paragraph 1, Code 1997, is amended to read as follows:

An excessive noise ~~level~~ exposure is sound which exceeds the times and intensities listed in the following table:

Sec. 4. Section 85B.8, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A claim for occupational hearing loss due to excessive noise ~~levels~~ exposure may be filed ~~six months~~ beginning one month after separation from the employment in which the employee was ~~exposed~~ subjected to excessive noise ~~levels~~ exposure. The date of the injury shall be the date of occurrence of any one of the following events:

Sec. 5. Section 85B.8, subsection 1, Code 1997, is amended to read as follows:

1. Transfer from excessive noise ~~level~~ exposure employment by an employer.

Sec. 6. Section 85B.9, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

85B.9 MEASURING HEARING LOSS.

1. Audiometric instruments, properly calibrated to the American national standards institute specifications, shall be used for measuring hearing levels and in such tests necessary to establish total hearing loss, if any. The hearing tests and examinations shall be conducted in environments which comply with accepted national standards.

2. Audiometric examinations shall be administered by persons who are certified by the council for accreditation in occupational hearing conservation or by persons licensed as audiologists under chapter 147, as physicians under chapter 148, as osteopathic physicians under chapter 150, or as osteopathic physicians and surgeons under chapter 150A, provided the licensed persons are trained in audiometry.

3. In calculating the total amount of hearing loss, the hearing levels at each of the four frequencies, five hundred, one thousand, two thousand, and three thousand Hertz shall be added together and divided by four to determine the average decibel hearing level for each ear. If the resulting average decibel hearing level in either ear is twenty-five decibels or less, the percentage hearing loss for that ear shall be zero. For each resulting average decibel hearing level exceeding twenty-five decibels, an allowance of one and one-half percent shall be made up to the maximum of one hundred percent which is reached at an average decibel hearing level of ninety-two decibels. In determining the total binaural percentage hearing loss, the percentage hearing loss for the ear with better hearing shall be multiplied by five and added to the percentage hearing loss for the ear with worse hearing and the sum of the two divided by six.

4. The assessment of the proportion of the total binaural percentage hearing loss that is due to occupational noise exposure shall be made by the employer's regular or consulting physician or licensed audiologist who is trained and has had experience with such assessment. If several audiometric examinations are available for assessment, the physician or audiologist shall determine which examinations shall be used in the final assessment of occupational hearing loss.

If the employee disputes the assessment, the employee may select a physician or licensed audiologist similarly trained and experienced to give an assessment of the audiometric examinations.

5. This section is applicable in the event of partial permanent or total permanent occupational hearing loss in one or both ears.

Sec. 7. NEW SECTION. 85B.9A APPORTIONMENT OF OCCUPATIONAL HEARING LOSS.

Apportionment of the total hearing loss between occupational and nonoccupational loss, for purposes of determining occupational hearing loss, may be made by an audiologist or physician with qualifications set forth in section 85B.9. In determining occupational hearing loss, consideration shall be given to all probable employment and nonemployment sources of loss. The apportionment of age-related loss shall be made by reducing the total binaural percentage hearing loss as calculated pursuant to section 85B.9, subsection 3, by the same percentage as the decibels of age-related loss occurring during the period of employment bears to the total decibel hearing level in each ear. The decibels of age-related loss shall be calculated according to tables adopted by the industrial commissioner consistent with tables of the national institute for occupational safety and health existing on July 1, 1998, and consistent with section 85B.9, subsection 3.

Sec. 8. Section 85B.10, Code 1997, is amended to read as follows:

85B.10 ~~EMPLOYERS~~ EMPLOYER'S NOTICE OF RESULTS OF TEST.

The employer shall communicate to the employee, in writing, the results of an audiometric examination or physical examination of an employee which reflects an average hearing ~~loss of the employee~~ level in one or both ears in excess of twenty-five decibels ~~ANSI or ISO~~ for the test frequencies of five hundred, one thousand, two thousand, and three thousand Hertz, as soon as practicable after the examination. The communication shall include the name and ~~address~~ qualifications of the person conducting the audiometric examination or physical examination, the site of the examination, the kind or type of test or examinations given, the results of each~~,~~ and the average decibel ~~loss~~ hearing level, ~~in~~ for the four frequencies, in each ear, ~~if any,~~ and, if known to the employer, whether the hearing loss is sensorineural ~~hearing loss~~ and, if the hearing loss resulted from another cause, the ~~name of the~~ cause.

Sec. 9. Section 85B.11, Code 1997, is amended to read as follows:

85B.11 PREVIOUS HEARING LOSS EXCLUDED.

An employer is liable, as provided in this chapter and subject to the provisions of chapter 85, for an occupational hearing loss to which the employment has contributed, but if previous hearing loss, whether occupational or not, is established by an audiometric examination or other competent evidence, whether or not the employee was exposed to excessive noise ~~level~~ exposure within six months preceding the test, the employer is not liable for the previous loss, nor is the employer liable for a loss for which compensation has previously been paid or awarded. The employer is liable only for the difference between the percent of occupational hearing loss determined as of the date of the audiometric examination used to determine occupational hearing loss and the percentage of loss established by the pre-employment audiometric examination. An amount paid to an employee for occupational hearing loss by any other employer shall be credited against compensation payable by an employer for the hearing loss. An employee shall not receive in the aggregate greater compensation from all employers for occupational hearing loss than that provided in this section for total occupational hearing loss. A payment shall not be made to an employee unless the employee has worked in excessive noise ~~level~~ exposure employment for a total period of at least ninety days for the employer from whom compensation is claimed.

Sec. 10. Section 85B.12, Code 1997, is amended to read as follows:

85B.12 HEARING AID PROVIDED.

A reduction of the compensation payable to an employee for occupational hearing loss shall not be made because the employee's ability to communicate may be improved by the use of a hearing aid. An employer who is liable for occupational hearing loss of an employee is required to provide the employee with a hearing aid for each affected ear unless it will not materially improve the employee's ability to communicate.

Approved May 5, 1998

CHAPTER 1161

SALES AND USE TAXES AND EXEMPTIONS ASSOCIATED WITH PROVIDING WATER

S.F. 2365

AN ACT relating to the imposition of the sales and use tax on infrastructure and electricity associated with providing water.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 357A.15, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A rural water district organized under chapter 504A shall receive a refund of sales or use taxes upon submitting an application to the department of revenue and finance for such refund of taxes imposed upon the gross receipts of all sales of building materials, supplies, or equipment sold to a contractor or used in the fulfillment of a written contract for the construction of facilities for such rural water district to the same extent as a rural water district organized under this chapter may obtain a refund under section 422.45, subsection 7.

Sec. 2. Section 422.45, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 33A. The gross receipts from the sale of electricity to water companies assessed for property tax pursuant to sections 428.24, 428.26, and 428.28 which is used solely for the purpose of pumping water from a river or well.

Approved May 5, 1998

CHAPTER 1162

FOOD ESTABLISHMENTS AND FOOD PROCESSING PLANTS

H.F. 2166

AN ACT relating to regulation of food establishments and providing for fees and penalties and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 10A.104, subsection 9, Code 1997, is amended to read as follows:

9. Administer and enforce this chapter, and chapters 99B, 135B, 135C, 135G, 135H, 135J, ~~137A, 137B,~~ 137C, 137D, and ~~137E~~ 137F.

Sec. 2. Section 100.35, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The fire marshal shall adopt, and may amend rules under chapter 17A, which include standards relating to exits and exit lights, fire escapes, fire protection, fire safety and the elimination of fire hazards, in and for churches, schools, hotels, theaters, amphitheaters, hospitals, health care facilities as defined in section 135C.1, boarding homes or housing, rest homes, dormitories, college buildings, lodge halls, club rooms, public meeting places, places of amusement, apartment buildings, food establishments as defined in section ~~137A.1, subsection 5, food service establishments as defined in section 137B.2, subsection 6~~ 137F.1, and all other buildings or structures in which persons congregate from time to time, whether publicly or privately owned. Violation of a rule adopted by the fire marshal is a simple misdemeanor. However, upon proof that the fire marshal gave written notice to the defendant of the violation, and proof that the violation constituted a clear and present danger to life, and proof that the defendant failed to eliminate the condition giving rise to the violation within thirty days after receipt of notice from the fire marshal, the penalty is that provided by law for a serious misdemeanor. Each day of the continuing violation of a rule after conviction of a violation of the rule is a separate offense. A conviction is subject to appeal as in other criminal cases.

Sec. 3. Section 137C.6, unnumbered paragraph 2, Code 1997, is amended to read as follows:

If a municipal corporation wants its local board of health to license, inspect, and otherwise enforce the Iowa hotel sanitation code within its jurisdiction, the municipal corporation may enter into an agreement to do so with the director. The director may enter into the agreement if the director finds that the local board of health has adequate resources to perform the required functions. A municipal corporation may only enter into an agreement to enforce the Iowa hotel sanitation code if it also agrees to enforce the Iowa food ~~service sanitation~~ code pursuant to section ~~137B.6 and the food and beverage vending machine laws pursuant to section 137E.3~~ 137F.3.

Sec. 4. Section 137C.35, unnumbered paragraph 1, Code 1997, is amended to read as follows:

This chapter does not apply to bed and breakfast homes as defined in section ~~137B.2~~ 137F.1. However, a bed and breakfast home shall have a smoke detector in proper working order in each sleeping room and a fire extinguisher in proper working order on each floor. A bed and breakfast home which does not receive its drinking water from a public water supply, shall have its drinking water tested at least annually by the state hygienic laboratory or the local board of health. A violation of this section is punishable as provided in section 137C.28.

Sec. 5. NEW SECTION. 137D.9 EXEMPTION.

This chapter shall not apply to a home food establishment having gross annual sales of prepared food of one thousand dollars or less, if the person who prepares the food sells or offers to sell the food on or off the premises of the home food establishment and if the food is labeled to identify the name and address of the person preparing the food and the common name of the food, and to state that the food is prepared in a kitchen that is not subject to state inspection, regulation, or licensure.

Sec. 6. NEW SECTION. 137F.1 DEFINITIONS.

For the purpose of this chapter:

1. "Bed and breakfast home" means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time and which, while it may advertise and accept reservations, does not hold itself out to the public to be a restaurant, hotel, or motel, does not require reservations, and serves food only to overnight guests.

2. "Commissary" means a food establishment used for preparing, fabricating, packaging, and storage of food or food products for distribution and sale through the food establishment's own food establishment outlets.

3. "Department" means the department of inspections and appeals.

4. "Director" means the director of the department of inspections and appeals.

5. "Farmers market" means a marketplace which seasonally operates principally as a common market for fresh fruits and vegetables on a retail basis for off-the-premises consumption.

6. "Food" means a raw, cooked, or processed edible substance, ice, a beverage, an ingredient used or intended for use or sale in whole or in part for human consumption, or chewing gum.

7. "Food code" means the 1997 edition of the United States food and drug administration food code.

8. "Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption and includes a food service operation in a school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school, or the Iowa juvenile home. "Food establishment" does not include the following:

a. A food processing plant.

b. An establishment that offers only prepackaged foods that are nonpotentially hazardous.

c. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.

d. Premises which are a home food establishment pursuant to chapter 137D.

e. Premises which operate as a farmers market.

f. Premises of a residence in which food that is nonpotentially hazardous is sold for consumption off-the-premises, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. As used in this subsection, food that is nonpotentially hazardous means only the following:

(1) Baked goods, except the following: soft pies, bakery products with custard or cream fillings, or any other potentially hazardous goods.

(2) Wholesome, fresh eggs that are kept at a temperature of forty-five degrees Fahrenheit or seven degrees Celsius or less.

(3) Honey which is labeled with additional information as provided by departmental rule.

g. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.

h. A private home that receives catered or home-delivered food.

i. Child day care facilities and other food establishment facilities located in hospitals or health care facilities which are subject to inspection by other state agencies or divisions of the department.

j. Supply vehicles, vending machine locations, or boardinghouses for permanent guests.

k. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to section 189A.3.

l. Premises covered by a current class "A" beer permit as provided in chapter 123.

9. "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer. "Food processing plant" does not include premises covered by a class "A" beer permit as provided in chapter 123.

10. "Mobile food unit" means a food establishment that is readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

11. "Municipal corporation" means a political subdivision of this state.

12. "Perishable food" means potentially hazardous food.

13. "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, or the growth and toxin production of clostridium botulinum. "Potentially hazardous food" includes an animal food that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures. "Potentially hazardous food" does not include the following:

a. An air-cooled hard-boiled egg with shell intact.

b. A food with a water activity value of 0.85 or less.

c. A food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at twenty-four degrees Centigrade or seventy-five degrees Fahrenheit.

d. A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.

14. "Pushcart" means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

15. "Regulatory authority" means the department or a municipal corporation that has entered into an agreement with the director pursuant to section 137F.3 for authority to enforce this chapter in its jurisdiction.

16. "Temporary food establishment" means a food establishment that operates for a period of no more than fourteen consecutive days in conjunction with a single event or celebration.

17. "Vending machine" means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

18. "Vending machine location" means the physical site where a vending machine is installed and operated, including the storage and servicing areas on the premises that are used in conjunction with the vending machine.

Sec. 7. NEW SECTION. 137F.2 ADOPTION BY RULE.

The director shall adopt the food code with the following exceptions:

1. Places used by a nonprofit organization which engages in the serving of food not more than one day per calendar week and not on two or more consecutive days are exempt from this chapter.

2. A food processing plant shall comply with the "Current Good Manufacturing Practices in Manufacturing, Processing, Packing, or Holding Human Food" as found in the latest version of 21 C.F.R. pt. 110, and with rules adopted by the department to enforce the practices.

3. A vending machine commissary shall be inspected at least once each calendar year.

4. A vending machine which only dispenses prepackaged food that is nonpotentially hazardous is exempt from inspection and licensing, except upon receipt of a verified complaint by the regulatory authority.

5. 1-201.10(B)(31) and 3-403.10 shall be deleted.

6. 3-201-11(B) shall be amended to allow food prepared by a home food establishment licensed under chapter 137D or by an operation specified under section 137F.1, subsection 8, paragraph "f", to be used or offered for sale.

7. 3-301.11(B) shall be amended by deleting the section and replacing it with the following:

(1) Except when washing fruits and vegetables, food employees should, to the extent practicable, avoid contact with exposed, ready-to-eat food with their bare hands. Where ready-to-eat food is routinely handled by employees, employers should adopt reasonable sanitary procedures to reduce the risk of the transmission of pathogenic organisms.

(2) In seeking to minimize employees' physical contact with ready-to-eat foods, no single method or device is universally practical or necessarily the most effective method to prevent the transmission of pathogenic organisms in all situations. As such, each public food service establishment shall review its operations to identify procedures where ready-to-eat food must be routinely handled by its employees and adopt one or more of the following sanitary alternatives, to be used either alone or in combination, to prevent the transmission of pathogenic organisms:

(a) The use of suitable food handling materials including, but not limited to, deli tissues, appropriate utensils, or dispensing equipment. Such materials must be used in conjunction with thorough hand washing practices in accord with paragraph (c).

(b) The use of single-use gloves, for the purpose of preparing or handling ready-to-eat foods, shall be discarded when damaged or soiled or when the process of food preparation or handling is interrupted. Single-use gloves must be used in conjunction with thorough hand washing practices in accord with paragraph (c).

(c) The use, pursuant to the manufacturer's instructions, of anti-microbial soaps, with the additional optional use of anti-bacterial protective skin lotions or anti-microbial hand sanitizers, rinses, or dips. All such soaps, lotions, sanitizers, rinses, and dips must contain active topical anti-microbial or anti-bacterial ingredients, registered by the United States environmental protection agency, cleared by the United States food and drug administration, and approved by the United States department of agriculture.

(d) The use of such other practices, devices, or products that are found by the division to achieve a comparable level of protection to one or more of the sanitary alternatives in paragraphs (a) through (c).

(3) Regardless of the sanitary alternatives in use, each public food service establishment shall establish:

(a) Systematic focused education and training of all food service employees involved in the identified procedures regarding the potential for transmission of pathogenic organisms from contact with ready-to-eat food. The importance of proper hand washing and hygiene in preventing the transmission of illness, and the effective use of the sanitary alternatives and monitoring systems utilized by the public food service establishment, shall be rein-

forced. The content and duration of this training shall be determined by the manager of the public food service establishment.

(b) A monitoring system to demonstrate the proper and effective use of the sanitary alternatives utilized by the public food service establishment.

8. 3-501.16 shall be amended by adding the following: "Shell eggs shall be received and held at an ambient temperature not to exceed forty-five degrees Fahrenheit or seven degrees Celsius."

9. 3-502.12(A) shall be amended by adding the following: "Packaging of raw meat and raw poultry using an oxygen packaging method, with a thirty-day 'sell by' date from the date it was packaged, shall be exempt from having an HACCP Plan that contains the information required in this section and section 8-201.14."

10. 3-603.11 shall be amended by adding the following: "The following standardized language shall be used on the required consumer advisory: 'Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of food-borne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.'"

11. A carbonating device in a food establishment shall have a dual check valve which shall be installed so that it is upstream from the carbonating device and downstream from any copper in the water supply line.

Sec. 8. NEW SECTION. 137F.3 AUTHORITY TO ENFORCE.

The director shall regulate, license, and inspect food establishments and food processing plants and enforce this chapter pursuant to rules adopted by the department in accordance with chapter 17A. Municipal corporations shall not regulate, license, inspect, or collect license fees from food establishments and food processing plants, except as provided in this section.

A municipal corporation may enter into an agreement with the director to provide that the municipal corporation shall license, inspect, and otherwise enforce this chapter within its jurisdiction. The director may enter into the agreement if the director finds that the municipal corporation has adequate resources to perform the required functions. A municipal corporation may only enter into an agreement to enforce the Iowa food code pursuant to this section if it also agrees to enforce the Iowa hotel sanitation code pursuant to section 137C.6. However, the department shall license and inspect all food processing plants which manufacture, package, or label food products. A municipal corporation may license and inspect, as authorized by this section, food processing plants whose operations are limited to the storage of food products.

If the director enters into an agreement with a municipal corporation as provided by this section, the director shall provide that the inspection practices of a municipal corporation are spot-checked on a regular basis.

A municipal corporation that is responsible for enforcing this chapter within its jurisdiction pursuant to an agreement shall make an annual report to the director providing the following information:

1. The total number of licenses granted or renewed by the municipal corporation under this chapter during the year.

2. The number of licenses granted or renewed by the municipal corporation under this chapter during the year in each of the following categories:

a. Food establishments.

b. Food processing plants.

c. Mobile food units and pushcarts.

d. Temporary food establishments.

e. Vending machines.

3. The amount of money collected in license fees during the year.

4. Other information the director requests.

The director shall monitor municipal corporations which have entered into an agreement pursuant to this section to determine if they are enforcing this chapter within their respective jurisdictions. If the director determines that this chapter is not enforced by a municipal corporation, the director may rescind the agreement after reasonable notice and an opportunity for a hearing. If the agreement is rescinded, the director shall assume responsibility for enforcement in the jurisdiction involved.

Sec. 9. NEW SECTION. 137F.4 LICENSE REQUIRED.

A person shall not operate a food establishment or food processing plant to provide goods or services to the general public, or open a food establishment to the general public, until the appropriate license has been obtained from the regulatory authority. Sale of products at wholesale to outlets not owned by a commissary owner requires a food processing plant license. A license shall expire one year from the date of issue. A license is renewable. All licenses issued under this chapter that are not renewed by the licensee on or before the expiration date shall be subject to a penalty of ten percent per month of the license fee if the license is renewed at a later date.

Sec. 10. NEW SECTION. 137F.5 APPLICATION FOR LICENSE.

An application form prescribed by the department for a license under this chapter shall be obtained from the department or from a municipal corporation which is a regulatory authority. A completed application shall be submitted to the appropriate regulatory authority.

The dominant form of business shall determine the type of license for establishments which engage in operations covered under both the definition of a food establishment and of a food processing plant.

The regulatory authority where the unit is domiciled shall issue a license for a mobile food unit.

An application for renewal of a license shall be made at least thirty days before the expiration of the existing license.

Sec. 11. NEW SECTION. 137F.6 LICENSE FEES.

The regulatory authority shall collect the following annual license fees:

1. For a mobile food unit or pushcart, twenty dollars.
2. For a temporary food establishment per fixed location, twenty-five dollars.
3. For a vending machine, twenty dollars for the first machine and five dollars for each additional machine.
4. For a food establishment which prepares or serves food for individual portion service intended for consumption on-the-premises, the annual license fee shall correspond to the annual gross food and beverage sales of the food establishment, as follows:
   a. Annual gross sales of under fifty thousand dollars, fifty dollars.
   b. Annual gross sales of at least fifty thousand dollars but less than one hundred thousand dollars, eighty-five dollars.
   c. Annual gross sales of at least one hundred thousand dollars but less than two hundred fifty thousand dollars, one hundred seventy-five dollars.
   d. Annual gross sales of two hundred fifty thousand dollars but less than five hundred thousand dollars, two hundred dollars.
   e. Annual gross sales of five hundred thousand dollars or more, two hundred twenty-five dollars.
5. For a food establishment which sells food or food products to consumer customers intended for preparation or consumption off-the-premises, the annual license fee shall correspond to the annual gross food and beverage sales of the food establishment, as follows:
   a. Annual gross sales of under ten thousand dollars, thirty dollars.
   b. Annual gross sales of at least ten thousand dollars but less than two hundred fifty thousand dollars, seventy-five dollars.
   c. Annual gross sales of at least two hundred fifty thousand dollars but less than five hundred thousand dollars, one hundred fifteen dollars.

d. Annual gross sales of at least five hundred thousand dollars but less than seven hundred fifty thousand dollars, one hundred fifty dollars.

e. Annual gross sales of seven hundred fifty thousand dollars or more, two hundred twenty-five dollars.

6. For a food processing plant, the annual license fee shall correspond to the annual gross food and beverage sales of the food processing plant, as follows:

a. Annual gross sales of under fifty thousand dollars, fifty dollars.

b. Annual gross sales of at least fifty thousand dollars but less than two hundred fifty thousand dollars, one hundred dollars.

c. Annual gross sales of at least two hundred fifty thousand dollars but less than five hundred thousand dollars, one hundred fifty dollars.

d. Annual gross sales of five hundred thousand dollars or more, two hundred fifty dollars.

A food establishment covered by subsections 4 and 5 shall be assessed license fees not to exceed seventy-five percent of the total fees applicable under both subsections.

Fees collected by the department shall be deposited in the general fund of the state. Fees collected by a municipal corporation shall be retained by the municipal corporation for regulation of food establishments and food processing plants licensed under this chapter.

Each vending machine licensed under this chapter shall bear a readily visible identification tag or decal provided by the licensee, containing the licensee's business address and phone number, and a company license number assigned by the regulatory authority.

Sec. 12. NEW SECTION. 137F.7 SUSPENSION OR REVOCATION OF LICENSES.

The regulatory authority may suspend or revoke a license issued to a person under this chapter pursuant to rules adopted by the department if any of the following occurs:

1. The person's food establishment or food processing plant does not conform to a provision of this chapter or a rule adopted pursuant to this chapter.

2. The person conducts an activity constituting a criminal offense in the food establishment or food processing plant and is convicted of a serious misdemeanor or a more serious offense as a result.

A licensee may appeal a suspension or revocation in accordance with rules adopted by the department.

Sec. 13. NEW SECTION. 137F.8 FARMERS MARKETS.

A vendor who offers a product for sale at a farmers market shall have the sole responsibility to obtain and maintain any license required to sell or distribute the product.

Sec. 14. NEW SECTION. 137F.9 OPERATION WITHOUT INSPECTION PROHIBITED.

A person shall not open or operate a food establishment or food processing plant until an inspection has been made and a license has been issued by the regulatory authority. Inspections shall be conducted according to standards adopted by rule of the department pursuant to chapter 17A.

A person who opens or operates a food establishment or food processing plant without a license is subject to a penalty of up to twice the amount of the annual license fee.

Sec. 15. NEW SECTION. 137F.10 REGULAR INSPECTIONS.

The appropriate regulatory authority shall provide for the inspection of each food establishment and food processing plant in this state in accordance with this chapter and with rules adopted pursuant to this chapter in accordance with chapter 17A. A regulatory authority may enter a food establishment or food processing plant at any reasonable hour to conduct an inspection. The manager or person in charge of the food establishment or food processing plant shall afford free access to every part of the premises and render all aid and assistance necessary to enable the regulatory authority to make a thorough and complete inspection.

Sec. 16. NEW SECTION. 137F.11 INSPECTION UPON COMPLAINT.

Upon receipt of a complaint by a customer of a food establishment or food processing plant stating facts indicating the premises are in an unsanitary condition, the regulatory authority may conduct an inspection.

Sec. 17. NEW SECTION. 137F.12 PLUMBING.

A food establishment or food processing plant shall have an adequately designed plumbing system conforming to at least the minimum requirements of the state plumbing code, or local plumbing code, whichever is more stringent. The plumbing system shall have a connection to a municipal water and sewer system or to a benefited water district or sanitary district if such facilities are available.

Sec. 18. NEW SECTION. 137F.13 WATER AND WASTE TREATMENT.

If a food establishment or food processing plant is served by privately owned water or waste treatment facilities, those facilities shall meet the technical requirements of the local board of health and the department of natural resources.

Sec. 19. NEW SECTION. 137F.14 TOILETS AND LAVATORIES.

A food establishment or food processing plant shall provide toilet and lavatory facilities in accordance with rules adopted by the department pursuant to this chapter in accordance with chapter 17A.

Sec. 20. NEW SECTION. 137F.15 FIRE SAFETY.

A violation of a fire safety rule adopted pursuant to section 100.35 and applicable to food establishments or food processing plants which occurs on the premises of a food establishment or food processing plant is a violation of this chapter.

Sec. 21. NEW SECTION. 137F.16 CONFLICTS WITH STATE BUILDING CODE.

Provisions of this chapter in conflict with the state building code shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

Sec. 22. NEW SECTION. 137F.17 PENALTY.

A person who violates this chapter or rules adopted pursuant to this chapter shall be subject to a civil penalty of one hundred dollars for each violation.

Sec. 23. NEW SECTION. 137F.18 INJUNCTION.

A person opening or operating a food establishment or food processing plant in violation of this chapter may be enjoined from further operation of the establishment or plant. If an imminent health hazard exists, the establishment or plant must cease operation. Operation shall not be resumed until authorized by the regulatory authority.

Sec. 24. NEW SECTION. 137F.19 DUTY OF COUNTY OR CITY ATTORNEY.

The county attorney in each county or city attorney in each city shall assist in the enforcement of this chapter.

Sec. 25. Section 172A.6, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The license and financial responsibility provisions of this chapter shall not apply to any person who is licensed ~~by the secretary~~ as provided in chapter ~~137A~~ 137F, 171, or 172 and who purchases livestock for slaughter valued at less than an average daily value of two thousand five hundred dollars during the preceding twelve months or such part thereof as the person was purchasing livestock. Said licensees are made subject to this chapter as to the regulatory and penal provisions hereof. All other provisions of this chapter shall apply to said dealers or brokers.

Sec. 26. Section 189A.3, unnumbered paragraph 1, Code 1997, is amended to read as follows:

No person shall operate an establishment other than a ~~grocery store or~~ food ~~service~~ establishment as defined in section ~~137B.2~~ 137F.1 without first obtaining a license from the department. The license fee for each establishment per year or any part of a year shall be:

Sec. 27. Section 331.382, subsection 5, Code 1997, is amended to read as follows:

5. The board shall not regulate, license, inspect, or collect license fees from food ~~service~~ establishments or food and beverage vending machines except as provided in chapter ~~137B~~ 137F or from hotels except as provided in chapter 137C ~~or for food and beverage vending machines except as provided in section 137E.3~~.

Sec. 28. Section 331.756, subsection 32, Code Supplement 1997, is amended to read as follows:

32. Assist the department of inspections and appeals in the enforcement of ~~the food establishment laws,~~ the Iowa food ~~service sanitation~~ code~~,~~ and the Iowa hotel sanitation code as provided in sections ~~137A.26, 137B.21,~~ 137F.19 and 137C.30.

Sec. 29. Chapters 137A, 137B, and 137E, Code 1997,* are repealed.

Sec. 30. EFFECTIVE DATE AND TRANSITION PROVISIONS.

1. This Act takes effect January 1, 1999.

2. A license issued pursuant to chapter 137A, 137B, or 137E before the effective date of this Act shall remain valid and be deemed the same as a license issued pursuant to chapter 137F for the remaining term of the license.

3. An establishment with licenses under both chapters 137A and 137B on the effective date of this Act shall not be issued a license under chapter 137F until both licenses have expired.

Approved May 5, 1998

CHAPTER 1163

SERVICES TAX EXEMPTION FOR MASSAGE THERAPY

H.F. 2550

AN ACT exempting services provided by licensed massage therapists from the state services tax.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 422.43, subsection 11, Code 1997,** is amended to read as follows:

11. The following enumerated services are subject to the tax imposed on gross taxable services: alteration and garment repair; armored car; vehicle repair; battery, tire, and allied; investment counseling; service charges of all financial institutions; barber and beauty; boat repair; vehicle wash and wax; carpentry; roof, shingle, and glass repair; dance schools and dance studios; dating services; dry cleaning, pressing, dyeing, and laundering; electrical and electronic repair and installation; rental of tangible personal property, except mobile homes which are tangible personal property; excavating and grading; farm implement repair of all kinds; flying service; furniture, rug, upholstery repair and cleaning; fur storage and repair; golf and country clubs and all commercial recreation; house and building moving;

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* Code 1997 and Code Supplement 1997 probably intended

** Code Supplement 1997 probably intended

household appliance, television, and radio repair; jewelry and watch repair; limousine service, including driver; machine operator; machine repair of all kinds; motor repair; motorcycle, scooter, and bicycle repair; oilers and lubricators; office and business machine repair; painting, papering, and interior decorating; parking facilities; pipe fitting and plumbing; wood preparation; licensed executive search agencies; private employment agencies, excluding services for placing a person in employment where the principal place of employment of that person is to be located outside of the state; sewage services for nonresidential commercial operations; sewing and stitching; shoe repair and shoeshine; sign construction and installation; storage of household goods, mini-storage, and warehousing of raw agricultural products; swimming pool cleaning and maintenance; taxidermy services; telephone answering service; test laboratories, including mobile testing laboratories and field testing by testing laboratories, and excluding tests on humans or animals; termite, bug, roach, and pest eradicators; tin and sheet metal repair; turkish baths, massage, and reducing salons, excluding services provided by massage therapists licensed under chapter 152C; weighing; welding; well drilling; wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl and vegetables; wrecking service; wrecker and towing; pay television; campgrounds; carpet and upholstery cleaning; gun and camera repair; janitorial and building maintenance or cleaning; lawn care, landscaping and tree trimming and removal; pet grooming; reflexology; security and detective services; tanning beds or salons; and water conditioning and softening.

For purposes of this subsection, gross taxable services from rental includes rents, royalties, and copyright and license fees. For purposes of this subsection, "financial institutions" means all national banks, federally chartered savings and loan associations, federally chartered savings banks, federally chartered credit unions, banks organized under chapter 524, savings and loan associations and savings banks organized under chapter 534, and credit unions organized under chapter 533.

Approved May 5, 1998

CHAPTER 1164

DEPARTMENT OF GENERAL SERVICES PRACTICES AND OTHER STATE GOVERNMENT ADMINISTRATION

S.F. 518

AN ACT relating to the administration of state government, by providing for the practices of the department of general services, state procurement, motor vehicles, and state printing.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 2B.1, subsection 3, Code 1997, is amended to read as follows:

3. The Iowa Code and administrative code divisions are responsible for the editing, compiling, and proofreading of the publications they prepare, as provided in this chapter ~~and notwithstanding section 18.76~~. The Iowa Code division is entitled to the temporary possession of the original enrolled Acts and resolutions as necessary to prepare them for publication.

Sec. 2. Section 18.1, subsection 2, Code 1997, is amended to read as follows:

2. "Competitive bidding ~~procedures~~ procedure" means the advertisement for, solicitation of, or the procurement of bids; the manner and condition in which bids are received; and the procedure by which bids are opened, accessed, accepted, ~~or~~ rejected, or awarded. A "competitive bidding procedure" may include a transaction accomplished in an electronic format.

Sec. 3. Section 18.1, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 7. "State buildings and grounds" excludes any building under the custody and control of the Iowa public employees' retirement system.

Sec. 4. Section 18.3, subsections 4 and 7, Code 1997, are amended to read as follows:

4. Providing for the proper maintenance of the state capitol, grounds, and equipment and all other state buildings~~,~~ and grounds, and equipment at the seat of government, except those referred to in section 216B.3, subsection 6.

7. Providing architectural services, contracting for construction and construction oversight for state agencies except for the board of regents, department of transportation, national guard, ~~and~~ natural resource commission, and the Iowa public employees' retirement system. Capital funding appropriated to state agencies, except the board of regents, department of transportation, national guard, ~~and~~ natural resource commission, and the Iowa public employees' retirement system for property management shall be transferred for administration and control to the director of the department of general services.

Sec. 5. Section 18.3, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 10. Developing and implementing procedures to conduct transactions, including purchasing, authorized by this chapter in an electronic format to the extent determined appropriate by the department. The department shall adopt rules establishing criteria for competitive bidding procedures involving transactions in an electronic format, including criteria for accepting or rejecting bids which are electronically transmitted to the department, and for establishing with reasonable assurance the authenticity of the bid and the bidder's identity.

NEW SUBSECTION. 11. Insuring motor vehicles owned by the state. Insurance coverage may be provided through a self-insurance program administered by the department or purchased from an insurer. If the department utilizes a self-insurance program, the department shall maintain loss and exposure data for vehicles under the jurisdiction of the state fleet administrator. Upon request, state agencies shall provide all loss and exposure information to the department.

NEW SUBSECTION. 12. Organizing the department by divisions or other subunits to promote the effective and efficient administration of the department.

Sec. 6. Section 18.6, subsections 2, 3, 4, and 9, Code 1997, are amended to read as follows:

2. The director may also exempt the purchase of an item or service from a competitive bidding procedure when the director determines that the best interests of the state will be served ~~due to an~~ by the exemption which shall be based on one of the following:

a. An immediate or emergency need existing for the item or service.

b. A need to protect the health, safety, or welfare of persons occupying or visiting a public improvement or property located adjacent to the public improvement.

3. The director shall have the power to contract for the purchase of items or services by the department. Contracts for the purchase of items shall be awarded on the basis of the lowest competent bid. Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price.

The director may enter into an agreement with the government of another state or with the federal government to provide for the cooperative purchase of an item or service of general use in this state.

4. The director may refuse all bids on any item or service and institute a new bidding procedure.

9. a. When the estimated total cost of construction, erection, demolition, alteration, or repair of a public improvement exceeds twenty-five thousand dollars, the department shall ~~advertise for~~ solicit bids on the proposed improvement by publishing an advertisement in a print format. The advertisement shall appear in two publications in a newspaper published in the county in which the work is to be done. The first advertisement for bids appearing in

a newspaper shall be not less than fifteen days prior to the date set for receiving bids. The department may publish an advertisement in an electronic format as an additional method of soliciting bids under this paragraph.

b. In awarding a contract, the department shall let the work to the lowest responsible bidder submitting a sealed proposal. However, if the department considers the bids received not to be acceptable, all bids may be rejected and new bids requested. A bid shall be accompanied~~, in a separate envelope,~~ by a ~~deposit of money or a~~ certified check or ~~credit union certified share draft~~ bid bond in an amount ~~to be named~~ designated in the advertisement for bids as security that the bidder will enter into a contract for the doing of the work requested. The department shall ~~fix~~ establish the bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The certified checks~~, share drafts~~ or ~~deposits of money~~ bid bonds of ~~the~~ unsuccessful bidders shall be returned as soon as the successful bidder is determined~~, and the~~. The certified check~~, share draft~~ or ~~deposit of money~~ bid bond of the successful bidder shall be returned upon execution of the contract ~~documents~~. This section does not apply to the construction, erection, demolition, alteration, or repair of a public improvement when the contracting procedure for ~~the doing of~~ the work requested is otherwise provided for in ~~another provision of~~ law.

Sec. 7. Section 18.6, subsection 12, Code 1997, is amended by striking the subsection.

Sec. 8. Section 18.8, unnumbered paragraph 1, Code 1997, is amended* to read as follows:

The director shall provide necessary ~~voice or data communications, including telephone and telegraph~~ telecommunications cabling, lighting, fuel, and water services for the state buildings and grounds located at the seat of government, except the buildings and grounds referred to in section 216B.3, subsection 6.

Sec. 9. Section 18.8, unnumbered paragraph 5, Code Supplement 1997, is amended to read as follows:

Except for buildings and grounds described in section 216B.3, subsection 6~~, and~~; section 2.43, unnumbered paragraph 1; and any buildings under the custody and control of the Iowa public employees' retirement system, the director shall assign office space at the capitol, other state buildings and elsewhere in the city of Des Moines, for all executive and judicial state agencies. Assignments may be changed at any time. The various officers to whom rooms have been so assigned may control the same while the assignment to them is in force. Official apartments shall be used only for the purpose of conducting the business of the state. The term "capitol" or "capitol building" as used in the Code shall be descriptive of all buildings upon the capitol grounds. The capitol building itself is reserved for the operations of the general assembly, the governor and the courts and the assignment and use of physical facilities for the general assembly shall be pursuant to section 2.43.

Sec. 10. Section 18.12, subsection 8, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. The director may dispose of presses, printing equipment, printing supplies, and other machinery or equipment used in the printing operation, as provided in section 18.59.

Sec. 11. Section 18.12, subsection 9, Code 1997, is amended to read as follows:

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

b. When the general assembly is not in session, the director ~~of general services~~ may request ~~funds~~ moneys from the executive council for moving state agencies located at the seat of government from one location to another. The request may include moving costs,

* See 97 Acts, ch 210, §18, codified in 1997 Code Supplement, for identical amendment

~~telephone~~ telecommunications costs, repair costs, or any other costs relating to the move. The executive council may approve and shall pay the costs from funds provided in section 7D.29 if it determines the agency or department has no available funds for these expenses.

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

Sec. 12. Section 18.12, subsection 12, Code 1997, is amended by striking the subsection.

Sec. 13. Section 18.16, subsection 2, Code 1997, is amended to read as follows:

2. The director shall pay the lease or rental fees to the renter or lessor and submit a monthly statement to each state agency for which building and office space is rented or leased. ~~The~~ If the director pays the lease or rental fees on behalf of a state agency, the state agency's payment to the department shall be credited to the rent revolving fund established by this section. With the approval of the director, a state agency may pay the lease or rental cost ~~shall be paid by the state agency to the department of general services in the same manner as other expenses of the state agency are paid and the payment shall be credited to the rent revolving fund~~ directly to the person who is due the payment under the lease or rental agreement.

Sec. 14. Section 18.18, subsection 1, paragraphs a through c, Code 1997, are amended to read as follows:

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

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

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

Sec. 15. Section 18.18, subsection 5, Code 1997, is amended to read as follows:

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

Sec. 16. Section 18.18, subsection 8, Code 1997, is amended by striking the subsection.

Sec. 17. NEW SECTION. 18.19 RECYCLING REVOLVING FUND.

A recycling revolving fund is created within the state treasury under the control of the department. The fund shall consist of any moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund. The assets of the fund shall be used by the department only for supporting recycling operations. Moneys in the fund, which may be subject to warrants written by the director of revenue and finance, shall be drawn upon the written requisition of the director or an authorized representative of the director. The fund is subject to an annual audit by the auditor of state. Section 8.33 does not apply to any moneys in the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

Sec. 18. Section 18.20, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The department in accordance with recommendations made by the department of natural resources shall require all state agencies to establish an agency wastepaper recycling program ~~by January 1, 1990~~. The director shall adopt rules which require a state agency to develop a program to ensure the recycling of the wastepaper generated by the agency. ~~Each agency shall submit a report to the general assembly meeting in January 1990, which includes a description of the program plan and the agency's efforts to use recycled products.~~ All state employees shall practice conservation of paper materials.

Sec. 19. Section 18.28, unnumbered paragraph 2, Code 1997, is amended by striking the unnumbered paragraph.

Sec. 20. Section 18.32, Code 1997, is amended to read as follows:

18.32 ADVERTISEMENTS FOR BIDS.

The director shall advertise for bids for ~~the doing of the~~ public printing.

Sec. 21. Section 18.33, Code 1997, is amended to read as follows:

18.33 REQUIREMENTS.

Advertisements shall state where and how specifications and other necessary information may be obtained, the time during which the director will receive bids, and the day, hour, and place when bids will be publicly opened or accessed and the manner by which the contracts will be awarded.

Sec. 22. Section 18.36, Code 1997, is amended to read as follows:

18.36 FORM OF BIDS.

Bids must be:

1. Secured in writing, by telephone, ~~or~~ by facsimile, or in a format prescribed by the director as indicated in the bid specifications~~, and only on the blanks furnished with the specifications~~.

2. Signed by the bidder, or if a telephone or electronic bid, confirmed ~~in writing~~ by the bidder in a manner prescribed by the director.

3. ~~If submitted~~ Submitted in ~~writing, submitted in a sealed envelope which shall be properly endorsed~~ a format prescribed by the director which reasonably assures the authenticity of the bid and the bidder's identity.

4. ~~In the hands of the director~~ Submitted to the department as specified by the date and time ~~fixed~~ established in the advertisements for bids.

Sec. 23. Section 18.37, Code 1997, is amended to read as follows:

18.37 DEPOSIT WITH BID OR YEARLY BOND.

~~A bidder shall deposit with the director at the time the~~ When a bidder ~~files~~ submits a bid to the department, the director may require the bidder to file a bid~~,~~ bond or a certified check ~~or credit union certified share draft~~ payable to the state treasurer ~~for~~ in an amount to be fixed in the bid specifications, either covering all classes or items or services, or separate certified checks ~~or drafts~~ for each bid in case the bidder makes more than one bid. In lieu of ~~checks or share drafts~~ a certified check, the bidder may furnish a yearly bond in an amount to be established by the director. ~~Checks or share drafts~~ Certified checks deposited by unsuccessful bidders, and by successful bidders when they have entered into the contract, shall be returned to them.

Sec. 24. Section 18.38, Code 1997, is amended to read as follows:

18.38 OPENING AND ACCESSING OF BIDS — AWARD.

All bids shall be publicly opened or accessed and read and the contracts ~~let at the time and place fixed therefor, or on the adjourned day or days named by the director, of which adjournment all parties shall take notice~~ awarded in the manner designated in the bid specifications. In the award of ~~contracts~~ a contract, due consideration shall be given ~~not only~~ to the price bid, ~~but to the~~ mechanical and other equipment proposed to be used by the bidder, ~~and~~ the financial responsibility of the bidder, ~~and~~ the bidder's ability and experience in the

performance of ~~like or~~ similar contracts, and any other factors that the department determines are relevant and that are included in the bid specifications.

Sec. 25. Section 18.43, Code 1997, is amended to read as follows:

18.43 DUTY TO ENTER INTO CONTRACT — FORFEITURE.

~~A~~ If the department requires a bid bond or certified check as provided in section 18.37, a successful bidder shall, within ten days after the award, enter into a contract in accordance with the bid. Unless this is done, or the delay is for reasons satisfactory to the director, the bid bond or certified check ~~or credit union certified share draft~~ submitted with the bid shall be forfeited to the state. The bid specifications on which the bid is made constitute a part of the contract.

Sec. 26. Section 18.44, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The department shall enter into contracts which the department determines are reasonable. The department may ensure that the contracts ~~shall, among other provisions,~~ provide ~~that~~ for the following:

Sec. 27. Section 18.45, Code 1997, is amended to read as follows:

18.45 BOND.

~~A~~ The department may require that a bidder provide a bond for the faithful performance of ~~the~~ a contract ~~shall be required in connection with each contract, in an~~. The amount ~~to~~ of the bond shall be ~~fixed~~ established by the director. The bond shall be filed with the department as specified and approved by the director.

Sec. 28. Section 18.46, Code 1997, is amended to read as follows:

18.46 ~~WRITTEN~~ AUTHORIZATON OF ORDERS.

~~No printing~~ Printing shall not be performed under any contract except ~~on written orders therefor, on detailed forms prescribed~~ as authorized by the director~~, and signed by the director or by some person authorized by the director~~. ~~Every~~ Each order shall designate the contract under which the order is given~~,~~ and the class, quantity, and kind of the required printing~~, the definite quantity and kind thereof, and be issued in duplicate with a stub copy preserved. A separate series of stubs and duplicates shall be used for each class of printing.~~

Sec. 29. Section 18.48, Code 1997, is amended to read as follows:

18.48 ACCEPTANCE OF PRINTING — PENALTY.

~~No printing shall be accepted as in compliance with the contract when not of the grade of skill which is usually employed by first-class printers on printing of this class, nor when the printing is not of the full quality contracted for.~~ The director may reject or refuse delivery on printing which is not of the quality for which the contract was awarded. If immediate necessity ~~and~~ or lack of time to procure printing elsewhere ~~compel~~ compels the use of defective printing furnished by a contractor, ~~it~~ the defective printing shall be accepted without approval, and one-half of the contract price ~~thereon~~ shall be deducted as liquidated damages for breach of contract. The amount of the liquidated damages may be deducted from any payment to the contractor under any state contract.

Sec. 30. Section 18.49, Code 1997, is amended to read as follows:

18.49 CONTRACTS BY INSTITUTIONAL HEADS.

The director may authorize the managing board, or head, or chief executive officer of any institution or department of the state located outside ~~the city of Des Moines~~ Polk county to secure, under the specifications of the director, competitive bids for printing needed by the institution or department, and submit the bids to the director. If the director approves any of the bids, the authorized board, head, or officer may contract for the printing, but the contract shall not be valid until ~~a duplicate copy is filed with and approved by~~ the director approves the contract. The director shall prescribe the manner by which the director is notified of and approves the contract.

Sec. 31. Section 18.50, Code 1997, is amended to read as follows:

18.50 EMERGENCY CONTRACTS.

The director may at any time award a ~~special~~ separate printing contract or may authorize ~~assistants~~ an assistant to award a ~~special~~ separate printing contract for any work ~~or material coming~~ and materials or printing supplies within the provisions of chapter 7A and sections 18.26 to 18.103 ~~but~~ which are not included in current printing contracts ~~already in existence,~~ or which cannot properly be made the subject of a general contract~~, if the amount of each contract shall not exceed the amount of five thousand dollars, and if special bids~~. A separate printing contract must have been duly solicited by the director from ~~persons or firms~~ vendors engaged in the kind of work under consideration who have indicated a desire to bid on the class of work to be ~~done~~ performed.

Sec. 32. Section 18.51, Code 1997, is amended to read as follows:

18.51 PAPER, PRINTING SUPPLIES, AND ACCOUNTING.

1. The director may contract for paper and other printing supplies as part of ~~the~~ a printing ~~or~~ contract. The director may purchase paper and other printing supplies and furnish ~~the same~~ them to ~~the~~ a contractor. ~~All paper purchased for use of the state shall, when practicable, have a distinguishing mark or water line by which it can be identified.~~

2. The director shall keep an accurate account with any person doing printing for the state. The director shall charge the person the value of all paper drawn, credit the person with all paper used on behalf of the state, and compel an accounting for all paper which is not used.

Sec. 33. Section 18.59, subsection 1, Code 1997, is amended to read as follows:

1. To ~~hold possession of~~ possess all presses and other printing equipment, inventory all of the described equipment, and ~~with the approval of the executive council sell the above-described~~ dispose of the machinery and equipment that is no longer necessary or is unfit for use. Receipts from the sale of presses, printing equipment, printing supplies, and other machinery or equipment used in the printing operation shall be deposited in the centralized printing revolving fund established in section 18.57.

Sec. 34. Section 18.60, Code 1997, is amended to read as follows:

18.60 COST SYSTEMS MAINTAINED BY DEPARTMENTS.

Each official, board, department, commission, or agency located outside ~~the city of Des Moines~~ Polk county, who maintains printing equipment, or does any printing for the state or its departments shall likewise keep an accurate cost system and ~~make~~ report each June 30 to the director of the amounts~~, and these~~. These reports shall be included in the annual, fiscal, or calendar report of the director.

Sec. 35. Section 18.63, unnumbered paragraph 1, Code 1997, is amended to read as follows:

~~No~~ A department or commission of state located in ~~the city of Des Moines~~ Polk county shall not expend ~~any funds~~ moneys for the publication or distribution of books, ~~or~~ pamphlets, or reports unless the publication ~~thereof be~~ is expressly required by law or approved by the director. ~~A violation of this section shall constitute misfeasance in office.~~ The state printing administrator may exempt minimal single printing projects from the requirements of this section in order to permit a state agency to timely procure printing, if a state contract is not currently available. The department shall adopt rules establishing criteria for exemption of minimal printing projects under this section.

Sec. 36. Section 18.82, Code 1997, is amended to read as follows:

18.82 CUSTODY OF DOCUMENTS AND STORAGE ROOMS.

The ~~superintendent~~ state printing administrator shall receive and have the custody of ~~the Iowa documents, reports, and~~ all ~~other~~ printed matter ~~and~~, including all documents and reports, for which the state printing administrator is responsible under this chapter. The

state printing administrator shall make and supervise the distribution of the ~~same~~ printed matter in such manner as will be most economical and useful to the public. The ~~superintendent~~ state printing administrator shall have charge of the state storage building or rooms, in which the ~~superintendent~~ state printing administrator shall keep the ~~reports and documents~~ printed matter.

Sec. 37. Section 18.115, Code 1997, is amended to read as follows:

18.115 ~~VEHICLE DISPATCHER~~ STATE FLEET ADMINISTRATOR — EMPLOYEES — POWERS AND DUTIES — FUEL ECONOMY REQUIREMENTS.

The director of the department of general services shall appoint a state ~~vehicle dispatcher~~ fleet administrator and other employees as necessary to administer this division. The state ~~vehicle dispatcher~~ fleet administrator shall serve at the pleasure of the director and is not governed by the merit system provisions of chapter 19A. Subject to the approval of the director, the state ~~vehicle dispatcher~~ fleet administrator has the following duties:

1. The ~~dispatcher~~ state fleet administrator shall assign to a state officer or employee or to a state ~~office, department, bureau, or commission~~ agency, one or more motor vehicles which may be required by the state officer or employee or ~~department~~ state agency, after the state officer or employee or ~~department~~ state agency has shown the necessity for such transportation. The state ~~vehicle dispatcher shall have the power to~~ fleet administrator may assign a motor vehicle either for part time or full time. The ~~dispatcher shall have the right to~~ state fleet administrator may revoke the assignment at any time.

2. The state ~~vehicle dispatcher~~ fleet administrator may cause all state-owned motor vehicles to be inspected periodically. Whenever the inspection reveals that repairs have been improperly made on the motor vehicle or that the operator is not giving it the proper care, the ~~dispatcher~~ state fleet administrator shall report this fact to the head of the ~~department~~ state agency to which the motor vehicle has been assigned, together with recommendation for improvement.

3. The state ~~vehicle dispatcher~~ fleet administrator shall install a record system for the keeping of records of the total number of miles state-owned motor vehicles are driven and the per-mile cost of operation of each motor vehicle. Every state officer or employee shall keep a record book to be furnished by the state ~~vehicle dispatcher~~ fleet administrator in which the officer or employee shall enter all purchases of gasoline, lubricating oil, grease, and other incidental expense in the operation of the motor vehicle assigned to the officer or employee, giving the quantity and price of each purchase, including the cost and nature of all repairs on the motor vehicle. Each operator of a state-owned motor vehicle shall promptly prepare a report at the end of each month on forms furnished by the state ~~vehicle dispatcher~~ fleet administrator and ~~forward the same~~ forwarded to the ~~dispatcher at the statehouse~~ state fleet administrator, giving the information the state ~~vehicle dispatcher~~ fleet administrator may request in the report. ~~The~~ Each month the state ~~vehicle dispatcher~~ fleet administrator shall ~~each month~~ compile the costs and mileage of state-owned motor vehicles from the reports and keep a cost history ~~card on~~ for each motor vehicle and the costs shall be reduced to a cost-per-mile basis for each motor vehicle. ~~It shall be the duty of the~~ The state ~~vehicle dispatcher to~~ fleet administrator shall call to the attention of an elected official or the head of any ~~department~~ state agency to which a motor vehicle has been assigned any evidence of the mishandling or misuse of ~~any~~ a state-owned motor vehicle which is called to the ~~dispatcher's~~ state fleet administrator's attention.

PARAGRAPH DIVIDED. A motor vehicle operated under this subsection shall not operate on gasoline other than gasoline blended with at least ten percent ethanol, unless under emergency circumstances. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol, if commercially available. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

4. The state ~~vehicle dispatcher~~ fleet administrator shall purchase all motor vehicles for all branches of the state government, except the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other ~~agencies~~ state agency exempted by law. ~~Before purchasing any new motor vehicle the dispatcher shall make requests for public bids by advertisement and shall purchase the vehicles from the lowest responsible bidder for the type and make of motor vehicle designated.~~ The state fleet administrator shall purchase new vehicles in accordance with competitive bidding procedures for items or services as provided in this chapter. The ~~vehicle dispatcher~~ state fleet administrator may purchase used or preowned vehicles at governmental or dealer auctions if the purchase is determined to be in the best interests of the state.

~~In conjunction with the requirements of section 18.3, subsection 1, effective January 1, 1991, the~~ The state ~~vehicle dispatcher~~ fleet administrator, and any other state agency, which for purposes of this paragraph includes but is not limited to community colleges and institutions under the control of the state board of regents, or local governmental political subdivision purchasing new motor vehicles ~~for other than law enforcement purposes,~~ shall purchase new passenger vehicles and light trucks ~~such~~ so that the average fuel efficiency for the fleet of new passenger vehicles and light trucks purchased in that year ~~by the state vehicle dispatcher or other state agency or local governmental political subdivision~~ equals or exceeds the average fuel economy standard for the vehicles' model year as established by the United States secretary of transportation under 15 U.S.C. § 2002. This paragraph does not apply to vehicles purchased for ~~any of the following:~~ law enforcement purposes~~, school buses,~~ or used for off-road maintenance work, or work vehicles used to pull loaded trailers. ~~The group of comparable vehicles within the total fleet purchased by the state vehicle dispatcher, or any other state agency or local governmental political subdivision purchasing motor vehicles for other than law enforcement purposes, shall have an average fuel efficiency rating equal to or exceeding the average fuel economy rating for that model year for that class of comparable vehicles as defined in 40 C.F.R. § 315.82. As used in this paragraph, "fuel economy" means the average number of miles traveled by an automobile per gallon of gasoline consumed as determined by the United States environmental protection agency administrator in accordance with 26 U.S.C. § 4064(c). For purposes of this paragraph, "state agency" includes, but is not limited to, a community college or an institution under the control of the state board of regents.~~

~~The~~ Not later than February 15 of each year, the state ~~vehicle dispatcher~~ fleet administrator shall ~~annually~~ report compliance with the corporate average ~~combined~~ fuel economy standards published by the United States secretary of transportation for ~~all~~ new motor vehicles ~~purchased by classification~~, other than motor vehicles purchased by the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other state agency exempted from the requirements of this subsection. The report of compliance shall classify the vehicles purchased for the current vehicle model year using the following categories: ~~(~~passenger automobiles, enforcement automobiles, vans, and light trucks~~) no later than January 31 of each year to the department of management and the energy and geological resources division of~~. The state fleet administrator shall deliver a copy of the report to the department of natural resources. As used in this paragraph, "~~combined~~ corporate average fuel economy" means the ~~combined~~ corporate average fuel economy as defined in ~~40~~ 49 C.F.R. § ~~600.002~~ 533.5.

a. ~~Effective January 1, 1993, the~~ The state ~~vehicle dispatcher, after consultation with the department of management and the various state agencies exempted from obtaining vehicles for use through the state vehicle dispatcher, shall adopt by rule pursuant to chapter 17A, a system of uniform standards for assigning~~ fleet administrator shall assign motor vehicles available for use to maximize the average passenger miles per gallon of motor vehicle fuel consumed. ~~The standards should~~ In assigning motor vehicles, the state fleet administrator shall consider standards established by the state fleet administrator, which may include but are not limited to the number of passengers traveling to a destination, the fuel economy of and passenger capacity of vehicles available for assignment, and any other

relevant information, to assure assignment of the most energy efficient vehicle or combination of vehicles for a trip from those vehicles available for assignment. The standards ~~adopted by the state vehicle dispatcher~~ shall not apply to special work vehicles~~,~~ and law enforcement vehicles. The ~~rules when adopted~~ standards shall apply to the following agencies:

(1) State ~~vehicle dispatcher~~ fleet administrator.

(2) State department of transportation.

(3) Institutions under the control of the state board of regents.

(4) The department for the blind.

(5) Any other state agency exempted from obtaining vehicles for use through the state ~~vehicle dispatcher~~ fleet administrator.

b. As used in paragraph "a", "fuel economy" means the average number of miles traveled by an automobile per gallon of gasoline consumed as determined by the United States environmental protection agency administrator in accordance with 26 U.S.C. § 4064(c).

5. Of all new passenger vehicles and light pickup trucks purchased by the state ~~vehicle dispatcher~~ fleet administrator, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion including but not limited to any of the following:

a. A flexible fuel, which is any of the following:

(1) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.

(2) A fuel which is a mixture of diesel fuel and processed soybean oil. At least twenty percent of the mixed fuel by volume must be processed soybean oil.

(3) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.2.

b. Compressed or liquefied natural gas.

c. Propane gas.

d. Solar energy.

e. Electricity.

The provisions of this subsection do not apply to vehicles and trucks purchased and directly used for law enforcement or purchased and used for off-road maintenance work or to pull loaded trailers.

~~It is the intent of the general assembly that the members of the midwest energy compact promote the development and purchase of motor vehicles equipped with engines which utilize alternative methods of propulsion.~~

6. All used motor vehicles turned in to the state ~~vehicle dispatcher~~ fleet administrator shall be disposed of by public auction, and the sales shall be advertised in a newspaper of general circulation one week in advance of sale, and the receipts from the sale shall be deposited in the depreciation fund to the credit of that ~~department or~~ state agency turning in the vehicle; except that, in the case of a used motor vehicle of special design, the state ~~vehicle dispatcher~~ fleet administrator may, with the approval of the director, instead of selling it at public auction, authorize the motor vehicle to be traded for another vehicle of similar design. If a vehicle sustains damage and the cost to repair exceeds the wholesale value of the vehicle, the state ~~vehicle dispatcher~~ fleet administrator may dispose of the motor vehicle by obtaining two or more written salvage bids and the vehicle shall be sold to the highest responsible bidder.

7. The state ~~vehicle dispatcher~~ fleet administrator may authorize the establishment of motor pools consisting of a number of state-owned motor vehicles under the ~~dispatcher's~~ state fleet administrator's supervision ~~and which the dispatcher~~. The state fleet administrator may ~~cause to be stored~~ store the motor vehicles in a public or private garage. If the state fleet administrator establishes a motor pool ~~is established by the state vehicle dispatcher~~, any state officer or employee desiring the use of a state-owned motor vehicle on state business shall notify the state ~~vehicle dispatcher~~ fleet administrator of the need for a vehicle within a reasonable time prior to actual use of the motor vehicle. The state ~~vehicle dis-~~

~~patcher~~ fleet administrator may assign a motor vehicle from the motor pool to the state officer or employee. If two or more state officers or employees desire the use of a state-owned motor vehicle for a trip to the same destination for the same length of time, the state ~~vehicle dispatcher~~ fleet administrator may assign one vehicle to make the trip.

8. The state ~~vehicle dispatcher~~ fleet administrator shall ~~cause to be marked~~ require that a sign be placed on ~~every~~ each state-owned motor vehicle ~~a sign~~ in a conspicuous place which indicates its ownership by the state ~~except cars~~. This requirement shall not apply to motor vehicles requested to be exempt by the commissioner of public safety or the director of the department of general services. All state-owned motor vehicles shall display registration plates bearing the word "official" except ~~cars~~ motor vehicles requested to be furnished with ordinary plates by the commissioner of public safety or the director of the department of general services pursuant to section 321.19. The state ~~vehicle dispatcher~~ fleet administrator shall keep an accurate record of the registration plates used on all ~~state cars~~ state-owned motor vehicles.

9. The state ~~vehicle dispatcher shall have the authority to make such~~ fleet administrator may adopt other rules regarding the operation of state-owned motor vehicles, with the approval of the director of the department of general services, as may be necessary to carry out the purpose of this chapter. All rules adopted by the vehicle dispatcher shall be approved by the director before becoming effective.

10. All ~~gasoline~~ fuel used in state-owned automobiles shall be purchased at cost from the various installations or garages of the state department of transportation, state board of regents, department of human services, or state ~~car~~ motor pools throughout the state, unless ~~such purchases are exempted by the vehicle dispatcher. The vehicle dispatcher shall study and determine the reasonable accessibility of these state-owned sources for the purchase of gasoline. If these~~ the state-owned sources for the purchase of ~~gasoline~~ fuel are not reasonably accessible~~,~~. If the ~~vehicle dispatcher~~ state fleet administrator determines that state-owned sources for the purchase of fuel are not reasonably accessible, the state fleet administrator shall authorize the purchase of ~~gasoline~~ fuel from other sources. The ~~vehicle dispatcher~~ state fleet administrator may prescribe a manner, other than the use of the revolving fund, in which the purchase of ~~gasoline~~ fuel from state-owned sources ~~shall be~~ is charged to the ~~department or~~ state agency responsible for the use of the ~~automobile~~ motor vehicle. The ~~vehicle dispatcher~~ state fleet administrator shall prescribe the manner in which oil and other normal ~~automobile~~ motor vehicle maintenance for state-owned ~~automobiles~~ motor vehicles may be purchased from private sources, if they cannot be reasonably obtained from a state ~~car~~ motor pool. The state ~~vehicle dispatcher~~ fleet administrator may advertise for bids and award contracts in accordance with competitive bidding procedures for items and services as provided in this chapter for ~~the~~ furnishing ~~of gasoline~~ fuel, oil, grease, and vehicle replacement parts for all state-owned motor vehicles. The state ~~vehicle dispatcher~~ fleet administrator and other state agencies, when advertising for bids for gasoline, shall also seek bids for ethanol-blended gasoline.

~~11. The state vehicle dispatcher is responsible for insuring motor vehicles owned by the state. Insurance coverage may be through a self-insurance program administered by the department or purchased from an insurer. If the determination is made to utilize a self-insurance program the vehicle dispatcher shall maintain loss and exposure data for the vehicles under the dispatcher's jurisdiction. Each agency shall provide to the department all requested motor vehicle loss and loss exposure information.~~

Sec. 38. Section 18.117, Code 1997, is amended to read as follows:

18.117 PRIVATE USE PROHIBITED — RATE FOR STATE BUSINESS.

1. A state officer or employee shall not use a state-owned motor vehicle for personal private use~~, nor shall the~~. A state officer or employee shall not be compensated for driving a privately owned motor vehicle unless it is done on state business with the approval of the state ~~vehicle dispatcher, and in~~ fleet administrator. In that case the state officer or employee shall receive an amount to be determined by the ~~state which may be~~ director in consultation

with the director of the department of personnel and the director of revenue and finance. The amount shall not exceed the maximum allowable under the federal internal revenue service rules per mile, notwithstanding established mileage requirements or depreciation allowances. However, the director may authorize ~~per mile reimbursement~~ private motor vehicle rates in excess of the rate allowed under the federal internal revenue service rules for state business use of substantially modified or specially equipped privately owned vehicles required by persons with disabilities. A statutory provision ~~stipulating~~ establishing reimbursement for necessary mileage, travel, or actual expenses ~~reimbursement~~ to a state officer falls under the ~~mileage reimbursement~~ private motor vehicle mileage rate limitation provided in this section unless specifically provided otherwise. Any peace officer employed by the state as defined in section 801.4 who is required to use a private motor vehicle in the performance of official duties shall receive ~~reimbursement for mileage expense~~ the private vehicle mileage rate at the rate ~~specified~~ provided in this section. However, the state ~~vehicle dispatcher~~ fleet administrator may delegate authority to officials of the state, and department heads, for the use of private vehicles on state business up to a yearly mileage figure established by the director ~~of general services~~. If a state motor vehicle has been assigned to a state officer or employee, the officer or employee shall not collect mileage for the use of a privately owned motor vehicle unless the state motor vehicle assigned is not usable.

2. ~~This section~~ Subsection 1 does not apply to ~~officials~~ any of the following:

a. Officials and employees of the state whose mileage is paid ~~by~~ other than by a state ~~agencies and this section does not apply to elected~~ agency.

b. Elected officers of the state~~, judicial~~.

c. Judicial officers~~,~~ or court employees.

d. Members and employees of the general assembly who shall be governed by policies relating to motor vehicle travel, including but not limited to reimbursement for expenses, as established by the general assembly.

Sec. 39. Section 421.40, unnumbered paragraph 3, Code 1997, is amended to read as follows:

The departments, the general assembly, and the courts shall pay their claims in a timely manner. If a claim for services, supplies, materials, or a contract which is payable from the state treasury remains unpaid after sixty days following the receipt of the claim or the satisfactory delivery, furnishing, or performance of the services, supplies, materials, or contract, whichever date is later, the state shall pay interest at the rate of one percent per month on the unpaid amount of the claim. This paragraph does not apply to claims against the state under chapters 25 and 669 or to claims paid by federal funds. The interest shall be charged to the appropriation or fund to which the claim is certified. Departments may enter into contracts for goods or services on payment terms of less than sixty days if the state may obtain a financial benefit or incentive which would not otherwise be available from the vendor. The department of revenue and finance, in consultation with the department of general services and other affected agencies, shall develop policies to promote consistency and fiscal responsibility relating to payment terms authorized under this paragraph. The director of the department of revenue and finance shall adopt rules under chapter 17A relating to the administration of this paragraph.

Sec. 40. NAME CHANGES — DIRECTIONS TO CODE EDITOR.

1. The Iowa Code editor shall change references to "superintendent of printing" to "state printing administrator" wherever the references appear in the Code.

2. The Iowa Code editor shall change references to "state vehicle dispatcher" to "state fleet administrator" wherever the references appear in the Code.

Sec. 41. Sections 18.41, 18.52, 18.55, 18.56, 18.76, 18.77, 18.78, 18.79, and 18.118, Code 1997, are repealed.

Approved May 6, 1998

CHAPTER 1165

PRIVATE ACTIVITY BONDS FOR AGRICULTURAL AND OTHER PURPOSES — AGRICULTURAL DEVELOPMENT AUTHORITY

S.F. 2052

AN ACT relating to programs involving government finance, by providing for the issuance of private activity bonds to administer programs by governmental entities, including the Iowa agricultural development authority and political subdivisions, and providing program assistance to beginning farmers.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 7C.4A, Code 1997, is amended to read as follows:

7C.4A ALLOCATION OF STATE CEILING.

For each calendar year, the state ceiling shall be allocated among bonds issued for various purposes as follows:

1. Thirty percent of the state ceiling shall be allocated solely to the Iowa finance authority for the following purposes:

a. Issuing qualified mortgage bonds.

b. Reallocating the amount, or any portion thereof, to another qualified political subdivision for the purpose of issuing qualified mortgage bonds; or

c. Exchanging the allocation, or any portion thereof, for the authority to issue mortgage credit certificates by election under section 25(c) of the Internal Revenue Code.

However, at any time during the calendar year the executive director of the Iowa finance authority may determine that a lesser amount need be allocated to the Iowa finance authority and on that date this lesser amount shall be the amount allocated to the authority and the excess shall be allocated under subsection ~~6~~ 7.

2. Twelve percent of the state ceiling shall be allocated to bonds issued to carry out programs established under chapters 260C, 260E, and 260F. However, at any time during the calendar year the director of the Iowa department of economic development may determine that a lesser amount need be allocated and on that date this lesser amount shall be the amount allocated for those programs and the excess shall be allocated under subsection ~~6~~ 7.

3. Sixteen percent of the state ceiling shall be allocated to qualified student loan bonds. However, at any time during the calendar year the governor's designee, with the approval of the Iowa student loan liquidity corporation, may determine that a lesser amount need be allocated to qualified student loan bonds and on that date the lesser amount shall be the amount allocated for those bonds and the excess shall be allocated under subsection ~~6~~ 7.

4. ~~Sixteen~~ Twenty-one percent of the state ceiling shall be allocated to qualified small issue bonds issued for first-time farmers. However, at any time during the calendar year the governor's designee, with the approval of the Iowa agricultural development authority, may determine that a lesser amount need be allocated to qualified small issue bonds for first-time farmers and on that date this lesser amount shall be the amount allocated for those bonds and the excess shall be allocated under subsection ~~6~~ 7.

5. Eighteen percent of the state ceiling shall be allocated to bonds issued by political subdivisions to finance a qualified industry or industries for the manufacturing, processing, or assembly of agricultural or manufactured products even though the processed products may require further treatment before delivery to the ultimate consumer.

~~5~~ 6. During the period of January 1 through ~~October 25~~ June 30, ~~five~~ three percent of the state ceiling shall be reserved for private activity bonds issued by political subdivisions, the proceeds of which are used by the issuing political subdivisions.

~~6~~ 7. a. The amount of the state ceiling which is not otherwise allocated under subsections 1 through 4 5, and after ~~October 25~~ June 30, the amount of the state ceiling reserved

under subsection ~~5~~ 6 and not allocated, shall be allocated to all bonds requiring an allocation under section 146 of the Internal Revenue Code without priority for any type of bond over another, except as otherwise provided in sections 7C.5 and 7C.11.

b. The population of the state shall be determined in accordance with the Internal Revenue Code.

Sec. 2. Section 7C.5, Code 1997, is amended to read as follows:

7C.5 FORMULA FOR ALLOCATION.

Except as provided in section 7C.4A, subsections 1 through 4 5, the state ceiling shall be allocated among all political subdivisions on a statewide basis on the basis of the chronological orders of receipt by the governor's designee of the applications described in section 7C.6 with respect to a definitive issue of bonds, as determined by the day, hour, and minute time-stamped on the application immediately upon receipt by the governor's designee. However, for the period January 1 through ~~October 25~~ June 30 of each year, allocations to bonds for which an amount of the state ceiling has been reserved pursuant to section 7C.4A, subsection ~~5~~ 6, shall be made to the political subdivisions submitting the applications first from the reserved amount until the reserved amount has been fully allocated and then from the amount specified in section 7C.4A, subsection ~~6~~ 7.

Sec. 3. Section 7C.6, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A political subdivision which proposes to issue bonds for a particular project or purpose for which an allocation of the state ceiling is required and has not already been made under section 7C.4A, subsections 1 through 4 5, must make an application for allocation before issuance of the bonds. The application may be made by the political subdivision or its representative, the beneficiary of the project or purpose, or by a person acting on behalf of the beneficiary. The application shall be submitted to the governor's designee, in the form prescribed by the governor's designee. The application shall contain, where appropriate, the following information:

Sec. 4. Section 7C.7, subsection 1, Code 1997, is amended to read as follows:

1. If the bonds are issued and delivered for the purpose or project within the thirty-day period or the forty-five day extension period provided in subsection 2, the political subdivision or its representative shall within ten days following the issuance and delivery of the bonds or not later than ~~October 25~~ June 30 of that year, if the bonds were issued and delivered on or before that date, file with the governor's designee, in the form or manner the governor's designee may prescribe, a notification of the date of issuance and the delivery of the bonds, and the actual principal amount of bonds issued and delivered. The filing of the notification shall be done by actual delivery or by posting in a United States post office depository with correct first class postage paid. If the actual principal amount of bonds issued and delivered is less than the amount of the allocation, the amount of the allocation is automatically reduced to the actual principal amount of the bonds issued and delivered.

Sec. 5. EXECUTIVE DIRECTOR — CONGRESSIONAL PERSUASION. The executive director of the agricultural development authority as established pursuant to chapter 175 shall use every effort practical to persuade members of the Congress of the United States regarding the following:

1. The need to change provisions in federal law, including the federal Internal Revenue Code, 26 U.S.C. § 141 et seq., in order to allow a person to qualify for assistance under the beginning farmer loan program pursuant to section 175.12, to finance the acquisition of agricultural land, improvements, and depreciable property from a family member, if the purchase price paid for the land, improvements, or depreciable property is not less than seventy-five percent of its appraised value.

2. The need to increase the state of Iowa's ceiling to the issuers of private activity bonds within the state in order to maximize the economic benefit to the citizens of the state from

the issuance of private activity bonds pursuant to the federal Internal Revenue Code, 26 U.S.C. § 146.

Sec. 6. COOPERATION BETWEEN THE AGRICULTURAL DEVELOPMENT AUTHORITY AND THE IOWA FINANCE AUTHORITY. To the extent authorized by the Iowa finance authority, the agricultural development authority may use any percentage of the state ceiling allocated to the Iowa finance authority pursuant to section 7C.4A for purposes of supporting the agricultural development authority in financing the beginning farmer loan program pursuant to section 175.12 through the issuance of qualified small issue bonds. The Iowa finance authority and the agricultural development authority shall cooperate to every extent practical in order to carry out this section without impeding the purposes of the Iowa finance authority.

Sec. 7. ADDITIONAL POSITION AUTHORIZED. In addition to any full-time equivalent positions otherwise authorized by the general assembly for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the agricultural development authority, as established in section 175.3, is authorized, one full-time equivalent position for the fiscal year.

Approved May 6, 1998

CHAPTER 1166

COUNTY AGRICULTURAL EXTENSION COUNCILS

S.F. 2200

AN ACT relating to the expenses, powers, and duties of county agricultural extension councils.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 176A.9, subsection 4, Code 1997, is amended to read as follows:

4. The extension council may collect reasonable fees ~~for specific services which require special equipment or personnel, such as soil testing services, seed testing services, or other educational services, but it shall not collect dues for or pay dues to any state or national organization or agency, nor shall it accept contributions or gifts for the extension district, or the extension council~~ and may seek and receive grants, donations, gifts, bequests, or other moneys from public and private sources to be used for the purposes set forth in this section, and may enter into contracts to provide educational services.

Sec. 2. Section 176A.9, subsection 6, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

6. Members of the council shall serve without compensation, but may receive actual and necessary expenses, including in-state travel expenses at not more than the state rate, incurred in the performance of official duties other than attendance at regular local county extension council meetings. Payment shall be made from funds available pursuant to section 176A.8, subsection 14.

Approved May 6, 1998

CHAPTER 1167

RURAL WATER DISTRICTS — AGREEMENTS WITH SANITARY DISTRICTS, PROJECT FINANCING, AND DETACHMENT AND ATTACHMENT OF AREAS

S.F. 2268

AN ACT relating to rural water services by authorizing rural water districts to enter into agreements with other governmental entities to provide for the ownership, acquisition, construction, and equipping of sewer systems, and authorizing the issuance of revenue obligations to finance the projects and providing procedures for detaching property from one district and attaching it to another district.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 357A.11, subsection 11, Code 1997, is amended to read as follows:

11. Have authority to execute an agreement with a governmental entity, including a county, city, sanitary sewer district, or another district, for purposes of managing or administering the ~~governmental entity's~~ works, facilities, or waterways which are useful for the collection, disposal, or treatment of wastewater or sewage and which are located within the jurisdiction of the governmental entity or the district. The board may do what is necessary to carry out the agreement, including but not limited to any of the following:

a. Owning or acquiring by gift, lease, purchase, or grant any interest in real or personal property.

b. Constructing, operating, maintaining, repairing, improving, or equipping any of the works, facilities, or waterways.

c. Financing all or part of the cost of acquiring, constructing, maintaining, repairing, improving, or equipping any works, facilities, or waterways, or refinancing all or part of the cost. The financing or refinancing shall be accomplished in accordance with the terms and procedures set forth in the applicable provisions of sections 384.24A, 384.83 through 384.88, 384.92, and 384.93. References in those sections to a city shall be applicable to a district and references in those sections to a governing body or a city council shall be applicable to the district's board.

Sec. 2. NEW SECTION. 357A.24 DETACHMENT AND ATTACHMENT OF AREAS BETWEEN DISTRICTS.

1. The boards of two or more districts, or the boards of any district and a rural water system organized under chapter 504A, may by concurrent action or agreement join in a petition to detach an area which is not being served by the facilities of one district or system for purposes of being attached to the other district or system. The concurrent action or agreement may include conditions placed on the effectiveness of the concurrent action or agreement as deemed appropriate by the boards of the districts.

2. The petition shall be filed with the auditor of the county in which the area to be detached is located. The petition shall include all of the following regarding the area which is the subject of the petition:

a. A description by section, or fraction thereof, and by township and range of the area, in the same manner as provided in section 357A.16.

b. A verification that the area is not being served by the facilities of any district.

c. A statement asserting that the area can be adequately and economically served by the facilities of the district proposing to attach the area.

3. Upon filing the petition, the auditor shall prepare for a hearing on the petition by following the same procedures as provided in section 357A.3. The notice of the hearing shall include all of the following:

a. The location of the area subject to the petition.

b. The time and place of the hearing as established by the board of supervisors for the county in which the area to be detached is located.

c. That all owners or tenants of real property within the boundaries of the area may appear and be heard.

4. After the hearing the board of supervisors shall order that the area subject to the petition be detached from one district and attached to the other district, if the board determines that all of the following have been satisfied:

a. The petition meets the requirements of this section.

b. The information included in the petition is accurate.

c. Notice required in this section has been provided.

d. The detachment and attachment is in the best interest of the residents of the area subject to the petition.

The order shall be published in the same newspaper which published the notice of the hearing.

5. This section does not preclude any procedure for detaching an area from or attaching an area to a district as otherwise provided by law, including this chapter.

Approved May 6, 1998

CHAPTER 1168

RURAL IMPROVEMENT ZONES

S.F. 2284

AN ACT relating to rural improvement zones.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 357H.1, Code Supplement 1997, is amended to read as follows:

357H.1 RURAL IMPROVEMENT ZONES.

The board of supervisors of a county with less than eleven thousand five hundred residents but more than ten thousand five hundred residents, based upon the 1990 certified federal census, and with a private lake development, shall designate an area surrounding the lake, if it is an unincorporated area of the county, a rural improvement zone upon receipt of a petition pursuant to section 357H.2, and upon the board's determination that the area is in need of improvements. For purposes of this chapter, "improvements" means dredging, installation of erosion control measures, land acquisition, and related improvements, including soil conservation practices, within or outside of the boundaries of the zone.

For purposes of this chapter, "board" means the board of supervisors of the county.

Sec. 2. Section 357H.6, Code Supplement 1997, is amended to read as follows:

357H.6 TRUSTEES — TERMS AND QUALIFICATIONS.

The election of trustees of a rural improvement zone shall take place at a special election on ballots which shall not reflect a nominee's political affiliation. Nomination shall be made by petition in accordance with chapter 45. The petition form shall be furnished by the county commissioner of elections, signed by eligible electors of the rural improvement zone equal in number to one percent of the vote cast within the zone for governor in the last previous general election, and shall be filed with the county commissioner of elections. A plurality shall be sufficient to elect the five trustees of the rural improvement zone, and no primary election for that office shall be held. At the original election, two trustees shall be elected for one year, two for two years, and one for three years. The terms of the succeeding trustees are for three years. The terms of the trustees shall begin immediately after their

election and certification. The trustees must be residents of the zone. Vacancies on the board shall be filled by appointment by the remaining trustees.

Sec. 3. Section 357H.8, Code Supplement 1997, is amended to read as follows:

357H.8 CERTIFICATES, CONTRACTS, AND OTHER OBLIGATIONS — STANDBY TAX.

To provide funds for the payment of the costs of improvement projects and for the payment of other activities authorized pursuant to section 357H.7, the board of trustees may borrow money and issue and sell certificates or may enter into contracts or other obligations payable from a sufficient portion of the future receipts of tax revenue authorized pursuant to section 357H.9 and the standby tax in subsection 4 of this section. The receipts shall be pledged to the payment of principal of and interest on the certificates, contracts, or other obligations.

1. Certificates may be sold at public sale or at private sale at par, premium, or discount at the discretion of the board of trustees. Chapter 75 does not apply to the issuance of these certificates.

2. Certificates may be issued with respect to a single improvement project or multiple projects and may contain terms or conditions as the board of trustees may provide by resolution authorizing the issuance of the certificates. However, certificates shall not be issued after January 1, 2007, except to refund other certificates as provided in subsection 3.

3. Certificates issued to refund other certificates may be sold at public sale or at private sale as provided in this section with the proceeds from the sale to be used for the payment of the certificates being refunded. The refunding certificates may be exchanged in payment and discharge of the certificates being refunded, in installments at different times, or an entire issue or series at one time. Refunding certificates may be sold or exchanged at any time on, before, or after the maturity of the outstanding certificates to be refunded, may be issued for the purpose of refunding a like, greater, or lesser principal amount of certificates, and may bear a rate of interest higher or lower than, or equivalent to, the rate of interest on certificates being renewed or refunded.

4. To further secure the payment of the certificates, the board of trustees shall, by resolution, provide for the assessment of an annual levy of a standby tax upon all taxable property within the rural improvement zone. A copy of the resolution shall be sent to the county auditor. The revenues from the standby tax shall be deposited in a special fund and shall be expended only for the payment of principal of and interest on the certificates issued as provided in this section, when the receipt of tax revenues pursuant to section 357H.9 is insufficient. If payments are necessary and made from the special fund, the amount of the payments shall be promptly repaid into the special fund from the first available payments received which are not required for the payment of principal of or interest on certificates due. No reserves may be built up in the special fund in anticipation of a projected default. The board of trustees shall adjust the annual standby tax levy for each year to reflect the amount of revenues in the special fund and the amount of principal and interest which is due in that year.

5. Before certificates, contracts, or other obligations are issued or entered into, the board of trustees shall publish a notice of its intention ~~to issue the certificates~~, stating the amount, the purpose, and the improvement project or projects for which the certificates, contracts, or other obligations are to be issued or entered into. A person may, within fifteen days after the publication of the notice, appeal the decision of the board of trustees in proposing to issue the certificates or to enter into the contracts or other obligations to the district court in the county in which the rural improvement zone exists. The action of the board of trustees in determining to issue the certificates or to enter into the contracts or other obligations is final and conclusive unless the district court finds that the board of trustees has exceeded its legal authority. An action shall not be brought which questions the legality of the certificates, contracts, or other obligations, the power of the board of trustees to issue the certificates or to enter into the contracts or other obligations, the effectiveness of any proceedings relating to the authorization of the project, or the authorization and issuance of the certificates or

entrance into the contracts or other obligations after fifteen days from the publication of the notice of intention to issue certificates or enter into contracts or other obligations.

6. The board of trustees shall determine if revenues are sufficient to secure the faithful performance of obligations.

Sec. 4. Section 357H.9, Code Supplement 1997, is amended to read as follows:

357H.9 INCREMENTAL PROPERTY TAXES.

The board of trustees shall provide by resolution that taxes levied on the taxable property in a rural improvement zone each year by or for the benefit of the state, city, county, school district, or other taxing district after the effective date of the resolution shall be divided as provided in section 403.19, subsections 1 and 2, in the same manner as if the taxable property in the rural improvement zone was taxable property in an urban renewal area and the resolution was an ordinance within the meaning of those subsections. The taxes received by the board of trustees shall be allocated to, and when collected be paid into, a special fund and may be irrevocably pledged by the trustees to pay the principal of and interest on the certificates ~~issued~~, contracts, or other obligations approved by the board of trustees to finance or refinance, in whole or in part, an improvement project. As used in this section, "taxes" includes, but is not limited to, all levies on an ad valorem basis upon land or real property located in the rural improvement zone.

Approved May 6, 1998

CHAPTER 1169

SEX OFFENDER REGISTRY

S.F. 2292

AN ACT relating to the sex offender registry and providing for the Act's applicability.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 692A.1, subsection 3, paragraphs a and b, Code Supplement 1997, are amended by striking the paragraphs.

Sec. 2. Section 692A.1, subsection 3, paragraph m, Code Supplement 1997, is amended to read as follows:

~~m.~~ n. An indictable offense committed in another jurisdiction which would constitute an indictable offense under paragraphs "a" through ~~"l"~~ "m".

Sec. 3. Section 692A.1, subsection 3, Code Supplement 1997, is amended by adding the following new paragraph after paragraph h and by relettering current paragraphs i through l as paragraphs j through m:

NEW PARAGRAPH. i. Incest committed against a minor.

Sec. 4. Section 692A.1, subsection 6, Code Supplement 1997, is amended to read as follows:

6. "Sexually violent offense" means any of the following indictable offenses:

a. Sexual abuse as defined under section 709.1.

b. Assault with intent to commit sexual abuse in violation of section 709.11.

c. Sexual misconduct with offenders in violation of section 709.16.

~~d. Telephone dissemination of obscene materials in violation of section 728.15.~~

~~e. Rental or sale of hard-core pornography in violation of section 728.4.~~

~~f. Indecent exposure in violation of section 709.9.~~

~~g.~~ d. Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, false imprisonment, burglary, or manslaughter.

~~h.~~ e. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs "a" through ~~"g"~~ "d" if committed in this state.

Sec. 5. Section 692A.1, Code Supplement 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 4A. "Other relevant offense" means any of the following offenses:

a. Telephone dissemination of obscene materials in violation of section 728.15.

b. Rental or sale of hard-core pornography in violation of section 728.4.

c. Indecent exposure in violation of section 709.9.

d. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs "a" through "c" if committed in this state.

NEW SUBSECTION. 8. "Sexually violent predator" means a person who has been convicted of an offense under the laws of this state or of another state which would qualify the person as a sexually violent predator under the federal Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1798.

Sec. 6. Section 692A.2, Code 1997, is amended to read as follows:

692A.2 PERSONS REQUIRED TO REGISTER.

1. A person who has been convicted of ~~either~~ a criminal offense against a minor, sexual exploitation, an other relevant offense, or a sexually violent offense in this state or in another state, or in a federal, military, tribal, or foreign court, or a person required to register in another state under the state's sex offender registry, shall register as provided in this chapter. A person required to register under this chapter shall, upon a first conviction, register for a period of ten years commencing ~~from~~ as follows:

a. From the date of placement on probation~~;~~.

b. From the date of release on parole~~;~~ or work release~~;~~.

c. From the date of release as a juvenile from foster care or residential treatment~~; or~~.

d. From the date of any other release from custody.

2. If a person is placed on probation, parole, or work release and the probation, parole, or work release is revoked, the ten years shall commence anew upon release from custody. If the person who is required to register under this chapter is incarcerated for a crime which does not require registration under this chapter, the period of registration is tolled until the person is released from incarceration for that crime.

3. A person who is required to register under this chapter shall, upon a second or subsequent conviction, register for the rest of the person's life.

4. A person is not required to register while incarcerated, in foster care, or in a residential treatment program. A person who is convicted, as defined in section 692A.1, of either a criminal offense against a minor ~~or~~, sexual exploitation, a sexually violent offense, or an other relevant offense as a result of adjudication of delinquency in juvenile court shall ~~not~~ be required to register as required in this chapter ~~if~~ unless the juvenile court finds that the person should not be required to register under this chapter. ~~If a person is placed on probation, parole, or work release and the probation, parole, or work release is revoked, the ten years shall commence anew upon release from custody.~~ If a juvenile is required to register and the court later modifies the order regarding the requirement to register, the court shall immediately notify the department. Convictions of more than one offense which require registration under this chapter but which are prosecuted within a single indictment shall be considered as a single offense for purposes of registration.

~~2.~~ 5. A person who has been convicted of an offense under the laws of this state or of another state which would qualify the person as a sexually violent predator ~~under the fed-~~

~~eral Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322,~~ shall register as provided in this chapter for an indeterminate period terminating only upon a determination by the sentencing court that registration is no longer required.

Sec. 7. Section 692A.3, subsections 2, 3, and 4, Code 1997, are amended to read as follows:

2. A person required to register under this chapter shall, within ten days of changing residence within a county in this state or within ten days of a change in the person's name as a result of marriage, dissolution of marriage, or a legal name change, notify the sheriff of the county in which the person is registered of the change of address, name, and any changes in the person's telephone number in writing on a form provided by the sheriff. The sheriff shall send a copy of the change of ~~address~~ information to the department within three working days of receipt of notice of the ~~address~~ change. The sex offender registry shall maintain and make available information from the registry cross-referenced by name at the time of conviction and by name subsequent to any change.

3. A person required to register under this chapter shall register with the sheriff of a county in which residence has been newly established and notify the sheriff of the county in which the person was registered, within ten days of changing residence to a location outside the county in which the person was registered. Registration shall be in writing on a form provided by the sheriff and shall include the person's change of address and any changes to the person's telephone number or name. The sheriff shall send a copy of the change of ~~address~~ information to the department within three working days of receipt of notice of the ~~address~~ change.

4. A person required to register under this chapter shall notify the sheriff of the county in which the person is registered, within ten days of changing residence to a location outside this state, of the new residence address and any changes in telephone number ~~and shall register in the other state within the ten days, if persons are required to register under the laws of the other state~~ or name. The sheriff shall send a copy of the change ~~of address~~ to the department within three working days of receipt of notice of the ~~address~~ change. The person must register with the registering agency of the other state within ten days of changing residency, if persons are required to register under the laws of the other state. The department or the sheriff of the county in this state in which the person last resided may notify the registering agency in the other state of the registrant's new address, telephone number, or name.

Sec. 8. Section 692A.4, subsection 2, Code 1997, is amended to read as follows:

2. Verification of address for a person who has been convicted of an offense under the laws of this state or of another state which would qualify the person as a sexually violent predator ~~under the federal Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322,~~ shall be accomplished in the same manner as in subsection 1, except that the verification shall be done every three months at times established by the department.

Sec. 9. Section 692A.5, subsection 1, paragraph a, Code Supplement 1997, is amended to read as follows:

a. Obtain fingerprints, the social security number, and a photograph of the person if fingerprints and a photograph and the social security number have not already been obtained in connection with the offense that triggers registration. A current photograph ~~may~~ shall also be required. Additional information for a person required to register as a sexually violent predator shall include, but not be limited to, other identifying factors, anticipated future places of residence, offense history, and documentation of any treatment received by the person for a mental abnormality or personality disorder.

Sec. 10. Section 692A.5, subsection 2, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

If the offender refuses to register, the sheriff, warden, or superintendent shall immediately notify a prosecuting attorney in the county in which the offender was convicted or, if the offender no longer resides in that county, in the county in which the offender resides of the refusal to register. The prosecuting attorney ~~may~~ shall bring a contempt of court action against the offender in the county in which the offender was convicted or, if the offender no longer resides in that county, in the county in which the offender resides. An offender who refuses to register ~~may~~ shall be held in contempt and may be incarcerated following the entry of judgment by the court on the contempt action until the offender complies with the registration requirements.

Sec. 11. Section 692A.7, subsection 1, Code 1997, is amended to read as follows:

1. A willful failure to register as required under this chapter is an aggravated misdemeanor for a first offense and a class "D" felony for a second or subsequent offense. However, a person who willfully fails to register as required under this chapter and who commits a criminal offense against a minor, sexual exploitation, an other relevant offense, or a sexually violent offense is guilty of a class "C" felony. Any fine imposed for a second or subsequent offense shall not be suspended. The court shall not defer judgment or sentence for any violation of the registration requirements of this chapter. The willful failure of a person who is on probation, parole, or work release, or any other form of release to register as required under this chapter shall result in the automatic revocation of the person's probation, parole, or work release.

Sec. 12. Section 692A.9, Code 1997, is amended to read as follows:

692A.9 REGISTRATION FORMS.

Registration forms shall be prepared by the department and shall include the registrant's name at the time of conviction and any change of name as a result of marriage, dissolution of marriage, or legal name change, the registrant's social security number, date of birth, the registrant's current address, and, if applicable, the registrant's telephone number. The forms may provide for the reporting of additional relevant information such as, but not limited to, fingerprints and photographs but shall not include information identifying the victim of the crime of which the registrant was convicted. Additional information for persons required to register as a sexually violent predator shall include, but not be limited to, other identifying factors, anticipated future places of residence, offense history, and documentation of any treatment received by the person for mental abnormality or personality disorder. Copies of blank forms shall be available upon request to any person from the sheriff.

Sec. 13. Section 692A.13, subsection 3, Code 1997, is amended to read as follows:

3. The department or a criminal or juvenile justice agency ~~with case-specific authorization from the department~~ may release relevant information from the registry ~~regarding a criminal offense against a minor, sexual exploitation, or a sexually violent offense, that is necessary to protect the~~ to members of the general public concerning a specific person who is required to register under this chapter as follows:

a. Any person may contact a sheriff's office or a police department in writing to request information regarding any person required to register. A request for information shall include the name and one or more of the following identifiers pertaining to the person about whom information is sought:

(1) The person's date of birth.

(2) The person's social security number.

(3) The person's address.

b. A county sheriff or a police department shall also provide to any person upon request a list of all registrants in that county who have been classified as "at-risk" in this state.

c. For offenders who have been classified as "at-risk" in this state pursuant to an assessment conducted as provided in subsection 6, the department or a criminal or juvenile justice agency may also release the offender's name, a photograph, locations frequented by the offender, and relevant Iowa criminal history information from the registry to public and

private schools, child day care centers, family day care providers, businesses, and organizations that serve primarily children, women, or vulnerable adults, and neighbors and community groups, or to the public at large. The extent of public disclosure of the information shall be rationally related to the following:

(1) The level of risk posed by the offender to the community.

(2) The locations where the offender resides, expects to reside, or is regularly found.

(3) The needs of the affected community members for information to enhance their individual and collective safety.

d. The department shall provide electronic access to relevant information from the registry pertaining to offenders who are convicted of a criminal offense against a minor, sexual exploitation, an other relevant offense, or a sexually violent offense on or after the effective date of this Act and who have been classified as "at-risk".

Sec. 14. Section 692A.13, subsections 6 and 7, Code 1997, are amended by striking the subsections and inserting in lieu thereof the following:

6. The department of corrections, the department of human services, and the department of public safety shall, in consultation with one another, develop methods and procedures for the assessment of the risk that persons required to register under this chapter pose of reoffending. The department of corrections, in consultation with the department of human services, the department of public safety, and the attorney general, shall adopt rules relating to assessment procedures. The assessment procedures shall include procedures for the sharing of information between the department of corrections, department of human services, and the division of criminal investigation of the department of public safety, as well as the communication of the results of the risk assessment to criminal and juvenile justice agencies. The assignment of responsibility for the assessment of risk shall be as follows:

a. The department of corrections shall perform the assessment of risk for persons who are incarcerated in institutions under the control of the director of the department of corrections, persons who are under the supervision of the department of corrections or a judicial district department of correctional services, and persons who are under the supervision or control of the department of corrections or a judicial district department of correctional services through an interstate compact.

b. The department of human services shall perform the assessment of risk for persons who are confined in institutions under the control of the director of human services, persons who are under the supervision of the department of human services, and persons who are under the supervision or control of the department of human services through an interstate compact.

c. The division of criminal investigation of the department of public safety shall perform the assessment of risk for persons who have moved to Iowa but are not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; federal parolees or probationers; persons who have been released from a county jail but are not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; juveniles who are not incarcerated but who are placed under the supervision of juvenile court services; and persons who are convicted and released by the courts and are not incarcerated or placed under supervision pursuant to the court's sentencing order. Assessments of persons who have moved to Iowa and persons on federal parole or probation shall be performed on an expedited basis if the person was classified as a person with a high degree of likelihood of reoffending by the other jurisdiction or the federal government.

7. By January 1, 1999, the department of corrections, the department of human services, and the division of criminal investigation of the department of public safety shall, in consultation with one another and associations which represent criminal and juvenile justice agencies, develop a model policy for disclosure of information about persons required to register under this chapter to members of the general public. The model policy shall be designed to further the objectives of providing adequate and timely notice to the community

concerning sex offenders who are or will be residing in the community and of assisting community members in developing constructive plans to prepare themselves.

Sec. 15. Section 692A.13, subsection 8, Code 1997, is amended to read as follows:

8. Notwithstanding sections 232.147 through 232.151, records concerning convictions for criminal offenses against a minor, sexual exploitation, other relevant offenses, or sexually violent offenses which are committed by a minor may be released in the same manner as records of convictions of adults.

Sec. 16. NEW SECTION. 692A.16 APPLICABILITY OF CHAPTER.

1. The registration requirements of this chapter shall apply to persons convicted of a criminal offense against a minor, sexual exploitation, an other relevant offense, or a sexually violent offense prior to July 1, 1995, are released* on or after July 1, 1995, who are participating in a work release or institutional work release program on or after July 1, 1995, or who are under parole or probation supervision by a judicial district department of correctional services on or after July 1, 1995.

2. Persons required to register under subsection 1 shall register for a period of ten years commencing with the later of either July 1, 1995, or the date of the person's release from confinement, release on work release or institutional work release, or release on parole or probation. For persons released from confinement, registration shall be initiated by the warden, sheriff, or superintendent in charge of the place of confinement in the same manner as provided in section 692A.5. For persons who are under parole or probation supervision, the person's parole or probation officer shall inform the person of the person's duty to register and shall obtain the registration information from the person as required under section 692A.5.

Sec. 17. Section 901.4, Code 1997, is amended to read as follows:

901.4 PRESENTENCE INVESTIGATION REPORT CONFIDENTIAL.

The presentence investigation report is confidential and the court shall provide safeguards to ensure its confidentiality, including but not limited to sealing the report, which may be opened only by further court order. At least three days prior to the date set for sentencing, the court shall serve all of the presentence investigation report upon the defendant's attorney and the attorney for the state, and the report shall remain confidential except upon court order. However, the court may conceal the identity of the person who provided confidential information. The report of a medical examination or psychological or psychiatric evaluation shall be made available to the attorney for the state and to the defendant upon request. The reports are part of the record but shall be sealed and opened only on order of the court. If the defendant is committed to the custody of the Iowa department of corrections and is not a class "A" felon, a copy of the presentence investigation report shall be forwarded to the director with the order of commitment by the clerk of the district court and to the board of parole at the time of commitment. The defendant or the defendant's attorney may file with the presentence investigation report, a denial or refutation of the allegations, or both, contained in the report. The denial or refutation shall be included in the report. If the person is sentenced for an offense which requires registration under chapter 692A, the court shall release the report to the department which is responsible under section 692A.13 for performing the assessment of risk.

Sec. 18. MEGAN'S LAW COMPLIANCE DETERMINATION. The department of public safety shall submit a request to the United States department of justice for a determination of whether the failure of a state to include as criminal offenses against a minor the offenses of kidnapping or false imprisonment of a minor, committed by someone other than a parent and which do not involve sexual abuse or attempted sexual abuse, will result in a state being found not to be in compliance with the federal Megan's Law amendment to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act specified in section 170101(f) of Pub. L. No. 104-145, 110 Stat. 1345 (codified at 42 U.S.C. §

* The words "who are released" probably intended

14071(f)). If the department of public safety receives, as a result of the request, an opinion that the failure to include those offenses as criminal offenses against a minor will cause a state to not be in compliance with the federal Megan's Law amendment, the department shall seek an exception to the requirement for inclusion of those offenses and shall report the information regarding the contents of the United States department of justice opinion and any results of the exception request at the commencement of the session of the general assembly which convenes in January of 1999.

Approved May 6, 1998

CHAPTER 1170

CHILD SUPPORT, SPOUSAL SUPPORT, AND RELATED MATTERS

S.F. 2313

AN ACT relating to child support, providing penalties, and providing effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I
STATE DISBURSEMENT UNIT

Section 1. Section 236.10, Code Supplement 1997, is amended to read as follows:

236.10 CONFIDENTIALITY OF RECORDS.

The file in a domestic abuse case shall be sealed by the clerk of court when it is complete and after the time for appeal has expired. However, the clerk shall open the file upon application to and order of the court for good cause shown or upon request of the child support recovery unit. Support payment records, whether maintained by the clerk of the district court or the department of human services, are public records and may be released upon request. However, a payment record shall not include address or location information.

Sec. 2. Section 252B.9, subsection 2, paragraph a, Code Supplement 1997, is amended to read as follows:

a. Payment records of the collection services center which are maintained pursuant to chapter 598 are public records and may be released upon request. Payment records of the clerk of the district court, to which the department has access to meet the requirements of a state disbursement unit, are also public records and may be released upon request. A payment record shall not include address or location information.

Sec. 3. Section 252B.13A, Code Supplement 1997, is amended to read as follows:

252B.13A COLLECTION SERVICES CENTER.

1. The department shall establish within the unit a collection services center for the receipt and disbursement of support payments as defined in section 252D.16 or 598.1 as required for orders by section 252B.14. For purposes of this section, support payments do not include attorney fees, court costs, or property settlements. The center may also receive and disburse surcharges as provided in section 252B.23.

2. a. The collection services center shall meet the requirements for a state disbursement unit pursuant to 42 U.S.C. § 654B, section 252B.14, and this section by October 1, 1999.

b. Prior to October 1, 1999, the department and the judicial department shall enter into a cooperative agreement for implementation of the state disbursement unit requirement. The agreement shall include, but is not limited to, provisions for all of the following:

(1) Coordination with the state case registry created in section 252B.24.

(2) The receipt and disbursement of income withholding payments for orders not receiving services from the unit pursuant to section 252B.14, subsection 4.

(3) The transmission of information, orders, and documents, and access to information.

(4) Furnishing, upon request, timely information on the current status of support payments as provided in 42 U.S.C. § 654B(b)(4), in a manner consistent with state law.

(5) The notification of payors of income to direct income withholding payments to the collection services center as provided in section 252B.14, subsection 4.

Sec. 4. Section 252B.14, Code Supplement 1997, is amended to read as follows:

252B.14 SUPPORT PAYMENTS — COLLECTION SERVICES CENTER — CLERK OF THE DISTRICT COURT.

1. For the purposes of this section, "support order" includes any order entered pursuant to chapter 234, 252A, 252C, 598, 600B, or any other support chapter or proceeding which establishes support payments as defined in section 252D.16 or 598.1.

2. For support orders being enforced by the child support recovery unit, support payments made pursuant to the order shall be directed to and disbursed by the collection services center.

3. ~~For a~~ With the exception of support ~~order as~~ payments to which subsection 2 ~~does not apply~~ or 4 applies, support payments made pursuant to ~~the~~ an order shall be directed to and disbursed by the clerk of the district court in the county in which the order for support is filed. The clerk of the district court may require the obligor to submit payments by bank draft or money order if the obligor submits an insufficient funds support payment to the clerk of the district court.

4. By October 1, 1999, for a support order to which subsection 2 does not apply, regardless of the terms of the support order directing or redirecting the place of payment, support payments made through income withholding by a payor of income as provided in chapter 252D shall be directed to and disbursed by the collection services center. The judicial department and the department shall develop and implement a plan to notify payors of income of this requirement and the effective date of the requirement applicable to the respective payor of income.

5. If the collection services center is receiving and disbursing payments pursuant to a support order, but the unit is not providing other services under Title IV-D of the federal Social Security Act, or if the order is not being enforced by the unit, the parties to that order are not considered to be receiving services under this chapter.

~~4.~~ 6. Payments to persons other than the clerk of the district court or the collection services center do not satisfy the support obligations created by a support order or judgment, except as provided for in sections 598.22 and 598.22A.

Sec. 5. Section 252B.15, Code 1997, is amended to read as follows:

252B.15 PROCESSING AND DISBURSEMENT OF SUPPORT PAYMENTS.

1. The collection services center shall notify the clerk of the district court of any order for which the child support recovery unit is providing enforcement services. The clerk of the district court shall forward any support payment made pursuant to the order, along with any support payment information, to the collection services center. Unless the agreement developed pursuant to section 252B.13A otherwise provides, by October 1, 1999, the clerk of the district court shall forward any support payment made and any support payment information provided through income withholding pursuant to chapter 252D, to the collection services center. The collection services center shall process and disburse the payment in accordance with federal requirements.

2. ~~If~~ Unless otherwise provided under federal law, if it is possible to identify the support order to which a payment is to be applied and if sufficient information is provided to identify the obligee, a payment received by the collection services center or the clerk of the district court shall be disbursed to the appropriate individual or office within two working days in accordance with section 598.22.

Sec. 6. Section 252B.16, subsection 3, Code 1997, is amended to read as follows:

3. Once the responsibility for receiving and disbursing support payments has been transferred from a clerk of the district court to the collection services center, the responsibility shall remain with the collection services center even if the child support recovery unit is no longer providing enforcement services, unless redirected by court order. However, the responsibility for receiving and disbursing income withholding payments shall not be redirected to a clerk of the district court.

Sec. 7. Section 252D.1, Code Supplement 1997, is amended to read as follows:

252D.1 DELINQUENT SUPPORT PAYMENTS.

If support payments ordered under chapter 232, 234, 252A, 252C, 252D, 252E, 252F, 598, 600B, or any other applicable chapter, or under a comparable statute of a foreign jurisdiction, as certified to the child support recovery unit established in section 252B.2, are not paid to the clerk of the district court or the collection services center pursuant to section 598.22 and become delinquent in an amount equal to the payment for one month, the child support recovery unit may enter an ex parte order or, upon application of a person entitled to receive the support payments, the district court may enter an ex parte order, notifying the person whose income is to be withheld, of the delinquent amount, of the amount of income to be withheld, and of the procedure to file a motion to quash the order for income withholding, and ordering the withholding of specified sums to be deducted from the delinquent person's income as defined in section 252D.16 sufficient to pay the support obligation and, except as provided in section 598.22, requiring the payment of such sums to the clerk of the district court or the collection services center. Beginning October 1, 1999, all income withholding payments shall be paid to the collection services center. Notification of income withholding shall be provided to the obligor and to the payor of income pursuant to section 252D.17.

Sec. 8. Section 252D.17, subsections 5, 6, and 8, Code Supplement 1997, are amended to read as follows:

5. The payor shall send the amounts withheld to the collection services center or the clerk of the district court pursuant to section 252B.14 within seven business days of the date the obligor is paid. "Business day" means a day on which state offices are open for regular business.

6. The payor may combine amounts withheld from the obligors' income in a single payment to the clerk of the district court or to the collection services center, as appropriate. Whether combined or separate, payments shall be identified by the name of the obligor, account number, amount, and, until October 1, 1999, the date withheld. If payments for multiple obligors are combined, the portion of the payment attributable to each obligor shall be specifically identified.

8. If the payor knowingly fails to withhold income or to pay the amounts withheld to the collection services center or the clerk of court in accordance with the provisions of the order ~~or~~, the notice of the order, or the notification of payors of income provisions established in section 252B.13A, the payor commits a simple misdemeanor and is liable for the accumulated amount which should have been withheld, together with costs, interest, and reasonable attorney fees related to the collection of the amounts due from the payor.

Sec. 9. Section 252D.18A, subsection 4, Code Supplement 1997, is amended to read as follows:

4. The payor shall identify and report payments by the obligor's name, account number, amount, and date withheld pursuant to section 252D.17. ~~If~~ Until October 1, 1999, if payments for multiple obligees are combined, the portion of the payment attributable to each obligee shall be specifically identified. Beginning October 1, 1999, if payments for multiple obligees are combined, the portion of the payment attributable to each obligee shall be specifically identified only if the payor is directed to do so by the child support recovery unit.

Sec. 10. Section 252D.20, Code 1997, is amended to read as follows:

252D.20 ADMINISTRATION OF INCOME WITHHOLDING PROCEDURES.

The child support recovery unit is designated as the entity of the state to administer income withholding in accordance with the procedures specified for keeping adequate records to document, track, and monitor support payments on cases subject to Title IV-D of the federal Social Security Act. ~~The~~ Until October 1, 1999, the clerks of the district court are designated as the entities for administering income withholding on cases which are not subject to Title IV-D. Beginning October 1, 1999, the collection services center is designated as the entity for administering income withholding for cases which are not subject to Title IV-D. The collection services center's responsibilities for administering income withholding in cases not subject to Title IV-D are limited to the receipt, recording, and disbursement of income withholding payments and to responding to requests for information on the current status of support payments pursuant to section 252B.13A. Notwithstanding section 622.53, in cases where the court or the child support recovery unit is enforcing a foreign judgment through income withholding, a certified copy of the underlying judgment is sufficient proof of authenticity.

Sec. 11. Section 598.22, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

Except as otherwise provided in section 598.22A, this section applies to all initial or modified orders for support entered under this chapter, chapter 234, 252A, 252C, 252F, 600B, or any other chapter of the Code. All orders or judgments entered under chapter 234, 252A, 252C, 252F, or 600B, or under this chapter or any other chapter which provide for temporary or permanent support payments shall direct the payment of those sums to the clerk of the district court or the collection services center in accordance with section 252B.14 for the use of the person for whom the payments have been awarded. Beginning October 1, 1999, all income withholding payments shall be directed to the collection services center. Payments to persons other than the clerk of the district court and the collection services center do not satisfy the support obligations created by the orders or judgments, except as provided for trusts governed by the federal Retirement Equity Act of 1984, Pub. L. No. 98-397, for tax refunds or rebates in section 602.8102, subsection 47, or for dependent benefits paid to the child support obligee as the result of disability benefits awarded to the child support obligor under the federal Social Security Act. For trusts governed by the federal Retirement Equity Act of 1984, Pub. L. No. 98-397, the order for income withholding or notice of the order for income withholding shall require the payment of such sums to the alternate payee in accordance with the federal Act.

Sec. 12. Section 598.22, unnumbered paragraph 3, Code Supplement 1997, is amended to read as follows:

An order or judgment entered by the court for temporary or permanent support or for income withholding shall be filed with the clerk. The orders have the same force and effect as judgments when entered in the judgment docket and lien index and are records open to the public. ~~The~~ Unless otherwise provided by federal law, if it is possible to identify the support order to which a payment is to be applied, and if sufficient information identifying the obligee is provided, the clerk or the collection services center, as appropriate, shall disburse the payments received pursuant to the orders or judgments within two working days of the receipt of the payments. All moneys received or disbursed under this section shall be entered in records kept by the clerk, or the collection services center, as appropriate, which shall be available to the public. The clerk or the collection services center shall not enter any moneys paid in the record book if not paid directly to the clerk or the center, as appropriate, except as provided for trusts and federal social security disability payments in this section, and for tax refunds or rebates in section 602.8102, subsection 47.

Sec. 13. Section 598.26, subsection 1, Code 1997, is amended to read as follows:

1. Until a decree of dissolution has been entered, the record and evidence shall be closed to all but the court, its officers, and the child support recovery unit of the department of

human services pursuant to section 252B.9. However, the payment records of a temporary support order, whether maintained by the clerk of the district court or the department of human services, are public records and may be released upon request. Payment records shall not include address or location information. No other person shall permit a copy of any of the testimony, or pleading, or the substance thereof, to be made available to any person other than a party to the action or a party's attorney. Nothing in this subsection shall be construed to prohibit publication of the original notice as provided by the rules of civil procedure.

Sec. 14. Section 602.8102, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 47C. Perform duties relating to implementation and operation of requirements for the collection services center pursuant to section 252B.13A, subsection 2.

DIVISION II
STATE CASE REGISTRY

Sec. 15. NEW SECTION. 252B.24 STATE CASE REGISTRY.

1. Beginning October 1, 1998, the unit shall operate a state case registry to the extent determined by applicable time frames and other provisions of 42 U.S.C. § 654A(e) and this section. The unit and the judicial department shall enter into a cooperative agreement for the establishment and operation of the registry by the unit. The state case registry shall include records with respect to all of the following:

a. Unless prohibited by federal law, each case for which services are provided under this chapter.

b. Each order for support, as defined in section 252D.16 or 598.1, which meets at least one of the following criteria:

(1) The support order is established or modified in this state on or after October 1, 1998.

(2) The income of the obligor is subject to income withholding under chapter 252D, including any support order for which the district court enters an ex parte order under chapter 252D on or after October 1, 1998.

2. The clerk of the district court shall provide the unit with any information, orders, or documents requested by the unit to establish or operate the state case registry, which are specified in the agreement described in subsection 1, within the time frames specified in that agreement. The agreement shall include but is not limited to provisions to provide for all of the following:

a. Provision to the unit of information, orders, and documents necessary for the unit to meet requirements described in 42 U.S.C. § 654A(e) and this section.

b. Provision to the unit of information filed with the clerk of the district court by a party under section 598.22B, and the social security number of a child filed with the clerk of the district court under section 602.6111.

c. Use of automation, as appropriate, to meet the requirements described in 42 U.S.C. § 654A(e) and this section.

3. The records of the state case registry are confidential records pursuant to chapter 22 and may only be disclosed or used as provided in section 252B.9.

Sec. 16. Section 598.22B, Code Supplement 1997, is amended to read as follows:

598.22B INFORMATION REQUIRED IN ORDER OR JUDGMENT.

This section applies to all initial or modified orders for paternity or support entered under this chapter, chapter 234, 252A, 252C, 252F, 252H, 252K, or 600B, or under any other chapter, and any subsequent order to enforce such support orders.

1. All such orders or judgments shall direct each party to file with the clerk of court or the child support recovery unit, as appropriate, upon entry of the order, and to update as appropriate, information on location and identity of the party, including social security number, residential and mailing addresses, telephone number, driver's license number, and name,

address, and telephone number of the party's employer. The order shall also include a provision that the information filed will be disclosed and used pursuant to this section. The party shall file the information with the clerk of court, or, if all support payments are to be directed to the collection services center as provided in ~~sections~~ section 252B.14, subsection 2, and section 252B.16, with the child support recovery unit.

2. All such orders or judgments shall include a statement that in any subsequent child support action initiated by the child support recovery unit or between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the unit or the court ~~may~~ shall deem due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the clerk of court or unit pursuant to subsection 1.

3. a. Information filed pursuant to subsection 1 shall not be a public record.

b. Information filed with the clerk of court pursuant to subsection 1 shall be available to the child support recovery unit, upon request. Beginning October 1, 1998, information filed with the clerk of court pursuant to subsection 1 shall be provided by the clerk of court to the child support recovery unit pursuant to section 252B.24.

c. Information filed with the clerk of court shall be available, upon request, to a party unless the party filing the information also files an affidavit alleging the party has reason to believe that release of the information may result in physical or emotional harm to the affiant or child. However, even if an affidavit has been filed, any information provided by the clerk of court to the child support recovery unit shall be disclosed by the unit as provided in section 252B.9.

d. ~~If the child support recovery unit is providing services pursuant to chapter 252B, information filed with~~ Information provided to the unit shall only be disclosed as provided in section 252B.9.

Sec. 17. Section 602.6111, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Beginning October 1, 1998, a party, except the child support recovery unit, filing a petition, complaint, answer, appearance, first motion, or any document with the clerk of district court to establish or modify an order for child support under chapter 236, 252A, 252K, 598, or 600B shall provide the clerk of the district court with the social security number of the child. The clerk of the district court shall keep the social security number of the child confidential, except the clerk shall provide the number to the child support recovery unit to be included in the records of the state case registry created under section 252B.24.

Sec. 18. Section 602.8102, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 47B. Perform the duties relating to establishment and operation of a state case registry pursuant to section 252B.24.

DIVISION III
NEW HIRE REPORTING

Sec. 19. Section 84A.5, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 9. The department shall provide access to information and documents necessary for employers and payors of income, as defined in sections 252D.16 and 252G.1, to comply with child support reporting and payment requirements. Access to the information and documents shall be provided at the central location of the department of workforce development and at each workforce development center.

Sec. 20. Section 252B.9, subsection 3, paragraph c, Code Supplement 1997, is amended to read as follows:

c. The unit may release or disclose information as necessary to provide services under section 252B.5, as provided by chapter 252G, as provided by Title IV-D of the federal Social Security Act, as amended, or as required by federal law.

Sec. 21. Section 252G.3, subsections 1 and 2, Code Supplement 1997, are amended to read as follows:

1. Beginning January 1, 1994, an employer who hires or rehires an employee on or after January 1, 1994, shall report the hiring or rehiring of the employee to the centralized employee registry ~~within fifteen~~ in accordance with one of the following time frames:

a. Within fifteen days of the hiring or rehiring of the employee. ~~Employers shall report employees who, on the date of hire or rehire, are eighteen years of age or older, and may report employees who, on the date of hire or rehire, are under eighteen years of age. Only employees who are reasonably expected to earn at least one dollar in compensation for any day on which the employee works shall be reported.~~

b. If the employer is transmitting hire and rehire reports magnetically or electronically, the employer may report through transmissions which are not less than twelve nor more than sixteen days apart.

1A. The report submitted shall contain all of the following:

a. The employer's name, address, and federal identification number.

b. The employee's name, address, and social security number~~, and date of birth~~.

c. Information regarding whether the employer has employee dependent health care coverage available and the appropriate date on which the employee may qualify for the coverage.

d. The address to which income withholding orders or the notices of orders and garnishments should be sent.

e. The employee's date of birth.

2. Employers required to report may report the information required under subsection ~~1~~ 1A by any of the following means:

a. By mailing a copy of the employee's Iowa employee's withholding allowance certificate to the registry.

b. By submitting electronic media in a format approved by the unit in advance.

c. By submitting a fax transmission of the employee's Iowa employee's withholding allowance certificate to the registry.

d. By any other means authorized by the unit in advance if the means will result in timely reporting.

e. By submitting both of the following:

(1) For the information in subsection 1A, paragraphs "a" and "b", by transmitting by first class mail, magnetically or electronically, a federal W-4 form, or, at the option of the employer, an equivalent form.

(2) By reporting the other information required in subsection 1A by any of the means provided in paragraph "a", "b", "c", or "d" of this subsection.

Sec. 22. Section 252G.5, Code 1997, is amended to read as follows:

252G.5 ACCESS TO CENTRALIZED EMPLOYEE REGISTRY.

The records of the centralized employee registry are confidential records pursuant to ~~section~~ sections 22.7 and 252B.9, and may be accessed only by state agencies as provided in this section and section 252B.9. When a state agency accesses information in the registry, the agency may use the information to update the agency's own records. Access to and use of the information contained in the registry shall be limited to the following:

1. The unit for administration of the child support enforcement program, including but not limited to activities related to establishment and enforcement of child and medical support obligations through administrative or judicial processes, and other services authorized pursuant to chapter 252B.

2. State agencies which utilize income information for the determination of eligibility or calculation of payments for benefit or entitlement payments unless prohibited under federal law.

3. State agencies which utilize income information for the recoupment of debts to the state unless prohibited under federal law.

DIVISION IV
CONFIDENTIALITY AND DISCLOSURE

Sec. 23. Section 252B.9, subsection 1, paragraph h, Code Supplement 1997, is amended to read as follows:

h. Notwithstanding any law to the contrary, the unit and a child support agency shall have access to any data maintained by the state of Iowa which contains information that would aid the agency in locating individuals. Such information shall include, but is not limited to, driver's license, motor vehicle, and criminal justice information. However, the information does not include criminal investigative reports or intelligence files maintained by law enforcement. The unit and child support agency shall use or disclose the information obtained pursuant to this paragraph only in accordance with subsection 3. Criminal history records maintained by the department of public safety shall be disclosed in accordance with chapter 692. The unit shall also have access to the protective order file maintained by the department of public safety.

Sec. 24. Section 252B.9, subsection 3, paragraph d, Code Supplement 1997, is amended by striking the paragraph and inserting in lieu thereof the following:

d. The unit may release information under section 252B.9A to meet the requirements of Title IV-D of the federal Social Security Act for parent locator services.

Sec. 25. Section 252B.9, subsection 3, paragraph f, Code Supplement 1997, is amended to read as follows:

f. Information may be released to courts having jurisdiction in support ~~or abandonment~~ proceedings. If a court issues an order, which is not entered under section 252B.9A, directing the unit to disclose confidential information, the unit may file a motion to quash pursuant to this chapter, Title IV-D of the federal Social Security Act, or other applicable law.

Sec. 26. Section 252B.9, subsection 3, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. i. If the unit receives notification under this paragraph, the unit shall notify the federal parent locator service as required by federal law that there is reasonable evidence of domestic violence or child abuse against a party or a child and that the disclosure of information could be harmful to the party or the child. The notification to the federal parent locator service shall be known as notification of a disclosure risk indicator. For purposes of this paragraph, the unit shall notify the federal parent locator service of a disclosure risk indicator only if at least one of the following applies:

(1) The unit receives notification that the department, or comparable agency of another state, has made a finding of good cause or other exception as provided in section 252B.3, or comparable law of another state.

(2) The unit receives and, through automation, matches notification from the department of public safety or the unit receives notification from a court of this or another state, that a court has issued a protective order or no contact order against a party with respect to another party or child.

(3) The unit receives notification that a court has dismissed a petition for specified confidential information pursuant to section 252B.9A.

(4) The unit receives notification that a tribunal has issued an order under chapter 252K, the uniform interstate family support Act, or the comparable law of another state, that the address or other identifying information of a party or child not be disclosed.

(5) The unit receives and, through automation, matches notification from the division of child and family services of the department, or the unit receives notification from a comparable agency of another state, of a founded allegation of child abuse, or a comparable finding under the law of the other state.

(6) The unit receives notification that an individual has an exemption from cooperation with child support enforcement under a family investment program safety plan which addresses family or domestic violence.

(7) The unit receives notification, as the result of a request under section 252B.9A, of the existence of any finding, order, safety plan, or founded allegation referred to in subparagraphs (1) through (6) of this paragraph.

Sec. 27. NEW SECTION. 252B.9A DISCLOSURE OF CONFIDENTIAL INFORMATION — AUTHORIZED PERSON — COURT.

1. A person, except a court or government agency, who is an authorized person to receive specified confidential information under 42 U.S.C. § 653, may submit a written request to the unit for disclosure of specified confidential information regarding a nonrequesting party. The written request shall comply with federal law and regulations and shall include a sworn statement attesting to the reason why the requester is an authorized person under 42 U.S.C. § 653, including that the requester would use the confidential information only for purposes permitted in that section.

2. Upon receipt of a request from an authorized person which meets all of the requirements under subsection 1, the unit shall search available records as permitted by law or shall request the information from the federal parent locator service as provided in 42 U.S.C. § 653.

a. If the unit locates the specified confidential information, the unit shall disclose the information to the extent permitted under federal law, unless one of the following applies:

(1) There is a notice from the federal parent locator service that there is reasonable evidence of domestic violence or child abuse pursuant to 42 U.S.C. § 653(b)(2).

(2) The unit has notified the federal parent locator service of a disclosure risk indicator as provided in section 252B.9, subsection 3, paragraph "i", and has not removed that notification.

(3) The unit receives notice of a basis for a disclosure risk indicator listed in section 252B.9, subsection 3, paragraph "i", within twenty days of sending a notice of the request to the subject of the request by regular mail.

b. If the unit locates the specified confidential information, but the unit is prohibited from disclosing confidential information under paragraph "a", the unit shall deny the request and notify the requester of the denial in writing. Upon receipt of a written notice from the unit denying the request, the requester may file a petition in district court for an order directing the unit to release the requested information to the court as provided in subsection 3.

3. A person may file a petition in district court for disclosure of specified confidential information. The petition shall request that the court direct the unit to release specified confidential information to the court, that the court make a determination of harm if appropriate, and that the court release specified confidential information to the petitioner.

a. The petition shall include a sworn statement attesting to the intended use of the information by the petitioner as allowed by federal law. Such statement may specify any of the following intended uses:

(1) To establish parentage, or to establish, set the amount of, modify, or enforce a child support obligation.

(2) To make or enforce a child custody or visitation determination or order.

(3) To carry out the duty or authority of the petitioner to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

b. Upon the filing of a petition, the court shall enter an order directing the unit to release to the court within thirty days specified confidential information which the unit would be

permitted to release under 42 U.S.C. § 653 and 42 U.S.C. § 663, unless one of the following applies:

(1) There is a notice from the federal parent locator service that there is reasonable evidence of domestic violence or child abuse pursuant to 42 U.S.C. § 653(b)(2).

(2) The unit has notified the federal parent locator service of a disclosure risk indicator as provided in section 252B.9, subsection 3, paragraph "i", and has not removed that notification.

(3) The unit receives notice of a basis for a disclosure risk indicator listed in section 252B.9, subsection 3, paragraph "i", within twenty days of sending notice of the order to the subject of the request by regular mail. The unit shall include in the notice to the subject of the request a copy of the court order issued under this paragraph.

c. Upon receipt of the order, the unit shall comply as follows:

(1) If the unit has the specified confidential information, and none of the domestic violence, child abuse, or disclosure risk indicator provisions of paragraph "b" applies, the unit shall file the confidential information with the court along with a statement that the unit has not received any notice that the domestic violence, child abuse, or disclosure risk indicator provisions of paragraph "b" apply. The unit shall be granted at least thirty days to respond to the order. The court may extend the time for the unit to comply. Upon receipt by the court of the confidential information under this subparagraph, the court may order the release of the information to the petitioner.

(2) If the unit has the specified confidential information, and the domestic violence, child abuse, or disclosure risk indicator provision of paragraph "b" applies, the unit shall file with the court a statement that the domestic violence, child abuse, or disclosure risk indicator provision of paragraph "b" applies, along with any information the unit has received related to the domestic violence, child abuse, or disclosure risk indicator. The unit shall be granted at least thirty days to respond to the order. The court may extend the time for the unit to comply. Upon receipt by the court of information from the unit under this subparagraph, the court shall make a finding whether disclosure of confidential information to any other person could be harmful to the nonrequesting party or child. In making the finding, the court shall consider any relevant information provided by the parent or child, any information provided by the unit or by a child support agency, any information provided by the petitioner, and any other relevant evidence. The unit or unit's attorney does not represent any individual person in this proceeding.

(a) If the court finds that disclosure of confidential information to any other person could be harmful to the nonrequesting party or child, the court shall dismiss the petition for disclosure and notify the unit to notify the federal parent locator service of a disclosure risk indicator.

(b) If the court does not find that disclosure of specified confidential information to any other person could be harmful to the nonrequesting party or child, the court shall notify the unit to file the specified confidential information with the court. Upon receipt by the court of the specified confidential information, the court may release the information to the petitioner and inform the unit to remove the disclosure risk indicator.

(3) If the unit does not have the specified confidential information and cannot obtain the information from the federal parent locator service, the unit shall comply with the order by notifying the court of the lack of information.

4. The confidential information which may be released by the unit to a party under subsection 2, or by the unit to the court under subsection 3, shall be limited by the federal Social Security Act and other applicable federal law, and the unit may use the sworn statement filed pursuant to subsections 1 or 3 in applying federal law. Any information filed with the court by the unit, when certified over the signature of a designated employee, shall be considered to be satisfactorily identified and shall be admitted as evidence, without requiring third-party foundation testimony. Additional proof of the official character of the person certifying the document or the authenticity of the person's signature shall not be required.

5. When making a request for confidential information under this section, a party or petitioner shall indicate the specific information requested.

6. For purposes of this section, "party" means party as defined in section 252B.9, subsection 3.

7. The unit may adopt rules pursuant to chapter 17A to prescribe provisions in addition to or in lieu of the provisions of this section to comply with federal requirements for parent locator services or the safeguarding of information.

DIVISION V
VOLUNTARY PATERNITY AFFIDAVITS AND RECISION

Sec. 28. Section 252A.3A, subsection 3, paragraph a, Code Supplement 1997, is amended to read as follows:

a. Prior to or at the time of completion of an affidavit of paternity, written and oral information about paternity establishment, developed by the child support recovery unit created in section 252B.2, shall be provided to the mother and putative father. Video or audio equipment may be used to provide oral information.

Sec. 29. Section 252A.3A, subsection 9, paragraph a, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) Written and oral information about establishment of paternity pursuant to subsection 3. Video or audio equipment may be used to provide oral information.

Sec. 30. Section 252A.3A, subsection 11, paragraph a, Code Supplement 1997, is amended to read as follows:

a. Written and oral information about the establishment of paternity pursuant to subsection 3. Video or audio equipment may be used to provide oral information.

Sec. 31. Section 252A.3A, subsection 12, paragraph a, subparagraph (2), Code Supplement 1997, is amended to read as follows:

(2) ~~Twenty days after the service of the notice or petition initiating~~ Entry of a court order pursuant to a proceeding in this state to which the signatory is a party relating to the child, including a proceeding to establish a support order under this chapter, chapter 252C, 252F, 598, or 600B or other law of this state.

DIVISION VI
ENFORCEMENT OF ORDERS FOR HEALTH CARE COVERAGE

Sec. 32. Section 252E.2, subsection 2, Code Supplement 1997, is amended to read as follows:

2. An insurer who is subject to the federal Employee Retirement Income Security Act, as codified in 29 U.S.C. § 1169, shall provide benefits in accordance with that section which meet the requirements of a qualified medical child support order. For the purposes of this subsection "qualified medical child support order" means and includes a medical child support order as defined in 29 U.S.C. § 1169, or a child support order which creates or recognizes the existence of a child's right to, or assigns to a child the right to, receive benefits for which a participant or child is eligible under a group health plan or a notice of such an order issued by the child support recovery unit, and which specifies the following:

a. The name and the last known mailing address of the participant and the name and mailing address of each child covered by the order except that, to the extent provided in the order, the name and mailing address of an official of the department may be substituted for the mailing address of the child.

b. A reasonable description of the type of coverage to be provided ~~by the plan~~ to each child, or the manner in which the type of coverage is to be determined.

c. The period during which the coverage applies.

~~d. Each plan to which the order applies.~~

DIVISION VII
DEFINITION OF "ACCOUNT"

Sec. 33. Section 252I.1, subsection 1, Code Supplement 1997, is amended to read as follows:

1. "Account" means "account" as defined in section 524.103, "share account or shares" as defined in section 534.102, the savings or deposits of a member received or being held by a credit union, or certificates of deposit. "Account" also includes deposits held by an agent, a broker-dealer, or an issuer as defined in section 502.102 and money-market mutual fund accounts and "account" as defined in 42 U.S.C. § 666(a)(17). However, "account" does not include amounts held by a financial institution as collateral for loans extended by the financial institution.

DIVISION VIII
PASSPORT SANCTION

Sec. 34. Section 252B.5, subsection 11, Code Supplement 1997, is amended to read as follows:

11. a. ~~Effective October 1, 1997,~~ Comply with federal procedures to periodically certify to the secretary of the United States department of health and human services, a list of the names of obligors determined by the unit to owe delinquent ~~child~~ support, under a support order as defined in section 252J.1, in excess of five thousand dollars. The ~~determination~~ certification of the delinquent amount owed may be based upon one or more support orders being enforced by the unit if the delinquent support owed exceeds five thousand dollars. The ~~determination~~ certification shall include any amounts which are delinquent pursuant to the periodic payment plan when a modified order has been retroactively applied. The certification shall be in a format and shall include any supporting documentation required by the secretary.

b. All of the following shall apply to an action initiated by the unit under this subsection:

(1) ~~At least thirty days prior to provision of certification to the secretary, the unit~~ The obligor shall ~~send~~ be sent a notice by regular mail ~~to the last known address of the obligor~~ in accordance with federal law and regulations and the notice shall remain in effect until support delinquencies have been paid in full. The notice shall include all of the following:

(a) A statement ~~that the unit has determined that~~ regarding the amount of delinquent support owed by the obligor ~~owes delinquent child support in excess of five thousand dollars~~.

(b) A statement providing information that ~~upon certification by the unit to the secretary, the secretary will transmit the certification to~~ if the delinquency is in excess of five thousand dollars, the United States secretary of state ~~for denial, revocation, restriction, or limitation of~~ may apply a passport sanction by revoking, restricting, limiting, or refusing to issue a passport as provided in 42 U.S.C. § 652(k).

(c) Information regarding the procedures for challenging the ~~determination~~ certification by the unit~~,~~.

(2) (a) A challenge shall be based upon mistake of fact. For the purposes of this subsection, "mistake of fact" means a mistake in the identity of the obligor or a mistake in the amount of the delinquent child support owed if the amount did not exceed five thousand dollars on the date of the unit's decision on the challenge.

~~(2)~~ ~~(a)~~ If the obligor chooses to challenge the ~~determination~~ certification, the obligor shall ~~submit the challenge in writing to~~ notify the unit~~, to be received by the unit~~ within ~~twenty days of the date of~~ the time period specified in the notice to the obligor. The obligor shall include any relevant information ~~in~~ with the ~~written~~ challenge.

(b) Upon timely receipt of the ~~written~~ challenge, the unit shall review the ~~determination~~ certification for a mistake of fact, or refer the challenge for review to the child support agency in the state chosen by the obligor as provided by federal law.

(c) Following the unit's review of the ~~determination~~ certification, the unit shall send a written decision to the obligor within ten days of timely receipt of the ~~written~~ challenge.

(i) If the unit determines that a mistake of fact exists, the unit shall ~~not certify the name of the obligor to the secretary~~ send notification in accordance with federal procedures withdrawing the certification for passport sanction.

(ii) If the unit determines that a mistake of fact does not exist, the ~~unit shall certify the name of the obligor to the secretary no earlier than~~ obligor may contest the determination within ten days following the issuance of the decision~~, unless, within ten days of the issuance of the decision, the obligor requests~~ by submitting a written request for a contested case proceeding pursuant to chapter 17A ~~or makes a payment for child support so that the amount of delinquent child support no longer exceeds five thousand dollars~~.

(3) Following issuance of a final decision under chapter 17A that no mistake of fact exists, the obligor may request a hearing before the district court ~~in the county where one or more of the support orders upon which the determination is based is filed~~ pursuant to chapter 17A. ~~To request a hearing, the obligor shall file a written application with the court contesting the decision and shall send a copy of the application to the unit by regular mail. Notwithstanding the time specifications of section 17A.19, an application for a hearing shall be filed with the court no later than ten days after issuance of the final decision. The clerk of the district court shall schedule a hearing and shall mail a copy of the order scheduling the hearing to the obligor and to the unit.~~ The ~~unit~~ department shall ~~certify~~ transmit a copy of its ~~written decision indicating the date of issuance to the court prior to the hearing~~ record to the district court pursuant to chapter 17A. ~~The hearing shall be held within thirty days of the filing of the application. The filing of an application for a hearing shall stay the certification by the unit to the secretary. However, if the obligor fails to appear at the scheduled hearing, the stay shall be automatically lifted and the unit shall certify the name of the obligor to the secretary.~~ The scope of the review by the district court shall be limited to demonstration of a mistake of fact. Issues related to visitation, custody, or other provisions not related to the support provisions of a support order are not grounds for a hearing under this subsection.

c. Following certification to the secretary, if the unit determines that an obligor no longer owes delinquent ~~child~~ support in excess of five thousand dollars, the unit shall ~~notify the secretary of the change or shall~~ provide information ~~to the secretary~~ and notice as the secretary requires to withdraw the certification for passport sanction.

DIVISION IX
DETERMINATION OF CONTROLLING ORDER

Sec. 35. Section 252H.2, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 6A. "Determination of controlling order" means the process of identifying a child support order which must be recognized pursuant to section 252K.207 and 28 U.S.C. § 1738B, when more than one state has issued a support order for the same child and the same obligor. Registration of a foreign order is not necessary for a court or the unit to make a determination of controlling order.

Sec. 36. Section 252H.3, subsection 1, Code Supplement 1997, is amended to read as follows:

1. Any action initiated under this chapter, including any court hearing resulting from an action, shall be limited in scope to the adjustment or modification of the child or medical support or cost-of-living alteration of the child support provisions of a support order. A determination of a controlling order is within the scope of this chapter.

Sec. 37. Section 252H.8, subsection 4, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. h. A certified copy of each order, issued by another state, considered in determining the controlling order.

Sec. 38. Section 252H.9, subsection 3, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. If applicable, the order determined to be the controlling order.

Sec. 39. Section 252H.16, subsection 1, Code 1997, is amended to read as follows:

1. The unit shall conduct the review and determine whether an adjustment is appropriate. As necessary, the unit shall make a determination of the controlling order.

DIVISION X
INTENT — RESPONSIBLE PARENTHOOD

Sec. 40. INTENT OF THE GENERAL ASSEMBLY — RESPONSIBLE PARENTHOOD. It is the intent of the general assembly that the core principle upon which programs for children and families, including the child support program, shall be based, is the importance of the relationship between both parents and a child. It is also the intent of the general assembly to encourage family formation, optimally in the context of marriage.

Neither parent's commitment to this relationship ends with providing financial support, but includes the sharing of time and self. The parent-child relationship includes rights and responsibilities, and, if entered into with the fullest commitment, includes limitless rewards and constitutes the most effective means of providing a child with a model of what a mother, a father, and a family should be.

It is the intent of the general assembly that the department of human services cooperate with other state, local, and community-based agencies and organizations to develop individualized local approaches, while maximizing coordination of existing programs and services, to assist both parents in fragile families to make and maintain connections with their children.

It is also the intent of the general assembly to enhance employment opportunities for families, including those for noncustodial parents, to improve the ability of both parents to support their children. In doing so, the department of human services and the department of workforce development shall cooperate to assist both parents in obtaining and maintaining employment including through the mechanisms provided under the family investment program, the job opportunities and basic skills (JOBS) program, the welfare-to-work program, and the child support recovery program.

DIVISION XI
SATISFACTION OF ACCRUED SUPPORT DEBT

Sec. 41. Section 252B.3, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 5. On or after July 1, 1999, the department shall implement a program for the satisfaction of accrued support debts, based upon timely payment by the obligor of both current support due and any payments due for accrued support debt under a periodic payment plan. The unit shall adopt rules pursuant to chapter 17A to establish the criteria and procedures for obtaining satisfaction under the program. The rules adopted under this subsection shall specify the cases and amounts to which the program is applicable, and may provide for the establishment of the program as a pilot program.

Sec. 42. Section 598.22A, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Payment of accrued support debt due the department of human services shall be credited pursuant to section 252B.3, subsection 5.

DIVISION XII
ALTERNATIVES TO MEDIAN INCOME

Sec. 43. Section 252B.7A, subsection 1, paragraph d, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

By July 1, 1999, the department shall adopt rules for imputing income, whenever possible, based on the earning capacity of a parent who does not provide income information or for whom income information is not available. Until such time as the department adopts rules establishing a different standard for determining the income of a parent who does not provide income information or for whom income information is not available, the estimated state median income for a one-person family as published annually in the Federal Register for use by the federal office of community services, office of energy assistance, for the subsequent federal fiscal year.

DIVISION XIII
INCOME WITHHOLDING ARREARAGE RATES

Sec. 44. Section 252D.18, subsection 1, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. There has been a change in the rules adopted by the department pursuant to chapter 17A regarding the amount of income to be withheld to pay a delinquency.

Sec. 45. INCOME WITHHOLDING RATES.

1. Beginning July 1, 1998, the amount of income withheld for the payment of delinquent support, as determined by the child support recovery unit under chapter 252D, shall be decreased on a prospective basis from the current level of fifty percent of the current child support obligation.

2. The department of human services may adopt rules pursuant to section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement this section and the rules shall become effective immediately upon filing, unless the effective date is delayed by the administrative rules review committee, notwithstanding section 17A.4, subsection 5, and section 17A.8, subsection 9, or a later effective date is specified in the rules. Any rules adopted in accordance with this section shall not take effect before the rules are reviewed by the administrative rules review committee. Any rules adopted in accordance with the provision of this section shall also be published as notice of intended action as provided in section 17A.4.

3. The department of human services may modify the rules adopted under this section regarding the rate of withholding established for payment of delinquent support, based upon the results of implementation of this section including but not limited to the resulting impact on collections.

DIVISION XIV
SATISFACTION OF SUPPORT OWED TO PARENT

Sec. 46. Section 252B.20, subsection 2, paragraph b, Code Supplement 1997, is amended to read as follows:

b. Approve the request and prepare an order which shall be submitted, along with the affidavit, to a judge of a district court for approval, suspending the accruing support obligation and, if requested by the obligee, and if not prohibited by chapter 252K, satisfying the obligation of support due the obligee.

Sec. 47. Section 252B.20, subsections 3, 10, and 11, Code Supplement 1997, are amended to read as follows:

3. An order approved by the court for suspension of an accruing support obligation is effective upon the date of filing of the suspension order. The satisfaction of an obligation of support due the obligee shall be final upon the filing of the suspension order. A support obligation which is satisfied is not subject to the reinstatement provisions of this section.

10. This section does not provide for the suspension, ~~waiver, satisfaction,~~ or retroactive modification of support obligations which accrued prior to the entry of an order suspending enforcement and collection of support pursuant to this section. However, if in the application for suspension, an obligee elects to satisfy an obligation of accrued support due the obligee, the suspension order may satisfy the obligation of accrued support due the obligee.

11. Nothing in this section shall prohibit or limit the unit or a party entitled to receive support from enforcing and collecting any unpaid or unsatisfied support that accrued prior to the suspension of the accruing obligation.

DIVISION XV
PASS THROUGH OF CHILD SUPPORT

Sec. 48. FEDERAL PERMISSION — PASS THROUGH OF CHILD SUPPORT.

1. The department of human services shall seek permission from the United States department of health and human services for a statewide initiative to pass the full amount of child support collected, on behalf of family investment program participants, through to those families without being required to reimburse the federal government for the federal share of the child support collected. If the department of human services receives unconditional approval from the United States department of health and human services, the department shall submit an implementation proposal to the general assembly that provides for a net offset in family investment program benefits which is equivalent to the amount of child support passed through to the family.

2. The goals of the initiative shall include all of the following:

a. Encouraging payment of child support by providing a direct connection between the act of paying child support and the receipt of child support by the child.

b. Reinforcing the value of employment for family investment program participants by more clearly identifying the actual level of income necessary to become independent from the receipt of benefits under the family investment program when child support is also being received.

Approved May 6, 1998

CHAPTER 1171

CONFINEMENT AND TREATMENT OF SEX OFFENDERS

S.F. 2398

AN ACT relating to the confinement and treatment of sex offenders.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 229A.1 LEGISLATIVE FINDINGS.

The general assembly finds that a small but extremely dangerous group of sexually violent predators exists which is made up of persons who do not have a mental disease or defect that renders them appropriate for involuntary treatment pursuant to the treatment provisions for mentally ill persons under chapter 229, since that chapter is intended to provide

short-term treatment to persons with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under chapter 229, sexually violent predators generally have antisocial personality features that are unamenable to existing mental illness treatment modalities and that render them likely to engage in sexually violent behavior. The general assembly finds that sexually violent predators' likelihood of engaging in repeat acts of predatory sexual violence is high and that the existing involuntary commitment procedure under chapter 229 is inadequate to address the risk these sexually violent predators pose to society.

The general assembly further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, because the treatment needs of this population are very long-term, and the treatment modalities for this population are very different from the traditional treatment modalities available in a prison setting or for persons appropriate for commitment under chapter 229. Therefore, the general assembly finds that a civil commitment procedure for the long-term care and treatment of the sexually violent predator is necessary.

Sec. 2. NEW SECTION. 229A.2 DEFINITIONS.

As used in this chapter:

1. "Agency with jurisdiction" means an agency which has custody of or releases a person serving a sentence or term of confinement or is otherwise in confinement based upon a lawful order or authority, and includes but is not limited to the department of corrections, the department of human services, a judicial district department of correctional services, and the Iowa board of parole.

2. "Likely to engage in predatory acts of sexual violence" means that the person more likely than not will engage in acts of a sexually violent nature. If a person is not confined at the time that a petition is filed, a person is "likely to engage in predatory acts of sexual violence" only if the person commits a recent overt act.

3. "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity of a person and predisposing that person to commit sexually violent offenses to a degree which would constitute a menace to the health and safety of others.

4. "Predatory" means acts directed toward a person with whom a relationship has been established or promoted for the primary purpose of victimization.

5. "Recent overt act" means any act that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm.

6. "Sexually motivated" means that one of the purposes for commission of a crime is the purpose of sexual gratification of the perpetrator of the crime.

7. "Sexually violent offense" means:

a. A violation of any provision of chapter 709.

b. A violation of any of the following if the offense involves sexual abuse, attempted sexual abuse, or intent to commit sexual abuse:

(1) Murder as defined in section 707.1.

(2) Kidnapping as defined in section 710.1.

(3) Burglary as defined in section 713.1.

(4) Child endangerment under section 726.6, subsection 1, paragraph "e".

c. Sexual exploitation of a minor in violation of section 728.12, subsection 1.

d. Pandering involving a minor in violation of section 725.3, subsection 2.

e. An offense involving an attempt or conspiracy to commit any offense referred to in this subsection.

f. An offense under prior law of this state or an offense committed in another jurisdiction which would constitute an equivalent offense under paragraphs "a" through "e".

g. Any act which, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated.

8. "Sexually violent predator" means a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses, if not confined in a secure facility.

Sec. 3. NEW SECTION. 229A.3 NOTICE OF DISCHARGE OF SEXUALLY VIOLENT PREDATOR — IMMUNITY FROM LIABILITY — MULTIDISCIPLINARY TEAM — PROSECUTOR'S REVIEW COMMITTEE — ASSESSMENT OF PERSON.

1. When it appears that a person who is confined may meet the definition of a sexually violent predator, the agency with jurisdiction shall give written notice to the attorney general and the multidisciplinary team established in subsection 4, no later than ninety days prior to any of the following events:

a. The anticipated discharge of a person who has been convicted of a sexually violent offense from total confinement, except that in the case of a person who is returned to prison for no more than ninety days as a result of revocation of parole, written notice shall be given as soon as practicable following the person's readmission to prison.

b. The discharge of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to chapter 812.

c. The discharge of a person who has been found not guilty by reason of insanity of a sexually violent offense.

2. If notice is given under subsection 1, the agency with jurisdiction shall inform the attorney general and the multidisciplinary team established in subsection 4, of both of the following:

a. The person's name, identifying factors, anticipated future residence, and offense history.

b. Documentation of any institutional evaluation and any treatment received.

3. The agency with jurisdiction, its employees, officials, members of the multidisciplinary team established in subsection 4, members of the prosecutor's review committee appointed as provided in subsection 5, and individuals contracting, appointed, or volunteering to perform services under this section shall be immune from liability for any good-faith conduct under this section.

4. The director of the department of corrections shall establish a multidisciplinary team which may include individuals from other state agencies to review available records of each person referred to such team pursuant to subsection 1. The team, within thirty days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent predator. The team shall notify the attorney general of its assessment.

5. The attorney general shall appoint a prosecutor's review committee to review the records of each person referred to the attorney general pursuant to subsection 1. The prosecutor's review committee shall assist the attorney general in the determination of whether or not the person meets the definition of a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the attorney general and the prosecutor's review committee.

Sec. 4. NEW SECTION. 229A.4 PETITION, TIME, CONTENTS.

1. If it appears that a person presently confined may be a sexually violent predator and the prosecutor's review committee has determined that the person meets the definition of a sexually violent predator, the attorney general may file a petition, within seventy-five days of the date the attorney general received the written notice by the agency of jurisdiction pursuant to section 229A.3, alleging that the person is a sexually violent predator and stating sufficient facts to support such an allegation.

2. A prosecuting attorney of the county in which the person was convicted or charged, or the attorney general if requested by the prosecuting attorney, may file a petition alleging that a person is a sexually violent predator and stating sufficient facts to support such an allegation, if it appears that a person who has committed a recent overt act meets any of the following criteria:

a. The person was convicted of a sexually violent offense and has been discharged after the completion of the sentence imposed for the offense.

b. The person was charged with, but was acquitted of, a sexually violent offense by reason of insanity and has been released from confinement or any supervision.

c. The person was charged with, but was found to be incompetent to stand trial for, a sexually violent offense and has been released from confinement or any supervision.

Sec. 5. NEW SECTION. 229A.5 PERSON TAKEN INTO CUSTODY, DETERMINATION OF PROBABLE CAUSE, HEARING, EVALUATION.

1. Upon filing of a petition under section 229A.4, the court shall make a preliminary determination as to whether probable cause exists to believe that the person named in the petition is a sexually violent predator. Upon a preliminary finding of probable cause, the court shall direct that the person named in the petition be taken into custody and that the person be served with a copy of the petition and any supporting documentation and notice of the procedures required by this chapter. If the person is in custody at the time of the filing of the petition, the court shall determine whether a transfer of the person to an appropriate secure facility is appropriate pending the outcome of the proceedings or whether the custody order should be delayed until the date of release of the person.

2. Within seventy-two hours after being taken into custody or being transferred to an appropriate secure facility, a hearing shall be held to determine whether probable cause exists to believe the detained person is a sexually violent predator. At the probable cause hearing, the detained person shall have the following rights:

a. To be provided with prior notice of date, time, and location of the probable cause hearing.

b. To respond to the preliminary finding of probable cause.

c. To appear in person at the hearing.

d. To be represented by counsel.

e. To present evidence on the respondent's own behalf.

f. To cross-examine witnesses who testify against the respondent.

g. To view and copy all petitions and reports in the possession of the court.

3. At the hearing, the state may rely upon the petition filed under subsection 1 but may also supplement the petition with additional documentary evidence or live testimony.

4. At the conclusion of the hearing, the court shall enter an order which does both of the following:

a. Verifies the respondent's identity.

b. Determines whether probable cause exists to believe that the respondent is a sexually violent predator.

5. If the court determines that probable cause does exist, the court shall direct that the respondent be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the respondent is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

Sec. 6. NEW SECTION. 229A.6 COUNSEL AND EXPERTS, INDIGENT PERSONS.

1. A respondent to a petition alleging the person to be a sexually violent predator shall be entitled to the assistance of counsel upon the filing of the petition under section 299A.4* and, if the respondent is indigent, the court shall appoint counsel to assist the respondent at state expense.

2. If a respondent is subjected to an examination under this chapter, the respondent may retain experts or professional persons to perform an independent examination on the respondent's behalf. If the respondent wishes to be examined by a qualified expert or professional person of the respondent's own choice, the examiner of the respondent's choice shall be given reasonable access to the respondent for the purpose of the examination, as well as access to all relevant medical and psychological records and reports. If the respondent is

* Section 229A.4 probably intended

indigent, the court, upon the respondent's request, shall determine whether the services are necessary and the reasonable compensation for the services. If the court determines that the services are necessary and the requested compensation for the services is reasonable, the court shall assist the respondent in obtaining an expert or professional person to perform an examination or participate in the trial on the respondent's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the respondent, and compensation received in the same case or for the same services from any other source.

Sec. 7. NEW SECTION. 229A.7 TRIAL, DETERMINATION, COMMITMENT PROCEDURE, CHAPTER 28E AGREEMENTS, MISTRIALS.

1. If the person charged with a sexually violent offense has been found incompetent to stand trial and the person is about to be released pursuant to section 812.5, or the person has been found not guilty of a sexually violent offense by reason of insanity, if a petition has been filed seeking the person's commitment under this chapter, the court shall first hear evidence and determine whether the person did commit the act or acts charged. At the hearing on this issue, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or insanity affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.

2. Within sixty days after the completion of the probable cause hearing held pursuant to section 229A.5, the court shall conduct a trial to determine whether the respondent is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. The respondent, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least four days prior to trial. The number and selection of jurors shall be determined as provided in chapter 607A. If no demand is made, the trial shall be before the court.

3. At trial, the court or jury shall determine whether, beyond a reasonable doubt, the respondent is a sexually violent predator. If the determination that the respondent is a sexually violent predator is made by a jury, the determination shall be by unanimous verdict of such jury.

If the court or jury determines that the respondent is a sexually violent predator, the respondent shall be committed to the custody of the director of the department of human services for control, care, and treatment until such time as the person's mental abnormality has so changed that the person is safe to be at large. The determination may be appealed.

4. The control, care, and treatment of a person determined to be a sexually violent predator shall be provided at a facility operated by the department of human services. At all times, persons committed for control, care, and treatment by the department of human services pursuant to this chapter shall be kept in a secure facility and those patients shall be segregated at all times from any other patient under the supervision of the department of human services. A person committed pursuant to this chapter to the custody of the department of human services may be kept in a facility or building separate from any other patient under the supervision of the department of human services. The department of human services

may enter into a chapter 28E agreement with the department of corrections or other appropriate agency in this state or another state for the confinement of patients who have been determined to be sexually violent predators. Patients who are in the confinement of the director of the department of corrections pursuant to a chapter 28E agreement shall be housed and managed separately from criminal offenders in the custody of the director of the department of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from those offenders.

5. If the court or jury is not satisfied beyond a reasonable doubt that the respondent is a sexually violent predator, the court shall direct the respondent's release. Upon a mistrial, the court shall direct that the respondent be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. Any subsequent trial following a mistrial shall be held within ninety days of the previous trial, unless such subsequent trial is continued as provided in subsection 1.

Sec. 8. NEW SECTION. 229A.8 ANNUAL EXAMINATIONS, DISCHARGE PETITIONS BY PERSONS COMMITTED.

1. Each person committed under this chapter shall have a current examination of the person's mental abnormality made once every year. The person may retain, or if the person is indigent and so requests, the court may appoint a qualified expert or professional person to examine such person, and such expert or professional person shall be given access to all records concerning the person.

2. The annual report shall be provided to the court that committed the person under this chapter. The court shall conduct an annual review and probable cause hearing on the status of the committed person.

3. Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for discharge at the probable cause hearing. The director of human services shall provide the committed person with an annual written notice of the person's right to petition the court for discharge over the director's objection. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report.

4. The committed person shall have a right to have an attorney represent the person at the probable cause hearing but the person is not entitled to be present at the hearing. If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality has so changed that the person is safe to be at large and will not engage in predatory acts or sexually violent offenses if discharged, then the court shall set a final hearing on the issue.

5. At the final hearing, the committed person shall be entitled to be present and is entitled to the benefit of all constitutional protections that were afforded the person at the original commitment proceeding. The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be at large and if discharged is likely to engage in acts of sexual violence.

Sec. 9. NEW SECTION. 229A.9 DETENTION AND COMMITMENT TO CONFORM TO CONSTITUTIONAL REQUIREMENTS.

The involuntary detention or commitment of persons under this chapter shall conform to constitutional requirements for care and treatment.

Sec. 10. NEW SECTION. 229A.10 PETITION FOR DISCHARGE — PROCEDURE.

If the director of human services determines that the person's mental abnormality has so changed that the person is not likely to commit predatory acts or sexually violent offenses if

discharged, the director shall authorize the person to petition the court for discharge. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for discharge, shall order a hearing within thirty days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of the attorney general's choice. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. The burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if discharged is likely to commit predatory acts or sexually violent offenses.

Sec. 11. NEW SECTION. 229A.11 SUBSEQUENT DISCHARGE PETITIONS, LIMITATIONS.

Nothing in this chapter shall prohibit a person from filing a petition for discharge pursuant to this chapter. However, if a person has previously filed a petition for discharge without the authorization of the director of human services, and the court determines either upon review of the petition or following a hearing that the petition was frivolous or that the petitioner's condition had not so changed that the person was safe to be at large, then the court shall summarily deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the director's authorization, the court shall endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds. If the court determines that a petition is frivolous, the court shall deny the petition without a hearing.

Sec. 12. NEW SECTION. 229A.12 DIRECTOR OF HUMAN SERVICES — RESPONSIBILITY FOR COSTS — DUTIES — REIMBURSEMENT.

The director of human services shall be responsible for all costs relating to the evaluation and treatment of persons committed to the director's custody under any provision of this chapter. Reimbursement may be obtained by the director from the patient and any person legally liable or bound by contract for the support of the patient for the cost of care and treatment provided.

Sec. 13. NEW SECTION. 229A.13 NOTICE TO VICTIMS OF DISCHARGE OF PERSONS COMMITTED.

In addition to any other information required to be released under this chapter, prior to the discharge of a person committed under this chapter, the director of human services shall give written notice of the person's discharge to any living victim of the person's activities or crime whose address is known to the director or, if the victim is deceased, to the victim's family, if the family's address is known. Failure to notify shall not be a reason for postponement of discharge. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this action.

Sec. 14. NEW SECTION. 229A.15 SEVERABILITY.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application and, to this end, the provisions of this chapter are severable.

Sec. 15. NEW SECTION. 229A.16 RELEASE OF CONFIDENTIAL OR PRIVILEGED INFORMATION AND RECORDS.

Notwithstanding anything in chapter 22 to the contrary, relevant information and records which would otherwise be confidential or privileged shall be released to the agency with jurisdiction or the attorney general for the purpose of meeting the notice requirement provided in section 229A.3 and determining whether a person is or continues to be a sexually violent predator.

Sec. 16. NEW SECTION. 229A.17 COURT RECORDS — SEALED AND OPENED BY COURT ORDER.

Any psychological reports, drug and alcohol reports, treatment records, reports of any diagnostic center, medical records, or victim impact statements which have been submitted to the court or admitted into evidence under this chapter shall be part of the record but shall be sealed and opened only on order of the court.

Sec. 17. NEW SECTION. 229A.18 SHORT TITLE.

This chapter shall be known and may be cited as the "Sexually Violent Predator Act".

Sec. 18. Section 815.11, Code 1997, is amended to read as follows:

815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

Costs incurred under chapter 229A, section 232.141, subsection 3, paragraph "c", sections 814.9, 814.10, 814.11, 815.4, 815.5, 815.6, 815.7, 815.10, or the rules of criminal procedure on behalf of an indigent shall be paid from funds appropriated by the general assembly to the department of inspections and appeals for those purposes.

Sec. 19. Section 901A.2, subsections 3 and 4, Code 1997, are amended to read as follows:

3. ~~A~~ Except as otherwise provided in subsection 4A, a person convicted of a sexually predatory offense which is a felony, who has a prior conviction for a sexually predatory offense, shall be sentenced to and shall serve twice the maximum period of incarceration for the offense, or twenty-five years, whichever is greater, notwithstanding any other provision of the Code to the contrary. A person sentenced under this subsection shall not have the person's sentence reduced under chapter 903A or otherwise by more than fifteen percent.

4. ~~A~~ Except as otherwise provided in subsection 4A, a person convicted of a sexually predatory offense which is a felony who has previously been sentenced under subsection 3 shall be sentenced to life in prison on the same terms as a class "A" felon under section 902.1, notwithstanding any other provision of the Code to the contrary. In order for a person to be sentenced under this subsection, the prosecuting attorney shall allege and prove that this section is applicable to the person.

Sec. 20. Section 901A.2, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4A. A person who has been convicted of a violation of section 709.3, subsection 2, shall, upon a second conviction for a violation of section 709.3, subsection 2, be committed to the custody of the director of the Iowa department of corrections for the rest of the person's life. In determining whether a conviction is a first or second conviction under this subsection, a prior conviction for a criminal offense committed in another jurisdiction which would constitute a violation of section 709.3, subsection 2, if committed in this state, shall be considered a conviction under this subsection. The terms and conditions applicable to sentences for class "A" felons under chapters 901 through 909 shall apply to persons sentenced under this subsection.

Sec. 21. NEW SECTION. 903B.1 HORMONAL INTERVENTION THERAPY — CERTAIN SEX OFFENSES.

1. A person who has been convicted of a serious sex offense may, upon a first conviction and in addition to any other punishment provided by law, be required to undergo medroxyprogesterone acetate treatment as part of any conditions of release imposed by the court or the board of parole. The treatment prescribed in this section may utilize an approved pharmaceutical agent other than medroxyprogesterone acetate. Upon a second or subsequent conviction, the court or the board of parole shall require the person to undergo medroxyprogesterone acetate or other approved pharmaceutical agent treatment as a condition of release, unless, after an appropriate assessment, the court or board determines that the treatment would not be effective. In determining whether a conviction is a first or second conviction under this section, a prior conviction for a criminal offense committed in another

jurisdiction which would constitute a violation of section 709.3, subsection 2, if committed in this state, shall be considered a conviction under this section. This section shall not apply if the person voluntarily undergoes a permanent surgical alternative approved by the court or the board of parole.

2. If a person is placed on probation and is not in confinement at the time of sentencing, the presentence investigation shall include a plan for initiation of treatment as soon as is reasonably possible after the person is sentenced. If the person is in confinement prior to release on probation or parole, treatment shall commence prior to the release of the person from confinement. Conviction of a serious sex offense shall constitute exceptional circumstances warranting a presentence investigation under section 901.2.

3. If the serious sex offense is a felony, the court may include, in addition to any other punishment provided by law, that the person receive a special sentence committing the person into the custody of the director of the Iowa department of corrections for the rest of the person's life, with eligibility for parole as provided in chapter 906. The special sentence imposed under this subsection shall commence upon completion of the sentence imposed under any applicable criminal sentencing provisions for the underlying serious sex offense and shall be supervised as if on parole, shall include the same treatment terms and conditions as required in subsection 1, and may include any other terms and conditions deemed appropriate to protect the public and promote the rehabilitation of the person. Notwithstanding section 906.15, a person receiving an additional special sentence pursuant to this subsection shall not be discharged from parole.

4. For purposes of this section, a "serious sex offense" means any of the following offenses in which the victim was a child who was, at the time the offense was committed, twelve years of age or younger:

a. Sexual abuse in the first degree, in violation of section 709.2.
b. Sexual abuse in the second degree, in violation of section 709.3.
c. Sexual abuse in the third degree, in violation of section 709.4.
d. Lascivious acts with a child, in violation of section 709.8.
e. Assault with intent, in violation of section 709.11.
f. Indecent contact with a minor, in violation of section 709.12.
g. Lascivious conduct with a minor, in violation of section 709.14.
h. Sexual exploitation by a counselor in violation of section 709.15.
i. Sexual exploitation of a minor, in violation of section 728.12, subsections 1 and 2.

5. The department of corrections, in consultation with the board of parole, shall adopt rules which provide for the initiation of medroxyprogesterone acetate or other approved pharmaceutical agent treatment prior to the parole or work release of a person who has been convicted of a serious sex offense and who is required to undergo treatment as a condition of release by the board of parole. The department's rules shall also establish standards for the supervision of the treatment by the judicial district department of correctional services during the period of release. Each district department of correctional services shall adopt policies and procedures which provide for the initiation or continuation of medroxyprogesterone acetate or other approved pharmaceutical agent treatment as a condition of release for each person who is required to undergo the treatment by the court or the board of parole. The board of parole shall, in consultation with the department of corrections, adopt rules which relate to initiation or continuation of medroxyprogesterone acetate or other approved pharmaceutical agent treatment as a condition of any parole or work release. Any rules, standards, and policies and procedures adopted shall provide for the continuation of the treatment until the agency in charge of supervising the treatment determines that the treatment is no longer necessary.

6. A person who is required to undergo medroxyprogesterone acetate treatment, or treatment utilizing another approved pharmaceutical agent, pursuant to this section, shall be required to pay a reasonable fee to pay for the costs of providing the treatment. A requirement that a person pay a fee shall include provision for reduction, deferral, or waiver of payment if the person is financially unable to pay the fee.

Sec. 22. SEX OFFENDER TREATMENT INTERIM STUDY COMMITTEE. The legislative council is requested to authorize an interim study committee to issue a report to the general assembly which convenes in 1999, concerning the treatments available and used in the United States and other countries to rehabilitate juvenile and adult sex offenders and deter those persons from engaging in criminal sexual acts or activities in the future.

Approved May 6, 1998

CHAPTER 1172

IOWA EDUCATIONAL SAVINGS PLAN TRUST

H.F. 2119

AN ACT providing for the creation of an Iowa educational savings plan trust, addressing tax aspects, and containing applicability provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 12D.1 PURPOSE AND DEFINITIONS.

The general assembly finds that the general welfare and well-being of the state are directly related to educational levels and skills of the citizens of the state, and that a vital and valid public purpose is served by the creation and implementation of programs which encourage and make possible the attainment of higher education by the greatest number of citizens of the state. The state has limited resources to provide additional programs for higher education funding and the continued operation and maintenance of the state's public institutions of higher education and the general welfare of the citizens of the state will be enhanced by establishing a program which allows citizens of the state to invest money in a public trust for future application to the payment of higher education costs. The creation of the means of encouragement for citizens to invest in such a program represents the carrying out of a vital and valid public purpose. In order to make available to the citizens of the state an opportunity to fund future higher education needs, it is necessary that a public trust be established in which moneys may be invested for future educational use. It is also necessary to establish an endowment fund which may be funded with public funds, among other sources, the income from which will be made available to participants in the trust to enhance their savings invested for the payment of future higher education costs.

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

1. "Administrative fund" means the administrative fund established under section 12D.4.
2. "Beneficiary" means the individual designated by a participation agreement to benefit from advance payments of higher education costs on behalf of the beneficiary.
3. "Benefits" means the payment of higher education costs on behalf of a beneficiary by the trust during the beneficiary's attendance at an institution of higher education.
4. "Endowment fund" means the endowment fund established under section 12D.4.
5. "Higher education costs" means the certified costs of tuition, fees, books, supplies, and equipment required for enrollment or attendance at an institution of higher education. Reasonable room and board expenses, based on the minimum amount applicable for the institution of higher education during the period of enrollment, shall be included as a higher education cost for those students enrolled on at least a half-time basis.
6. "Institution of higher education" means an institution described in section 481 of the federal Higher Education Act of 1965, 20 U.S.C. § 1088, which is eligible to participate in the United States department of education's student aid programs.

7. "Internal Revenue Code" means the same as defined in section 422.3.

8. "Iowa educational savings plan trust" or "trust" means the trust created under section 12D.2.

9. "Participant" means an individual, or an individual's legal representative, who has entered into a participation agreement under this chapter for the advance payment of higher education costs on behalf of a beneficiary.

10. "Participation agreement" means an agreement between a participant and the trust entered into under this chapter.

11. "Program fund" means the program fund established under section 12D.4.

12. "Refund penalty" means the amount assessed by the treasurer of state for cancellation of a participation agreement which is not considered a de minimus penalty pursuant to section 529 of the Internal Revenue Code.

13. "Tuition and fees" means the quarter or semester charges imposed to attend an institution of higher education required as a condition of enrollment.

Sec. 2. NEW SECTION. 12D.2 CREATION OF IOWA EDUCATIONAL SAVINGS PLAN TRUST.

An Iowa educational savings plan trust is created. The treasurer of state is the trustee of the trust, and has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of this chapter pertaining to the trust, including the power to do all of the following:

1. Make and enter into contracts necessary for the administration of the trust created under this chapter.

2. Enter into agreements with any institution of higher education, the state, or any federal or other state agency, or other entity as required to implement this chapter.

3. Carry out the duties and obligations of the trust pursuant to this chapter.

4. Accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation which the treasurer of state shall deposit into the administrative fund, the endowment fund, or the program fund.

5. Carry out studies and projections so the treasurer of state may advise participants regarding present and estimated future higher education costs and levels of financial participation in the trust required in order to enable participants to achieve their educational funding objectives.

6. Participate in any federal, state, or local governmental program for the benefit of the trust.

7. Procure insurance against any loss in connection with the property, assets, or activities of the trust.

8. Solicit and accept for the benefit of the endowment fund gifts, grants, and other moneys, including legislative appropriations and grants from any federal, state, or local governmental agency.

9. Enter into participation agreements with participants.

10. Make payments to institutions of higher education pursuant to participation agreements on behalf of beneficiaries.

11. Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in this chapter.

12. Invest moneys within the endowment fund and the program fund in any investments which are determined by the treasurer of state to be appropriate.

13. Engage investment advisors, if necessary, to assist in the investment of trust assets.

14. Contract for goods and services and engage personnel as necessary, including consultants, actuaries, managers, legal counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice to the treasurer of state regarding trust administration and operation.

15. Establish, impose, and collect administrative fees and charges in connection with transactions of the trust, and provide for reasonable service charges, including penalties for cancellations and late payments with respect to participation agreements.

16. Administer the funds of the trust.

17. Adopt rules pursuant to chapter 17A for the administration of the trust.

An amount, not to exceed two hundred thousand dollars annually, shall be transferred from the unclaimed property trust fund established in section 556.18 to the administrative fund for the payment of costs of administration and operation of the trust.

Sec. 3. NEW SECTION. 12D.3 PARTICIPATION AGREEMENTS FOR TRUST.

The trust may enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and agreements:

1. a. Each participation agreement shall require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. A participant shall not be required to make an annual contribution on behalf of a beneficiary. The minimum contribution per beneficiary per year, in a year in which a participant is making a contribution, shall be three hundred dollars, and the maximum contribution shall not exceed two thousand dollars per beneficiary per year adjusted annually to reflect increases in the consumer price index. However, the treasurer of state may set a maximum, as necessary, to maintain compliance with section 529 of the Internal Revenue Code.

b. Participation agreements may be amended to provide for adjusted levels of payments based upon changed circumstances or changes in educational plans.

2. Beneficiaries designated in participation agreements may be designated from date of birth up to, but not including, their seventeenth birthday.

3. Payment of benefits provided under participation agreements must begin not later than the first full fall academic quarter or semester of enrollment at an institution of higher education following the twenty-second birthday or high school graduation of the beneficiary, whichever is later.

4. The execution of a participation agreement by the trust shall not guarantee in any way that higher education costs will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will attain any of the following:

a. Be admitted to an institution of higher education.

b. If admitted, be determined a resident for tuition purposes by the institution of higher education.

c. Be allowed to continue attendance at the institution of higher education following admission.

d. Graduate from the institution of higher education.

5. a. A beneficiary under a participation agreement may be changed as permitted under rules adopted by the treasurer of state upon written request of the participant prior to the date of admission of the beneficiary to an institution of higher education as long as the substitute beneficiary is eligible for participation.

b. Participation agreements may otherwise be freely amended throughout their terms in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters as authorized by rule.

6. Each participation agreement shall provide that the participation agreement may be canceled upon the terms and conditions, and upon payment of applicable fees and costs set forth and contained in the rules adopted by the treasurer of state.

Sec. 4. NEW SECTION. 12D.4 PROGRAM, ENDOWMENT, AND ADMINISTRATIVE FUNDS — INVESTMENT AND PAYMENTS.

1. a. The treasurer of state shall segregate moneys received by the trust into three funds: the program fund, the endowment fund, and the administrative fund.

b. All moneys paid by participants in connection with participation agreements shall be deposited as received into separate accounts within the program fund.

c. All moneys received by the trust from the proceeds of gifts and other endowments for the purposes of the trust shall be deposited as received into the endowment fund.

d. The program fund and the endowment fund shall be separately administered.

e. Any gifts, grants, or donations made by any governmental entity or any person, firm, partnership, or corporation to the trust for deposit to the endowment fund shall be a grant, gift, or donation to the state for the accomplishment of a valid public eleemosynary, charitable, and educational purpose and shall not be included in the income of the donor for Iowa tax purposes.

f. Contributions to the trust made by participants or received in the form of gifts, grants, or donations may only be made in the form of cash.

g. A participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust.

2. a. Each beneficiary under a participation agreement shall receive a pro rata interest in the investment income derived by the endowment fund each year after any transfers to the administrative fund have been made.

b. The amount of interest received from the endowment fund shall be in the ratio that the principal amount paid by the participant under the participation agreement and investment income earned to date under the agreement bears to the principal amount of all moneys, funds, and securities then held in the program fund, but not to exceed the amount which, in combination with the current payment due from the program fund, equals the beneficiary's higher education costs for the current period of enrollment.

c. Moneys accrued by participants in the program fund of the trust may be used for payments to any institution of higher education.

d. No rights to any moneys derived from the endowment fund shall exist if moneys payable under the participation agreement are paid to an educational institution which is not an institution of higher education.

Sec. 5. NEW SECTION. 12D.5 CANCELLATION OF AGREEMENTS.

1. A participant may cancel a participation agreement at will.

a. If the participation agreement is canceled by a participant prior to the expiration of two years from the date of original execution of the participation agreement, the participant shall receive one hundred percent of the principal amount of all contributions made by the participant, but any program fund investment income or endowment fund investment income which has been credited to the participant's account shall be retained by the trust to cover administration expenses.

b. After a participation agreement has been in effect for two years, participants shall be entitled to the return upon cancellation of the agreement of the principal amount of all contributions made by participants plus actual program fund investment income on the contributions, but not endowment fund investment income, less a refund penalty to be levied by the trust. The penalty shall be deposited into the administrative fund.

2. a. Upon the occurrence of any of the following circumstances, no refund penalty shall be levied by the trust in the event of termination of a participation agreement:

(1) Death of the beneficiary.

(2) Permanent disability or mental incapacity of the beneficiary.

(3) The beneficiary is awarded a scholarship, as defined in section 529 of the Internal Revenue Code, but only to the extent the refund of earnings does not exceed the scholarship amount.

b. In the event of cancellation of a participation agreement for any of the causes listed in paragraph "a", the participant shall be entitled to receive the principal amount of all payments made by the participant under the participation agreement plus the actual program fund investment income earned on the payments, but not endowment fund investment income.

Sec. 6. NEW SECTION. 12D.6 REPAYMENT AND OWNERSHIP OF PAYMENTS AND INVESTMENT INCOME — TRANSFER OF OWNERSHIP RIGHTS.

1. a. A participant retains ownership of all payments made under a participation agreement up to the date of utilization for payment of higher education costs for the beneficiary.

b. All income derived from the investment of the payments made by the participant shall be considered to be held in trust for the benefit of the beneficiary.

2. In the event the program is terminated prior to payment of higher education costs for the beneficiary, the participant is entitled to a full refund of all payments made under the participation agreement and all investment income credited on all the payments.

No right to receive investment income shall exist in cases of voluntary participant termination except as provided in section 12D.5.

3. If the beneficiary graduates from an institution of higher education, and a balance remains in the participant's account, the treasurer of state shall pay the balance to the participant.

4. The institution of higher education shall obtain ownership of the payments made for the higher education costs paid to the institution at the time each payment is made to the institution.

5. Any amounts which may be paid to any person or persons pursuant to the Iowa educational savings plan trust but which are not listed in this section are owned by the trust.

6. A participant may transfer ownership rights to another eligible participant, including a gift of the ownership rights to a minor beneficiary. The transfer shall be made and the property distributed in accordance with rules adopted by the treasurer of state or with the terms of the participation agreement.

7. A participant shall not be entitled to utilize any interest in the trust as security for a loan.

Sec. 7. NEW SECTION. 12D.7 EFFECT OF PAYMENTS ON DETERMINATION OF NEED AND ELIGIBILITY FOR STUDENT FINANCIAL AID.

A student loan program, student grant program, or other program administered by any agency of the state, except as may be otherwise provided by federal law or the provisions of any specific grant applicable to that law, shall not take into account and shall not consider amounts available for the payment of higher education costs pursuant to the Iowa educational savings plan trust in determining need and eligibility for student aid.

Sec. 8. NEW SECTION. 12D.8 ANNUAL AUDITED FINANCIAL REPORT TO GOVERNOR AND GENERAL ASSEMBLY.

1. The treasurer of state shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the trust by November 1 to the governor and the general assembly.

The annual audit shall be made either by the auditor of state or by an independent certified public accountant designated by the auditor of state and shall include direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

2. The annual audit shall be supplemented by all of the following information prepared by the treasurer of state:

a. Any related studies or evaluations prepared in the preceding year.

b. A summary of the benefits provided by the trust including the number of participants and beneficiaries in the trust.

c. Any other information which is relevant in order to make a full, fair, and effective disclosure of the operations of the trust.

Sec. 9. NEW SECTION. 12D.9 TAX CONSIDERATIONS.

1. For federal income tax purposes, the Iowa educational savings plan trust shall be considered a qualified state tuition program exempt from taxation pursuant to section 529 of

the Internal Revenue Code. The Iowa educational savings plan trust meets the requirements of section 529(b), of the Internal Revenue Code, as follows:

a. Pursuant to section 12D.3, subsection 1, paragraph "a", a participant may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account.

b. Pursuant to section 12D.4, subsection 1, paragraph "f", contributions may only be made in the form of cash.

c. Pursuant to section 12D.5, subsection 1, paragraphs "a" and "b", penalties are provided on refunds of earnings which are not used for qualified higher education expenses of the beneficiary, made on account of the death or disability of the designated beneficiary, or made due to scholarship, allowance, or payment receipt as provided in section 529(b)(3) of the Internal Revenue Code.

d. Pursuant to section 12D.4, subsection 1, paragraph "b", a separate account is established for each beneficiary.

e. Pursuant to section 12D.4, subsection 1, paragraph "g", a participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust.

f. Pursuant to section 12D.6, subsection 7, a participant shall not pledge any interest in the trust as security for a loan.

g. Pursuant to section 12D.3, subsection 1, a maximum contribution level is established.

2. State income tax treatment of the Iowa educational savings plan trust shall be as provided in section 422.7, subsections 35, 36, and 37, and section 422.35, subsection 14.

Sec. 10. NEW SECTION. 12D.10 PROPERTY RIGHTS TO ASSETS IN TRUST.

1. The assets of the trust, including the program fund and the endowment fund, shall at all times be preserved, invested, and expended solely and only for the purposes of the trust and shall be held in trust for the participants and beneficiaries.

2. No property rights in the trust shall exist in favor of the state.

3. The assets of the trust shall not be transferred or used by the state for any purposes other than the purposes of the trust.

Sec. 11. NEW SECTION. 12D.11 CONSTRUCTION.

This chapter shall be construed liberally in order to effectuate its purpose.

Sec. 12. Section 422.7, Code Supplement 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 35. a. Subtract the amount, not to exceed two thousand dollars per beneficiary, contributed as a participant in the Iowa educational savings plan trust created in chapter 12D.

b. Add the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Iowa educational savings plan trust to the extent previously deducted as a contribution to the trust.

NEW SUBSECTION. 36. Subtract, to the extent included, income from interest and earnings received from the Iowa educational savings plan trust created in chapter 12D.

NEW SUBSECTION. 37. Subtract, to the extent not deducted for federal income tax purposes, the amount of any gift, grant, or donation made to the Iowa educational savings plan trust for deposit in the endowment fund of that trust.

Sec. 13. Section 422.35, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 14. Subtract, to the extent not deducted for federal income tax purposes, the amount of any gift, grant, or donation made to the Iowa educational savings plan trust, as created in chapter 12D, for deposit in the endowment fund of that trust.

Sec. 14. Sections 12 and 13 of this Act apply to contributions, gifts, grants, and donations made on or after July 1, 1998, for tax years ending on or after that date.

Approved May 6, 1998

CHAPTER 1173

COMPLIANCE WITH REQUIREMENTS FOR AGRICULTURAL DRAINAGE WELLS

H.F. 2136

AN ACT relating to agricultural drainage wells, by extending the date for complying with certain requirements.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 455I.2, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

Not later than December 31, ~~1998~~ 2001, all of the following shall apply:

Approved May 6, 1998

CHAPTER 1174

STATE TAX STATUS OF CERTAIN PUBLIC RETIREMENT SYSTEM CONTRIBUTIONS

H.F. 2153

AN ACT providing that member contributions under certain public retirement systems are considered employer contributions for state income tax purposes, and providing effective and applicability date provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 97A.8, subsection 1, paragraph i, Code 1997, is amended to read as follows:

i. (1) Notwithstanding paragraph "g" or other provisions of this chapter, beginning January 1, 1995, for federal income tax purposes, and beginning January 1, 1999, for state income tax purposes, member contributions required under paragraph "f" or "h" which are picked up by the department shall be considered employer contributions for federal and state income tax purposes, and the department shall pick up the member contributions to be made under paragraph "f" or "h" by its employees. The department shall pick up these contributions by reducing the salary of each of its employees covered by this chapter by the amount which each employee is required to contribute under paragraph "f" or "h" and shall certify the amount picked up in lieu of the member contributions to the department of revenue and finance. The department of revenue and finance shall forward the amount of the contributions picked up to the board of trustees for recording and deposit in the pension accumulation fund.

(2) Member contributions picked up by the department under subparagraph (1) shall be treated as employer contributions for federal and state income tax purposes only and for all other purposes of this chapter ~~and the laws of this state~~ shall be treated as employee contributions and deemed part of the employee's earnable compensation or salary.

Sec. 2. Section 97B.11A, Code 1997, is amended to read as follows:

97B.11A PICKUP OF EMPLOYEE CONTRIBUTIONS.

1. Notwithstanding section 97B.11 or other provisions of this chapter, beginning January 1, 1995, for federal income tax purposes, and beginning January 1, 1999, for state income tax purposes, member contributions required under section 97B.11 which are picked up by the employer shall be considered employer contributions for federal and state income tax purposes, and each employer shall pick up the member contributions to be made under section 97B.11 by its employees. Each employer shall pick up these contributions by reducing the salary of each of its employees covered by this chapter by the amount which each employee is required to contribute under section 97B.11 and shall pay the amount picked up in lieu of the member contributions as provided in section 97B.14.

2. Member contributions picked up by each employer under subsection 1 shall be treated as employer contributions for federal and state income tax purposes only and for all other purposes of this chapter ~~and the laws of this state~~ shall be treated as employee contributions and deemed part of the employee's wages or salary.

Sec. 3. Section 294.10A, Code 1997, is amended to read as follows:

294.10A PICKUP OF TEACHER ASSESSMENTS.

1. Notwithstanding section 294.9 or other provisions of this chapter, for federal income tax purposes beginning January 1 following the submission by a board of trustees of an application to the federal internal revenue service requesting qualification of a plan in accordance with the requirements of the Internal Revenue Code, as defined in section 422.3, and for state income tax purposes beginning January 1, 1999, or January 1 following an application for qualification, whichever is later, teacher assessments required under section 294.9 which are picked up by an employing school district shall be considered employer contributions for federal and state income tax purposes, and each employing school district establishing a pension and annuity retirement system pursuant to this chapter shall pick up the teacher assessments to be made under section 294.9 by its employees commencing on the ~~January 1 following an application for qualification~~ applicable date on which the assessments shall be considered employer contributions for income tax purposes under this subsection. Each employing school district shall pick up these teacher assessments by reducing the salary of each of the teachers covered by this chapter by the amount which each teacher is required to contribute through assessments under section 294.9 and shall pay to the board of trustees the amount picked up in lieu of the teacher assessments for recording and deposit in the fund.

2. Teacher assessments picked up by each employing school district under subsection 1 shall be treated as employer contributions for federal and state income tax purposes only and for all other purposes of this chapter ~~and the laws of this state~~ shall be treated as teacher assessments and deemed part of the teacher's wages or salary.

Sec. 4. Section 411.8, subsection 1, paragraph i, Code 1997, is amended to read as follows:

i. (1) Notwithstanding paragraph "g" or other provisions of this chapter, beginning January 1, 1995, for federal income tax purposes, and beginning January 1, 1999, for state income tax purposes, member contributions required under paragraph "f" or "h" which are picked up by the city shall be considered employer contributions for federal and state income tax purposes, and each city shall pick up the member contributions to be made under paragraph "f" or "h" by its employees. Each city shall pick up these contributions by reducing the salary of each of its employees covered by this chapter by the amount which each

employee is required to contribute under paragraph "f" or "h" and shall pay the amount picked up in lieu of the member contributions to the board of trustees for recording and deposit in the fund.

(2) Member contributions picked up by each city under subparagraph (1) shall be treated as employer contributions for federal and state income tax purposes only and for all other purposes of this chapter ~~and the laws of this state~~ shall be treated as employee contributions and deemed part of the employee's earnable compensation or salary.

Sec. 5. Section 422.7, subsections 29 through 31, Code Supplement 1997, are amended by striking the subsections.

Sec. 6. EFFECTIVE AND APPLICABILITY DATE. This Act takes effect January 1, 1999, and applies to tax years beginning on or after January 1, 1999.

Approved May 6, 1998

CHAPTER 1175

LOCAL COMMUNITY AND ECONOMIC DEVELOPMENT — COMMUNITY BUILDER PROGRAM AND ENTERPRISE ZONES

H.F. 2164

AN ACT relating to economic development enterprise zones and to local community and economic development planning assistance and the community builder program.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 15.108, subsection 3, paragraph a, Code Supplement 1997, is amended by adding the following new subparagraph:

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

Sec. 2. Section 15.108, subsection 3, paragraph b, subparagraph (3), Code Supplement 1997, is amended to read as follows:

(3) Provide planning assistance to cities, ~~other municipalities,~~ counties, ~~groups of adjacent communities, metropolitan~~ local and regional ~~areas, and official governmental planning agencies~~ government organizations, and local and regional economic development organizations. Subject to the availability of funds for this purpose, the department may provide financial assistance to cities, counties, local and regional government organizations, and local and regional economic development organizations for the purpose of developing community and economic development plans.

Sec. 3. Section 15.282, Code 1997, is amended to read as follows:

15.282 PURPOSE.

The purpose of this part is to assist communities and rural areas of the state with their development and governmental responsibilities by providing low-interest and no-interest

loans or grants for traditional infrastructure, new infrastructure, and housing~~, and their efforts relating to community, business, and economic development under the community builder program established in section 15.308~~.

The department may also provide assistance for infrastructure assessment or planning efforts pursuant to rules established by the department.

Sec. 4. Section 15.286A, Code 1997, is amended to read as follows:

15.286A PLANNING.

1. The planning category contains projects that include but are not limited to planning efforts ~~leading to completion of the community builder program established in section 15.308 and~~ for statewide or regional infrastructure assessment or planning.

~~2. A city, cluster of cities, county, group of counties, council of governments, or regional planning commission, or one of these entities on behalf of an unincorporated community or group of unincorporated communities, is eligible to apply for loans or grants from this category for planning efforts related to the community builder program.~~

~~3.~~ 2. The department may issue requests for proposals for applications on a competitive basis or may negotiate with one or more public or private contractors for statewide or regional infrastructure assessment or planning.

~~4.~~ 3. The department shall adopt rules pursuant to chapter 17A for administration of this category.

Sec. 5. Section 15.327, subsection 1, Code 1997, is amended to read as follows:

1. "Community" means a city, county, or entity established pursuant to chapter 28E ~~that is a certified participant under section 15.308 or has established a comprehensive plan approved by the department~~.

Sec. 6. Section 15E.192, subsection 1, Code Supplement 1997, is amended to read as follows:

1. A county may create an economic development enterprise zone as authorized in this division, subject to certification by the department of economic development, by designating up to one percent of the county area for that purpose. An eligible county containing a city whose boundaries extend into an adjacent county may establish an enterprise zone in an area of the city located in the adjacent county if the adjacent county's board of supervisors adopts a resolution approving the establishment of the enterprise zone in the city and the two counties enter into an agreement pursuant to chapter 28E regarding the establishment of the enterprise zone. A county may establish more than one enterprise zone.

Sec. 7. Section 15E.193, subsection 1, paragraph a, Code Supplement 1997, is amended to read as follows:

a. Is not a retail business or a business where entrance is limited by a cover charge or membership requirement.

Sec. 8. Section 15E.193, subsection 1, paragraph b, Code Supplement 1997, is amended to read as follows:

b. ~~Pays at least eighty percent of the cost of a standard medical and dental insurance plan for all full-time employees.~~ Provides all full-time employees with the option of choosing one of the following:

(1) The business pays eighty percent of both of the following:

(a) The cost of a standard medical insurance plan.

(b) The cost of a standard dental insurance plan or an equivalent plan.

(2) The business provides the employee with a monetarily equivalent plan to the plan provided for in subparagraph (1).

Sec. 9. Section 15E.193, subsection 1, paragraph d, Code Supplement 1997, is amended to read as follows:

d. Creates at least ten full-time positions and maintains them for at least ten years. For an existing business in counties with a population of ten thousand or less or in cities with a population of two thousand of* less, the commission may adopt a provision that allows the business to create at least five initial jobs with the additional jobs to be added in five years. The business shall include in its strategic plan the timeline for job creation. If the existing business fails to meet the ten-job creation requirement within the five-year period, all incentives or assistance will cease immediately.

Sec. 10. NEW SECTION. 15E.193A ALTERNATIVE ELIGIBLE BUSINESS CRITERIA.

1. A business which is not located in an enterprise zone is eligible to receive incentives and assistance under section 15E.196 if the business has not closed or reduced its operation in one area of the state and relocated substantially the same operation in a location which qualifies the business under this section and if the business meets all of the following criteria:

a. Satisfies the requirements in section 15E.193, subsection 1, paragraphs "a", "b", "d", and "e".

b. Is or will be located in a city with a population between eight thousand and twenty-four thousand as determined by population estimates by the United States bureau of the census for the year of 1995.

c. Is or will be located in a city which is not more than thirty-five miles from an existing enterprise zone in this state or an equivalent zone in an adjacent state.

d. Satisfies the requirement in section 15.329, subsection 1, paragraph "d".

e. Is or will be located in an area which meets two of the criteria listed in section 15E.194, subsection 2.

f. Receives approval by ordinance or resolution from the city in which the project is located.

2. After approval of a project by ordinance or resolution, the city shall submit an application for incentives and assistance to the department of economic development. As part of the application, the city shall submit information relating the requirements listed in subsection 1 and in section 15E.193, subsection 2. The department may approve, defer, or deny the application.

3. If a business has received incentives or assistance under section 15E.196 and fails to maintain the requirements of subsection 1 to be an eligible business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. The city shall have the authority to take action to recover the value of taxes not collected as a result of an exemption provided by the community to the business. The department of revenue and finance shall have the authority to recover the value of state taxes or incentives provided under section 15E.196. The value of state incentives provided under section 15E.196 includes applicable interest and penalties. The department of economic development and the city shall enter into agreements with the business specifying the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of subsection 1. In addition, a business that fails to maintain the requirements of subsection 1 shall not receive incentives or assistance for each year during which the business is not in compliance.

4. In making its decision regarding an application, the department of economic development shall consider the impact of the eligible business on other businesses in competition with it and compare the compensation package of businesses in competition with the business being considered for incentives or assistance. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for incentives or assistance. The department shall also make a good faith effort to determine the probability that the proposed incentives or assistance will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking incentives or assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

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* The word "or" probably intended

However, if the department finds that an eligible business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the eligible business shall not qualify for incentives or assistance under section 15E.196, unless the department finds that the violations did not seriously affect public health or safety or the environment, or if it did that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether an eligible business is eligible for incentives or assistance under section 15E.196, the department is exempt from chapter 17A. If requested by the department, the business shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings, and any other information which would assist the department in assessing the nature of any violation.

5. A business that is approved to receive incentives or assistance shall, for the length of its designation as an enterprise zone business, certify annually to the department of economic development its compliance with the requirements of this section.

Sec. 11. Section 15E.195, subsection 1, Code Supplement 1997, is amended to read as follows:

1. A county which designates an enterprise zone pursuant to section 15E.194, subsection 1, and in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone designated pursuant to section 15E.194, subsection 1, to receive incentives or assistance as provided in section 15E.196. The commission shall consist of nine members. Five of these members shall consist of one representative of the board of supervisors, one member with economic development expertise chosen by the department of economic development, one representative of the county zoning board, one member of the local community college board of directors, and one representative of the local workforce development center. These five members shall select the remaining four members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining four members shall be a representative of that ~~zone~~ community. ~~However, if the enterprise zone qualifies under the city criteria, one of the four members shall be a representative of an international labor organization and if an enterprise zone is located in any city, a representative, chosen by the city council, of each such city may be a member of the commission.~~ A county shall have only one enterprise zone commission to review applications for incentives and assistance for businesses located within or requesting to locate within a certified enterprise zone designated pursuant to section 15E.194, subsection 1.

Sec. 12. Section 15E.195, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. A city with a population of twenty-four thousand or more which designates an enterprise zone pursuant to section 15E.194, subsection 2, and in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone to receive incentives or assistance as provided in section 15E.196. The commission shall consist of nine members. Six of these members shall consist of one representative of an international labor organization, one member with economic development expertise chosen by the department of economic development, one representative of the city council, one member of the local community college board of directors, one member of the city planning and zoning commission, and one representative of the local workforce development center. These six members shall select the remaining three members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of

1993, one of the remaining three members shall be a representative of that community. If a city contiguous to the city designating the enterprise zone is included in an enterprise zone, a representative of the contiguous city, chosen by the city council, shall be a member of the commission. A city in which an eligible enterprise zone is certified shall have only one enterprise zone commission. If a city has established an enterprise zone commission prior to the effective date of this Act, the city may petition to the department of economic development to change the structure of the existing commission.

Sec. 13. Section 15E.196, subsection 5, Code Supplement 1997, is amended to read as follows:

5. The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible business locates or expands in an enterprise zone and which is used in the operation of the eligible business. The amount of value added for purposes of this subsection shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone. If an exemption provided pursuant to this subsection is made applicable to only a portion of the property within an enterprise zone, the definition of that subset of eligible property must be by uniform criteria which further some planning objective established by the city or county enterprise zone commission and approved by the eligible city or county. The exemption may be allowed for a period not to exceed ten years beginning the year the eligible business enters into an agreement with the county or city to locate or expand operations in an enterprise zone.

Sec. 14. Section 15.308, Code 1997, is repealed.

Approved May 6, 1998

CHAPTER 1176

EDUCATION STANDARDS AND ACCREDITATION PROCESS

H.F. 2272

AN ACT requiring the state board of education to adopt rules relating to the incorporation of accountability for student achievement into the education standards and accreditation process.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 256.7, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 21. Develop and adopt rules by July 1, 1999, incorporating accountability for student achievement into the standards and accreditation process described in section 256.11. The rules shall provide for all of the following:

a. Requirements that all school districts and accredited nonpublic schools develop, implement, and file with the department a comprehensive school improvement plan that includes, but is not limited to, demonstrated school, parental, and community involvement in assessing educational needs, establishing local education standards and student achievement levels, and, as applicable, the consolidation of federal and state planning, goal-setting, and reporting requirements.

b. A set of core academic indicators in mathematics and reading in grades four, eight, and eleven, a set of core academic indicators in science in grades eight and eleven, and another

set of core indicators that includes, but is not limited to, graduation rate, postsecondary education, and successful employment in Iowa. Annually, the department shall report state data for each indicator in the condition of education report.

c. A requirement that all school districts and accredited nonpublic schools annually report to the department and the local community the district-wide progress made in attaining student achievement goals on the academic and other core indicators and the district-wide progress made in attaining locally established student learning goals. The school districts and accredited nonpublic schools shall demonstrate the use of multiple assessment measures in determining student achievement levels. The school districts and accredited nonpublic schools may report on other locally determined factors influencing student achievement. The school districts and accredited nonpublic schools shall also report to the local community their results by individual attendance center.

Approved May 6, 1998

CHAPTER 1177

TAXATION — MISCELLANEOUS PROVISIONS

H.F. 2513

AN ACT relating to the individual income tax by eliminating the taxation of certain capital gains and providing special treatment of gains from the sales of businesses to descendants, increasing the amount of pension income excluded, increasing certain personal exemption tax credits, and increasing and expanding the tuition and textbook tax credit, exempting sales and services to certain nonprofit hospitals from the sales, services, and use taxes, and relating to the income eligibility requirements for the homestead property tax credit, mobile home tax credit, or reimbursement for rent constituting property taxes paid, and including effective and prospective and retroactive applicability date provisions.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I
CAPITAL GAINS

Section 1. Section 422.7, subsection 21, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

Subtract ~~forty-five percent of~~ the net capital gain from the following:

Sec. 2. Section 422.7, subsection 21, paragraph a, Code Supplement 1997, is amended to read as follows:

a. (1) Net capital gain from the sale of real property used in a business, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years, or from the sale of a business, as defined in section 422.42, in which the taxpayer was employed or in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years. The sale of a business means the sale of all or substantially all of the tangible personal property or service of the business.

However, where the business is sold to individuals who are all lineal descendants of the taxpayer, the taxpayer does not have to have materially participated in the business in order for the net capital gain from the sale to be excluded from taxation.

However, in lieu of the net capital gain deduction in this paragraph and paragraphs "b", "c", and "d", where the business is sold to individuals who are all lineal descendants of the taxpayer, the amount of capital gain from each capital asset may be subtracted in determining net income.

(2) For purposes of this paragraph, "lineal descendant" means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

Sec. 3. Section 422.7, subsection 21, unnumbered paragraph 2, Code Supplement 1997, is amended by striking the unnumbered paragraph and inserting in lieu thereof the following:

However, to the extent otherwise allowed, the deduction provided in this subsection is not allowed for purposes of computation of a net operating loss in section 422.9, subsection 3, and in computing the income for the taxable year or years for which a net operating loss is deducted.

Sec. 4. EFFECTIVE AND APPLICABILITY DATES. This division of this Act, being deemed of immediate importance, takes effect upon enactment and applies retroactively to January 1, 1998, for tax years beginning on or after that date.

DIVISION II
PENSION INCOME EXCLUSION

Sec. 5. Section 422.7, subsection 34, Code Supplement 1997, is amended to read as follows:

34. For a person who is disabled, or is fifty-five years of age or older, or is the surviving spouse of an individual or a survivor having an insurable interest in an individual who would have qualified for the exemption under this subsection for the tax year, subtract, to the extent included, the total amount of a governmental or other pension or retirement pay, including, but not limited to, defined benefit or defined contribution plans, annuities, individual retirement accounts, plans maintained or contributed to by an employer, or maintained or contributed to by a self-employed person as an employer, and deferred compensation plans or any earnings attributable to the deferred compensation plans, up to a maximum of ~~three~~ five thousand dollars for a person, other than a husband or wife, who files a separate state income tax return and up to a maximum of ~~six~~ ten thousand dollars for a husband and wife who file a joint state income tax return. However, a surviving spouse who is not disabled or fifty-five years of age or older can only exclude the amount of pension or retirement pay received as a result of the death of the other spouse. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined maximum exclusion under this subsection of up to ten thousand dollars. The ten thousand dollar exclusion shall be allocated to the husband or wife in the proportion that each spouse's respective pension and retirement pay received bears to total combined pension and retirement pay received.

Sec. 6. This division of this Act, being deemed of immediate importance, takes effect upon enactment and applies retroactively to January 1, 1998, for tax years beginning on or after that date.

DIVISION III
PERSONAL EXEMPTION CREDIT

Sec. 7. Section 422.12, subsection 1, paragraphs a and b, Code 1997, is amended to read as follows:

a. For an estate or trust, a single individual, or a married person filing a separate return, ~~twenty~~ forty dollars.

b. For a head of household, or a husband and wife filing a joint return, ~~forty~~ eighty dollars.

Sec. 8. This division of this Act applies retroactively to January 1, 1998, for tax years beginning on or after that date.

DIVISION IV
TUITION TAX CREDIT

Sec. 9. Section 422.12, subsection 2, Code 1997, is amended to read as follows:

2. A tuition credit equal to ~~ten~~ twenty-five percent of the first one thousand dollars which the taxpayer has paid to others for each dependent in grades kindergarten through twelve, for tuition and textbooks of each dependent in attending an elementary or secondary school situated in Iowa, which school is accredited or approved under section 256.11, which is not operated for profit, and which adheres to the provisions of the federal Civil Rights Act of 1964 and chapter 216. As used in this subsection, "textbooks" means books and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state and does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship~~, and does not include~~. "Textbooks" includes books or materials used for extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature. Notwithstanding any other provision, all other credits allowed under this section and section 422.12B shall be deducted before the tuition credit under this subsection. The department, when conducting an audit of a taxpayer's return, shall also audit the tuition tax credit portion of the tax return.

As used in this subsection, "tuition" means any charges for the expenses of personnel, buildings, equipment and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching only of those subjects legally and commonly taught in public elementary and secondary schools in this state and which do not relate to the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship~~, and which do not~~. "Tuition" includes those expenses which relate to extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature.

Sec. 10. This division of this Act applies retroactively to January 1, 1998, for tax years beginning on or after that date.

DIVISION V
EXEMPTION FOR NONPROFIT HOSPITALS

Sec. 11. Section 422.45, Code 1997,* is amended by adding the following new subsection:

NEW SUBSECTION. 52. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a nonprofit hospital licensed pursuant to chapter 135B to be used in the operation of the hospital.

DIVISION VI
HOMESTEAD CREDIT, RENT REIMBURSEMENT, AND MOBILE HOME TAX CREDIT

Sec. 12. Section 425.23, subsection 1, Code 1997, is amended to read as follows:

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* Code Supplement 1997 probably intended

1. a. The tentative credit or reimbursement for a claimant described in section 425.17, subsection 2, paragraph "a" and paragraph "b" if no appropriation is made to the fund created in section 425.40 shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
~~$ 0 — 5,999.99~~	~~100%~~
~~6,000 — 6,999.99~~	~~85~~
~~7,000 — 7,999.99~~	~~70~~
~~8,000 — 9,999.99~~	~~50~~
~~10,000 — 11,999.99~~	~~35~~
~~12,000 — 13,999.99~~	~~25~~
$ 0 — 8,499.99	100%
8,500 — 9,499.99	85
9,500 — 10,499.99	70
10,500 — 12,499.99	50
12,500 — 14,499.99	35
14,500 — 16,499.99	25

b. If moneys have been appropriated to the fund created in section 425.40, the tentative credit or reimbursement for a claimant described in section 425.17, subsection 2, paragraph "b", shall be determined as follows:

(1) If the amount appropriated under section 425.40 plus any supplemental appropriation made for a fiscal year for purposes of this lettered paragraph is at least twenty-seven million dollars, the tentative credit or reimbursement shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
~~$ 0 — 5,999.99~~	~~100%~~
~~6,000 — 6,999.99~~	~~85~~
~~7,000 — 7,999.99~~	~~70~~
~~8,000 — 9,999.99~~	~~50~~
~~10,000 — 11,999.99~~	~~35~~
~~12,000 — 13,999.99~~	~~25~~
$ 0 — 8,499.99	100%
8,500 — 9,499.99	85
9,500 — 10,499.99	70
10,500 — 12,499.99	50
12,500 — 14,499.99	35
14,500 — 16,499.99	25

(2) If the amount appropriated under section 425.40 plus any supplemental appropriation made for a fiscal year for purposes of this lettered paragraph is less than twenty-seven million dollars the tentative credit or reimbursement shall be determined in accordance with the following schedule:

If the household income is:			Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
~~$ 0~~	~~—~~	~~5,999.99~~	~~50%~~
~~6,000~~	~~—~~	~~6,999.99~~	~~42~~
~~7,000~~	~~—~~	~~7,999.99~~	~~35~~
~~8,000~~	~~—~~	~~9,999.99~~	~~25~~
~~10,000~~	~~—~~	~~11,999.99~~	~~17~~
~~12,000~~	~~—~~	~~13,999.99~~	~~12~~
$ 0	—	8,499.99	50%
8,500	—	9,499.99	42
9,500	—	10,499.99	35
10,500	—	12,499.99	25
12,500	—	14,499.99	17
14,500	—	16,499.99	12

Sec. 13. Section 425.23, subsection 3, paragraph a, Code 1997, is amended to read as follows:

a. A person who is eligible to file a claim for credit for property taxes due and who has a household income of ~~six~~ eight thousand five hundred dollars or less and who has an unpaid special assessment levied against the homestead may file a claim for a special assessment credit with the county treasurer. The department shall provide to the respective treasurers the forms necessary for the administration of this subsection. The claim shall be filed not later than September 30 of each year. Upon the filing of the claim, interest for late payment shall not accrue against the amount of the unpaid special assessment due and payable. The claim filed by the claimant constitutes a claim for credit of an amount equal to the actual amount due upon the unpaid special assessment, plus interest, payable during the fiscal year for which the claim is filed against the homestead of the claimant. However, where the claimant is an individual described in section 425.17, subsection 2, paragraph "b", and the tentative credit is determined according to the schedule in ~~section 425.23,~~ subsection 1, paragraph "b", subparagraph (2), of this section, the claim filed constitutes a claim for credit of an amount equal to one-half of the actual amount due and payable during the fiscal year. The treasurer shall certify to the director of revenue and finance not later than October 15 of each year the total amount of dollars due for claims allowed. The amount of reimbursement due each county shall be paid by the director of revenue and finance by November 15 of each year, drawn upon warrants payable to the respective treasurer. There is appropriated annually from the general fund of the state to the department of revenue and finance an amount sufficient to carry out the provisions of this subsection. The treasurer shall credit any moneys received from the department against the amount of the unpaid special assessment due and payable on the homestead of the claimant.

Sec. 14. Section 425.23, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. a. For the base year beginning in the 1999 calendar year and for each subsequent base year, the dollar amounts set forth in subsections 1 and 3 shall be multiplied by the cumulative adjustment factor for that base year. "Cumulative adjustment factor" means the product of the annual adjustment factor for the 1998 base year and all annual adjustment factors for subsequent base years. The cumulative adjustment factor applies to the base year beginning in the calendar year for which the latest annual adjustment factor has been determined.

b. The annual adjustment factor for the 1998 base year is one hundred percent. For each subsequent base year, the annual adjustment factor equals the annual inflation factor for

the calendar year, in which the base year begins, as computed in section 422.4 for purposes of the individual income tax.

Sec. 15. Section 435.22, subsection 2, Code 1997, is amended to read as follows:

2. If the owner of the home is an Iowa resident, has attained the age of twenty-three years on or before December 31 of the base year, and has an income when included with that of a spouse which is less than ~~six~~ eight thousand five hundred dollars per year, the annual tax shall not be imposed on the home. If the income is ~~six~~ eight thousand five hundred dollars or more but less than ~~fourteen~~ sixteen thousand five hundred dollars, the annual tax shall be computed as follows:

If the Household Income is:	Annual Tax Per Square Foot:
~~$ 6,000 — 6,999.99~~	~~3.0 cents~~
~~7,000 — 7,999.99~~	~~6.0~~
~~8,000 — 9,999.99~~	~~10.0~~
~~10,000 — 11,999.99~~	~~13.0~~
~~12,000 — 13,999.99~~	~~15.0~~
$ 8,500 — 9,499.99	3.0 cents
9,500 — 10,499.99	6.0
10,500 — 12,499.99	10.0
12,500 — 14,499.99	13.0
14,500 — 16,499.99	15.0

For purposes of this subsection "income" means income as defined in section 425.17, subsection 7, and "base year" means the calendar year preceding the year in which the claim for a reduced rate of tax is filed. The home reduced rate of tax shall only be allowed on the home in which the claimant is residing at the time in which the claim for a reduced rate of tax is filed.

Beginning with the 1998 base year, the income dollar amounts set forth in this subsection shall be multiplied by the cumulative adjustment factor for that base year as determined in section 425.23, subsection 4.

Sec. 16. APPLICABILITY. This division of this Act applies to claims for credit for property taxes due, claims for reimbursement for rent constituting property taxes paid, and claims for credit for mobile home taxes due filed on or after January 1, 1999.

Approved May 6, 1998

CHAPTER 1178

MOTOR VEHICLE OPERATION, MOTOR CARRIERS, AND TRANSPORTATION OF HAZARDOUS MATERIALS

H.F. 2514

AN ACT relating to motor vehicle operation and motor vehicles, carriers and motor trucks, and penalties and hazardous materials, including weight requirements and transportation of hazardous materials, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321.208A, Code Supplement 1997, is amended to read as follows:

321.208A OPERATION IN VIOLATION OF OUT-OF-SERVICE ORDER — PENALTY.

A person required to hold a commercial driver's license to operate a commercial motor vehicle shall not operate a commercial motor vehicle on the highways of this state in violation of an out-of-service order issued by a peace officer for a violation of the out-of-service rules adopted by the department. An employer shall not allow an employee to drive a commercial motor vehicle in violation of such out-of-service order. A person who violates this section shall be subject to a ~~penalty~~ scheduled fine of one hundred dollars under section 805.8, subsection 2, paragraph "z".

Sec. 2. Section 321.228, subsection 2, Code 1997, is amended to read as follows:

2. The provisions of sections 321.261 to ~~321.274~~ 321.273, and sections 321.277 and 321.280 shall apply upon highways and elsewhere throughout the state.

Sec. 3. Section 321.275, subsection 7, Code 1997, is amended by striking the subsection.

Sec. 4. Section 321.395, Code 1997, is amended to read as follows:

321.395 LAMPS ON PARKED VEHICLES.

Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent ~~thereto~~ to the roadway, outside of a business district whether attended or unattended during the times mentioned in section 321.384, such vehicle shall be equipped with one or more lamps which shall exhibit a white or amber light on the roadway side visible from a distance of five hundred feet to the front of such vehicle and a red light visible from a distance of five hundred feet to the rear, except that local authorities may provide by ordinance or resolution that no lights need be displayed upon any such vehicle when stopped or parked in accordance with local parking regulations upon a highway where there is sufficient light to reveal any person or object within a distance of five hundred feet upon such highway. ~~Lamps on parked or stopped vehicles, except trucks, trailers or semitrailers as defined in section 321.392, required to be exhibited by this section, but not including running lights, shall not be lighted at any time when the vehicle is being driven on the highway unless the head lamps are also lighted.~~ Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

Sec. 5. Section 321.450, unnumbered paragraphs 1 and 3, Code 1997, are amended to read as follows:

A person shall not transport or have transported or shipped within this state any hazardous material except in compliance with rules adopted by the department under chapter 17A. The rules shall be consistent with the federal hazardous materials regulations ~~promulgated~~ adopted under United States Code, Title 49, and found in 49 C.F.R. § 107, 171 to 173, 177, 178, and 180. ~~However, rules adopted under this section concerning tank specifications shall not apply to cargo tank motor vehicles with a capacity of four thousand gallons or less used to transport gasoline in intrastate commerce, which were manufactured between 1950 and 1989, were domiciled in Iowa prior to July 1, 1991, and are in compliance with the American society of mechanical engineers specifications in effect at the time of manufacture.~~

Notwithstanding other provisions of this section, or the age requirements under section 321.449, the age requirements under section 321.449 and the rules adopted under this section pertaining to compliance with regulations adopted under ~~U.S.C.~~ United States Code, Title 49, and found in 49 C.F.R. § 177.804, shall not apply to retail dealers of fertilizers, petroleum products, and pesticides and their employees while delivering fertilizers, petroleum products, and pesticides to farm customers within a one-hundred-mile radius of their retail place of business. ~~Notwithstanding contrary provisions of this chapter, motor vehicles registered for a maximum gross weight of five tons or less shall be exempt from the requirements of placarding and of carrying hazardous materials shipping papers if the hazardous materials which are transported are clearly labeled.~~

Sec. 6. Section 321.463, subsection 5, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. For the purposes of the maximum gross weight tables in paragraphs "a", "b", and "c", distance in feet is the measured distance in feet between the centers of the extreme axles of any group of axles, rounded to the nearest whole foot.

Sec. 7. Section 321.463, subsections 7 and 8, Code Supplement 1997, are amended to read as follows:

7. ~~In addition, the~~ The weight on any one axle, including a tandem axle, of a vehicle which is transporting raw materials from a designated borrow site to a construction project or transporting raw materials from a construction project, and which is operating on a highway that is not part of the interstate system and along a route of travel approved by the department or the appropriate local authority, may exceed the legal maximum weight otherwise allowed under this chapter by ten percent if the gross weight on any particular group of axles on the vehicle does not exceed the gross weight allowed under this chapter for that group of axles. ~~However, if~~ If the vehicle exceeds the ten percent tolerance allowed ~~for any one axle or tandem axle~~ under this ~~paragraph~~ subsection, the fine ~~to be assessed for the axle or tandem axle~~ shall be computed on the difference between the actual weight and the ten percent tolerance weight allowed for the axle or tandem axle ~~under this paragraph~~. ~~This paragraph applies only to vehicles operating along a route of travel approved by the department.~~

8. A vehicle or combination of vehicles transporting materials to or from a construction project or commercial plant site ~~along a route of travel approved by the department or appropriate local authority shall comply with subsection 5, paragraph "a"~~ may operate under the maximum gross weight table for interstate highways in subsection 5, paragraph "a", if the route is approved by the department or appropriate local authority. Route approval is not required if the vehicle or combination of vehicles transporting materials to or from a construction project or commercial plant site complies with the maximum gross weight table for noninterstate highways in subsection 5, paragraph "c".

Sec. 8. Section 321.473, unnumbered paragraph 3, Code 1997, is amended to read as follows:

Any person who violates the provisions of the ordinance or resolution shall, upon conviction or a plea of guilty, be subject to a fine determined by dividing the difference between the actual weight and the maximum weight established by the ordinance or resolution by one hundred, and multiplying the quotient by two dollars. The fine for violation of a special permit issued pursuant to this section shall be based upon the difference between the actual weight of the vehicle and load and the maximum weight allowed by the permit in accordance with section 321.463.

Sec. 9. Section 321.491, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

Within ten days after the conviction or forfeiture of bail of a person upon a charge of violating any provision of this chapter or other law regulating the operation of vehicles on

highways every magistrate of the court or clerk of the district court of record in which the conviction occurred or bail was forfeited shall prepare and immediately forward to the department an abstract of the record of the case. The abstract must be certified by the person preparing it to be true and correct. The clerk of the district court shall collect a fee of fifty cents for each individual copy of any record of conviction or forfeiture of bail furnished to any requestor at the clerk's office except for the department or other local, state, or federal government entity. Moneys collected under this section shall be transferred to the department as a repayment receipt, as defined in section 8.2, to enhance the efficiency of the department to process records and information between the department and the Iowa court information system. Notwithstanding any other provision in this section or chapter 22, the judicial department shall be the provider of public electronic access to the clerk's records of convictions and forfeitures of bail through the Iowa court information system and shall, if all such records are provided monthly to a vendor, the judicial department shall collect a fee from such vendor which is the greater of three thousand dollars per month or the actual direct cost of providing the records.

Sec. 10. Section 325A.2, Code Supplement 1997, is amended to read as follows:

325A.2 DUTIES OF DEPARTMENT AND LOCAL AUTHORITIES.

1. The department shall do all of the following:

~~1.~~ a. Prescribe and enforce safety and financial responsibility regulations for motor carriers and require the filing of reports regarding safety and financial responsibility.

~~2.~~ b. Approve a tariff for motor carriers of household goods.

~~3.~~ c. Issue, amend, suspend, or revoke motor carrier permits and certificates.

2. A local authority, as defined in section 321.1, shall not impose any regulations upon the operation of motor carriers that are more restrictive than any of the provisions of this chapter, or section 321.449 or 321.450.

Sec. 11. Section 455B.424, subsection 1, Code 1997, is amended to read as follows:

1. The person who generates hazardous waste or the owner or operator of a hazardous waste disposal facility who transports hazardous wastes off of the site where the hazardous waste was generated or off the disposal facility site shall pay a fee of ten dollars for each ton up to two thousand five hundred tons of hazardous waste transported off the site, excluding the water content of any waste that is transported to another facility under the ownership of the generator for the purposes of waste treatment or recycling.

Sec. 12. Section 455B.424, subsection 2, paragraph b, Code 1997, is amended to read as follows:

b. Two dollars for each ton up to five hundred tons of hazardous waste destroyed or treated at the generator's site or at the disposal facility to render the hazardous waste nonhazardous.

Sec. 13. Section 805.6, subsection 1, paragraph c, subparagraph (2), Code 1997, is amended to read as follows:

(2) If the violation charged involved or resulted in an accident or injury to property and the total damages are less than ~~five hundred~~ one thousand dollars, the amount of fifty dollars plus court costs.

Sec. 14. Section 805.8, subsection 2, paragraph z, Code Supplement 1997, is amended to read as follows:

z. For violations of section 321.460 prohibiting spilling loads on the highway and of section 321.208A prohibiting operation in violation of an out-of-service order, the scheduled fine is one hundred dollars.

Sec. 15. Section 805.10, subsection 1, Code 1997, is amended to read as follows:

1. When the violation charged involved or resulted in an accident or injury to property and the total damages are ~~five hundred~~ one thousand dollars or more, or in an injury to person.

Sec. 16. Section 321.274, Code 1997, is repealed.

Sec. 17. EFFECTIVE DATE. Section 5 of this Act takes effect October 1, 1998, contingent upon adoption of new regulations concerning the transportation or shipment of hazardous materials by the appropriate federal agencies.

Approved May 6, 1998

CHAPTER 1179

ENTERPRISE ZONES — ELIGIBLE HOUSING BUSINESSES AND RELATED MATTERS

H.F. 2538

AN ACT relating to eligible housing businesses qualifying for incentives and assistance in enterprise zones, providing additional incentives and assistance for approved eligible businesses located in an enterprise zone, and requiring consideration of building codes and zoning.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 15E.193A ELIGIBLE HOUSING BUSINESS.

1. A housing business qualifying under this section is eligible to receive incentives and assistance only as provided in this section. Sections 15E.193 and 15E.196 do not apply to an eligible housing business qualifying under this section.

2. An eligible housing business under this section includes a housing developer or housing contractor that builds or rehabilitates a minimum of four single-family homes with a value, after completion of the building or rehabilitation, not exceeding one hundred twenty thousand dollars for each home located in that part of a city or county in which there is a designated enterprise zone or one multiple dwelling unit building containing three or more individual dwelling units with a total value per unit, after completion of the building or rehabilitation, not exceeding one hundred twenty thousand dollars located in that part of a city or county in which there is a designated enterprise zone.

3. The single-family homes and dwelling units which are rehabilitated or constructed by the eligible housing business shall be modest homes or units but shall include the necessary amenities. When completed and made available for occupancy, the single-family homes and dwelling units shall meet the United States department of housing and urban development's housing quality standards and local safety standards.

4. The eligible housing business shall complete its building or rehabilitation within two years from the time the business begins construction on the single-family homes and dwelling units. The failure to complete construction or rehabilitation within two years shall result in the eligible housing business becoming ineligible and subject to the repayment requirements and penalties enumerated in subsection 7.

5. An eligible housing business shall provide the enterprise zone commission with all of the following information:

a. The long-term strategic plan for the housing business which shall include labor and infrastructure needs.

b. Information dealing with the benefits the housing business will bring to the area.

c. Examples of why the housing business should be considered or would be considered a good business enterprise.

d. An affidavit that it has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violation has occurred that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

6. An eligible housing business which has been approved to receive incentives and assistance by the department of economic development pursuant to application as provided in section 15E.195 shall receive all of the following incentives and assistance for a period not to exceed ten years:

a. An eligible housing business may claim an income tax credit up to a maximum of ten percent of the new investment which is directly related to the building or rehabilitating of a minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise zone or one multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, subchapter S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, subchapter S corporation, limited liability company, or estate or trust.

b. Sales, services, and use tax refund, as provided in section 15.331A.

7. If a business has received incentives or assistance under this section and fails to maintain the requirements of this section to be an eligible housing business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. The department of revenue and finance shall have the authority to recover the value of state taxes or incentives provided under this section. The value of state incentives provided under this section includes applicable interest and penalties. The department of economic development and the city and county, as applicable, shall enter into agreement with the business specifying the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of this section. In addition, a business that fails to maintain the requirements of this section shall not receive incentives or assistance for each year during which the business is not in compliance.

8. The department of economic development and the department of revenue and finance shall each adopt rules to jointly administer this section.

Sec. 2. Section 15E.195, Code Supplement 1997, is amended to read as follows:

15E.195 ENTERPRISE ZONE COMMISSION.

1. A county in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone to receive incentives or assistance as provided in section 15E.196. <u>The enterprise zone commission shall also review applications from qualified housing businesses requesting to receive incentives or assistance as provided in section 15E.193A.</u> The commission shall consist of nine members. Five of these members shall consist of one representative of the board of supervisors, one member with economic development expertise chosen by the department of economic development, one representative of the county zoning board, one member of the local community college board of directors, and one representative of the local workforce development center. These five members shall select the remaining four members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining four members shall be a representative of that zone. However, if the enterprise zone qualifies under the city

criteria, one of the four members shall be a representative of an international labor organization and if an enterprise zone is located wholly or partially in any city, a representative, chosen by the city council, of each such city ~~may~~ shall be a member of the commission. The size of the commission shall be expanded by the number of members necessary to accommodate the appointment of a representative of each city. A county shall have only one enterprise zone commission.

2. The commission may adopt more stringent requirements, including requirements related to compensation and benefits, for a business to be eligible for incentives or assistance than provided in ~~section~~ sections 15E.193 and 15E.193A. The commission may develop as an additional requirement that preference in hiring be given to individuals who live within the enterprise zone. The commission shall work with the local workforce development center to determine the labor availability in the area. The commission shall examine and evaluate building codes and zoning in the enterprise zone and make recommendations to the appropriate governing body in an effort to promote more affordable housing development.

3. If the enterprise zone commission determines that a business qualifies ~~for inclusion in an enterprise zone~~ and is eligible to receive incentives or assistance as provided in either section 15E.193A or section 15E.196, the commission shall submit an application for incentives or assistance to the department of economic development. The department may approve, defer, or deny the application.

4. In making its decision, the commission or department shall consider the impact of the eligible business on other businesses in competition with it and compare the compensation package of businesses in competition with the business being considered for incentives or assistance. The commission or department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for incentives or assistance. The commission or department shall also make a good faith effort to determine the probability that the proposed incentives or assistance will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking incentives or assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

However, if the commission or department finds that an eligible business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the eligible business shall not qualify for incentives or assistance under section 15E.193A or section 15E.196, unless the commission or department finds that the violations did not seriously affect public health or safety or the environment, or if it did that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether an eligible business is eligible for incentives or assistance under section 15E.193A or section 15E.196, the commission or department shall be exempt from chapter 17A. If requested by the commission or department, the business shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the commission or department in assessing the nature of any violation.

5. A business that is approved to receive incentives or assistance shall, for the length of its designation as an enterprise zone business, certify annually to the county or city, as applicable, and the department of economic development its compliance with the requirements of either section 15E.193 or section 15E.193A.

Sec. 3. Section 15E.196, subsection 1, Code Supplement 1997, is amended to read as follows:

1. a. New jobs credit from withholding, as provided in section 15.331.

b. (1) As an alternative to paragraph "a", a business may provide a housing assistance program in the form of down payment assistance or rental assistance for employees in new jobs, as defined in section 260E.2, who buy or rent housing located within any certified

enterprise zone. A business establishing a housing assistance program shall fund this program through a credit from withholding based on the wages paid to the employees participating in the housing assistance program. An amount equal to one and one-half percent of the gross wages paid by the employer to each employee participating in the housing assistance program shall be credited from the payment made by an employer pursuant to section 422.16. If the amount of the withholding by the employer is less than one and one-half percent of the gross wages paid to the employees, then the employer shall receive a credit against other withholding taxes due by the employer. The employer shall deposit the amount of the credit quarterly into a housing assistance fund created by the business out of which the business shall provide employees enrolled in the housing assistance program with down payment assistance or rental assistance.

(2) A business may enter into an agreement with the county or city designating the enterprise zone pursuant to section 15E.194 to borrow initial moneys to fund a housing assistance program. The county or city may appropriate from the general fund of the county or city for the assistance program an amount not to exceed an amount estimated by the department of revenue and finance to be equal to the total amount of credit from withholding for employees determined by the business to be enrolled in the program during the first two years. The business shall pay the principal and interest on the loan out of moneys received from the credit from withholding provided for in subparagraph (1). The terms of the loan agreement shall include the principal amount, the interest rate, the terms of repayment, and the term of the loan. The terms of the loan agreement shall not extend beyond the period during which the enterprise zone is certified.

(3) The employer shall certify to the department of revenue and finance that the credit from withholding is in accordance with an agreement and shall provide other information the department may require.

(4) An employee participating in the housing assistance program will receive full credit for the amount withheld as provided in section 422.16.

Approved May 6, 1998

CHAPTER 1180

WASTE TIRES AND TIRE-DERIVED FUELS

H.F. 2546

AN ACT relating to waste tires and tire-derived fuels.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 455D.11A, subsection 3, Code Supplement 1997, is amended to read as follows:

3. Financial assurance instruments may include instruments such as cash or surety bond, a letter of credit in a form prescribed by the department, ~~or~~ a secured trust fund, a corporate guarantee, or a combination of such instruments and guarantees sufficient to satisfy the requirements of subsection 5. The department may request an annual audit, which shall remain confidential, to be performed by a third party.

Sec. 2. Section 455D.11A, subsection 5, Code Supplement 1997, is amended to read as follows:

5. Financial assurance shall be provided in the amounts as follows:

a. For a waste tire collection or processing site ~~initially permitted on or after July 1, 1992~~, the financial assurance instrument for a waste tire collection site shall provide coverage in an amount which is equivalent to ~~eighty-five~~ thirty-five cents per passenger tire equivalent collected by the site ~~and the~~ prior to July 1, 1998. The financial assurance instrument for a waste tire processing site shall provide coverage in an amount which is equivalent to ~~eighty-five~~ thirty-five cents per passenger tire equivalent collected for processing by the site which is above the three-day processing supply of tires for the site as determined by the department. This paragraph shall take effect July 1, 1999.

b. ~~For a waste tire collection or processing site in existence prior to July 1, 1992, a waste tire collection site shall provide a financial assurance instrument in an amount which is eighty-five cents per additional tire collected after July 1, 1992, and a waste tire processing site shall provide a financial assurance instrument in an amount which is eighty-five cents per additional tire collected for processing, above the three-day processing supply of tires for the site as determined by the department, after July 1, 1992.~~ For a waste tire collection or processing site, the financial assurance instrument for a waste tire collection site shall provide coverage in an amount which is equivalent to eighty-five cents per passenger tire equivalent collected by the site on or after July 1, 1998, and the financial assurance instrument for a waste tire processing site shall provide coverage in an amount which is equivalent to eighty-five cents per passenger tire equivalent collected for processing by the site which is above the three-day processing supply of tires for the site as determined by the department.

Sec. 3. Section 455D.11E, Code 1997, is amended to read as follows:

455D.11E USE BY REGENTS INSTITUTIONS OF ~~WASTE TIRES TO PRODUCE~~ TIRE-DERIVED FUELS AND OTHER BENEFICIAL USES OF WASTE TIRES.

State board of regents institutions of higher education, defined in section 262.7, are encouraged to use, to the fullest extent practicable, waste tires for beneficial uses~~, such as,~~ including, but not limited to, ~~producing~~ the consumption of tire-derived fuels. Moneys shall be awarded from the waste tire management fund, pursuant to section 455D.11C, subsection 2, to such an institution by the department pursuant to section 455D.11C to offset additional fuel, operation, and maintenance costs incurred in generating heat, electricity, or power ~~on a British thermal unit equivalent basis~~ through the use of tire-derived fuel and for the reimbursement of costs associated with mandated air permits, regulatory fees, and emission or fuel testing required to expand the institution's use of tire-derived fuel. Moneys of not more than one hundred thousand dollars may be awarded in the aggregate in a fiscal year to such institutions to offset ~~any increased fuel~~ costs described in this section which are associated with assisting the state's program to dispose of waste tires in an environmentally sound manner, and shall be available only to the extent that such moneys help to reduce the number of waste tires in the state. Institutions receiving moneys as described in this section shall not be eligible to receive funding available in section 455D.11F.

Sec. 4. Section 455D.11F, Code 1997, is amended to read as follows:

455D.11F ~~TIRE PROCESSORS~~ END-USERS AWARDED MONEYS FOR ~~PROCESSING~~ USING PROCESSED WASTE TIRES.

1. As used in this section:

a. "End-user" means a facility, industry, utility, or operation where processed waste tires are recycled, reused, or consumed for energy recovery.

~~a.~~ b. "Passenger tire equivalent" means the physical dimensions of a tire which has a rim diameter of sixteen and one-half inches or less.

~~b. "Site of end use" means a site where whole or processed waste tires are permanently legally disposed of, recycled, or reused.~~

c. "Tire processor" means a person who reduces waste tires into a processed form suitable for recycling or producing fuel for energy or heat, or uses whole waste tires in any other beneficial use as authorized by the department. "Tire processor" does not mean a person who retreads tires or processes and stores tires.

2. ~~A tire processor who~~ An end-user that annually ~~processes~~ recycles, reuses, or consumes for energy recovery more than two hundred fifty thousand processed waste tires~~, as defined in section 455D.11, or the equivalent, at a processing site as defined in section 455D.11 located within the state~~ may be awarded moneys pursuant to section 455D.11C, subsection 2, from the waste tire management fund of not more than ~~twenty~~ ten cents per passenger tire equivalent processed and delivered to the ~~site of end use~~ end-user, at a reimbursement rate of no more than fifty percent of the costs incurred or paid per ton by the end-user to receive the processed waste tire materials. Moneys of not more than three hundred thousand dollars for such ~~tire processors~~ end-user awards shall be available in the aggregate in a fiscal year and shall be disbursed by the department upon application and approval to such ~~tire processors~~ end-users. ~~A tire processor~~ An end-user shall not receive more than ~~twenty~~ one hundred fifty thousand dollars from the waste tire management fund in a fiscal year. ~~A tire processor with a pending enforcement action against the tire processor by the department is ineligible to receive moneys while the enforcement action is pending. A tire processor~~ Funding allocations shall be made proportionately between eligible end-users in the event that funding requests exceed the total annual amount of moneys available. Moneys shall be available only for waste tires that have been generated from within the state and which are processed by and received from a tire processor located within the state. An end-user with a pending enforcement action against the end-user by the department relating to sections 455D.11 through 455D.11H shall be ineligible for consideration of reimbursement for any processed waste tire materials recycled, reused, or consumed for energy recovery while the enforcement action is pending. An end-user of processed waste tire material is encouraged to use moneys awarded under this subsection to ~~lower the rates at which the tire processor sells~~ increase the purchase and consumption of processed materials.

Sec. 5. Section 455D.11G, Code 1997, is amended to read as follows:

455D.11G DISPOSAL FEE CHARGED BY RETAIL TIRE DEALER.

1. A retail tire dealer who currently charges a fee relating to disposal of used tires is encouraged to include the fee within the sales price of new tires. The practice by retail tire dealers of adding the fee as a separate charge on sales invoices is discouraged.

2. Notwithstanding any provision in this chapter, any generator of waste tires who is identified as being a contributor to the materials which are the object of an abatement and who can document full compliance with this chapter and administrative rules adopted pursuant to this chapter in disposing of such waste tires shall not be liable for any of the cost of recovery actions of the abatement.

Sec. 6. APPROPRIATION. There is appropriated from moneys used for funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph "a", subparagraph (1), to Iowa state university of science and technology for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For equipment and retrofitting the heating plant at the university to burn tire derived fuel:
..... $ 200,000

Notwithstanding section 8.33, moneys appropriated in this section which remain unexpended or unobligated on June 30, 1999, shall not revert to the general fund of the state but shall remain available for expenditure for the same purposes in the succeeding fiscal year.

Approved May 6, 1998

CHAPTER 1181

MENTAL HEALTH, DEVELOPMENTAL DISABILITY, AND SUBSTANCE ABUSE SERVICE, COMMITMENT, AND PAYMENT

H.F. 2558

AN ACT relating to mental health, developmental disability, and substance abuse service, commitment, and payment provisions, and including an applicability provision and an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I
COMMUNITY MENTAL HEALTH CENTERS

Section 1. Section 230A.1, Code 1997, is amended to read as follows:

230A.1 ESTABLISHMENT AND SUPPORT OF COMMUNITY MENTAL HEALTH CENTERS.

A county or affiliated counties, by action of the board or boards of supervisors, with approval of the administrator of the division of mental health and developmental disabilities of the department of human services, may establish a community mental health center under this chapter to serve the county or counties. ~~In establishing the community mental health center, the board of supervisors of each county involved may make a single nonrecurring expenditure, in an amount determined by the board.~~ This section does not limit the authority of the board or boards of supervisors of any county or group of counties to continue to expend money to support operation of the center, and to form agreements with the board of supervisors of any additional county for that county to join in supporting and receiving services from or through the center.

Sec. 2. Section 230A.3, Code 1997, is amended to read as follows:

230A.3 FORMS OF ORGANIZATION.

Each community mental health center established or continued in operation as authorized by section 230A.1 shall be organized and administered in accordance with one of the ~~two alternative forms prescribed by this chapter. The two alternative forms are~~ following alternative forms:

1. Direct establishment of the center by the county or counties supporting it and administration of the center by an elected board of trustees, pursuant to sections 230A.4 to 230A.11.

2. Establishment of the center by a nonprofit corporation providing services to the county or counties on the basis of an agreement with the board or boards of supervisors, pursuant to sections 230A.12 and 230A.13.

3. Continued operation of a center originally established prior to July 1, 1998, under subsection 2 without an agreement with the board or boards of supervisors which originally established the center, provided the center is in compliance with the applicable standards adopted by the mental health and mental retardation commission.

Sec. 3. Section 230A.12, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Each community mental health center established or continued in operation pursuant to section 230A.3, ~~subsection 2,~~ shall be organized under the Iowa nonprofit corporation Act appearing as chapter 504A, except that a community mental health center organized under chapter 504 prior to July 1, 1974, shall not be required by this chapter to adopt the Iowa nonprofit corporation Act if it is not otherwise required to do so by law. The board of directors of each such community mental health center shall enter into an agreement with the county or affiliated counties which are to be served by the center, which agreement shall include but need not be limited to the period of time for which the agreement is to be in force,

what services the center is to provide for residents of the county or counties to be served, standards the center is to follow in determining whether and to what extent persons seeking services from the center shall be considered able to pay the cost of the services received, and policies regarding availability of the center's services to persons who are not residents of the county or counties served by the center. The board of directors, in addition to exercising the powers of the board of directors of a nonprofit corporation may:

Sec. 4. Section 249A.4, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 15. Establish appropriate reimbursement rates for community mental health centers that are accredited by the mental health and mental retardation commission. The reimbursement rates shall be phased-in over the three-year period beginning July 1, 1998, and ending June 30, 2001.

Sec. 5. Section 230A.3, subsection 3, as enacted by this Act, is repealed on July 1, 2001.

DIVISION II
LEGAL SETTLEMENT

Sec. 6. Section 230.1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The necessary and legal costs and expenses attending the taking into custody, care, investigation, admission, commitment, and support of a person with mental illness admitted or committed to a state hospital shall be paid by a county or by the state as follows:

Sec. 7. Section 230.1, subsections 1 and 2, Code 1997, are amended to read as follows:

1. By the county in which such person has a legal settlement, ~~or~~ if the person is eighteen years of age or older.

2. By the state when such person has no legal settlement in this state, ~~or~~ when ~~such~~ the person's legal settlement is unknown, or if the person is under eighteen years of age.

Sec. 8. Section 252.16, subsection 8, Code Supplement 1997, is amended to read as follows:

8. A person receiving treatment or support services from any provider, whether organized for pecuniary profit or not or whether supported by charitable or public or private funds, that provides treatment or services for mental retardation, developmental disabilities, mental health, brain injury, or substance abuse does not acquire legal settlement in ~~the~~ a county ~~in which the site of the provider is located~~ unless the person continuously resides in that county for one year from the date of the last treatment or support service received by the person.

Sec. 9. LEGAL SETTLEMENT PLAN. The department of human services shall work with the Iowa state association of counties in developing proposals for legal settlement determination and for expediting resolution of legal settlement disputes. The department shall report on or before December 1, 1998, to the general assembly and the governor outlining proposals and providing other relevant recommendations.

Sec. 10. EFFECTIVE DATE AND FISCAL ESTIMATE REQUIREMENT. Sections 6 and 7 of this division of this Act, amending section 230.1, take effect July 1, 1999. The department of human services shall work with the Iowa state association of counties, legislative fiscal bureau, the behavioral managed care contractor under the medical assistance program, and other knowledgeable persons in developing a fiscal estimate as to the effect on state, county, and federal expenditures to implement the provisions of section 230.1, as amended by this Act. The state portion of the fiscal estimate shall be incorporated into the department's budget for the fiscal year beginning July 1, 1999. The department shall submit the entire fiscal estimate to the governor and general assembly on or before December 1, 1998.

DIVISION III
SUPPORTED COMMUNITY LIVING SERVICES

Sec. 11. Section 135C.6, subsection 1, Code Supplement 1997, is amended to read as follows:

1. A person or governmental unit acting severally or jointly with any other person or governmental unit shall not establish or operate a health care facility in this state without a license for the facility. A supported community~~, supervised apartment~~ living ~~arrangement~~ service, as defined in section 225C.21, is not required to be licensed under this chapter, but is subject to approval under section 225C.21 in order to receive public funding.

Sec. 12. Section 225C.21, Code 1997, is amended to read as follows:

225C.21 ~~COMMUNITY, SUPERVISED APARTMENT~~ SUPPORTED COMMUNITY LIVING ~~ARRANGEMENTS~~ SERVICES.

1. As used in this section, "supported community~~, supervised apartment~~ living ~~arrangement~~ services" means ~~the provision of a residence~~ services provided in a noninstitutional setting to adult persons with mental illness, mental retardation, or developmental disabilities ~~who are capable of living semi-independently but require minimal supervision~~ to meet the persons' daily living needs.

2. The department shall adopt rules pursuant to chapter 17A establishing minimum standards for the programming of supported community~~, supervised apartment~~ living ~~arrangements~~ services. The department shall approve all supported community~~, supervised apartment~~ living ~~arrangements~~ services which meet the minimum standards.

3. Approved supported community~~, supervised apartment~~ living ~~arrangements~~ services may receive funding from the state, federal and state social services block grant funds, and other appropriate funding sources, consistent with state legislation and federal regulations. The funding may be provided on a per diem, per hour, or grant basis, as appropriate.

Sec. 13. Section 235B.3, subsection 2, paragraph e, subparagraph (6), Code 1997, is amended to read as follows:

(6) A member of the staff or an employee of a supported community~~, supervised apartment~~ living ~~arrangement~~ service, sheltered workshop, or work activity center.

DIVISION IV
HOME AND COMMUNITY-BASED WAIVER SERVICES

Sec. 14. Section 135C.6, subsection 8, Code Supplement 1997, is amended to read as follows:

8. The following residential programs to which the department of human services applies accreditation, certification, or standards of review shall not be required to be licensed as a health care facility under this chapter:

a. A residential program which provides care to not more than ~~three~~ four individuals and receives moneys appropriated to the department of human services under provisions of a federally approved home and community-based services waiver for persons with mental retardation or other medical assistance program under chapter 249A.

~~b. A residential program which serves not more than four individuals and is operating under provisions of a federally approved home and community-based waiver for persons with mental retardation, if all individuals residing in the program receive on-site staff supervision during the entire time period the individuals are present in the program's living unit. The need for the on-site supervision shall be reflected in each individual's program plan developed pursuant to the department of human services' rules relating to case management for persons with mental retardation.~~ In approving a residential program under this paragraph, the department of human services shall consider the geographic location of the program so as to avoid an overconcentration of such programs in an area.

~~c.~~ b. A total of twenty residential care facilities for persons with mental retardation which

are licensed to serve no more than five individuals may be authorized by the department of human services to convert to operation as a residential program under the provisions of a medical assistance home and community-based services waiver for persons with mental retardation. A converted residential program is subject to the conditions stated in paragraph ~~"b"~~ "a" except that the program shall not serve more than five individuals. The department of human services shall allocate conversion authorizations to provide for four conversions in each of the department's five service regions. If a conversion authorization allocated to a region is not used for conversion by January 1, 1998, the department of human services may reallocate the unused conversion authorization to another region. The department of human services shall study the cost effectiveness of the conversions and provide an initial report to the general assembly no later than January 2, 1998, and a final report no later than December 15, 1998.

DIVISION V
MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

Sec. 15. Section 225C.6, subsection 1, Code 1997, is amended to read as follows:

1. To the extent funding is available, the commission shall perform the following duties:

a. Advise the administrator on the administration of the overall state ~~plans for~~ disability services system.

b. Adopt necessary rules pursuant to chapter 17A which relate to disability programs and services, including but not limited to definitions of each disability included within the term "disability services" as necessary for purposes of state, county, and regional planning, programs, and services.

c. Adopt standards for ~~accreditation of community mental health centers and comprehensive community~~ mental health centers, services, and programs as recommended under section 230A.16.

d. Adopt standards for the care of and services to persons with mental illness and mental retardation residing in county care facilities recommended under section 227.4.

e. ~~Adopt standards for the delivery of disability services by the division, and for the maintenance and operation of public or private facilities offering services to persons with disabilities, which are not subject to licensure by the department or the department of inspections and appeals, and review the standards employed by the department or the department of inspections and appeals for licensing facilities which provide services to~~ If no other person sets standards for a service available to persons with disabilities, adopt standards for that service.

f. Assure that proper appeal procedures are available to persons aggrieved by decisions, actions, or circumstances relating to accreditation.

g. ~~Award~~ Adopt necessary rules for awarding grants from the state and federal government as well as other moneys that become available to the division for grant purposes.

~~h. Review and rank applications for federal mental health grants prior to submission to the appropriate federal agency.~~

~~i.~~ h. Annually submit to the governor and the general assembly:

(1) A report concerning the activities of the commission.

(2) Recommendations formulated by the commission for changes in law.

~~j.~~ i. By January 1 of each odd-numbered year, submit to the governor and the general assembly an evaluation of:

(1) The extent to which services to persons with disabilities ~~stipulated in the state plans~~ are actually available to persons in each county in the state and the quality of those services.

(2) The ~~cost~~ effectiveness of the services being provided by disability service providers in this state and by each of the state mental health institutes established under chapter 226 and by each of the state hospital-schools established under chapter 222.

~~(3) The cost effectiveness of programs carried out by randomly selected providers receiving money from the state for disability services.~~

~~k.~~ j. Advise the administrator, the council on human services, the governor, and the general assembly on budgets and appropriations concerning disability services.

~~l.~~ k. ~~Consult~~ Coordinate activities with the Iowa governor's planning council for developmental disabilities ~~at least twice a year~~.

~~m.~~ l. Establish standards for the provision under medical assistance of individual case management services.

~~n. Establish standards for the structure of a service coordination system which ensures a linkage between the service coordination system and individual case management services.~~

~~o.~~ m. Identify model eligibility guidelines for disability services.

~~p. Identify model guidelines for purchase of disability services and for disability service reimbursement methodologies.~~

~~q. Prepare, for mental health and developmental disabilities regional planning councils, advance estimates of state and, to the extent possible, federal funds available to counties for purchase of disability services.~~

~~r.~~ n. Identify basic disability services for planning purposes.

~~s.~~ o. Prepare five-year plans based upon the county management plans developed ~~by mental health and developmental disabilities regional planning councils~~ pursuant to section 331.439.

~~t. Identify disability services which are eligible for state payment under the mental health and developmental disabilities community services fund created in section 225C.7.~~

p. Work with other state agencies on coordinating, collaborating, and communicating concerning activities involving persons with disabilities.

Sec. 16. ACCREDITATION OR CERTIFICATION OF SERVICE PROVIDERS. Effective July 1, 1998, the department of human services shall include persons with Prader-Willi syndrome, who, due to their disability, experience limitations in three or more of the major life activities as defined in the federal Developmental Disability Assistance and Bill of Rights Act, Pub. L. No. 101-496, in the definition of "persons with developmental disabilities" used in the department's rules for accreditation or certification of providers of services to persons with mental illness, mental retardation, and developmental disabilities, in 441 IAC 24.

DIVISION VI
COUNTY MANAGEMENT PLANS

Sec. 17. COUNTY MANAGEMENT PLAN PROCESS. The state-county management committee shall review the requirements in law and rule applicable to county management plans for mental health, mental retardation, and development disability services. The review shall include, but is not limited to, options for allowing a plan to apply to a three-year period with annual opportunities for public input and amendment and other proposals for streamlining the county management plan process. The committee shall include the results of the review in the committee's annual report.

Sec. 18. Section 331.439, subsection 8, Code Supplement 1997, is amended by striking the subsection and inserting in lieu thereof the following:

8. A county's management plans submitted under this section shall provide for services to children from community mental health centers and other mental health service providers accredited under chapter 225C.

Sec. 19. 1997 Iowa Acts, chapter 169, section 25, is repealed.

Sec. 20. EFFECTIVE DATE — APPLICABILITY. Sections 18 and 19 of this division of this Act, amending section 331.439, subsection 8, and repealing a 1997 Iowa Acts provision, being deemed of immediate importance, take effect upon enactment. A county's compliance with any amendment to the county's management plan submitted by the county pursuant to 1997 Iowa Acts, chapter 169, sections 24 and 25, shall be at the county's option or as required under other applicable law.

DIVISION VII
DUAL CIVIL COMMITMENTS

Sec. 21. NEW SECTION. 125.75B DUAL FILINGS.
An application for involuntary commitment or treatment of a respondent under this chapter may be filed contemporaneously with an application for involuntary hospitalization of the respondent under chapter 229.

Sec. 22. NEW SECTION. 229.2A DUAL FILINGS.
An application for involuntary hospitalization of a respondent under this chapter may be filed contemporaneously with an application for involuntary commitment or treatment of the respondent under chapter 125.

Sec. 23. Section 229.21, subsection 3, Code 1997, is amended to read as follows:
3. a. Any respondent with respect to whom the judicial hospitalization referee has found the contention that the respondent is seriously mentally impaired or a chronic substance abuser sustained by clear and convincing evidence presented at a hearing held under section 229.12 or section 125.82, may appeal from the referee's finding to a judge of the district court by giving the clerk notice in writing, within ~~seven~~ ten days after the referee's finding is made, that an appeal ~~therefrom~~ is taken. The appeal may be signed by the respondent or by the respondent's next friend, guardian or attorney.
b. An order of a judicial hospitalization referee with a finding that the respondent is seriously mentally impaired or a chronic substance abuser shall include the following notice, located conspicuously on the face of the order:
"NOTE: The respondent may appeal from this order to a judge of the district court by giving written notice of the appeal to the clerk of the district court within ten days after the date of this order. The appeal may be signed by the respondent or by the respondent's next friend, guardian, or attorney. For a more complete description of the respondent's appeal rights, consult section 229.21 of the Code of Iowa or an attorney."
c. When ~~so~~ appealed, the matter shall stand for trial de novo. Upon appeal, the court shall schedule a hospitalization or commitment hearing before a district judge at the earliest practicable time.

Sec. 24. Section 229.27, subsection 4, Code 1997, is amended by striking the subsection.

Sec. 25. IMPLEMENTATION OF ACT. Section 25B.2, subsection 3, shall not apply to this division of this Act.

DIVISION VIII
SEXUALLY VIOLENT PREDATORS

Sec. 26. Section 229A.12, if enacted by 1998 Iowa Acts, Senate File 2398,* section 12, is amended to read as follows:
229A.12 DIRECTOR OF HUMAN SERVICES — RESPONSIBILITY FOR COSTS — DUTIES — REIMBURSEMENT.
The director of human services shall be responsible for all costs relating to the evaluation and treatment of persons committed to the director's custody under any provision of this chapter. Reimbursement may be obtained by the director from the patient and any person legally liable or bound by contract for the support of the patient for the cost of care and treatment provided. As used in this section, "any person legally liable" does not include a political subdivision.

Approved May 6, 1998

* Chapter 1171 herein

CHAPTER 1182

AIRCRAFT REGISTRATION FEES AND SALES TAX EXEMPTIONS

H.F. 2560

AN ACT relating to aircraft registration fees and sales tax exemptions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 328.21, unnumbered paragraph 1, Code 1997, is amended to read as follows:

~~There~~ An annual registration fee for each aircraft shall be paid to the department at the time of ~~such~~ registration ~~an annual registration fee for each such aircraft~~, to be computed as follows:

Sec. 2. Section 328.21, subsection 1, Code 1997, is amended to read as follows:

1. Unless otherwise provided in this section, for the first registration, a sum equal to one ~~and one-half~~ percent of the manufacturer's list price of the aircraft, not to exceed five thousand dollars.

Sec. 3. Section 328.21, subsection 2, Code 1997, is amended to read as follows:

2. The second year's registration fee is seventy-five hundredths of one percent of the ~~rate fixed for the first registration~~ manufacturer's list price of the aircraft; the third year's fee is fifty hundredths of one percent; and the fourth and subsequent year's fee is twenty-five hundredths of one percent~~; however,~~. When an aircraft other than a new aircraft is registered in Iowa, the registration fee shall be based upon the number of years the aircraft was previously registered. However, an aircraft shall not be registered for a fee of less than thirty-five dollars or more than five thousand dollars.

Sec. 4. Section 328.26, Code 1997, is amended to read as follows:

328.26 APPLICATION FOR REGISTRATION.

Every application for registration pursuant to sections 328.19 ~~to 328.22~~ and 328.20 shall be made upon such forms, and shall contain such information, as the department may prescribe, and every application shall be accompanied by the full amount of the registration fee.

When an aircraft is registered to a person for the first time the fee submitted to the department shall include the tax imposed by section 422.43 or section 423.2 or evidence of the exemption of the aircraft from the tax imposed under section 422.43 or 423.2.

Sec. 5. Section 422.45, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 38B. The gross receipts from the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the gross receipts of all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, "aircraft" means aircraft used in nonscheduled interstate federal aviation administration-certified air carrier operation operating under 14 C.F.R. ch. 1, pt. 135.

Sec. 6. Section 422.45, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 38C. The gross receipts from the sale of aircraft to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

a. The aircraft is kept in the inventory of the dealer for sale at all times.

b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraphs "a", "b", and "c" are not continuously met, the dealer claiming the exemption under this subsection is liable for the tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price.

Sec. 7. Section 328.22, Code 1997, is repealed.

Approved May 6, 1998

CHAPTER 1183

PUBLIC RETIREMENT SYSTEMS AND RELATED PROVISIONS

H.F. 2496

AN ACT relating to public retirement systems, and providing effective, implementation, and applicability dates.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I
PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM

Section 1. Section 97A.6, subsection 2, paragraph d, subparagraph (4), Code 1997, is amended to read as follows:

(4) For a member who terminates service, other than by death or disability, on or after July 1, 1996, but before July 1, 1998, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added one and one-half percent of the member's average final compensation for each year of service over twenty-two years. However, this subparagraph does not apply to more than eight additional years of service.

Sec. 2. Section 97A.6, subsection 2, paragraph d, Code 1997, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (5) For a member who terminates service, other than by death or disability, on or after July 1, 1998, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added one and one-half percent of the member's average final compensation for each year of service over twenty-two years. However, this subparagraph does not apply to more than ten additional years of service.

Sec. 3. Section 97A.6, subsection 4, Code 1997, is amended to read as follows:

4. ALLOWANCE ON ORDINARY DISABILITY RETIREMENT.

a. Upon retirement for ordinary disability prior to July 1, 1998, a member shall receive an ordinary disability retirement allowance which shall consist of a pension which shall equal fifty percent of the member's average final compensation unless either of the following conditions exist:

~~a.~~ (1) If the member has not had five or more years of membership service, the member shall receive a disability pension equal to one-fourth of the member's average final compensation.

~~b.~~ (2) If the member has had twenty-two or more years of membership service, the member shall receive a disability retirement allowance that is equal to the greater of the benefit that the member would receive under subsection 2 if the member were fifty-five years of age or the disability pension otherwise calculated under this subsection.

b. Upon retirement for ordinary disability on or after July 1, 1998, a member who has five or more years of membership service shall receive a disability retirement allowance in an amount equal to the greater of fifty percent of the member's average final compensation or the retirement allowance that the member would receive under subsection 2 if the member had attained fifty-five years of age. A member who has less than five years of membership service shall receive a pension equal to one-fourth of the member's average final compensation.

Sec. 4. Section 97A.6, subsection 6, paragraph b, Code 1997, is amended to read as follows:

b. Upon retirement for accidental disability on or after July 1, 1990, but before July 1, 1998, a member shall receive an accidental disability retirement allowance which shall consist of a pension equal to sixty percent of the member's average final compensation. However, if the member has had twenty-two or more years of membership service, the member shall receive a disability retirement allowance that is equal to the greater of the retirement allowance that the member would receive under subsection 2 if the member were fifty-five years of age or the disability retirement allowance calculated under this paragraph.

Sec. 5. Section 97A.6, subsection 6, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. Upon retirement for accidental disability on or after July 1, 1998, a member shall receive an accidental disability retirement allowance which shall consist of a pension in an amount equal to the greater of sixty percent of the member's average final compensation or the retirement allowance that the member would receive under subsection 2 if the member has attained fifty-five years of age.

Sec. 6. Section 97A.6, subsection 7, paragraph a, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Should any beneficiary for either ordinary or accidental disability, except a beneficiary who is fifty-five years of age or over and would have completed twenty-two years of service if the beneficiary had remained in active service, be engaged in a gainful occupation paying more than the difference between the member's net retirement allowance and one and one-half times the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement, then the amount of the retirement allowance shall be reduced to an amount ~~which together with~~ such that the member's net retirement allowance plus the amount earned by the member shall equal one and one-half times the amount of the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement. Should the member's earning capacity be later changed, the amount of the retirement allowance may be further modified, provided that the new retirement allowance shall not exceed the amount of the retirement allowance originally granted adjusted by annual readjustments of pensions pursuant to subsection 14 of this section nor an amount which would cause the member's net retirement allowance, when added to the amount earned by the beneficiary, ~~equals~~ to equal one and one-half times the amount of the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which the member was retired at age fifty-five or greater, shall not again become a member of the retirement system and shall have the member's retirement allowance suspended while in active service. If the rank or position held by the retired member is subsequently abolished, adjustments to the allowable limit on the amount of income which can be earned in a gainful

occupation shall be computed in the same manner as provided in subsection 14, paragraph "c", of this section for readjustment of pensions when a rank or position has been abolished. If the salary scale associated with a member's rank at retirement is changed after the member retires, earnable compensation for purposes of this section shall be based upon the salary an active member currently would receive at the same rank and with seniority equal to that of the retired member at the time of retirement. For purposes of this paragraph, "net retirement allowance" means the amount determined by subtracting the amount paid during the previous calendar year by the beneficiary for health insurance or similar health care coverage for the beneficiary and the beneficiary's dependents from the amount of the member's retirement allowance paid for that year pursuant to this chapter. The beneficiary shall submit sufficient documentation to the board of trustees to permit the system to determine the member's net retirement allowance for the applicable year.

Sec. 7. APPLICABILITY. Section 6 of this Act, amending section 97A.6, subsection 7, paragraph "a", is applicable to amounts earned by a beneficiary after December 31, 1997.

DIVISION II
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Sec. 8. Section 97.51, subsection 8, Code 1997, is amended to read as follows:

8. Effective July 1, 1980, a person receiving benefits, or who becomes eligible to receive benefits, on or after July 1, 1980, under this chapter, shall receive the monthly increase in benefits provided in section ~~97B.49, subsection 11~~ 97B.49G, subsection 3, paragraph "a".

There is appropriated from the general fund of the state to the Iowa old-age and survivors' insurance liquidation fund from funds not otherwise appropriated an amount sufficient to finance the provisions of this subsection.

Sec. 9. Section 97B.8, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A board is established to be known as the "Investment Board of the Iowa Public Employees' Retirement System", referred to in this chapter as the "board", whose duties are to establish policy for the department in matters relating to the investment of the trust funds of the Iowa public employees' retirement system. At least annually the board shall review the investment policies and procedures used by the department under section 97B.7, subsection 2, paragraph "b", and shall hold a public meeting on the investment policies and investment performance of the fund. Following its review and the public meeting, the board shall establish an investment policy and goal statement which shall direct the investment activities of the department. The development of the investment policy and goal statement and its subsequent execution shall be performed cooperatively between the board and the department. In addition to the reasons provided in section 21.5, subsection 1, the board may hold a closed session pursuant to the requirements of section 21.5 of that portion of an investment board meeting in which financial or commercial information is provided to or discussed by the board if the board determines that disclosure of such information could result in a loss to the system or to the provider of the information.

Sec. 10. Section 97B.9, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Regardless of any potentially applicable statute of limitations, if the department finds that the employee or employer, or both, have erroneously underpaid contributions, the employer shall pay the employer's share of contributions and interest and the interest assessed to the employee's share of contributions. The employee shall pay the employee's share of contributions to the employer, who shall then remit them to the department. For purposes of section 1526 of the federal Taxpayer Relief Act of 1997, eligible participants, as defined by section 1526, may make payments of contributions under this section without regard to the limitations of section 415(c)(1) of the federal Internal Revenue Code.

Sec. 11. Section 97B.10, Code 1997, is amended to read as follows:

97B.10 ~~REFUNDS~~ CREDITING OF ERRONEOUS CONTRIBUTIONS.

1. If the department finds the employee or employer, or both, have erroneously paid contributions, including the payment of contributions prior to an individual's valid decision to elect out of coverage under this chapter on or after January 1, 1999, pursuant to section 97B.42A, the department shall make an adjustment, compromise, or settlement and ~~make a refund of~~ shall credit such payments to the ~~employee or employer, or both, as it finds just and equitable~~ appropriate party. ~~Refunds so made shall be charged to the fund to which the erroneous collections have been credited and shall be paid to the employee or employer, or both, without interest.~~

2. A claim of an employee or employer for a ~~refund~~ credit for erroneously paid contributions shall be made within three years of date of payment. However, the department may ~~make refund payments~~ issue a credit to employees or employers after the expiration of the three-year deadline if the department finds that ~~the payment of the refund~~ issuing the credit is just and equitable.

3. Except as provided in this subsection, interest shall not be paid on credits issued pursuant to this section. However, if a credit for contributions paid prior to an individual's decision to elect out of coverage pursuant to section 97B.42A is issued, accumulated interest and interest on dividends as provided in section 97B.70 shall apply. In addition, the department may, at any time, apply accumulated interest and interest dividends as provided in section 97B.70 on any credits issued under this section if the department finds that the crediting of interest is just and equitable.

Sec. 12. Section 97B.11, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Each employer shall deduct from the wages of each member of the system a contribution in the amount of three and seven-tenths percent of the covered wages paid by the employer, until the member's termination ~~or retirement~~ from employment~~, whichever is earlier~~. The contributions of the employer shall be in the amount of five and seventy-five hundredths percent of the covered wages of the member.

Sec. 13. Section 97B.13, Code 1997, is amended to read as follows:

97B.13 NO INCOME TAX DEDUCTION.

For the purposes of the state income tax, the contribution required by this chapter shall not be allowed as a deduction to the taxpayer in computing the taxpayer's net income for any year in which such ~~tax~~ contribution is deducted from the taxpayer's wages.

Sec. 14. Section 97B.17, unnumbered paragraph 1,* Code 1997, is amended to read as follows:

The department shall establish and maintain records of each member, including but not limited to, the amount of wages of each member, the contribution of each member with interest, and interest dividends credited. The records may be maintained in paper, magnetic, or electronic form, including optical disk storage. These records are the basis for the compilation of the retirement benefits provided under this chapter. The following records maintained under this chapter ~~containing personal identifiable information~~ are not public records for the purposes of chapter 22:

1. Records containing social security numbers.

2. ~~Records listing designated beneficiaries.~~

~~3.~~ Records specifying amounts accumulated in members' active accounts.

~~4.~~ 3. Records containing names~~,~~ or addresses~~, and amounts of monthly benefits to which~~ of members or their beneficiaries ~~are entitled~~.

~~5.~~ 4. Records containing ~~names, addresses, and~~ amounts of ~~lump sum refund~~ payments to ~~terminated~~ members or their beneficiaries.

5. Records containing financial or commercial information that relates to the investment

* "and subsections 1 through 5," also probably intended

of system funds if the disclosure of such information could result in a loss to the system or to the provider of the information.

Sec. 15. Section 97B.19, Code 1997, is amended to read as follows:

97B.19 REVISION FOR ERROR.

If~~, prior to the expiration of six months~~ following the delivery of ~~such~~ the statement provided in section 97B.18, it is brought to the attention of the department that any entry of ~~such~~ wages in ~~such~~ its records is erroneous, or that any item of ~~such~~ wages has been omitted from the records, the department may correct ~~such~~ the entry or include ~~such~~ the omitted item in its records, as the case may be. Written notice of any revision of any ~~such~~ entry which is adverse to the interest of any individual shall be given to ~~such~~ the individual in any case where ~~such~~ the individual has previously been notified by the department of the amount of wages and of the period of payments shown by ~~such~~ the entry. Upon request in writing ~~made prior to the expiration of six months immediately following the giving of the statement provided for in section 97B.18~~, the department shall afford any individual, or after the individual's death shall afford the individual's beneficiary or any other person so entitled in the judgment of the department, reasonable notice and opportunity for hearing with respect to any entry or alleged omission of wages of ~~such~~ the individual in such record, or any revision of any ~~such~~ entry. If a hearing is held, the department shall make findings of fact and a decision based upon the evidence adduced at ~~such~~ the hearing and shall revise its records accordingly. Judicial review of action of the department under this section ~~and section 97B.20~~ may be sought in accordance with the terms of the Iowa administrative procedure Act and section 97B.29.

Sec. 16. Section 97B.25, Code 1997, is amended to read as follows:

97B.25 APPLICATIONS FOR BENEFITS.

A representative designated by the chief benefits officer and referred to in this chapter as a retirement benefits specialist shall promptly examine applications for retirement benefits and on the basis of facts found shall determine whether or not the claim is valid ~~and if~~. If the claim is valid, the retirement benefits specialist shall send a notification to the member stating the option the member has selected pursuant to sections 97B.49A through 97B.49G, as applicable, or section 97B.51, the month with respect to which benefits shall commence, and the monthly benefit amount payable~~, and the maximum duration~~. ~~The~~ If the claim is invalid, the retirement benefits specialist shall promptly notify the applicant and any other interested party of the decision and the reasons. ~~Unless the applicant or other interested party, within thirty calendar days after the notification was mailed to the applicant's or party's last known address, files an appeal as provided in section 97B.20A, the decision is final and benefits shall be paid or denied in accord with the decision.~~ A retirement application shall not be amended or revoked by the member once the first retirement allowance is paid. A member's death during the first month of entitlement shall not invalidate an approved application.

Sec. 17. Section 97B.40, Code 1997, is amended to read as follows:

97B.40 FRAUD.

1. ~~Whoever,~~ A person shall be guilty of a fraudulent practice if the person makes, or causes to be made, any false statement or representation for the purpose of causing an increase in any payment authorized to be made under this chapter, ~~or~~ for the purpose of causing any payment to be made where no payment is authorized under this chapter, ~~shall willfully make or cause to be made any~~ for the purpose of obtaining confidential information from the department, or for any other unlawful purpose related to this chapter.

2. For purposes of this section, "any false statement or representation" includes the following:

a. Any false statement or representation willfully made or caused to be made as to the amount of any wages paid or received for the period during which earned or unpaid, knowing it to be false ~~or whoever makes or causes to be made any~~.

b. Any false statement of a material fact made or caused to be made knowing it to be false in any application for any payment under this chapter~~, or whoever willfully makes or causes to be made any~~.

c. Any false statement, representation, affidavit, or document willfully made, presented, or caused to be made in connection with ~~such~~ an application for any payment under this chapter knowing ~~them~~ it to be false~~, shall be guilty of a fraudulent practice~~.

d. Any unauthorized use of any security devices, such as personal identification codes, utilized for the purpose of accessing information from the department.

Sec. 18. Section 97B.41, subsection 6, Code 1997, is amended to read as follows:

6. "Bona fide retirement" means a retirement by a vested member which meets the requirements of section 97B.52A~~, subsection 1,~~ and in which the member is eligible to receive benefits under this chapter.

Sec. 19. Section 97B.41, subsection 8, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

8. "Employee" means an individual who is employed as defined in this chapter for whom coverage under this chapter is mandatory.

a. "Employee" shall also include any of the following individuals who do not elect out of coverage under this chapter pursuant to section 97B.42A:

(1) Elective officials in positions for which the compensation is on a fee basis, elective officials of school districts, elective officials of townships, and elective officials of other political subdivisions who are in part-time positions. An elective official covered under this chapter may terminate membership under this chapter by informing the department in writing of the expiration of the member's term of office. A county attorney is an employee for purposes of this chapter whether that county attorney is employed on a full-time or part-time basis.

(2) Members of the general assembly of Iowa and temporary employees of the general assembly of Iowa. A member of the general assembly covered under this chapter may terminate membership under this chapter by informing the department in writing of the member's intent to terminate membership.

Temporary employees of the general assembly covered under this chapter may terminate membership by sending written notification to the department of their separation from service.

(3) Nonvested employees of drainage and levee districts.

(4) Employees of a community action program determined to be an instrumentality of the state or a political subdivision.

(5) Magistrates.

(6) Persons employed under the federal Job Training Partnership Act of 1982, Pub. L. No. 97-300.

(7) Members of the ministry, rabbinate, or other religious order who have taken the vow of poverty.

(8) Persons employed as city managers, or as city administrators performing the duties of city managers, under a form of city government listed in chapter 372 or chapter 420.

(9) Members of the state transportation commission, the board of parole, and the state health facilities council.

(10) Employees appointed by the state board of regents who do not elect coverage in a retirement system qualified by the state board of regents that meets the criteria of section 97B.2.

(11) Persons employed by the board of trustees for the statewide fire and police retirement system established in section 411.36.

b. "Employee" does not mean the following individuals:

(1) Individuals who are enrolled as students and whose primary occupations are as students who are incidentally employed by employers.

(2) Graduate medical students while serving as interns or resident doctors in training at any hospital, or county medical examiners and deputy county medical examiners under chapter 331, division V, part 8.

(3) Employees hired for temporary employment of less than six months or one thousand forty hours in a calendar year. An employee who works for an employer for six or more months in a calendar year or who works for an employer for more than one thousand forty hours in a calendar year is not a temporary employee under this subparagraph. Adjunct instructors are temporary employees for the purposes of this chapter. As used in this section, unless the context otherwise requires, "adjunct instructors" means instructors employed by a community college or a university governed by the state board of regents without a continuing contract, whose teaching load does not exceed one-half time for two full semesters or three full quarters per calendar year.

(4) Foreign exchange teachers and visitors including alien scholars, trainees, professors, teachers, research assistants, and specialists in their field of specialized knowledge or skill.

(5) Employees of the Iowa dairy industry commission established under chapter 179, the Iowa beef cattle producers association established under chapter 181, the Iowa pork producers council established under chapter 183A, the Iowa turkey marketing council established under chapter 184A, the Iowa soybean promotion board established under chapter 185, the Iowa corn promotion board established under chapter 185C, and the Iowa egg council established under chapter 196A.

(6) Judicial hospitalization referees appointed under section 229.21.

(7) Employees of an area agency on aging, if as of July 1, 1994, the agency provides for participation by all of its employees in an alternative qualified plan pursuant to the requirements of the federal Internal Revenue Code.

(8) Persons employed through any program described in section 84A.7 and provided by the Iowa conservation corps.

8A. "Employer" means the state of Iowa, the counties, municipalities, agencies, public school districts, all political subdivisions, and all of their departments and instrumentalities, including area agencies on aging, other than those employing persons as specified in subsection 8, paragraph "b", subparagraph (7), and joint planning commissions created under chapter 28E or 28I.

If an interstate agency is established under chapter 28E and similar enabling legislation in an adjoining state, and an employer had made contributions to the system for employees performing functions which are transferred to the interstate agency, the employees of the interstate agency who perform those functions shall be considered to be employees of the employer for the sole purpose of membership in the system, although the employer contributions for those employees are made by the interstate agency.

Sec. 20. Section 97B.41, subsection 14, Code 1997, is amended to read as follows:

14. "Membership service" means service rendered by a member after July 4, 1953. Years of membership service shall be counted to the complete quarter calendar year. However, membership service for a calendar year shall not include more than four quarters. In determining a member's period of membership service, the department shall combine all periods of service for which the member has made contributions. ~~If the department has not maintained the accumulated contribution account of the member for a period of service, as provided pursuant to section 97B.53, subsection 6, the department shall credit the member for the service if the member submits satisfactory proof to the department that the member did make the contributions for the period of service and did not take a refund for the period of service.~~

Sec. 21. Section 97B.41, subsection 19, Code 1997, is amended to read as follows:

19. "Service" means ~~uninterrupted~~ service under this chapter by an employee, except an elected official, ~~from the date the employee last entered employment of the employer until~~

~~the date the employee's employment shall be terminated by death, retirement, resignation or discharge; provided, however, the service of any employee shall not be deemed to be interrupted by~~ for which the employee is paid covered wages. Service shall also mean the following:

a. Service in the armed forces of the United States, if the employee was employed by ~~the~~ a covered employer immediately prior to entry into the armed forces, and if the employee was released from service and returns to covered employment with ~~the~~ an employer within twelve months of the date on which the employee has the right of release from service or within a longer period as required by the applicable laws of the United States.

b. Leave of absence ~~or vacation~~ authorized by the employer prior to July 1, 1998, for a period not exceeding twelve months and ending no later than July 1, 1999.

c. A leave of absence authorized pursuant to the requirements of the federal Family and Medical Leave Act of 1993 ~~is considered a leave of absence authorized by the employer~~, or other similar leave authorized by the employer for a period not to exceed twelve weeks in any calendar year.

~~c. The termination at the end of the school year of the contract of employment of an employee in the public schools of the state of Iowa, provided the employee enters into a further contract of employment in the public schools of the state of Iowa for the next succeeding school year.~~

d. Temporary or seasonal interruptions in service ~~such as service of school bus drivers, schoolteachers under regular contract, interim teachers or substitute teachers, instructors at Iowa state university of science and technology, the state university of Iowa, or university of northern Iowa, employees in state schools or hospital dormitories, other positions~~ for employees of a school corporation or educational institution when the temporary suspension of service does not terminate the period of employment of the employee~~, or temporary employees of the general assembly~~ and the employee returns to service at a school corporation or educational institution upon the end of the temporary or seasonal interruption.

Sec. 22. Section 97B.41, subsection 21, Code 1997, is amended to read as follows:

21. "Special service" means service for an employer while employed in a protection occupation as provided in section ~~97B.49, subsection 16, paragraph "a"~~ 97B.49B, and as a county sheriff, deputy sheriff, or airport fire fighter as provided in section ~~97B.49, subsection 16, paragraph "b"~~ 97B.49C.

Sec. 23. Section 97B.41, subsection 23, paragraph a, Code 1997, is amended to read as follows:

a. "Three-year average covered wage" means a member's covered wages averaged for the highest three years of the member's service, except as otherwise provided in this subsection. The highest three years of a member's covered wages shall be determined using calendar years. However, if a member's final quarter of a year of employment does not occur at the end of a calendar year, the department may determine the wages for the third year by computing the average quarter of all quarters from the member's highest calendar year of covered wages not being used in the selection of the two highest years and using the computed average quarter for each quarter in the third year in which no wages have been reported in combination with the final quarter or quarters of the member's service to create a full year. However, the department shall not use the member's final quarter of wages if using that quarter would reduce the member's three-year average covered wage. If the three-year average covered wage of a member exceeds the highest maximum covered wages in effect for a calendar year during the member's period of service, the three-year average covered wage of the member shall be reduced to the highest maximum covered wages in effect during the member's period of service. Notwithstanding any other provision of this paragraph to the contrary, a member's wages for the third year as computed by this paragraph shall not exceed, by more than three percent, the member's highest actual calendar year of covered wages for a member whose first month of entitlement is January 1999 or later.

Sec. 24. Section 97B.41, subsection 25, paragraph b, subparagraph (17), unnumbered paragraph 2, Code 1997, is amended to read as follows:

Notwithstanding any other provision of this chapter providing for the payment of the benefits provided in section ~~97B.49, subsection 16 or 17~~ 97B.49B, 97B.49C, 97B.49D, or 97B.49G, the department shall establish the covered wages limitation which applies to members covered under section ~~97B.49, subsection 16 or 17~~ 97B.49B, 97B.49C, 97B.49D, or 97B.49G, at the same level as is established under this subparagraph for other members of the system.

Sec. 25. Section 97B.42A, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

97B.42A OPTIONAL EXCLUSION FROM MEMBERSHIP.

1. Commencing January 1, 1999, a person who is newly hired in a position as an employee, as defined in section 97B.1A,* subsection 8, paragraph "a", shall be covered under this chapter unless the person files an application with appropriate documentation to the department within sixty days of employment in the position to affirmatively elect out of coverage. A decision to elect out of coverage under this chapter is irrevocable upon approval from the system.

2. If a person elects out of coverage pursuant to this section, the period of time from the date on which the person was newly hired until the date the person's election out of coverage is effective shall not constitute service for purposes of coverage under this chapter. In addition, a wage adjustment shall be processed for the person based on any contributions collected pursuant to this chapter during that period of time and shall be credited pursuant to section 97B.10.

3. A person who is employed in a position as an employee as defined in section 97B.1A,* subsection 8, paragraph "a", on January 1, 1999, and who has not elected coverage under this chapter prior to that date and is not an active member of another retirement system in the state which is maintained in whole or in part by public contributions or payments, shall begin coverage under the system on January 1, 1999, unless the person files an application with appropriate documentation with the department to elect out of coverage on or before January 1, 2000. If a person elects out of coverage, the period of time from January 1, 1999, until the date the person's election out of coverage is effective shall not constitute service for purposes of coverage under this chapter and a wage adjustment shall be processed for the person based on any contributions collected pursuant to this chapter during that period of time and shall be credited pursuant to section 97B.10. A decision to elect out of coverage under this chapter pursuant to this section is irrevocable upon approval from the department.

4. A person who becomes a member of the system pursuant to subsection 3, or who is a member of the system, may purchase credit, pursuant to section 97B.73, for one or more quarters of service prior to January 1, 1999, in which the person was employed in a position as described in section 97B.1A,* subsection 8, paragraph "a", but was not a member of the system.

Sec. 26. Section 97B.43, unnumbered paragraph 2, Code 1997, is amended to read as follows:

Any person with a record of thirty years as a public employee in the state of Iowa prior to July 1, 1947, and who is not eligible for prior service credit under other provisions of this section, is entitled to a credit for years of prior service in the determination of the retirement allowance payment under this chapter, provided the public employee makes application to the department of personnel for credit for prior public service, accompanied by verification of the person's claim as the department may require. The person's allowance for prior service credits shall be computed in the same manner as otherwise provided in this section, but shall not exceed the sum of four hundred fifty dollars nor be less than three hundred

* See §82 herein

dollars per annum. Any such person is entitled to receive retirement allowances computed as provided by this chapter, effective from the date of application to the department, provided such application is approved. However, beginning July 1, 1975, the amount of such person's retirement allowance payment received during June 1975, as computed under this section shall be increased by two hundred percent and the allowance for prior service credits shall not exceed one thousand three hundred fifty dollars nor be less than nine hundred dollars per annum. Effective July 1, 1987, there is appropriated for each fiscal year from the Iowa public employees' retirement fund created in section 97B.7 to the department of personnel an amount sufficient to fund the retirement allowance increases paid under this paragraph. Effective July 1, 1980, a person with a record of thirty years as a public employee in the state of Iowa prior to July 1, 1947, receiving retirement allowances under this chapter shall receive the monthly increase in benefits provided in section ~~97B.49, subsection 11~~ 97B.49G, subsection 3, paragraph "a".

Sec. 27. Section 97B.45, subsections 1, 2, 3, and 4, Code 1997, are amended to read as follows:

1. The first of the month in which a member attains the age of sixty-five years if the member has not completed ~~thirty~~ twenty years of membership service.

2. The first of the month in which the member attains the age of sixty-two years if the member has completed ~~thirty~~ twenty years of membership service.

3. The first of any month in which the member has completed ~~thirty~~ twenty years of membership service if the member has attained the age of sixty-two years but is not yet sixty-five years of age.

4. The first of any month in which ~~a member meets the membership service and age requirements to retire under section 97B.49, subsection 15~~ the member is at least fifty-five years of age and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds eighty-eight.

Sec. 28. Section 97B.46, subsection 2, Code 1997, is amended by striking the subsection.

Sec. 29. Section 97B.46, subsection 3, Code 1997, is amended to read as follows:

3. A member remaining in service after attaining the age of seventy years is entitled to receive a retirement allowance under ~~section 97B.49~~ sections 97B.49A through 97B.49H, as applicable, commencing with payment for the calendar month within which the written notice is submitted to the department, except that if the member fails to submit the notice on a timely basis, retroactive payments shall be made for no more than six months immediately preceding the month in which the written notice is submitted.

Sec. 30. Section 97B.48, subsection 3, Code 1997, is amended to read as follows:

3. As of the first of the month in which a member attains the age of seventy years, the department shall provide written notification to the member that the member may commence receiving a retirement allowance regardless of the member's employment status. Upon termination from employment of a member receiving a retirement allowance pursuant to this subsection, the member is entitled to have the member's monthly retirement allowance recalculated using the applicable formula for determining a retirement allowance pursuant to sections 97B.49A through 97B.49G, as applicable, in place at the time of the member's first month of entitlement.

Sec. 31. Section 97B.48, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 4. Payment of a member's retirement allowance pursuant to sections 97B.49A through 97B.49H shall commence no later than the required beginning date specified under section 401(a)(9) of the federal Internal Revenue Code regardless of whether

the member has submitted the appropriate notice to receive an allowance. If the lump sum actuarial equivalent under section 97B.48, subsection 1, could have been selected by the member, payments shall be made in a lump sum rather than as a monthly allowance.

NEW SUBSECTION. 5. In the event that all, or any portion, of the retirement allowance payable to a member pursuant to subsection 4 shall remain unpaid solely by reason of the inability of the department to locate the member, the amounts payable shall be forfeited. If the member is located after the amounts payable are forfeited, the amounts payable shall be restored.

Sec. 32. Section 97B.48A, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

If a member who has not reached the member's sixty-fifth birthday and who has a bona fide retirement under this chapter is in regular full-time employment during a calendar year, the member's retirement allowance shall be reduced by fifty cents for each dollar the member earns over the limit provided in this subsection. However, employment is not full-time employment until the member receives remuneration in an amount in excess of ~~seven~~ twelve thousand ~~four hundred forty~~ dollars for a calendar year, or an amount equal to the amount of remuneration permitted for a calendar year for persons under sixty-five years of age before a reduction in federal social security retirement benefits is required, whichever is higher. Effective the first of the month in which a member attains the age of sixty-five years, a retired member may receive a retirement allowance without a reduction after return to covered employment regardless of the amount of remuneration received.

Sec. 33. Section 97B.48A, subsection 3, Code 1997, is amended to read as follows:

3. Upon a retirement after reemployment, a retired member may have the retired member's retirement allowance redetermined under this section or section ~~97B.49 or~~ 97B.48, 97B.49A through 97B.49H, 97B.50, or 97B.51, whichever is applicable, based upon the addition of credit for the years of membership service of the employee after reemployment, the covered wage during reemployment, and the age of the employee after reemployment. The member shall receive a single retirement allowance calculated from both periods of membership service, one based on the initial retirement and one based on the second retirement following reemployment. If the total years of membership service and prior service of a member who has been reemployed equals or exceeds thirty, the years of membership service on which the original retirement allowance was based may be reduced by a fraction of the years of service equal to the number of years by which the total years of membership service and prior service exceeds thirty divided by thirty, if this reduction in years of service will increase the total retirement allowance of the member. The additional retirement allowance calculated for the period of reemployment shall be added to the retirement allowance calculated for the initial period of membership service and prior service, adjusted as provided in this subsection. The retirement allowance calculated for the initial period of membership service and prior service shall not be adjusted for any other factor than years of service. The retired member shall not receive a retirement allowance based upon more than a total of thirty years of service. Effective July 1, 1998, a redetermination of a retirement allowance as authorized by this subsection for a retired member whose combined service exceeds the applicable years of service for that member as provided in sections 97B.49A through 97B.49G shall have the determination of the member's reemployment benefit based upon the percentage multiplier as determined for that member as provided in sections 97B.49A through 97B.49G.

Sec. 34. Section 97B.48A, subsection 4, Code 1997, is amended to read as follows:

4. The department shall pay to the member the accumulated contributions of the member and ~~to the employer~~ the employer contributions, plus interest plus interest dividends as provided in section 97B.70, for all completed calendar years, compounded as provided in section 97B.70, on the covered wages earned by a retired member that are not used in the recalculation of the retirement allowance of a member.

Sec. 35. NEW SECTION. 97B.49A MONTHLY PAYMENTS OF ALLOWANCE — GENERAL CALCULATION.

1. DEFINITIONS. For the purposes of this section:

a. "Applicable percentage" means sixty percent or, for each active or inactive vested member retiring on or after July 1, 1996, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of membership and prior service beyond thirty years of service, not to exceed a total of five additional percentage points.

b. "Fraction of years of service" means a number, not to exceed one, equal to the sum of the years of membership service and the number of years of prior service divided by thirty years.

2. ENTITLEMENT TO MONTHLY ALLOWANCE. Each member, upon retirement on or after the member's normal retirement date, is entitled to receive a monthly retirement allowance determined under this section. For an inactive vested member the monthly retirement allowance shall be determined on the basis of this section and section 97B.50 as they are in effect on the date of the member's retirement.

3. CALCULATION OF MONTHLY ALLOWANCE. For each active or inactive vested member retiring on or after July 1, 1994, with four or more complete years of service, a monthly benefit shall be computed which is equal to one-twelfth of an amount equal to the applicable percentage of the three-year average coverage* wage multiplied by a fraction of years of service. However, if benefits under this section commence on an early retirement date, the amount of the benefit shall be reduced in accordance with section 97B.50.

4. ALTERNATIVE CALCULATIONS.

a. For each active member employed before January 1, 1976, and retiring on or after January 1, 1976, and for each member who was a vested member before January 1, 1976, with four or more complete years of service, a formula benefit shall be determined equal to the larger of the benefit determined under this paragraph and paragraph "b" of this subsection, as applicable, the benefit determined under subsection 3, or the benefit determined under section 97B.49G, subsection 1. The amount of the monthly formula benefit for each such active or vested member who retired on or after January 1, 1976, shall be equal to one-twelfth of one and fifty-seven hundredths percent per year of membership service multiplied by the member's average annual covered wages. In no case shall the amount of monthly formula benefit accrued for membership service prior to July 1, 1967, be less than the monthly annuity at the normal retirement date determined by applying the sum of the member's accumulated contributions, the member's employer's accumulated contributions on or before June 30, 1967, and any retirement dividends standing to the member's credit on or before December 31, 1966, to the annuity tables in use by the department with due regard to the benefits payable from such accumulated contributions under sections 97B.52 and 97B.53.

b. For each member employed before January 1, 1976, who has qualified for prior service credit in accordance with the first paragraph of section 97B.43, a formula benefit shall be determined equal to the larger of the benefit determined under this paragraph, and paragraph "a" of this subsection, as applicable, the benefit determined under subsection 3, or the benefit determined under section 97B.49G, subsection 1. The amount of the monthly formula benefit under this paragraph shall be equal to eight-tenths of one percent per year of prior service credit multiplied by the monthly rate of the member's total remuneration not in excess of three thousand dollars annually during the twelve consecutive months of the member's prior service for which that total remuneration was the highest. An additional three-tenths of one percent of the remuneration not in excess of three thousand dollars annually shall be payable for prior service during each year in which the accrued liability for benefit payments created by the abolished system is funded by appropriation from the Iowa public employees' retirement fund.

c. For each active and vested member retiring with less than four complete years of service and who therefore cannot have a benefit determined under the formula benefit of paragraph "a" or "b" of this subsection, subsection 3, or section 97B.49G, subsection 1, a monthly annuity for membership service shall be determined by applying the member's accumulated

* The word "covered" probably intended

contributions and the employer's matching accumulated contributions as of the effective retirement date and any retirement dividends standing to the member's credit on or before December 31, 1966, to the annuity tables in use by the department according to the member's age and contingent annuitant's age, if applicable.

Sec. 36. NEW SECTION. 97B.49B PROTECTION OCCUPATION.

1. DEFINITIONS. For purposes of this section:

a. "Applicable percentage" means sixty percent or, for each active or inactive vested member retiring on or after July 1, 1996, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-five years of service, not to exceed a total of five additional percentage points.

b. "Eligible service" means membership and prior service in a protection occupation. In addition, for a member with membership and prior service in a protection occupation described in paragraph "d", subparagraph (2), eligible service includes membership and prior service as a sheriff, deputy sheriff, or airport fire fighter as defined in section 97B.49C.

c. "Fraction of years of service" means a number, not to exceed one, equal to the sum of the years of eligible service in a protection occupation divided by twenty-five years.

d. "Protection occupation" includes all of the following:

(1) A conservation peace officer employed under section 456A.13.

(2) A marshal in a city not covered under chapter 400 or a fire fighter or police officer of a city not participating in the retirement systems established in chapter 410 or 411.

(3) A correctional officer or correctional supervisor employed by the Iowa department of corrections, and any other employee of that department whose primary purpose is, through ongoing direct inmate contact, to enforce and maintain discipline, safety, and security within a correctional facility. The Iowa department of corrections and the personnel division of the department of personnel shall jointly determine which job classifications are covered under this subparagraph.

(4) An airport safety officer employed under chapter 400 by an airport commission in a city of one hundred thousand population or more.

(5) An employee of the state department of transportation who is designated as a "peace officer" by resolution under section 321.477, but only if the employee retires on or after July 1, 1990. For purposes of this subparagraph, service as a traffic weight officer employed by the highway commission prior to the creation of the state department of transportation or as a peace officer employed by the Iowa state commerce commission prior to the creation of the state department of transportation shall be included in computing the employee's years of membership service.

(6) A fire prevention inspector peace officer employed by the department of public safety prior to July 1, 1994, who does not elect coverage under the Iowa department of public safety peace officers' retirement, accident, and disability system, as provided in section 97B.42B.

2. CALCULATION OF MONTHLY ALLOWANCE. Notwithstanding other provisions of this chapter, a member who is or has been employed in a protection occupation who retires on or after July 1, 1994, and at the time of retirement is at least fifty-five years of age may elect to receive, in lieu of the receipt of any benefits as calculated pursuant to section 97B.49A or 97B.49D, a monthly retirement allowance equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage as a member who has been employed in a protection occupation multiplied by a fraction of years of service, with benefits payable during the member's lifetime.

3. ADDITIONAL CONTRIBUTIONS.

a. Annually, the department of personnel shall actuarially determine the cost of the additional benefits provided for members covered under this section as a percentage of the covered wages of the employees covered by this section. Sixty percent of the cost shall be paid by the employers of employees covered under this section and forty percent of the cost shall be paid by the employees. The employer and employee contributions required under this paragraph are in addition to the contributions paid under sections 97B.11 and 97B.11A.

b. (1) For the fiscal year commencing July 1, 1988, and each succeeding fiscal year, there is appropriated from the state fish and game protection fund to the department of personnel the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under subsection 1, paragraph "d", subparagraph (1).

(2) Annually, during each fiscal year commencing with the fiscal year beginning July 1, 1988, each applicable city shall pay to the department of personnel the amount necessary to pay the employer share of the cost of the additional benefits provided to employees of that city covered under subsection 1, paragraph "d", subparagraphs (2) and (4).

(3) For the fiscal year commencing July 1, 1988, and each succeeding fiscal year, the department of corrections shall pay to the department of personnel from funds appropriated to the Iowa department of corrections, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under subsection 1, paragraph "d", subparagraph (3).

(4) For the fiscal year commencing July 1, 1990, and each succeeding fiscal year, the state department of transportation shall pay to the department of personnel, from funds appropriated to the state department of transportation from the road use tax fund and the primary road fund, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under subsection 1, paragraph "d", subparagraph (5).

(5) For the fiscal year commencing July 1, 1992, and each succeeding fiscal year, the department of public safety shall pay to the department of personnel from funds appropriated to the department of public safety, the amount necessary to pay the employer share of the cost of the additional benefits provided to a fire prevention inspector peace officer pursuant to subsection 1, paragraph "d", subparagraph (6).

(6) For the fiscal year commencing July 1, 1994, and each succeeding fiscal year, each judicial district department of correctional services shall pay to the department of personnel from funds appropriated to that judicial district department of correctional services, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under subsection 1, paragraph "d", subparagraph (7).

Sec. 37. NEW SECTION. 97B.49C SHERIFFS, DEPUTY SHERIFFS, AND AIRPORT FIRE FIGHTERS.

1. DEFINITIONS. For purposes of this section:

a. "Airport fire fighter" means an airport fire fighter employed by the military division of the department of public defense.

b. "Applicable percentage" means the greater of the following percentages:

(1) Sixty percent.

(2) For each active or inactive vested member retiring on or after July 1, 1996, and before July 1, 1998, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-two years of service, not to exceed a total of five additional percentage points.

(3) For each active or inactive vested member retiring on or after July 1, 1998, sixty percent plus, if applicable, an additional three-eighths of one percentage point for each additional calendar quarter of eligible service beyond twenty-two years of service, not to exceed a total of twelve additional percentage points.

c. "Deputy sheriff" means a deputy sheriff appointed pursuant to section 341.1 prior to July 1, 1981, or section 331.903 on or after July 1, 1981.

d. "Eligible service" means membership and prior service as an airport fire fighter, sheriff, and deputy sheriff under this section. In addition, eligible service includes membership and prior service as a marshal in a city not covered under chapter 400 or a fire fighter or police officer of a city not participating in the retirement systems established in chapter 410 or 411, and as an airport fire fighter prior to July 1, 1994.

e. "Fraction of years of service" means a number, not to exceed one, equal to the sum of the years of eligible service under this section divided by twenty-two years.

f. "Sheriff" means a county sheriff as defined in section 39.17.

2. CALCULATION OF MONTHLY ALLOWANCE. Notwithstanding other provisions of this chapter, a member who retires from employment as a sheriff, deputy sheriff, or airport fire fighter on or after July 1, 1994, and at the time of retirement is at least fifty-five years of age may elect to receive, in lieu of the receipt of any benefits as calculated pursuant to section 97B.49A or 97B.49D, a monthly retirement allowance equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage as a member who has been employed in eligible service multiplied by a fraction of years of service, with benefits payable during the member's lifetime.

3. ADDITIONAL CONTRIBUTIONS.

a. Annually, the department of personnel shall actuarially determine the cost of the additional benefits provided for members covered under this section as a percentage of the covered wages of the employees covered by this section. Sixty percent of the cost shall be paid by the employers of employees covered under this section and forty percent of the cost shall be paid by the employees. The employer and employee contributions required under this paragraph are in addition to the contributions paid under sections 97B.11 and 97B.11A. However, the cost of including service as an airport fire fighter prior to July 1, 1994, as eligible service under this section shall not affect the contribution rates calculated and paid by the member or the employer under this section.

b. (1) Annually, during each fiscal year commencing with the fiscal year beginning July 1, 1988, each county shall pay to the department of personnel the amount necessary to pay the employer share of the cost of the additional benefits provided to sheriffs and deputy sheriffs.

(2) For the fiscal year commencing July 1, 1994, and each succeeding fiscal year, there is appropriated from the general fund of the state to the department of personnel, from funds not otherwise appropriated, an amount necessary to pay the employer share of the cost of the additional benefits provided to airport fire fighters under this section.

Sec. 38. NEW SECTION. 97B.49D HYBRID FORMULA.

1. An active or inactive vested member, who is or has been employed in both special service and regular service, who retires on or after July 1, 1996, with four or more completed years of service and at the time of retirement is at least fifty-five years of age, may elect to receive, in lieu of the receipt of a monthly retirement allowance as calculated pursuant to sections 97B.49A through 97B.49C, a combined monthly retirement allowance equal to the sum of the following:

a. One-twelfth of an amount equal to the applicable percentage of the member's three-year average covered wage multiplied by a fraction of years of service. The fraction of years of service for purposes of this paragraph shall be the actual years of service, not to exceed thirty, for which regular service contributions were made, divided by thirty. However, any otherwise applicable age reduction for early retirement shall apply to the calculation under this paragraph.

b. One-twelfth of an amount equal to the applicable percentage of the member's three-year average covered wage multiplied by a fraction of years of service. The fraction of years of service for purposes of this paragraph shall be the actual years of service, not to exceed twenty-five, earned in a position described in section 97B.49B, for which special service contributions were made, divided by twenty-five. In calculating the fractions of years of service under the paragraph, a member shall not receive special service credit for years of service for which the member and the member's employer did not make the required special service contributions to the department.

c. One-twelfth of an amount equal to the applicable percentage of the member's three-year average covered wage multiplied by a fraction of years of service. The fraction of years of service for purposes of this paragraph shall be the actual years of service, not to exceed twenty-two, earned in a position described in section 97B.49C, for which special service

contributions were made, divided by twenty-two. In calculating the fractions of years of service under this paragraph, a member shall not receive special service credit for years of service for which the member and the member's employer did not make the required special service contributions to the department.

2. In calculating the combined monthly retirement allowance pursuant to subsection 1, the sum of the fraction of years of service provided in subsection 1, paragraphs "a", "b", and "c", shall not exceed one. If the sum of the fractions of years of service would exceed one, the department shall deduct years of service first from the calculation under subsection 1, paragraph "a", and then from the calculation under subsection 1, paragraph "b", if necessary, so that the sum of the fractions of years of service shall equal one.

3. In calculating the combined monthly retirement allowance pursuant to subsection 1, the applicable percentage shall be sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of membership service in service as described in subsection 1, paragraph "a", "b", or "c", beyond thirty years of service, not to exceed a total of five additional percentage points. Any addition in the percentage multiplier shall be included in the calculations required under this section.

Sec. 39. NEW SECTION. 97B.49E MINIMUM BENEFITS.

1. For each active member retiring on or after June 30, 1973, and who has completed ten or more years of membership service, the total amount of monthly benefit payable at the normal retirement date for prior service and membership service shall not be less than fifty dollars per month. If benefits commence on an early retirement date, the amount of benefit shall be reduced in accordance with section 97B.50. If an optional allowance is selected under section 97B.51, the amount payable shall be the actuarial equivalent of the minimum benefit. An employee who is in employment on a school year or academic year basis, will be considered to be an active member as of June 30, 1973, if the employee completes the 1972-1973 school year or academic year.

2. Effective January 1, 1997, for members who retired on or after July 1, 1953, and before July 1, 1990, with at least ten years of prior and membership service, the minimum monthly benefit payable at the normal retirement date for prior and membership service shall be two hundred dollars. The minimum monthly benefit payable shall be increased by ten dollars for each year of prior and membership service beyond ten years, up to a maximum of twenty additional years of prior and membership service. If benefits commenced on an early retirement date, the amount of the benefit shall be reduced in accordance with section 97B.50. If an optional allowance was selected under section 97B.51, the amount payable shall be the actuarial equivalent of the minimum benefit.

Sec. 40. NEW SECTION. 97B.49F RETIREMENT DIVIDENDS.

1. COST OF LIVING DIVIDEND.

a. Effective July 1, 1997, commencing with dividends payable in November 1997, and for each subsequent year, all members who retired prior to July 1, 1990, and all beneficiaries and contingent annuitants of such members, shall be eligible for annual dividend payments, payable in November of that year, pursuant to the requirements of this subsection. The dividend payable in any given year shall be the sum of the dollar amount of the dividend payable in the previous November and the dividend adjustment. A dividend determined pursuant to this subsection shall not be used to increase the monthly benefit amount payable. In no event shall the dividend payable be less than twenty-five dollars.

b. (1) The dividend adjustment for a given year shall be calculated by multiplying the total of the retiree's, beneficiary's, or contingent annuitant's monthly benefit payments and the dividend payable to the retiree, beneficiary, or contingent annuitant, in the previous calendar year by the applicable percentage as determined by this paragraph.

(2) The applicable percentage shall be the least of the following percentages:

(a) The percentage representing eighty percent of the percentage increase in the consumer price index published in the federal register by the federal department of labor, bureau

of labor statistics, that reflects the percentage increase in the consumer price index for the twelve-month period ending June 30 of the year that the dividend is to be paid.

(b) The percentage representing the percentage amount the actuary has certified, in the annual actuarial valuation of the system as of June 30 of the year in which the dividend is to be paid, that the fund can absorb without requiring an increase in the employer and employee contributions to the fund.

(c) Three percent.

c. If a member dies on or after November 1, but before payment of a dividend is made in that month, the full amount of the retirement dividend for that year shall be paid in the member's name upon notification of the member's death.

2. FAVORABLE EXPERIENCE DIVIDEND.

a. Commencing January 1, 1999, all members who retired on or after July 1, 1990, and who have been retired for at least one year as of the date the dividend is payable, or a beneficiary or contingent annuitant of such a member, shall be eligible to receive a favorable experience dividend, payable on the last business day in January of each year pursuant to the requirements of this subsection.

b. A favorable experience dividend reserve account, hereafter called the "reserve account", is established within the retirement fund. Moneys credited to the reserve account shall be used by the department for the purpose of providing a favorable experience dividend pursuant to this subsection.

c. Moneys shall be credited to the reserve account in the retirement fund as follows:

(1) On or before January 15, 1999, there shall be credited to the reserve account an amount that the system's actuary determines is sufficient to pay the maximum favorable experience dividend for each of the next following five years, based on reasonable actuarial assumptions.

(2) Beginning with the annual actuarial valuation of the system as of June 30, 1999, and for each annual actuarial valuation of the system thereafter, there shall be credited to the reserve account on each applicable January 15 following an actuarial valuation, an amount that represents that portion of the favorable actuarial experience, if any, that the system's actuary determines shall be credited to the reserve account pursuant to rules adopted by the department.

(3) The portion of the favorable actuarial experience, if any, that is not initially credited to the reserve account pursuant to subparagraph (2), but which, if applied to the retirement fund, would result in the actuarial valuation of assets exceeding the actuarial accrued liability of the system based on the most recent annual actuarial valuation of the system, shall be credited to the reserve account.

(4) As used in this paragraph, "favorable actuarial experience" means the difference, if positive, between the anticipated and actual experience of the system's actuarial assets and liabilities as measured by the system's actuary in the most recent annual actuarial valuation of the system pursuant to rules adopted by the department.

d. The favorable experience dividend is calculated by multiplying the total of the monthly benefit payments of the retiree, beneficiary, or contingent annuitant for the previous calendar year, by the number of complete years the member has been retired or would have been retired if living as of the date the dividend is payable, and by the applicable percentage. For purposes of this paragraph, the applicable percentage is the percentage, not to exceed three percent, that the department determines shall be applied in calculating the favorable experience dividend if the department determines that the reserve account is sufficiently funded to make a distribution. In making its determination, the department shall consider, but not be limited to, the amounts credited to the reserve account, the distributions from the reserve account made in previous years, the likelihood of future credits to and distributions from the reserve account, and the distributions paid under subsection 1.

Sec. 41. NEW SECTION. 97B.49G MONTHLY PAYMENTS OF ALLOWANCE — MISCELLANEOUS PROVISIONS.

1. MONTHLY PAYMENTS OF ALLOWANCE — PERCENTAGE MULTIPLIER.

a. For each active or inactive vested member retiring on or after July 1, 1986, and before July 1, 1994, with four or more complete years of service, a monthly benefit shall be computed which is equal to one-twelfth of an amount equal to the applicable percentage multiplier of the three-year average covered wage multiplied by a fraction of years of service.

b. The applicable percentage multiplier for purposes of this subsection shall be the following:

(1) For active or inactive vested members retiring on or after July 1, 1986, but before July 1, 1990, fifty percent.

(2) For active or inactive vested members retiring on or after July 1, 1990, but before July 1, 1991, fifty-two percent.

(3) For active or inactive vested members retiring on or after July 1, 1991, but before July 1, 1992, fifty-four percent.

(4) For active or inactive vested members retiring on or after July 1, 1992, but before July 1, 1993, fifty-six percent.

(5) For active or inactive vested members retiring on or after July 1, 1993, but before July 1, 1994, fifty-seven and four-tenths percent.

(6) For active or inactive vested members retiring on or after July 1, 1994, sixty percent.

c. For purposes of this subsection, fraction of years of service means a number, not to exceed one, equal to the sum of the years of membership service and the number of years of prior service divided by thirty years.

2. EXTRA PAYMENTS ON ALLOWANCE — PRE-1976 RETIREES.

a. On January 1, 1976, for each member who retired before January 1, 1976, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for December 1975 is increased by ten percent for the first calendar year or portion of a calendar year the member was retired, and by an additional five percent for each calendar year after the first calendar year the member was retired through the calendar year beginning January 1, 1975. The total increase shall not exceed one hundred percent. Effective July 1, 1987, there is appropriated for each fiscal year from the Iowa public employees' retirement fund created in section 97B.7 to the department of personnel from funds not otherwise appropriated an amount sufficient to fund the monthly retirement allowance increases paid under this paragraph.

The benefit increases granted to members retired under the system on January 1, 1976, shall be granted only on January 1, 1976, and shall not be further increased for any year in which the member was retired after the calendar year beginning January 1, 1975.

b. Effective July 1, 1978, for each member who retired from the system prior to January 1, 1976, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1978 is increased as follows:

(1) For the first ten years of service, fifty cents per month for each complete year of service.

(2) For the eleventh through the twentieth years of service, two dollars per month for each complete year of service.

(3) For the twenty-first through the thirtieth years of service, three dollars per month for each complete year of service.

Effective July 1, 1979, the increases granted to members under this subparagraph shall be paid to contingent annuitants and to beneficiaries.

3. EXTRA PAYMENTS ON ALLOWANCE.

a. Effective July 1, 1980, for each member who retired from the system prior to January 1, 1976, and for each member who retired from the system on or after January 1, 1976, under section 97B.49A, subsection 4, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1980 is increased as follows:

(1) For the first ten years of service, fifty cents per month for each complete year of service.

(2) For the eleventh through the twentieth years of service, one dollar per month for each complete year of service.

(3) For the twenty-first through the thirtieth years of service, one dollar and fifty cents per month for each complete year of service.

(4) The amount of monthly increase payable to a member under this paragraph is also payable to a beneficiary and a contingent annuitant and shall be reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52 compared to the full monthly benefit provided in this section or section 97B.49A, as applicable.

However, effective July 1, 1980, the monthly retirement allowance attributable to membership service and prior service of a member, contingent annuitant, and beneficiary shall not be less than five dollars times the number of complete years of service of the member, not to exceed thirty, reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52, compared to the full monthly retirement benefit provided in this section or section 97B.49A, as applicable.

b. Effective beginning July 1, 1982, for each member who retired from the system prior to January 1, 1976, and for each member who retired from the system on or after January 1, 1976, under section 97B.49A, subsection 4, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1982 is increased as follows:

(1) For the first ten years of service, fifty cents per month for each complete year of service.

(2) For the eleventh through the twentieth years of service, one dollar per month for each complete year of service.

(3) For the twenty-first through the thirtieth years of service, one dollar and fifty cents per month for each complete year of service.

(4) The amount of monthly increase payable to a member under this paragraph is also payable to a beneficiary and a contingent annuitant and shall be reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52 compared to the full monthly benefit provided in this section or section 97B.49A, as applicable.

c. Beginning January 1, 1999, for each member who retired from the system prior to July 1, 1986, the amount of regular monthly retirement allowance attributable to membership and prior service that was payable to the member, or the beneficiary or contingent annuitant of the member, for December 1998 shall be increased by fifteen percent.

d. Beginning January 1, 1999, for each member who retired from the system on or after July 1, 1986, but before July 1, 1990, the amount of regular monthly retirement allowance attributable to membership and prior service that was payable to the member, or the beneficiary or contingent annuitant of the member, for December 1998 shall be increased by seven percent.

4. NORMAL RETIREMENT DATES. A retired member shall be deemed to have retired on the member's normal retirement date, and retirement benefits calculated shall not be reduced pursuant to section 97B.50, if the member meets any of the following requirements:

a. The member is an active or inactive vested member retiring on or after July 1, 1988, and before July 1, 1990, who is at least fifty-five years of age and has completed at least thirty years of membership service and prior service, and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds ninety-two.

b. The member is an active or inactive vested member retiring on or after July 1, 1990, and before July 1, 1996, who is at least fifty-five years of age and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds ninety-two.

c. The member is an active or inactive vested member retiring on or after July 1, 1996, and before July 1, 1997, who is at least fifty-five years of age and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds ninety.

d. The member is an active or inactive vested member retiring on or after July 1, 1986, and before January 1, 1999, who is at least sixty-two years of age and who has completed thirty years of membership service.

5. DIVIDENDS — NOVEMBER 1996.

a. Each member who retired from the system between July 4, 1953, and December 31, 1975, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1996 monthly benefit payment a retirement dividend equal to two hundred ninety-two percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

b. A member who retired from the system between January 1, 1976, and June 30, 1982, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1996 monthly benefit payment a retirement dividend equal to two hundred twenty-three percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

c. A member who retired from the system between July 1, 1982, and June 30, 1986, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1996 monthly benefit payment a retirement dividend equal to seventy-four percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

d. A member who retired from the system between July 1, 1986, and June 30, 1990, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1996 monthly benefit payment a retirement dividend equal to twenty-four percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

e. Notwithstanding the determination of the amount of a retirement dividend under this subsection, a retirement dividend shall not be less than twenty-five dollars.

6. CONSERVATION PEACE OFFICER — JULY 1986 - JULY 1988.

a. Notwithstanding other provisions of this chapter, a member who is or has been employed as a conservation peace officer under section 456A.13 and who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as a conservation peace officer, may elect to receive, in lieu of the receipt of any benefits under subsection 1 or section 97B.49A, as applicable, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a conservation peace officer, with benefits payable during the member's lifetime.

b. A conservation peace officer who retires on or after July 1, 1986, and before July 1, 1988, and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a conservation peace officer, multiplied by a fraction of years of service as a conservation peace officer. For the purpose of this subsection, "fraction of years of service" means a number, not to exceed one, equal to the sum of the years of membership service as a conservation peace officer, divided by twenty-five years. On or after July 1, 1986, but before July 1, 1988, if the conservation peace officer has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the conservation peace officer's retirement precedes the date on which the conservation peace officer attains sixty years of age.

The annual contribution necessary to pay for the additional benefits provided in this paragraph shall be paid by the employer and employee in the same proportion that employer and employee contributions are made under section 97B.11.

c. There is appropriated from the state fish and game protection fund to the department of personnel an actuarially determined amount calculated by the Iowa public employees' retirement system sufficient to pay for the additional benefits to conservation peace officers provided by this subsection, as a percentage, in paragraph "a" and for the employer portion of the benefits provided in paragraph "b". The amount is in addition to the contribution paid by the employer under section 97B.11. The cost of the benefits relating to conservation peace officers within the fish and game division of the department of natural resources shall be paid from the state fish and game protection fund and the cost of the benefits relating to the other conservation peace officers of the department shall be paid from the general fund.

7. PEACE OFFICER — JULY 1986 - JULY 1988.

a. Notwithstanding other provisions of this chapter, a member who is or has been employed as a peace officer and who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as a peace officer, may elect to receive, in lieu of the benefits under subsection 1 or section 97B.49A, subsection 4, as applicable, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a peace officer, with benefits payable during the member's lifetime.

A peace officer who retires on or after July 1, 1986, and before July 1, 1988, and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a peace officer multiplied by the fraction of years of service as a peace officer. For the purpose of this subsection, "fraction of years of service" means a number, not to exceed one, equal to the sum of the years of membership service as a peace officer, divided by twenty-five years. On or after July 1, 1984, but before July 1, 1988, if the peace officer has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the peace officer's retirement precedes the date on which the peace officer attains sixty years of age.

For the purpose of this subsection, membership service as a peace officer means service under this system as any or all of the following:

(1) As a county sheriff as defined in section 39.17.

(2) As a deputy sheriff appointed pursuant to section 341.1, Code 1981, or section 331.903.

(3) As a marshal or police officer in a city not covered under chapter 400.

b. Each county and applicable city and employee eligible for benefits under this subsection shall annually contribute an amount determined by the department of personnel, as a percentage of covered wages, to be necessary to pay for the additional benefits provided by this subsection. The annual contribution in excess of the employer and employee contributions required by this chapter shall be paid by the employer and the employee in the same proportion that employer and employee contributions are made under section 97B.11. The additional percentage of covered wages shall be calculated separately by the department for service under paragraph "a", subparagraphs (1) and (2), and for service under paragraph "a", subparagraph (3), and each shall be an actuarially determined amount for that type of service which, if contributed throughout the entire period of active service, would be sufficient to provide the pension benefit provided in this subsection.

8. CORRECTIONAL OFFICER — JULY 1986 - JULY 1988.

a. Notwithstanding sections of this chapter relating to eligibility for and determination of retirement benefits, a vested member who is or has been employed as a correctional officer by the Iowa department of corrections and who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least thirty years of membership service as a correctional officer, may elect to receive, in lieu of the receipt of benefits under subsection 1 or section 97B.49A, subsection 4, as applicable, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a correctional officer, with benefits payable during the member's lifetime.

b. The Iowa department of corrections and the department of personnel shall jointly determine the applicable merit system job classifications of correctional officers.

c. The Iowa department of corrections shall pay to the department of personnel, from funds appropriated to the Iowa department of corrections, an actuarially determined amount sufficient to pay for the additional benefits provided in this subsection. The amount is in addition to the employer contributions required in section 97B.11.

9. AIRPORT FIRE FIGHTER — JULY 1986 - JULY 1988.

a. Notwithstanding other provisions of this chapter, a member who is or has been employed by the office of disaster services as an airport fire fighter who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as an airport fire fighter, may elect to receive, in lieu of the receipt of any benefits under subsection 1 or section 97B.49A, subsection 4, as applicable, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as an airport fire fighter, with benefits payable during the member's lifetime.

b. An airport fire fighter who retires on or after July 1, 1986, and before July 1, 1988, and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as an airport fire fighter multiplied by a fraction of years of service as an airport fire fighter. For the purpose of this subsection, "fraction of years of service" means a number, not to exceed one, equal to the sum of the years of membership service as an airport fire fighter, divided by twenty-five years. On or after July 1, 1986, but before July 1, 1988, if the airport fire fighter has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the airport fire fighter's retirement precedes the date on which the airport fire fighter attains sixty years of age.

c. The employer and each employee eligible for benefits under this subsection shall annually contribute an actuarially determined amount specified by the department, as a percentage of covered wages, that is necessary to pay for the additional benefits provided by this subsection. The annual contribution in excess of the employer and employee contributions required in section 97B.11 shall be paid by the employer and the employee in the same proportion that the employer and employee contributions are made under section 97B.11.

d. There is appropriated from the general fund of the state to the department from funds not otherwise appropriated an amount sufficient to pay the employer share of the cost of the additional benefits provided in this subsection.

10. PROTECTION OCCUPATION — JULY 1988 - JULY 1994.

a. For purposes of this subsection:

(1) "Applicable percentage" means the applicable percentage multiplier defined in subsection 1, paragraph "b", that applies on the date a member retires and becomes eligible to receive a monthly allowance as calculated pursuant to this subsection.

(2) "Fraction of years of service" means a number, not to exceed one, equal to the sum of the years of membership service in a protection occupation divided by twenty-five years.

b. Notwithstanding other provisions of this chapter, a member who is or has been employed in a protection occupation who retires on or after July 1, 1988, and before July 1, 1994, and at the time of retirement is at least fifty-five years of age may elect to receive, in lieu of the receipt of any benefits as calculated pursuant to subsection 1 or section 97B.49A, subsection 4, as applicable, a monthly retirement allowance equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage as a member who has been employed in a protection occupation multiplied by a fraction of years of service, with benefits payable during the member's lifetime.

11. SHERIFFS AND DEPUTY SHERIFFS — JULY 1988 - JULY 1994.

a. For purposes of this subsection:

(1) "Applicable percentage" means the applicable percentage multiplier as described in

subsection 1, paragraph "b", that applies on the date a member retires and becomes eligible to receive a monthly allowance as calculated pursuant to this subsection.

(2) "Fraction of years of service" means a number, not to exceed one, equal to the sum of the years of membership service as a sheriff or deputy sheriff divided by twenty-two years.

b. Notwithstanding other provisions of this chapter, a member who retires from employment as a sheriff or deputy sheriff on or after July 1, 1988, and before July 1, 1994, and at the time of retirement is at least fifty-five years of age may elect to receive, in lieu of the receipt of any benefits as calculated pursuant to subsection 1 or section 97B.49A, subsection 4, as applicable, a monthly retirement allowance equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage as a member who has been employed as a sheriff or deputy sheriff multiplied by a fraction of years of service, with benefits payable during the member's lifetime.

Sec. 42. NEW SECTION. 97B.49H ACTIVE MEMBER SUPPLEMENTAL ACCOUNTS.

1. There is established, for each active member, a supplemental account consisting of amounts credited to the account as provided in this section which shall be held and used for the exclusive benefit of the member pursuant to the requirements of this section.

2. Amounts shall be credited to a supplemental account of each active member pursuant to the requirements of this section following a determination by the system's actuary during the most recent annual actuarial valuation that the system does not have an unfunded accrued liability. For purposes of this section, the system does not have an unfunded accrued liability if the actuarial accrued liability of the system based on the actuarial cost method used by the actuary does not exceed the actuarial value of assets of the system as of the valuation date.

3. The department shall annually determine the amount to be credited to the supplemental accounts of active members. The amount to be credited shall be calculated by multiplying the member's covered wages for the applicable wage reporting period by the supplemental rate. For purposes of this subsection, the supplemental rate is the difference, if positive, between the combined employee and employer statutory contribution rates in effect under section 97B.11 and the normal cost rate of the system as determined by the system's actuary in the most recent annual actuarial valuation of the system. The credits shall be made at least quarterly during the calendar year following a determination that the system does not have an unfunded accrued liability. The normal cost rate, calculated according to the actuarial cost method used, is the percent of pay allocated to each year of service that is necessary to fund projected benefits over all members' service with the system.

4. Amounts credited to a member's supplemental account shall be credited with interest quarterly pursuant to section 97B.70, subsection 2.

5. Amounts credited to a member's supplemental account shall be distributed as follows:

a. If a member terminates covered employment and files an application for a refund under section 97B.53, the member shall receive in a lump sum payment, in addition to any other payment provided by this chapter, all amounts credited to the member's supplemental account.

b. If a member dies prior to retirement, the member's beneficiary shall receive in a lump sum payment, in addition to any other payment provided by this chapter, all amounts credited to the member's supplemental account.

c. Upon retirement, the member shall receive in a lump sum payment or in an annuity, in addition to any other payment provided by this chapter, all amounts credited to the member's supplemental account.

Sec. 43. IMPLEMENTATION DATE. New section 97B.49H, establishing an active member supplemental account, shall not be implemented until the Iowa public employees' retirement system receives approval to implement this new section from the federal internal revenue service.

Sec. 44. NEW SECTION. 97B.49I QUALIFIED BENEFITS ARRANGEMENT.

The department, by rule, may establish and maintain a qualified benefits arrangement under section 415(m) of the federal Internal Revenue Code. The amount of any annual benefit that would be payable pursuant to this chapter but for the limitation imposed by section 415 of the federal Internal Revenue Code shall be paid from a qualified benefits arrangement established and maintained pursuant to this section.

Sec. 45. Section 97B.50, Code 1997, is amended to read as follows:

97B.50 EARLY RETIREMENT.

1. Except as otherwise provided in this section, a vested member, upon retirement prior to the normal retirement date other than that specified in section 97B.45, subsection 4, is entitled to receive a monthly retirement allowance determined in the same manner as provided for normal retirement in ~~section 97B.49, subsections 1, 4, and 5,~~ sections 97B.49A, 97B.49E, and 97B.49G, reduced as follows:

a. For a member who is less than sixty-two years of age, by twenty-five hundredths of one percent per month for each month that the early retirement date precedes the normal retirement date.

b. For a member who is at least sixty-two years of age and who has not completed ~~thirty~~ twenty years of membership service and prior service, by twenty-five hundredths of one percent per month for each month that the early retirement date precedes the normal retirement date.

2. a. A vested member who retires from the system due to disability and commences receiving disability benefits pursuant to the federal Social Security Act, 42 U.S.C. § 423 et seq., and who has not reached the normal retirement date, shall receive benefits under ~~section 97B.49~~ sections 97B.49A through 97B.49G, as applicable, and shall not have benefits reduced upon retirement as required under subsection 1 regardless of whether the member has completed thirty or more years of membership service. However, the benefits shall be suspended during any period in which the member returns to covered employment. This section takes effect July 1, 1990, for a member meeting the requirements of this paragraph who retired from the system at any time after July 4, 1953. Eligible members are entitled to the receipt of retroactive adjustment payments back to July 1, 1990, notwithstanding the requirements of subsection 4.

b. A vested member who retires from the system due to disability and commences receiving disability benefits pursuant to the federal Railroad Retirement Act, 45 U.S.C. § 231 et seq., and who has not reached the normal retirement date, shall receive benefits under ~~section 97B.49~~ sections 97B.49A through 97B.49G, as applicable, and shall not have benefits reduced upon retirement as required under subsection 1 regardless of whether the member has completed thirty or more years of membership service. However, the benefits shall be suspended during any period in which the member returns to covered employment. This section takes effect July 1, 1990, for a member meeting the requirements of this paragraph who retired from the system at any time since July 4, 1953. Eligible members are entitled to the receipt of retroactive adjustment payments back to July 1, 1990, notwithstanding the requirements of subsection 4.

3. A member who is at least sixty-two years of age and less than sixty-five years of age, and who has completed ~~thirty~~ twenty or more years of membership service and prior service, shall receive ~~full~~ benefits under ~~section 97B.49~~ sections 97B.49A through 97B.49G, as applicable, determined as if the member had attained sixty-five years of age.

4. A vested member eligible for a retirement allowance adjusted under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice of retirement was submitted to the department.

*Sec. 46. NEW SECTION. 97B.50A DISABILITY BENEFITS FOR SPECIAL SERVICE MEMBERS.

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

a. "Member" means a vested member who is classified as a special service member under section 97B.1A, subsection 21, at the time of the alleged disability.

b. "Net disability retirement allowance" means the amount determined by subtracting the amount paid during the previous calendar year by the member for health insurance or similar health care coverage for the member and the member's dependents from the amount of the member's disability retirement allowance paid for that year pursuant to this section.

c. "Reemployment comparison amount" means an amount equal to the current covered wages of an active special service member at the same position on the salary scale within the rank or position the member held at the time the member received a disability retirement allowance pursuant to this section. If the rank or position held by the member at the time of retirement pursuant to this section is abolished, the amount shall be computed by the department as though the rank or position had not been abolished and salary increases had been granted on the same basis as granted to other ranks or positions by the former employer of the member. The reemployment comparison amount shall not be less than the three-year average covered wage of the member.

2. IN-SERVICE DISABILITY RETIREMENT ALLOWANCE.

a. A member who is injured in the performance of the member's duties, and otherwise meets the requirements of this subsection shall receive an in-service disability retirement allowance under the provisions of this subsection, in lieu of a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable.

b. Upon application of a member, a member who has become totally and permanently incapacitated for duty in the member's special service occupation as the natural and proximate result of an injury, disease, or exposure occurring or aggravated while in the actual performance of duty shall be eligible to retire under this subsection, provided that the medical board shall certify that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. The department shall make the final determination, based on the medical evidence received, of a member's total and permanent disability. However, if a person's membership in the system first commenced on or after July 1, 1999, the member shall not be eligible for benefits with respect to a disability which would not exist, but for a medical condition that was known to exist on the date that membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the department that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same or comparable special service position held by the member immediately prior to the application for disability benefits.

c. Disease under this subsection shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain, exposure, or the inhalation of noxious fumes, poison, or gases. However, if a person's membership in the system first commenced on or after July 1, 1999, and the heart disease or disease of the lungs or respiratory tract would not exist, but for a medical condition that was known to exist on the date that membership commenced, the presumption established in this paragraph shall not apply.

d. Upon retirement for an in-service disability as provided by this subsection, a member shall receive the greater of a monthly in-service disability retirement allowance calculated under this subsection or a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable. The monthly in-service disability allowance calculated under this subsection shall consist of an allowance equal to one-twelfth of sixty percent of the member's three-year average covered wage or its actuarial equivalent as provided under section 97B.51.

3. ORDINARY DISABILITY RETIREMENT ALLOWANCE.

a. A member who otherwise meets the requirements of this subsection shall receive an

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ordinary disability retirement allowance under the provisions of this subsection, in lieu of a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable.

b. Upon application of a member, a member who has become totally and permanently incapacitated for duty in the member's special service occupation shall be eligible to retire under this subsection, provided that the medical board shall certify that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. The department shall make the final determination, based on the medical evidence received, of a member's total and permanent disability. However, if a person's membership in the system first commenced on or after July 1, 1999, the member shall not be eligible for benefits with respect to a disability which would not exist, but for a medical condition that was known to exist on the date that membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the department that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same or comparable special service position held by the member immediately prior to the application for disability benefits.

c. Upon retirement for an ordinary disability as provided by this subsection, a member shall receive the greater of a monthly ordinary disability retirement allowance calculated under this subsection or a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable. The monthly ordinary disability allowance calculated under this subsection shall consist of an allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage or its actuarial equivalent as provided under section 97B.51.

4. WAIVER OF ALLOWANCE. A member receiving a disability retirement allowance under this section may file an application to receive benefits pursuant to section 97B.50, subsection 2, in lieu of receiving a disability retirement allowance under the provisions of this section, if the member becomes eligible for benefits under section 97B.50, subsection 2. An application to receive benefits pursuant to section 97B.50, subsection 2, shall be filed with the department within sixty days of becoming eligible for benefits pursuant to that section or the member shall be ineligible to elect coverage under that section. On the first of the month following the month in which a member's application is approved by the department, the member's election of coverage under section 97B.50, subsection 2, shall become effective and the member's eligibility to receive a disability retirement allowance pursuant to this section shall cease. Benefits payable pursuant to section 97B.50, subsection 2, shall be calculated using the option choice the member selected for payment of a disability retirement allowance pursuant to this section. An application to elect coverage under section 97B.50, subsection 2, is irrevocable upon approval by the department.

5. OFFSET TO ALLOWANCE. Notwithstanding any provisions to the contrary in state law, or any applicable contract or policy, any amounts which may be paid or payable by the employer under the provisions of any workers' compensation, unemployment compensation, or other law to a member, and any disability payments the member receives pursuant to the federal Social Security Act, 42 U.S.C. § 423 et seq., shall be offset against and payable in lieu of any retirement allowance payable pursuant to this section on account of the same disability.

6. REEXAMINATION OF MEMBERS RETIRED ON ACCOUNT OF DISABILITY.

a. Once each year during the first five years following the retirement of a member under this section, and once in every three-year period thereafter, the department may, and upon the member's application shall, require any member receiving an in-service or ordinary disability retirement allowance who has not yet attained the age of fifty-five years to undergo a medical examination as arranged by the medical board. The examination shall be made by the medical board or by an additional physician or physicians designated by the board. If any member receiving an in-service or ordinary disability retirement allowance who has not attained the age of fifty-five years refuses to submit to the medical examination, the

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allowance may be discontinued until the member's withdrawal of the refusal, and should the member's refusal continue for one year, all rights in and to the member's disability retirement allowance shall be revoked by the department.

b. If a member is determined under paragraph "a" to be no longer eligible for in-service or ordinary disability benefits, all benefits paid under this section shall cease. The member shall be eligible to receive benefits calculated under section 97B.49B or 97B.49C, as applicable, when the member reaches age fifty-five.

7. REEMPLOYMENT.

a. If a member receiving a disability retirement allowance is returned to covered employment, the member's disability retirement allowance shall cease, the member shall again become an active member, and shall contribute thereafter at the same rate payable by similarly classified members. If a member receiving a disability retirement allowance returns to special service employment, then the period of time the member received a disability retirement allowance shall constitute eligible service as defined in section 97B.49B, subsection 1, or section 97B.49C, subsection 1, as applicable. Upon subsequent retirement, the member's retirement allowance shall be calculated as provided in section 97B.48A.

b. (1) If a member receiving a disability retirement allowance is engaged in a gainful occupation that is not covered employment, the member's disability retirement allowance shall be reduced, if applicable, as provided in this paragraph.

(2) If the member is engaged in a gainful occupation paying more than the difference between the member's net disability retirement allowance and one and one-half times the reemployment comparison amount for that member, then the amount of the member's disability retirement allowance shall be reduced to an amount such that the member's net disability retirement allowance plus the amount earned by the member shall equal one and one-half times the reemployment comparison amount for that member.

(3) The member shall submit sufficient documentation to the system to permit the system to determine the member's net disability retirement allowance and earnings from a gainful occupation that is not covered employment for the applicable year.

(4) This paragraph does not apply to a member who is at least fifty-five years of age and would have completed a sufficient number of years of service if the member had remained in active special service employment. For purposes of this subparagraph, a sufficient number of years of service shall be twenty-five for a special service member as described in section 97B.49B or twenty-two years of service for a special service member as described in section 97B.49C.

8. DEATH BENEFITS. A member who is receiving an in-service or ordinary disability retirement allowance under this section shall be treated as having elected a lifetime monthly retirement allowance with death benefits payable under section 97B.52, subsection 2, unless the member elects an optional form of benefit provided under section 97B.51, which shall be actuarially equivalent to the lifetime monthly retirement allowance provided under this section.

9. MEDICAL BOARD. The system shall designate a medical board to be composed of three physicians from the university of Iowa hospitals and clinics who shall arrange for and pass upon the medical examinations required under the provisions of this section and shall report in writing to the department the conclusions and recommendations upon all matters duly referred to the medical board. Each report of a medical examination under this section shall include the medical board's findings as to the extent of the member's physical impairment. Except as required by this section, each report shall be confidential and shall be maintained in accordance with the federal Americans with Disabilities Act, and any other state or federal law containing requirements for confidentiality of medical records.

10. LIABILITY OF THIRD PARTIES — SUBROGATION.

a. If a member receives an injury for which benefits are payable under this section, and if the injury is caused under circumstances creating a legal liability for damages against a third party other than the system, the member or the member's legal representative may maintain

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an action for damages against the third party. If a member or a member's legal representative commences such an action, the plaintiff member or representative shall serve a copy of the original notice upon the system not less than ten days before the trial of the action, but a failure to serve the notice does not prejudice the rights of the system, and the following rights and duties ensue:

(1) The system shall be indemnified out of the recovery of damages to the extent of benefit payments made by the system, with legal interest, except that the plaintiff member's attorney fees may be first allowed by the district court.

(2) The system has a lien on the damage claim against the third party and on any judgment on the damage claim for benefits for which the system is liable. In order to continue and preserve the lien, the system shall file a notice of the lien within thirty days after receiving a copy of the original notice in the office of the clerk of the district court in which the action is filed.

b. If a member fails to bring an action for damages against a third party within thirty days after the system requests the member in writing to do so, the system is subrogated to the rights of the member and may maintain the action against the third party, and may recover damages for the injury to the same extent that the member may recover damages for the injury. If the system recovers damages in the action, the court shall enter judgment for distribution of the recovery as follows:

(1) A sum sufficient to repay the system for the amount of such benefits actually paid by the system up to the time of the entering of the judgment.

(2) A sum sufficient to pay the system the present worth, computed at the interest rate provided in section 535.3 for court judgments and decrees, of the future payments of such benefits, for which the system is liable, but the sum is not a final adjudication of the future payment which the member is entitled to receive.

(3) Any balance shall be paid to the member.

c. Before a settlement is effective between a system and a third party who is liable for any injury, the member must consent in writing to the settlement; and if the settlement is between the member and a third party, the system must consent in writing to the settlement; or on refusal to consent, in either case, the district court in the county in which either the employer of the member or the system is located must consent in writing to the settlement.

d. For purposes of subrogation under this section, a payment made to an injured member or the member's legal representative, by or on behalf of a third party or the third party's principal or agent, who is liable for, connected with, or involved in causing the injury to the member, shall be considered paid as damages because the injury was caused under circumstances creating a legal liability against the third party, whether the payment is made under a covenant not to sue, compromise settlement, denial of liability, or is otherwise made.

11. A member retired under this section, in order to be eligible for continued receipt of retirement benefits, shall submit to the department any documentation the department may reasonably request which will provide information needed to determine payments to the member under this section.

12. The expenses incurred in the administration of this section by the system shall be paid through additional contributions as determined pursuant to section 97B.49B, subsection 3, or section 97B.49C, subsection 3, as applicable.

13. APPLICABILITY — RETROACTIVITY.

a. This section applies to a member who becomes disabled on or after July 1, 1999, and also applies to a member who becomes disabled prior to July 1, 1999, if the member has not terminated special service employment as of June 30, 1999.

b. To qualify for benefits under this section, a member must file a completed application with the department within one year of the member's termination of employment. A member eligible for a disability retirement allowance under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which the completed application for receipt of a disability retirement allowance under this section is approved.

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*14. RULES. The department shall adopt rules pursuant to chapter 17A specifying the application procedure for members pursuant to this section.**

Sec. 47. Section 97B.51, subsection 2, Code 1997, is amended to read as follows:

2. The election by a member of ~~the~~ an option stated under ~~subsection 1 of~~ this section or in sections 97B.49A through 97B.49G, shall be null and void if the member dies prior to the member's first month of entitlement.

Sec. 48. Section 97B.51, subsection 3, Code 1997, is amended to read as follows:

3. A member who had elected to take ~~the~~ an option stated in ~~subsection 1 of~~ this section or in sections 97B.49A through 97B.49G, as applicable, may, at any time prior to retirement, revoke such an election by written notice to the department. A member shall not change or revoke an election once the first retirement allowance is paid.

Sec. 49. Section 97B.51, subsection 5, Code 1997, is amended to read as follows:

5. At retirement, a member may designate that upon the member's death, a specified amount of money shall be paid to a named beneficiary, and the member's monthly retirement allowance shall be reduced by an actuarially determined amount to provide for the lump sum payment. The amount designated by the member must be in thousand dollar increments and shall be limited to the amount of the member's accumulated contributions. The amount designated shall not lower the monthly retirement allowance of the member by more than one-half the amount payable under section ~~97B.49, subsection 1 or 5~~ 97B.49A or 97B.49G, as applicable. A member may designate a different beneficiary if the original named beneficiary predeceases the member.

Sec. 50. Section 97B.52, subsection 1, paragraphs b and c, Code 1997, are amended to read as follows:

b. For service in a protection occupation, as defined in section ~~97B.49, subsection 16, paragraph "d"~~ 97B.49B, the applicable denominator is twenty-five.

c. For service as a sheriff, deputy sheriff, or airport fire fighter, as provided in section ~~97B.49, subsection 16, paragraph "b"~~ 97B.49C, the applicable denominator is twenty-two.

Sec. 51. Section 97B.52, subsection 2, Code 1997, is amended to read as follows:

2. If a member dies on or after the first day of the member's first month of entitlement, the excess, if any, of the accumulated contributions by the member as of said date, over the total gross monthly retirement allowances received by the member under the retirement system will be paid to the member's beneficiary unless the retirement allowance is then being paid in accordance with section ~~97B.48A~~ 97B.48 or with section 97B.51, subsection 1, 4, 5, or 6.

Sec. 52. Section 97B.52, subsection 3, paragraph b, Code 1997, is amended to read as follows:

b. If a death benefit is due and payable, interest shall continue to accumulate through the ~~month~~ quarter preceding the ~~month~~ quarter in which payment is made to the designated beneficiary, heirs at law, or the estate unless the payment of the death benefit is delayed because of a dispute between alleged heirs, in which case the benefit due and payable shall be placed in a noninterest bearing escrow account until the beneficiary is determined in accordance with this section.

4. In order to receive the death benefit, the beneficiary, heirs at law, or the estate, or any other third-party payee, must apply to the department within five years of the member's death.

The department shall reinstate a designated beneficiary's right to receive a death benefit beyond the five-year limitation if the designated beneficiary was the member's spouse at the time of the member's death and the distribution is required or permitted pursuant to Internal Revenue Code section 401(a)(9) and the applicable treasury regulations.

In the event that all, or any portion, of the death benefit payable to the member's designated beneficiary, heirs at law, or estate, shall remain unpaid solely by reason of the inabil-

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ity of the system to locate the payee, the amount payable shall be forfeited after the time for making a claim has run. However, if the appropriate payee is located after the death benefit is forfeited, the benefit shall be restored.

Sec. 53. Section 97B.52, subsection 4, Code 1997, is amended by striking the subsection.

Sec. 54. Section 97B.52, subsection 5, Code 1997, is amended to read as follows:

5. Following written notification to the department, a beneficiary of a deceased member may waive current and future rights to payments to which the beneficiary would otherwise be entitled under section 97B.51, subsections 5 and 6, and this section. Upon receipt of the waiver, the department shall pay the amount designated to be received by that beneficiary to the member's other surviving beneficiary or beneficiaries or to the estate of the deceased member, as elected by the beneficiary in the waiver. If the payments being waived are payable to the member's estate and an estate is not probated, the payments shall be paid to the deceased member's surviving spouse, or if there is no surviving spouse, to the member's heirs other than the beneficiary who waived the payments.

Sec. 55. Section 97B.52A, subsection 1, Code 1997, is amended to read as follows:

1. ~~Effective January 1, 1995, a~~ A member has a bona fide retirement when the member terminates all employment covered under the chapter or formerly covered under the chapter pursuant to section 97B.42, files a completed application for benefits form with the department, survives into the month for which benefits are first payable, and meets the following applicable requirement:

a. For a member whose first month of entitlement is prior to July 1, 1998, the member does not return to covered employment ~~as defined in this chapter~~ until the member has qualified for no fewer than four calendar months of retirement benefits.

b. For a member whose first month of entitlement is July 1998 or later, the member does not return to any employment with a covered employer until the member has qualified for no fewer than four calendar months of retirement benefits.

Sec. 56. Section 97B.52A, subsection 3, Code 1997, is amended to read as follows:

3. A member whose first month of entitlement is before July 1998 and who terminates covered employment but maintains an employment relationship with an employer that made contributions to the system on the member's behalf does not have a bona fide retirement until all employment, including employment which is not covered by this chapter, with such employer is terminated for at least thirty days. In order to receive retirement benefits, the member must file a completed application for benefits form with the department before returning to any employment with the same employer.

Sec. 57. Section 97B.53, subsection 1, Code 1997, is amended to read as follows:

1. Upon the termination of employment with the employer prior to retirement other than by death of a member, the accumulated contributions by the member and, for a vested member, the accumulated employer contributions for the vested member at the date of the termination may be paid to the member upon application, except as provided in subsections 2, 5, and 6. For the purpose of this subsection, the "accumulated employer contributions" is an amount equal to the total obtained as of any date, by accumulating each individual contribution by the employer for the member with interest plus interest dividends as provided in section 97B.70, for all completed calendar years and for any completed calendar year for which the interest dividend has not been declared and for completed months of partially completed calendar years, compounded as provided in section 97B.70 multiplied by a fraction of years of service for that member as defined in section 97B.49A, 97B.49B, or 97B.49C.

Sec. 58. Section 97B.53, subsection 2, Code 1997, is amended to read as follows:

2. If a vested member's employment is terminated prior to the member's retirement, other than by death, the member may receive a monthly retirement allowance commencing on the

first day of the month in which the member attains the age of sixty-five years, if the member is then alive, or, if the member so elects in accordance with section 97B.47, commencing on the first day of the month in which the member attains the age of fifty-five or any month thereafter prior to the date the member attains the age of sixty-five years, and continuing on the first day of each month thereafter during the member's lifetime, provided the member does not receive prior to the date the member's retirement allowance is to commence a refund of accumulated contributions under any of the provisions of this chapter. The amount of each such monthly retirement allowance shall be determined as provided in either ~~section 97B.49~~ sections 97B.49A through 97B.49G, or in section 97B.50, whichever is applicable.

Sec. 59. Section 97B.53, subsection 3, Code 1997, is amended to read as follows:

3. The accumulated contributions account of a terminated, vested member shall be credited with interest, including interest dividends, in the manner provided in section 97B.70. ~~Interest and interest dividends shall be credited to the accumulated contributions of members who terminate service and subsequently become vested in accordance with section 97B.70.~~

Sec. 60. Section 97B.53, subsection 6, Code 1997, is amended to read as follows:

6. ~~A member who terminates employment before the member is vested and who does not claim and receive a refund of the member's accumulated contributions within ten years of the date of termination shall, if the member makes claim for a refund more than ten years after the date of termination, be required to submit proof satisfactory to the department of the member's entitlement to the refund. Interest and interest dividends on the accumulated contributions shall only be credited if provided in accordance with section 97B.70. The department is under no obligation to maintain the accumulated contribution accounts of such former members for more than ten years after their dates of termination.~~ The system is under no obligation to maintain the accumulated contribution account of a member who terminates covered employment prior to December 31, 1998, if the member was not vested at the time of termination. A person who made contributions to the abolished system, who is entitled to a refund in accordance with the provisions of this chapter, and who has not claimed and received such a refund prior to January 1, 1964, shall, if the person makes a claim for refund after January 1, 1964, be required to submit proof satisfactory to the department of the person's entitlement to the refund. The department is under no obligation to maintain the contribution accounts of such persons after January 1, 1964.

Sec. 61. Section 97B.70, subsection 3, Code 1997, is amended to read as follows:

3. Interest ~~and interest dividends~~ shall be credited to the accumulated contributions accounts of active members, ~~and~~ inactive vested members, and, effective January 1, 1999, to inactive nonvested members, until the ~~first of the month coinciding with or next following the member's retirement date~~ quarter prior to the quarter in which the member's first retirement allowance is paid or in which the member is issued a refund under section 97B.53, or in which a death benefit is issued.

Sec. 62. Section 97B.70, subsection 4, Code 1997, is amended to read as follows:

4. ~~Interest~~ Prior to January 1, 1999, interest and interest dividends shall be credited to the accumulated contributions account of a person who leaves the contributions in the retirement fund upon termination from covered employment prior to achieving vested status, but who subsequently ~~achieves vested status~~ returns to covered employment. ~~The~~ Upon return to covered employment but prior to January 1, 1999, interest and interest dividends shall be credited to the accumulated contributions account of the person commencing upon the date on which the person ~~becomes a vested member~~ has covered wages.

5. ~~Interest and interest dividends shall cease upon the first of the month coinciding with or next following the person's retirement date.~~ If the department no longer maintains the accumulated contribution account of the person pursuant to ~~section 97B.53~~ this chapter, but

the person submits satisfactory proof to the department that the person did make the contributions, the department shall credit interest and interest dividends in the manner provided in ~~this~~ subsection 4.

Sec. 63. Section 97B.72, Code 1997, is amended to read as follows:

97B.72 MEMBERS OF GENERAL ASSEMBLY — APPROPRIATION.

1. Persons who are members of the Seventy-first General Assembly or a succeeding general assembly who submit proof to the department of membership in the general assembly during any period beginning July 4, 1953, may make contributions to the system for all or a portion of the period of service in the general assembly, and receive credit for the applicable period for which contributions are made. ~~The contributions made by the member shall be equal to the accumulated contributions as defined in section 97B.41, subsection 2, which would have been made if the member of the general assembly had been a member of the system during the applicable period.~~ The proof of membership in the general assembly and payment of ~~accumulated~~ contributions as provided by this section shall be transmitted to the department. A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more calendar quarters.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the member shall make contributions in an amount equal to the accumulated contributions as defined in section 97B.41, subsection 2, which would have been made if the member of the general assembly had been a member of the system during the applicable period of service in the general assembly. There is appropriated from moneys available to the general assembly under section 2.12 an amount sufficient to pay the contributions pursuant to this paragraph, of the employer based on the period of service for which the members have paid accumulated contributions, in an amount equal to the contributions which would have been made if the members of the general assembly who made employee contributions had been members of the system during the applicable period of service in the general assembly, plus interest and interest dividends at the rate provided in section 97B.70 for all completed calendar years, and for any completed calendar year for which the interest dividend has not been declared and for completed months of partially completed calendar years, compounded as provided in section 97B.70.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to forty percent of the actuarial cost of the service purchase. There is also appropriated from moneys available to the general assembly under section 2.12 an amount sufficient to pay sixty percent of the actuarial cost of the service purchase by a member pursuant to this paragraph. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the department in accordance with actuarial tables, as reported to the department by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. However, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

Sec. 64. Section 97B.72A, Code 1997, is amended to read as follows:

97B.72A FORMER LEGISLATIVE SERVICE — APPROPRIATION.

1. A vested or retired member of the system who was a member of the general assembly prior to July 1, 1988, may make contributions to the system for all or a portion of the period of service in the general assembly. ~~The contributions made by the member shall be equal to the accumulated contributions as defined in section 97B.41, subsection 2, which would have~~

~~been made if the member of the general assembly had been a member of the system during the applicable period of service in the general assembly.~~ A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more calendar quarters. The member of the system shall submit proof to the department of membership in the general assembly. The department shall credit the member with the period of membership service for which contributions are made.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions made by the member shall be equal to the accumulated contributions as defined in section 97B.41, subsection 2, which would have been made if the member of the general assembly had been a member of the system during the applicable period of service in the general assembly. There is appropriated from the general fund of the state to the department an amount sufficient to pay the contributions of the employer based on the period of service of members of the general assembly for which the member paid accumulated contributions ~~under this section~~ pursuant to this paragraph. The amount appropriated is equal to the employer contributions which would have been made if the members of the system who made employee contributions had been members of the system during the period for which they made employee contributions, plus interest at the rate provided in section 97B.70 for each year compounded as provided in section 97B.70.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to forty percent of the actuarial cost of the service purchase. There is also appropriated from the general fund of the state to the department an amount sufficient to pay sixty percent of the actuarial cost of the service purchase by a member pursuant to this paragraph. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the department in accordance with actuarial tables, as reported to the department by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

~~2.~~ 3. However, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

Sec. 65. Section 97B.73, Code 1997, is amended to read as follows:

97B.73 MEMBERS FROM OTHER PUBLIC SYSTEMS.

1. A vested or retired member who has one or more full calendar years of covered wages who was in public employment comparable to employment covered under this chapter in another state or in the federal government, or who was a member of another public retirement system in this state, including but not limited to the teachers insurance annuity association-college retirement equities fund, but who was not retired under that system, upon submitting verification of membership and service in the other public system to the department, including proof that the member has no further claim upon a retirement benefit from that other public system, may make ~~employer and employee~~ contributions as provided by this section to the system either for the entire period of service in the other public system, or for partial service in the other public system in increments of one or more calendar quarters. If the member wishes to transfer only a portion of the service value of another public system to this system and the other public system allows a partial withdrawal of a member's system credits, the member shall receive credit for membership service in this system equivalent to the period of service transferred from the other public system. ~~The~~

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the contribution payable, representing both employee and employer contributions, shall be based upon the member's covered wages for the most recent full calendar year at the applicable rates in effect for that calendar year under sections 97B.11, 97B.49B, 97B.49C, and ~~97B.49~~ 97B.49G and multiplied by the member's years of service in other public employment. If the member's most recent covered wages were earned prior to the most recent calendar year, the member's covered wages shall be adjusted by the department by an inflation factor to reflect changes in the economy since the covered wages were earned.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to the actuarial cost of the service purchase. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the department in accordance with actuarial tables, as reported to the department by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. This section is applicable to a vested or retired member who was a member of a public retirement system established in sections 294.8, 294.9, and 294.10 but was not retired under that system.

~~Notwithstanding any provision of this section to the contrary, effective July 1, 1994, a vested or retired member must have membership service within the current calendar year in order to make contributions in any manner provided by this section.~~

4. A member entitled to a benefit from another public system must waive, on a form provided by the Iowa public employees' retirement system, all rights to a retirement benefit under the other public system before receiving credit in this system for the years of service in the other public system. The waiver must be accepted by the other public system.

5. Effective July 1, 1988, a member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which ~~written notice was submitted to the department~~ the member pays contributions under this section.

6. Effective July 1, 1998, a purchase of service made in accordance with this section by a retired reemployed member shall be applied to either the member's original retirement allowance, or to the member's reemployment service, whichever is more beneficial to the member. If applied to a member's original retirement allowance, or to the member's reemployment service after the retirement allowance payments for such service begin, the member is eligible to receive retroactive adjustment payments for no more than six months prior to completion of the purchase.

7. However, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

Sec. 66. Section 97B.73A, Code 1997, is amended to read as follows:

97B.73A PART-TIME COUNTY ATTORNEYS.

1. A part-time county attorney may elect in writing to the department to make ~~employee~~ contributions to the system for the county attorney's previous service as a county attorney and receive credit for membership service in the system for the applicable period of service as a part-time county attorney for which employee contributions are made. ~~The contributions paid by the member shall be equal to the accumulated contributions, as defined in section 97B.41, subsection 2, for the applicable period of membership service.~~ A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more calendar quarters.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions paid by the member shall be equal to the accumulated contributions, as defined in section 97B.41, subsection 2, for the applicable period of membership service. A member who elects to make contributions ~~under this section~~ pursuant to this paragraph shall notify the applicable county board of supervisors of the member's election, and the county board of supervisors shall pay to the department the employer contributions that would have been contributed by the employer under section 97B.11, plus interest on the contributions that would have accrued if the county attorney had been a member of the system for the applicable period of service.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to forty percent of the actuarial cost of the service purchase. Upon notification of the applicable county board of supervisors of the member's election, the county board of supervisors shall pay to the department an amount sufficient to pay sixty percent of the actuarial cost of the service purchase by a member pursuant to this paragraph. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the department in accordance with actuarial tables, as reported to the department by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. Effective July 1, 1988, a member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice was submitted to the department.

4. However, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

Sec. 67. Section 97B.74, Code 1997, is amended to read as follows:

97B.74 REINSTATEMENT AS A VESTED MEMBER (BUY-BACK).

1. A vested or retired member who was a member of the system at any time on or after July 4, 1953, and who received a refund of the member's contributions for that period of membership service, may elect in writing to the department to make contributions to the system for all or a portion of the period of membership service for which a refund of contributions was made, and receive credit for the period of membership service for which contributions are made. ~~The contributions repaid by the member for such service shall be equal to the accumulated contributions, as defined in section 97B.41, subsection 2, received by the member for the applicable period of membership service, plus interest on the accumulated contributions for the applicable period, from the date of receipt by the member to the date of repayment, at the interest rate provided in section 97B.70 applicable for each year compounded as provided in section 97B.70.~~

A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more calendar quarters.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions to be repaid by the member for such service shall be equal to the accumulated contributions, as defined in section 97B.41, subsection 2, received by the member for the applicable period of membership service, plus interest on the accumulated contributions for the applicable period, from the date of receipt by the member to the date of repayment, at the interest rate provided in section 97B.70 applicable for each year compounded as provided in section 97B.70.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to the actuarial cost of the service purchase. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the department in accordance with actuarial tables, as reported to the department by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. Effective July 1, 1988, a member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice was submitted to the department.

Sec. 68. Section 97B.80, Code Supplement 1997, is amended to read as follows:

97B.80 VETERAN'S CREDIT.

1. Effective July 1, 1992, a vested or retired member~~,~~ who has one or more full calendar years of covered wages and who at any time served on active duty in the armed forces of the United States, upon submitting verification of the dates of the active duty service, may make ~~employer and employee~~ contributions to the system ~~based upon the member's covered wages for the most recent full calendar year in which the member had reportable wages at the applicable rates in effect for that year under sections 97B.11 and 97B.49,~~ for all or a portion of the period of time of the active duty service, in increments of one or more calendar quarters, and receive credit for membership service and prior service for the period of time for which the contributions are made.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions to be paid, representing both employer and employee contributions, shall be based upon the member's covered wages for the most recent full calendar year in which the member had reportable wages at the applicable rates in effect for that year under sections 97B.11, 97B.49B, 97B.49C, and 97B.49G. If the member's most recent covered wages were earned prior to the most recent calendar year, the member's covered wages shall be adjusted by the department by an inflation factor to reflect changes in the economy.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to the actuarial cost of the service purchase. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the department in accordance with actuarial tables, as reported to the department by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. The department shall adjust benefits for a six-month period prior to the date the member pays contributions under this section if the member is receiving a retirement allowance at the time the contribution payment is made. Verification of active duty service and payment of contributions shall be made to the department. However, a member is not eligible to make contributions under this section if the member is receiving, is eligible to receive, or may in the future be eligible to receive retirement pay from the United States government for active duty in the armed forces, except for retirement pay granted by the United States government under retired pay for nonregular service pursuant to 10 U.S.C. § 12731 – 12739. A member receiving retired pay for nonregular service who makes contributions under this section shall provide information required by the department documenting time periods covered under retired pay for nonregular service.

~~Notwithstanding any provision of this section to the contrary, effective July 1, 1994, a vested or retired member must have membership service within the current calendar year in order to make contributions in any manner provided by this section.~~

4. Effective July 1, 1998, a purchase of service made in accordance with this section by a retired reemployed member shall be applied to either the member's original retirement allowance, or to the member's reemployment service, whichever is more beneficial to the

member. If applied to the member's original retirement allowance, or to the member's reemployment service after the retirement allowance payments for such service begin, the member is eligible to receive retroactive adjustment payments for no more than six months prior to completion of the purchase.

5. However, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

Sec. 69. NEW SECTION. 97B.81 LEAVES OF ABSENCE.

1. A vested member on an approved leave of absence which does not constitute service as defined in section 97B.1A,* subsection 19, which is granted on or after July 1, 1998, may make contributions to the system for all or a portion of the leave of absence, and shall receive service credit for the period of time for which the contributions are made.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions to be paid, representing both employer and employee contributions, shall be based upon the member's covered wages for the most recent full calendar year in which the member had covered wages at the applicable rates in effect for that calendar year under sections 97B.11, 97B.49B, 97B.49C, and 97B.49G. If the member's most recent covered wages were earned prior to the most recent calendar year, the member's covered wages shall be adjusted by the department by an inflation factor to reflect changes in the economy.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to the actuarial cost of the service purchase. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the department in accordance with actuarial tables, as reported to the department by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. A member shall not be entitled to purchase the service credit, however, if the member is entitled to receive a retirement benefit from another public retirement system for the same period of time. A member entitled to a benefit from another public system must waive, on a form provided by the Iowa public employees' retirement system, all rights to a retirement benefit under the other public system before receiving credit in this system for any period of service in the other public system. The waiver must be accepted by the other public system.

4. However, the department shall ensure that the member, in exercising an option provided by this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

Sec. 70. Section 97D.3, subsection 2, Code 1997, is amended to read as follows:

2. Upon a favorable vote in the referendum and notwithstanding sections 97A.3 and 411.3, all persons newly hired as peace officers, as defined in section 97A.1, police officers, and fire fighters after July 1, 1991, shall be members of the Iowa public employees' retirement system under chapter 97B, rather than members of retirement systems under chapters 97A and 411. Such members shall have federal social security coverage in addition to coverage under the Iowa public employees' retirement system and shall have the same benefits as county sheriffs and deputy sheriffs under section ~~97B.49, subsection 16, paragraph "b"~~ 97B.49C or 97B.49G, as applicable.

Sec. 71. Section 509A.13A, subsection 1, paragraph b, subparagraph (2), Code 1997, is amended to read as follows:

(2) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 97B ~~based upon any of the following:~~

~~(a) Meeting the requirements for receiving retirement benefits pursuant to chapter 97B based upon having attained at least sixty-two years of age and upon having completed at least thirty years of membership service.~~

* See §82 herein

~~(b) Meeting the requirements for receiving benefits under section 97B.49, subsection 16, without a reduction for years of service pursuant to section 97B.49, subsection 16, paragraph "c".~~

Sec. 72. Section 602.1611, subsection 3, Code 1997, is amended to read as follows:

3. Magistrates ~~may elect to~~ shall be members of the Iowa public employees' retirement system ~~upon filing in writing with the department of personnel~~ unless the magistrate elects out of coverage under the Iowa public employees' retirement system as provided in section ~~97B.41, subsection 8, paragraph "b," subparagraph (8)~~ 97B.42A.

Sec. 73. Section 602.11115, subsection 2, Code 1997, is amended to read as follows:

2. To commence coverage under the judicial retirement system pursuant to article 9, part 1, effective July 1, 1984, but to become an inactive member of the Iowa public employees' retirement system pursuant to chapter 97B and remain eligible for benefits under ~~section 97B.49~~ sections 97B.49A through 97B.49H for the period of membership service under chapter 97B.

Sec. 74. Section 724.6, subsection 2, Code 1997, is amended to read as follows:

2. Notwithstanding subsection 1, fire fighters, as defined in section 411.1, subsection 9, airport fire fighters included under section ~~97B.49, subsection 16, paragraph "b", subparagraph (2)~~ 97B.49C, emergency rescue technicians, and emergency medical care providers, as defined in section 147A.1, shall not, as a condition of employment, be required to obtain a permit under this section. However, the provisions of this subsection shall not apply to a person designated as an arson investigator by the chief fire officer of a political subdivision.

Sec. 75. Sections 97B.12 and 97B.20, Code 1997, are repealed.

Sec. 76. Section 97B.49, Code Supplement 1997, is repealed.

Sec. 77. EFFECTIVE DATE — APPLICABILITY.

a. Section 19, amending section 97B.41, subsection 8, is effective January 1, 1999, and is applicable to persons hired on and after that date.

b. The portion of section 27 that amends section 97B.45, subsections 1, 2, and 3, and section 45, amending section 97B.50, are effective January 1, 1999, and apply to members retiring on or after January 1, 1999.

Sec. 78. EFFECTIVE DATE. Section 57 of this Act, amending section 97B.53, subsection 1, takes effect July 1, 1999.

Sec. 79. EFFECTIVE DATE — RETROACTIVE APPLICABILITY. Section 71 of this Act, amending section 509A.13A, subsection 1, paragraph "b", being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to July 1, 1994, and is applicable on and after that date.

Sec. 80.* *EFFECTIVE DATE. Section 46 of this Act, creating new section 97B.50A, takes effect July 1, 1999.

Sec. 81. IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM — ELIGIBILITY FOR RETIREMENT ALLOWANCE.

1. Notwithstanding any provision of chapter 97B to the contrary, a person designated by an eligible member of the Iowa public employees' retirement system as a contingent annuitant eligible to receive an optional allowance pursuant to Iowa Code section 97B.51 but who did not receive an allowance as a contingent annuitant pursuant to the requirements of section 97B.51 (Code 1991 or 1993, as applicable) shall be entitled to receive an optional allowance and an applicable lump-sum payment pursuant to that election commencing with the first month following a determination by the Iowa public employees' retirement system that the requirements of this section are met. For purposes of this section, "an

* Item veto; see message at end of the Act

applicable lump-sum payment" means an amount representing the monthly allowances that would have been paid had the person designated as a contingent annuitant been eligible to receive an optional allowance immediately following the death of the eligible member.

2. For purposes of this section, an eligible member of the Iowa public employees' retirement system means a member who meets all of the following requirements:

a. The member submitted a valid application for retirement benefits between January 1, 1992, and January 1, 1995.

b. The member was otherwise eligible to receive a retirement allowance pursuant to section 97B.51, subsection 1, Code 1991 or 1993, as applicable, but died prior to the department of personnel issuing payment of the member's first retirement allowance.

c. The member survived into the month for which the member's first retirement allowance would have been payable.

3. The person designated as a contingent annuitant shall file a valid application with the Iowa public employees' retirement system for an allowance pursuant to this section prior to June 30, 1999.

4. A person designated as a contingent annuitant who elects to receive an allowance pursuant to this section shall, prior to receiving an allowance pursuant to this section, make arrangements with the Iowa public employees' retirement system to repay any death benefits paid by the system to the person.

Sec. 82. CODE EDITOR DIRECTIVES. The Code editor is directed to renumber Iowa Code section 97B.41 to Iowa Code section 97B.1A. Sections 97A.3, 97B.1, 97B.42B, 97B.43, 97B.66, 97B.68, 97B.72, 97B.72A, 97B.73A, 97B.74, 411.3, 411.30, and 602.11115, Code 1997, are amended by striking from the sections the reference "97B.41" and inserting in lieu thereof the reference "97B.1A".

Sec. 83. STUDY OF STATEWIDE DEFERRED COMPENSATION PROGRAM. The Iowa public employees' retirement system division shall continue its study of the possible establishment of a statewide deferred compensation plan for active members of the Iowa public employees' retirement system. In conducting its study, the division shall seek input, through surveys or other similar methods, from affected employees and employers concerning the establishment of a statewide deferred compensation plan to be administered by the Iowa public employees' retirement system division. The division shall submit a report concerning the results of its study to the general assembly on or before January 1, 1999, and shall include its findings and recommendations.

Sec. 84. STUDY OF ESTABLISHMENT OF A BENEFITS ADVISORY BOARD. The public employees' retirement system division shall study the possible establishment of a benefits advisory board and shall make recommendations concerning the establishment of a benefits advisory board. The study shall consider the duties to be assigned to a potential benefits advisory board, the membership of the board and the manner of selecting members to the board, and the authority of the board concerning any recommendations it may be empowered to make concerning benefits to be provided to members of the Iowa public employees' retirement system. The division shall submit a report concerning the results of its study to the general assembly on or before January 8, 1999, and shall include its findings and any recommended proposal or proposals.

Sec. 85. STUDY OF INCLUSION OF ADJUNCT INSTRUCTORS IN MEMBERSHIP OF THE IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM. The Iowa public employees' retirement system division shall conduct a study concerning the issue of whether adjunct instructors employed by a community college or regents university should be allowed to become members of the Iowa public employees' retirement system. In conducting its study, the division shall seek input from affected employees and employers concerning the possible inclusion of adjunct instructors in the retirement system. On or before September 1,

1999, the Iowa public employees' retirement system division shall file a report with the legislative service bureau, for distribution to the public retirement systems committee, which contains its findings and recommendations concerning this issue.

DIVISION III
STATEWIDE FIRE AND POLICE RETIREMENT SYSTEM

Sec. 86. Section 411.6, subsection 2, paragraph d, subparagraph (3), Code 1997, is amended to read as follows:

(3) For a member who terminates service, other than by death or disability, on or after October 16, 1992, but before July 1, 1998, and who does not withdraw the member's contributions pursuant to section 411.23, upon the member's retirement there shall be added six-tenths percent of the member's average final compensation for each year of service over twenty-two years. However, this subparagraph does not apply to more than eight additional years of service.

Sec. 87. Section 411.6, subsection 2, paragraph d, Code 1997, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (4) For a member who terminates service, other than by death or disability, on or after July 1, 1998, and who does not withdraw the member's contributions pursuant to section 411.23, upon the member's retirement there shall be added one and one-half percent of the member's average final compensation for each year of service over twenty-two years. However, this subparagraph does not apply to more than eight additional years of service.

Sec. 88. Section 411.6, subsection 4, Code 1997, is amended to read as follows:

4. ALLOWANCE ON ORDINARY DISABILITY RETIREMENT.

a. Upon retirement for ordinary disability prior to July 1, 1998, a member shall receive an ordinary disability retirement allowance which shall consist of a pension which shall equal fifty percent of the member's average final compensation unless either of the following conditions exist:

~~a.~~ (1) If the member has not had five or more years of membership service the member shall receive a pension equal to one-fourth of the member's average final compensation.

~~b.~~ (2) If the member has had twenty-two or more years of membership service, the member shall receive a disability retirement allowance that is equal to the greater of the benefit that the member would receive under subsection 2 if the member were fifty-five years of age or the disability pension otherwise calculated under this subsection.

b. Upon retirement for ordinary disability on or after July 1, 1998, a member who has five or more years of membership service shall receive a disability retirement allowance in an amount equal to the greater of fifty percent of the member's average final compensation or the retirement allowance that the member would receive under subsection 2 if the member had attained fifty-five years of age. A member who has less than five years of membership service shall receive a pension equal to one-fourth of the member's average final compensation.

Sec. 89. Section 411.6, subsection 6, paragraph b, Code 1997, is amended to read as follows:

b. Upon retirement for accidental disability on or after July 1, 1990, but before July 1, 1998, a member shall receive an accidental disability retirement allowance which shall consist of a pension equal to sixty percent of the member's average final compensation. However, if the member has had twenty-two or more years of membership service, the member shall receive a disability retirement allowance that is equal to the greater of the retirement allowance that the member would receive under subsection 2 if the member was fifty-five years of age or the disability retirement allowance calculated under this paragraph.

Sec. 90. Section 411.6, subsection 6, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. Upon retirement for accidental disability on or after July 1, 1998, a member shall receive an accidental disability retirement allowance which shall consist of a pension in an amount equal to the greater of sixty percent of the member's average final compensation or the retirement allowance that the member would receive under subsection 2 if the member has attained fifty-five years of age.

Sec. 91. Section 411.6, subsection 7, paragraph a, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Should any beneficiary for either ordinary or accidental disability, except a beneficiary who is fifty-five years of age or over and would have completed twenty-two years of service if the beneficiary had remained in active service, be engaged in a gainful occupation paying more than the difference between the member's net retirement allowance and one and one-half times the earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement, then the amount of the member's retirement allowance shall be reduced to an amount ~~which together with~~ such that the member's net retirement allowance plus the amount earned by the member shall equal one and one-half times the amount of the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement. Should the member's earning capacity be later changed, the amount of the member's retirement allowance may be further modified, provided that the new retirement allowance shall not exceed the amount of the retirement allowance adjusted by annual readjustments of pensions pursuant to subsection 12 of this section nor an amount which would cause the member's net retirement allowance, when added to the amount earned by the beneficiary, ~~equals~~ to equal one and one-half times the amount of the earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which the member was retired at age fifty-five or greater, shall not again become a member of the retirement system and shall have the member's retirement allowance suspended while in active service. If the rank or position held by the retired member is subsequently abolished, adjustments to the allowable limit on the amount of income which can be earned in a gainful occupation shall be computed by the board of trustees as though such rank or position had not been abolished and salary increases had been granted to such rank or position on the same basis as increases granted to other ranks and positions in the department. For purposes of this paragraph, "net retirement allowance" means the amount determined by subtracting the amount paid during the previous calendar year by the beneficiary for health insurance or similar health care coverage for the beneficiary and the beneficiary's dependents from the amount of the member's retirement allowance paid for that year pursuant to this chapter. The beneficiary shall submit sufficient documentation to the system to permit the system to determine the member's net retirement allowance for the applicable year.

Sec. 92. Section 411.6, subsection 10, Code 1997, is amended to read as follows:

10. Pensions offset by compensation benefits. Any amounts which may be paid or payable by the said cities under the provisions of any workers' compensation or similar law to a member or to the dependents of a member on account of any disability or death, shall be offset against and payable in lieu of any benefits payable under the provisions of this chapter on account of the same disability or death. In addition, any amounts payable to a member as unemployment compensation under the provisions of chapter 96 based on unemployment from membership service for a member receiving an ordinary disability benefit or an accidental disability benefit pursuant to this chapter shall be offset against and payable in lieu of any benefits payable under the provisions of this chapter for an ordinary disability or an accidental disability.

Sec. 93. Section 411.9, Code 1997, is amended to read as follows:

411.9 MILITARY SERVICE EXCEPTIONS.

1. A member who is absent while serving in the armed services of the United States or its allies and is discharged or separated from the armed services under honorable conditions shall have the period or periods of absence while serving in the armed services, not in excess of four years unless any period in excess of four years is at the request and for the convenience of the federal government, included as part of the member's period of service in the department. The member shall not continue the contributions required of the member under section 411.8 during the period of military service, if the member, within one year after the member has been discharged or separated under honorable conditions from military service, returns and resumes duties in the department, and if the member is declared physically capable of resuming duties upon examination by the medical board. A period of absence may exceed four years at the request and for the convenience of the federal government.

2. Notwithstanding any provisions of this chapter to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with section 414(u) of the federal Internal Revenue Code.

Sec. 94. Section 411.15, Code 1997, is amended to read as follows:

411.15 HOSPITALIZATION AND MEDICAL ATTENTION.

Cities shall provide hospital, nursing, and medical attention for the members of the police and fire departments of the cities, when injured while in the performance of their duties as members of such department, and shall continue to provide hospital, nursing, and medical attention for injuries or diseases incurred while in the performance of their duties for members receiving a retirement allowance under section 411.6, subsection 6~~, and the~~. Cities may provide the hospital, nursing, and medical attention required by this section through the purchase of insurance, by self-insuring the obligation, or through payment of moneys into a local government risk pool established for the purpose of covering the costs associated with the requirements of this section. The cost of providing the hospital, nursing, and medical attention required by this section shall be paid from moneys held in a trust and agency fund established pursuant to section 384.6, or out of the appropriation for the department to which the injured person belongs or belonged; provided that any amounts received by the injured person under the workers' compensation law of the state, or from any other source for such specific purposes, shall be deducted from the amount paid by the city under the provisions of this section.

Sec. 95. Section 411.22, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

If a member receives an injury for which benefits are payable under section 411.6, subsection 3 or 5, or section 411.15 and if the injury is caused under circumstances creating a legal liability for damages against a third party other than the retirement system, the member or the member's legal representative may maintain an action for damages against the third party. If a member or a member's legal representative commences such an action, the plaintiff member or representative shall serve a copy of the original notice upon the retirement system not less than ten days before the trial of the action, but a failure to serve the notice does not prejudice the rights of the retirement system, and the following rights and duties ensue:

Sec. 96. Section 411.22, subsection 3, Code 1997, is amended to read as follows:

3. Before a settlement is effective between ~~a~~ the retirement system and a third party who is liable for an injury, the member must consent in writing to the settlement; and if the settlement is between the member and a third party, the retirement system must consent in writing to the settlement; or on refusal to consent, in either case, the district court in the county in which either the city ~~and~~ or the retirement system ~~are~~ is located must consent in writing to the settlement.

Sec. 97. NEW SECTION. 411.24 PAYMENT TO REPRESENTATIVE PAYEE.

1. ADULTS. When it appears to the system that the interest of an applicant entitled to a payment would be served, certification of payment may be made, regardless of the legal competence or incompetence of the individual entitled to the payment, either for direct payment to the applicant, or for the applicant's use and benefit to a representative of an applicant. Payments under this section shall be made in accordance with rules adopted by the board.

2. MINORS. Payments on behalf of minors shall be made in accordance with rules adopted by the board.

3. FINALITY. Any payments made under the provisions of this section shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

Sec. 98. Section 411.36, subsection 1, paragraph c, Code 1997, is amended to read as follows:

c. ~~The city treasurers of~~ A city treasurer, city financial officer, or city clerk involved with the financial matters of the city from four participating cities, one of whom is from a city having a population of less than forty thousand, and three of whom are from cities having a population of forty thousand or more. The ~~city treasurers~~ members authorized pursuant to this paragraph shall be appointed by the governing body of the Iowa league of cities.

Sec. 99. APPLICABILITY. Section 91 of this Act, amending section 411.6, subsection 7, paragraph "a", is applicable to amounts earned by a beneficiary after December 31, 1997.

DIVISION IV
JUDICIAL RETIREMENT SYSTEM

Sec. 100. Section 602.1611, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Commencing July 1, 1998, associate juvenile judges and associate probate judges, who are appointed on a full-time basis, are members of the judicial retirement system established in article 9, part 1, and are not members of the public employees' retirement system established in chapter 97B, except as provided in section 602.11116.

Sec. 101. Section 602.9107, subsection 1, Code 1997, is amended to read as follows:

1. The annual annuity of a judge under this system is an amount equal to three percent of the judge's average annual basic salary for the judge's last three years as a judge of one or more of the courts included in this article, multiplied by the judge's years of service as a judge of one or more of the courts for which contributions were made to the system. However, an annual annuity shall not exceed an amount equal to ~~fifty percent~~ a specified percentage of the basic annual salary which the judge is receiving at the time the judge becomes separated from service. Forfeitures shall not be used to increase the annuities a judge or survivor would otherwise receive under the system.

For judges who retire and receive an annuity prior to July 1, 1998, the specified percentage shall be fifty percent.

For judges who retire and receive an annuity on or after July 1, 1998, the specified percentage shall be fifty-two percent.

Sec. 102. NEW SECTION. 602.9107B MINIMUM ANNUITY BENEFIT.

A judge, or a survivor of a judge, who retired before July 1, 1977, and who is receiving an annuity pursuant to this article, shall, commencing with an annuity paid on or after July 1, 1998, be paid a minimum monthly annuity payment of five hundred dollars.

Sec. 103. NEW SECTION. 602.11116 ASSOCIATE JUVENILE JUDGES AND ASSOCIATE PROBATE JUDGES — RETIREMENT.

If a full-time associate juvenile judge or full-time associate probate judge is a member of the Iowa public employees' retirement system on June 30, 1998, the associate juvenile judge

or associate probate judge shall elect, by informing the state court administrator by June 30, 1998, one of the following retirement benefit options to be effective July 1, 1998:

1. To remain a member under the Iowa public employees' retirement system pursuant to chapter 97B.

2. To commence membership under the judicial retirement system pursuant to article 9, part 1, effective July 1, 1998, but to become an inactive member of the Iowa public employees' retirement system pursuant to chapter 97B and remain eligible for benefits under sections 97B.49A through 97B.49H, as applicable, for the period of membership service under chapter 97B.

3. To commence membership under the judicial retirement system pursuant to article 9, part 1, retroactive to the date the associate juvenile judge or associate probate judge became an associate juvenile judge or associate probate judge, and to cease to be a member of the Iowa public employees' retirement system, effective July 1, 1998. The department of personnel shall transmit by January 1, 1999, to the state court administrator for deposit in the judicial retirement fund the associate juvenile judge's or associate probate judge's accumulated contributions as defined in section 97B.41, subsection 2, for the judge's period of membership service as an associate juvenile judge or associate probate judge. Before July 1, 2000, or at retirement previous to that date, an associate juvenile judge or associate probate judge who becomes a member of the judicial retirement system pursuant to this subsection shall contribute to the judicial retirement fund an amount equal to the difference between four percent of the associate juvenile judge's or associate probate judge's total salary received for the entire period of service before July 1, 1998, as an associate juvenile judge or associate probate judge, and the associate juvenile judge's or associate probate judge's accumulated contributions transmitted by the department of personnel to the state court administrator pursuant to this subsection. The associate juvenile judge's or associate probate judge's contribution shall not be limited to the amount specified in section 602.9104, subsection 1. The state court administrator shall credit an associate juvenile judge or associate probate judge with service under the judicial retirement system for the period of service for which contributions at the four percent level are made.

Sec. 104. EFFECTIVE DATE. Sections 100 and 103 of this Act, being deemed of immediate importance, take effect upon enactment.

Sec. 105. JUDICIAL RETIREMENT SYSTEM — LEGISLATIVE INTENT. It is the intent of the general assembly that the specified maximum percentage multiplier for purposes of calculating a retirement annuity for a judge pursuant to section 602.9107 be increased in the manner provided in this section. The maximum percentage multiplier shall be increased beyond fifty-two percent in increments of not more than two percentage points every two years based upon whether the most recent actuarial valuation of the system indicates that the system can afford the increase. The maximum percentage multiplier shall not exceed sixty percent.

DIVISION V
GENERAL PROVISIONS

Sec. 106. NEW SECTION. 29.2A AIRPORT FIRE FIGHTERS — MAXIMUM AGE.

The maximum age for a person to be employed as an airport fire fighter by the military division of the department of public defense is sixty-five years of age.

Sec. 107. Section 80.36, Code 1997, is amended to read as follows:

80.36 MAXIMUM AGE.

The maximum age for a person to be employed as a peace officer in the ~~divisions of highway safety, uniformed force and radio communications, criminal investigation and bureau of identification, and drug law enforcement~~ department of public safety is sixty-five years of age.

Sec. 108. Section 97D.1, subsection 1, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. Avoid enacting further benefit enhancements that fail to preserve or enhance intergenerational equity amongst all employees covered by the retirement system.

Sec. 109. Section 294.12, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Notwithstanding the provisions of this section, the plan provisions of a pension and annuity retirement system of a school district established under this chapter regarding the determination and distribution of benefits upon termination of the retirement system shall be effective if the school district has received a favorable determination letter from the federal internal revenue service as to the qualified status of such retirement system under applicable provisions of the Internal Revenue Code.

Sec. 110. Section 321.477, Code 1997, is amended to read as follows:

321.477 EMPLOYEES AS PEACE OFFICERS — MAXIMUM AGE.

The department may designate by resolution certain of its employees upon each of whom there is hereby conferred the authority of a peace officer to control and direct traffic and weigh vehicles, and to make arrests for violations of the motor vehicle laws relating to the operating authority, registration, size, weight, and load of motor vehicles and trailers and registration of a motor carrier's interstate transportation service with the department. The maximum age for a person employed as a peace officer pursuant to this section is sixty-five years of age.

Sec. 111. Section 330A.8, subsection 16, Code 1997, is amended to read as follows:

16. To designate employees upon whom are conferred all the powers of a peace officer as defined in section 801.4. The maximum age for a person designated as a peace officer pursuant to this subsection is sixty-five years of age.

Sec. 112. Section 331.903, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 6. The maximum age for a person to be employed as a deputy sheriff appointed pursuant to this section is sixty-five years of age.

Sec. 113. Section 362.10, Code 1997, is amended to read as follows:

362.10 POLICE OFFICERS AND FIRE FIGHTERS.

The maximum age for a police officer, marshal, or fire fighter employed for police duty or the duty of fighting fires is sixty-five years of age. This section shall not apply to volunteer fire fighters.

Sec. 114. Section 456A.13, Code 1997, is amended to read as follows:

456A.13 OFFICERS AND EMPLOYEES — PEACE OFFICER STATUS.

The director shall employ the number of assistants, including a professionally trained state forester, that are necessary to carry out the duties imposed on the commission; and, under the same conditions, the director shall appoint the number of full-time officers and supervisory personnel that are necessary to enforce all laws of the state and rules and regulations of the commission. The full-time officers and supervisory personnel have the same powers that are conferred by law on peace officers in the enforcement of all laws of the state of Iowa and the apprehension of violators. A person appointed as a full-time officer shall be at least twenty-one years of age~~, but not more than sixty-five years of age,~~ on the date of appointment and shall not be employed as a full-time officer after attaining the age of sixty-five. "Full-time officer" means any person appointed by the director to enforce the laws of this state.

Sec. 115. COMPREHENSIVE EXAMINATION OF PLAN DESIGN — PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM, THE STATEWIDE FIRE AND POLICE RETIREMENT SYSTEM, AND MEMBERS OF SPECIAL CLASSIFICATIONS WITHIN THE IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM — REPORT.

1. The chief benefits officer of the Iowa public employees' retirement system, the executive director of the statewide fire and police retirement system, and the director of the financial division of the department of public safety for the public safety peace officers' retirement, accident, and disability system, hereafter "the systems' representatives", shall coordinate, in consultation with the public retirement systems committee established pursuant to section 97D.4, a comprehensive examination of the plan designs concerning the public retirement systems established in chapter 97A, chapter 411, and the provisions of chapter 97B governing special classifications, pursuant to the principles established in chapter 97D, and make recommendations concerning plan design improvement for each of the retirement systems.

2. In coordinating and conducting the examination required by this section, the systems' representatives shall consult, and make periodic reports to, the public retirement systems committee. In addition, the systems' representatives shall hire, subject to the prior approval of the public retirement systems committee, a consultant to facilitate the conducting of the examination.

3. In conducting the examination, the systems' representatives shall consider and examine, but not be limited to, the following:

a. Consideration of appropriate benefit enhancements to each retirement system. Consideration of benefit enhancements shall take into account the availability of enhanced disability benefits for members of each retirement system under examination and the applicability of federal social security benefits for members of certain retirement systems under examination.

b. Consideration of establishing a benefit structure pertaining to each retirement system under examination, which takes into account the applicability or inapplicability of federal social security contributions and benefits for the members of each applicable retirement system, and which provides comparable and equitable benefits for members of each system upon retirement. In addition, the examination shall include consideration of transferring certain groups of employees from one system to another.

c. Review of the functions of each retirement system under examination and consideration of how to perform those functions in an efficient manner that meets the needs of the members of each retirement system.

d. Establishment of equitable contribution rates for both employers and employees, including consideration of the mechanism to establish the contribution rates.

e. Consideration of establishing a uniform actuarial reporting method for all retirement systems under consideration to assist the public retirement systems committee in examining the relative financial condition of each retirement system.

f. Consideration of the member service needs of both active and retired members of each retirement system under examination shall be made in examining each item for consideration in this subsection.

g. Consideration of any applicable federal and state legal requirements concerning public retirement systems, to include consideration of the obligations currently established for qualified plans under the federal Internal Revenue Code.

4. In conducting the examination, the systems' representatives shall solicit from active and retired members of each of the retirement systems subject to the comprehensive examination written comments concerning issues to be considered by the consultant, prior to the hiring of the consultant, and written comments on the results of the examination.

5. On or before November 2, 1998, the systems' representatives shall file a report with the legislative service bureau, for distribution to the public retirement systems committee, which

contains the results of the comprehensive examination and any proposal, or proposals, for improving the plan design of any or all of the public retirement systems examined pursuant to this section. The report shall include discussion and recommendations concerning the items for consideration listed in subsection 3.

Approved May 8, 1998, except the items which I hereby disapprove and which are designated as Section 46 in its entirety; and Section 80 in its entirety. My reasons for vetoing these items are delineated in the item veto message pertaining to this Act to the Secretary of State this same date, a copy of which is attached hereto.

TERRY E. BRANSTAD, *Governor*

Dear Mr. Secretary:

I hereby transmit House File 2496, an Act relating to public retirement systems, and providing effective, implementation, and applicability dates.

House File 2496 is, therefore, approved on this date with the following exceptions, which I hereby disapprove.

I am unable to approve the items designated as Sections 46 and 80, in their entirety. These items provide a disability benefits system and the accompanying benefits, effective July 1, 1999, for special service members of the Iowa Public Employees' Retirement System (IPERS). Special service members are primarily those in protection occupations such as correctional officers and other law enforcement personnel at the state and local level. This new benefit system would allow these members to receive long-term disability benefits in the event a work-related disability prevents the member from continuing to work in the public safety field in which the member was originally employed. The new system would be in addition to the social security disability benefits and workers' compensation benefits currently available to these employees.

This new system was advanced in an effort to provide a disability system to IPERS special service members comparable with that available to the Statewide Fire and Police Retirement System and the Public Safety Peace Officers' Retirement, Accident, and Disability System. However, members of those other systems are not eligible for social security benefits, nor in the case of the Statewide Fire and Police Retirement System are members eligible for workers' compensation benefits. This legislation would in effect cause the benefits of IPERS special service members to leapfrog those available to other law enforcement personnel and firefighters in the state. Thus, while advanced as promoting parity among the systems, the change may instead create greater disparities among the systems.

Recognizing the drawbacks associated with an ad hoc approach to parity improvements, in Section 115 of this bill the General Assembly has wisely directed a comprehensive review be undertaken of all three systems to determine a benefit structure that would provide comparable and equitable benefits to members of each system. I believe it would be premature to approve additional benefit enhancements before this study is completed. Because the expanded disability benefits provided in this bill would not take effect until July 1, 1999, should the upcoming comparability study indicate the appropriateness of this expansion for IPERS special service members, the legislation could be acted upon again next session and still take effect at the time originally planned. In other words, there would be no impact on members, yet there would be the advantage of a full understanding about the appropriateness and ramifications of this change.

A specific provision about which I am particularly concerned is the presumption that any heart or lung disease is work related. Even if a special service member had smoked cigarettes

for twenty or thirty years, should this individual become disabled as a result of heart or lung disease, it would be presumed to be work related and the officer would be entitled to receive full benefits. It is well known that heavy tobacco use is a major cause of emphysema, lung cancer, and heart disease, and our public policy should not be expected to support nor condone it.

For the above reasons, I hereby respectfully disapprove these items in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in House File 2496 are hereby approved as of this date.

Sincerely,
TERRY E. BRANSTAD, *Governor*

CHAPTER 1184

APPELLATE COURT JUDGES

H.F. 2471

AN ACT concerning the number of supreme court justices and court of appeals judges, and including a contingent effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 602.4101, subsection 1, Code 1997, is amended to read as follows:

1. The supreme court consists of ~~nine~~ seven justices. A majority of the justices sitting constitutes a quorum, but ~~less~~ fewer than three justices is not a quorum.

Sec. 2. Section 602.5102, subsection 1, Code 1997, is amended to read as follows:

1. The court of appeals consists of ~~six~~ nine judges; three judges of the court of appeals constitute a quorum.

Sec. 3. TRANSITION TO SEVEN-MEMBER SUPREME COURT. Notwithstanding section 602.4101, the supreme court shall consist of eight or nine justices until the number of justices is reduced to seven, by attrition, commencing with any vacancy in the supreme court occurring on or after July 1, 1999. For purposes of this subsection, "vacancy" means the death, resignation, or removal of a justice on the supreme court, or the expiration of a term as a justice on the supreme court following a failure to file a declaration of candidacy pursuant to section 46.20 or a failure to be retained in office pursuant to a judicial election.

Sec. 4. CONTINGENT EFFECTIVE DATE. This Act takes effect on July 1, 1999, if an appropriation to the judicial department for the fiscal year beginning July 1, 1999, provides for the authorization and funding of nine judges of the court of appeals.

Approved May 13, 1998

CHAPTER 1185

MENTAL INCOMPETENCY — VOTING

S.F. 2038

AN ACT relating to disqualification from voting or registering to vote for reasons of mental incompetence.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 48A.2, subsection 3, Code 1997, is amended to read as follows:

3. "Person who is mentally incompetent to vote" means a person who has been ~~legally determined to be severely or profoundly mentally retarded, or has been~~ found ~~incompetent~~ to lack the mental capacity to vote in a proceeding held pursuant to section ~~229.27~~ 222.31 or 633.556.

Sec. 2. Section 48A.6, subsection 2, Code 1997, is amended to read as follows:

2. A person who ~~has been legally determined to be~~ is mentally incompetent to vote. Certification by the clerk of the district court that any such person has been found no longer incompetent by a court shall qualify such person to again be an elector, subject to the other provisions of this chapter.

Sec. 3. Section 48A.10, Code 1997, is amended to read as follows:

48A.10 REGISTRATION REQUIRED.

If a registered voter moves to a different county, the person shall submit a completed voter registration form to the commissioner in order to be qualified to vote in that county. An otherwise eligible elector whose right to vote has been restored pursuant to chapter 914 or who has been found not to be a person who is mentally incompetent to vote may register to vote.

Sec. 4. Section 48A.14, subsection 1, paragraph f, Code 1997, is amended to read as follows:

f. The challenged registrant has been adjudged by a court of law to be a person who is mentally incompetent ~~by a court of law~~ to vote and no subsequent proceeding has reversed that finding.

Sec. 5. Section 48A.30, subsection 1, paragraph e, Code 1997, is amended to read as follows:

e. The clerk of the district court or the state registrar sends notice that the registered voter has been declared a person who is mentally incompetent to vote under state law.

Sec. 6. Section 222.16, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Commitment of a person pursuant to section 222.31 does not constitute a finding or raise a presumption that the person is incompetent to vote. The court shall make a separate determination as to the person's competency to vote. The court shall find a person incompetent to vote only upon determining that the person lacks sufficient mental capacity to comprehend and exercise the right to vote.

Sec. 7. Section 222.31, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3. In its order, the court shall include a finding as to whether the person has sufficient mental capacity to comprehend and exercise the right to vote.

Sec. 8. Section 222.45, Code 1997, is amended to read as follows:

222.45 POWER OF COURT.

On the hearing, the court may discharge the person with mental retardation from all supervision, control, and care, or may transfer the person from a public institution to a

private institution, or vice versa, or transfer the person from a special unit to a hospital-school, or vice versa, as the court deems appropriate under all the circumstances. If the person has been determined to lack the mental capacity to vote, the court shall include in its order a finding that this determination remains in force or is revoked.

Sec. 9. Section 602.8102, subsection 15, Code Supplement 1997, is amended to read as follows:

15. ~~Notify~~ Monthly notify the county commissioner of registration and the state registrar of voters of persons seventeen and one-half years of age and older who have been convicted of a felony during the preceding calendar month or persons who at any time during the preceding calendar month have been legally declared to be mentally incompetent to vote.

Sec. 10. Section 633.556, subsection 1, Code Supplement 1997, is amended to read as follows:

1. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a guardian are proved by clear and convincing evidence, the court may appoint a guardian. If the court appoints a guardian based upon mental incapacity of the proposed ward, the court shall make a separate determination as to the ward's competency to vote. The court shall find a ward incompetent to vote only upon determining that the person lacks sufficient mental capacity to comprehend and exercise the right to vote.

Sec. 11. Section 633.679, Code 1997, is amended to read as follows:

633.679 PETITION TO TERMINATE.

At any time after the appointment of a guardian or conservator, the person under guardianship or conservatorship may apply to the court by petition, alleging that the person is no longer a proper subject thereof, and asking that the guardianship or conservatorship be terminated. A person under an order appointing a guardian which order found the person incompetent to vote may include a request for reinstatement of the person's voting rights in a petition to terminate the guardianship or by filing a separate petition for modification of this determination.

Approved May 14, 1998

CHAPTER 1186

TAX STATEMENTS

S.F. 2061

AN ACT relating to property tax statements and to a delay in implementing the inclusion of certain information on property tax statements by providing a deferral application process and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. REPORT TO TASK FORCE TO STUDY STATE AND LOCAL TAXATION. By October 1, 1998, representatives of the Iowa state treasurers association shall furnish a report to the task force, established by the legislative council, to study Iowa's system of state and local taxation. The report shall recommend a process by which counties and the state can achieve the goal of providing a uniform tax statement design to be used statewide for tax statements issued for the fiscal year beginning July 1, 1999, and all subsequent fiscal years.

Sec. 2. Section 445.5, subsection 1, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

As soon as practicable after receiving the tax list prescribed in chapter 443, the treasurer shall deliver to the ~~taxpayer~~ titleholder a statement of taxes due and payable which shall include the following information:

Sec. 3. Section 445.5, subsection 1, unnumbered paragraph 2, Code Supplement 1997, is amended by striking the paragraph and inserting in lieu thereof the following:

2. The county treasurer shall each year, upon request, deliver to the following persons or entities, or their duly authorized agents, a copy of the tax statement or tax statement information:

a. Contract purchaser.

b. Lessee.

c. Mortgagee.

d. Financial institution organized or chartered or holding an authorization certificate pursuant to chapter 524, 533, or 534.

e. Federally chartered financial institution.

The treasurer may negotiate and charge a reasonable fee not to exceed the cost of producing the information for the requestor for a tax statement or tax statement information provided by the treasurer.

3. A person other than those listed in subsection 2, who requests a tax statement or tax statement information, shall pay a fee to the treasurer at a rate not to exceed two dollars per parcel.

Sec. 4. NEW SECTION. 445.6 APPLICATION TO WAIVE TAX STATEMENT REQUIREMENTS.

For the fiscal years beginning July 1, 1998, and July 1, 1999, a county may apply to the director of the department of management for a deferral in implementing the property tax statement format requirements of section 445.5, subsection 1, paragraphs "a" through "i". For the fiscal year beginning July 1, 1998, the application for deferral must be received by the department within thirty days of enactment of this Act. For the fiscal year beginning July 1, 1999, the application for deferral must be received by the department on or before January 1, 1999.

An application for deferral must outline in detail the reason why the county is requesting the deferral and why the county is unable to substantially comply with the tax statement format requirements of section 445.5, subsection 1. When reviewing a county's application, the director shall, among other factors, consider whether or not the county contracts with, or otherwise uses the services of, accounting vendors or computer software vendors who have software that will facilitate the timely implementation of the tax statement format requirements of section 445.5, subsection 1. A presumption arises that these counties are capable of complying with the property tax statement format requirements of section 445.5, subsection 1. The director shall notify the county treasurer of the director's decision within thirty days of receipt of a deferral application from the county. If the director grants a deferral to a county, application of the property tax statement format requirements of section 445.5, subsection 1, is waived for that county.

A county granted a deferral pursuant to this section shall, for the fiscal year for which the deferral is granted, provide with the tax statement an enclosure detailing comparative property tax data for each taxing authority in the county. The comparative data shall include the total amount of taxes levied by each taxing authority in the previous fiscal year and the current fiscal year, the dollar amount difference between the two amounts, and that same difference expressed as a percentage increase or decrease. The comparative data enclosure shall also contain a statement that the county received from the state a deferral from the timely implementation of the tax statement format requirements.

For the purposes of this section and section 445.5, "taxing authority" means a public body which has the authority to certify a tax to be levied.

Sec. 5. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 14, 1998

CHAPTER 1187

HIV TESTING, REPORTING, AND PARTNER NOTIFICATION

S.F. 2161

AN ACT relating to the reporting and partner notification requirements relative to the human immunodeficiency virus.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 141.4, unnumbered paragraph 2, Code 1997, is amended to read as follows:

Counseling and testing shall be provided at alternative testing and counseling sites and at sexually transmitted disease clinics. The Iowa department of public health shall assist local boards of health in the development of programs which provide free ~~anonymous~~ testing to the public.

Sec. 2. Section 141.6, subsection 3, Code 1997, is amended to read as follows:

3. In administering the program, the Iowa department of public health shall provide for the following:

a. A person who tests positive for the human immunodeficiency virus infection shall receive posttest counseling, during which time the person shall be encouraged on a strictly confidential basis to refer for counseling and human immunodeficiency virus testing any person with whom the person has had sexual relations or has shared intravenous equipment.

~~b. If, following counseling, a person who tests positive for the human immunodeficiency virus infection chooses to disclose the identity of any sexual partners or persons with whom the person has shared intravenous equipment, the physician or health practitioner attending the person shall obtain written consent which acknowledges that the person is making the disclosure voluntarily.~~

~~c.~~ b. The physician or health practitioner attending the person ~~shall forward any written consent forms~~ may provide any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared intravenous equipment to the Iowa department of public health. The department disease prevention staff shall then conduct partner notification in the same manner as that utilized for sexually transmitted diseases.

~~d.~~ c. Devise a procedure, as a part of the partner notification program, to provide for the notification of an identifiable third party who is a sexual partner of or who shares intravenous equipment with a person who has tested positive for the human immunodeficiency virus, by the department or a physician, when all of the following situations exist:

(1) A physician for the infected person is of the good faith opinion that the nature of the continuing contact poses an imminent danger of human immunodeficiency virus infection transmission to the third party.

(2) When the physician believes in good faith that the infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

Notwithstanding subsection 4, the department or a physician may reveal the identity of a person who has tested positive for the human immunodeficiency virus infection pursuant to this subsection only to the extent necessary to protect a third party from the direct threat of transmission. Notification of a person pursuant to this paragraph is subject to the disclosure provisions of section 141.23, subsection 3. This subsection shall not be interpreted to create a duty to warn third parties of the danger of exposure to human immunodeficiency virus through contact with a person who tests positive for the human immunodeficiency virus infection.

Prior to notification of a third party, the physician proposing to cause the notification to be made shall make reasonable efforts to inform, in writing, the person who has tested positive for the human immunodeficiency virus infection. The written information shall state that due to the nature of the person's continuing contact with a third party, the physician is forced to take action to provide notification to the third party. The physician, when reasonably possible, shall provide the following information to the person who has tested positive for the human immunodeficiency virus infection:

(a) The nature of the disclosure and the reason for the disclosure.

(b) The anticipated date of disclosure.

(c) The name of the party or parties to whom disclosure is to be made.

The department shall adopt rules pursuant to chapter 17A to implement this paragraph. The rules shall provide a detailed procedure by which the department or a physician may directly notify an endangered third party.

Sec. 3. Section 141.8, subsections 1, 4, and 6, Code 1997, are amended to read as follows:

1. Prior to withdrawing blood for the purpose of performing a human immunodeficiency virus-related test, the physician or other practitioner shall inform the subject of the test that the test is voluntary ~~and may be performed anonymously if requested~~. Within seven days after the testing of a person with a test result indicating human immunodeficiency virus infection which has been confirmed as positive according to prevailing medical technology, the physician or other practitioner at whose request the test was performed shall make a report to the Iowa department of public health on a form provided by the department. ~~Prior to making the required report, the physician or other practitioner shall provide written information regarding the partner notification program and shall inquire if the person wishes to initiate participation in the program by agreeing to have identifying information reported to the department on a confidential basis.~~

4. Within seven days of the testing of a person with a test result indicating human immunodeficiency virus infection ~~which has been confirmed as positive according to prevailing medical technology~~, the director of a blood plasma center or blood bank shall make a report to the Iowa department of public health on a form provided by the department.

6. a. The forms provided by the department ~~pursuant to subsections 2 and 3~~ shall ~~contain the name, date of birth, sex, and address of the subject of the report and the name and address of the physician or other person making the report. The forms provided by the department pursuant to subsections 1, 4, and 5 may include the subject's age, race, marital status, or other information deemed necessary by the department for epidemiological purposes, but shall not include the subject's name or address without the written authorization of the subject.~~ require inclusion of all of the following information:

(1) The name of the patient.

(2) The address of the patient.

(3) The patient's date of birth.

(4) The sex of the patient.

(5) The race or ethnicity of the patient.

(6) The patient's marital status.

(7) The patient's telephone number.
(8) The name and address of the laboratory, plasma center, or blood center.
(9) The date the test was found to be positive and the collection date.
(10) The name of the physician or medical provider who performed the test.
(11) If the patient is female, whether the patient is pregnant.

b. The ~~subject~~ patient shall be provided with information regarding the confidentiality measures followed by the department and may request that the department maintain the ~~subject's~~ patient's confidential file ~~for the purposes of partner notification, or~~ for the inclusion of the ~~subject~~ patient in research or treatment programs.

c. The department shall develop an informational brochure for patients who may have blood withdrawn for the purpose of performing an HIV test. The information, at a minimum, shall include a summary of the patient's rights and responsibilities under the law.

Sec. 4. Section 141.10, subsection 1, paragraph d, Code 1997, is amended to read as follows:

d. Release may be made of test results concerning a patient pursuant to procedures established under section 141.6, subsection 3, paragraph ~~"d"~~ "c".

Sec. 5. Section 141.22, subsection 4, Code 1997, is amended to read as follows:

4. Prior to withdrawing blood for the purpose of performing an HIV-related test, the subject shall be given written notice of the provisions of this section and of section 141.6, subsection 3, paragraph ~~"d"~~ "c".

Approved May 14, 1998

CHAPTER 1188

LEGALIZATION OF SIGOURNEY COMMUNITY SCHOOL DISTRICT
SALE OF PROPERTY

S.F. 2225

AN ACT to legalize the proceedings of the board of directors of the Sigourney Community School District to sell certain school district property and providing effective and retroactive applicability dates.

WHEREAS, the board of directors of the Sigourney Community School District, pursuant to section 297.22, authorized the sale of certain property of the school district consisting of the North elementary school site described as out lot twenty and the middle school site described as out lot nine of the City of Sigourney, Keokuk County, Iowa; and

WHEREAS, due to an error, the board failed to have the property appraised as required by section 297.22; and

WHEREAS, the board accepted bids for the property and proceeded with the sale of the property in the belief that the requirements of section 297.22 had been satisfied; NOW THEREFORE,

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. All proceeding taken by the board of directors of the Sigourney Community School District regarding the sale of the North elementary school property and the middle school property are hereby legalized and constitute a valid and binding sale of this property.

Sec. 2. This Act, being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to March 9, 1992.

Approved May 14, 1998

CHAPTER 1189

INDUSTRIES REGULATED BY REGULATED INDUSTRIES
UNIT OF INSURANCE DIVISION

S.F. 2316

AN ACT relating to entities and subject matter under the regulatory authority of the regulated industries unit of the insurance division, including business opportunities, cemeteries, and cemetery merchandise, motor vehicle service contracts, preneed funeral merchandise and services, and residential service contracts, providing for fees, and establishing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321I.3, subsection 2, Code 1997, is amended to read as follows:

2. In addition to any other required filings, a true and correct copy of the service contract and the provider's reimbursement insurance policy, the consent to service of process on the commissioner, and such other information as the commissioner requires, shall be filed annually no later than the first day of August. If the first day of August falls on a weekend or a holiday, the date for filing shall be the next business day. In addition to the annual filing, the provider shall promptly file copies of any amended documents, if material amendments have been made in the materials on file with the division. If an annual filing is made after the first of August and sales have occurred during the period when the provider was in noncompliance with this section, the division shall assess an additional filing fee that is two times the amount normally required for an annual filing. A fee shall not be charged for interim filings made to keep the materials filed with the division current and accurate. The annual filing shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

Sec. 2. Section 321I.5, subsection 2, paragraph f, Code 1997, is amended to read as follows:

f. Clearly and conspicuously states the dates that coverage starts and ends and the existence, terms, and conditions of a deductible amount, if any.

Sec. 3. Section 321I.5, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3. A complete copy of the terms of the motor vehicle service contract shall be delivered to the prospective service contract holder at or before the time that the prospective service contract holder makes application for the service contract. If there is no separate application procedure, then a complete copy of the motor vehicle service contract shall be delivered to the service contract holder at or before the time the service contract holder becomes bound under the contract.

Sec. 4. Section 321I.6, Code 1997, is amended to read as follows:

321I.6 COMMISSIONER MAY PROHIBIT CERTAIN SALES — INJUNCTION.

The commissioner shall~~, upon giving a ten-day notice to a motor vehicle service contract provider,~~ issue an order instructing the provider to cease and desist from selling or offering

for sale motor vehicle service contracts if the commissioner determines that the provider has failed to comply with a provision of this chapter. Upon the failure of a motor vehicle service contract provider to obey a cease and desist order issued by the commissioner, the commissioner may give notice in writing of the failure to the attorney general, who shall immediately commence an action against the provider to enjoin the provider from selling or offering for sale motor vehicle service contracts until the provider complies with the provisions of this chapter and the district court may issue the injunction.

Sec. 5. Section 321I.11, subsection 1, paragraph g, Code 1997, is amended to read as follows:

g. A motor vehicle service contract provider shall not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with respect to the motor vehicle service contract industry or with respect to a motor vehicle service contract provider which is untrue, deceptive, or misleading. It is deceptive or misleading to use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a manufacturer or of such a nature that the use would tend to mislead a person into believing that the solicitation is in some manner connected with the manufacturer, unless actually authorized or issued by the manufacturer.

Sec. 6. Section 321I.12, subsection 1, paragraph a, Code 1997, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (4) Copies of all materials relating to claims which have been denied.

Sec. 7. Section 523A.1, subsection 1, unnumbered paragraph 4, Code 1997, is amended to read as follows:

This section does not apply to payments for merchandise delivered to the purchaser. ~~Except for caskets and other types of inner burial containers or concrete burial vaults sold after July 1, 1995, delivery~~ Delivery includes storage in a warehouse ~~under the control of the seller or any other warehouse~~ or storage facility approved by the commissioner ~~when a receipt of ownership in the name of the purchaser is delivered to the purchaser, the merchandise is insured against loss, the merchandise is protected against damage, title has been transferred to the purchaser, the merchandise is appropriately identified and described in a manner that it can be distinguished from other similar items of merchandise, the method of storage allows for visual audits of the merchandise, and the annual reporting requirements of section 523A.2, subsection 1, are satisfied~~. Concrete burial vaults and caskets sold after July 1, 1995, shall not be delivered in lieu of trusting. The commissioner may prohibit delivery in lieu of trusting with regard to additional types of inner burial containers and merchandise or establish standards for the approval of storage facilities, pursuant to rules adopted for that purpose.

Sec. 8. Section 523A.5, subsection 2, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. "Inner burial container" means a container in which human remains are placed for burial or entombment and, if only one container is used for purposes of burial or entombment, includes a container designed to serve the same function as merchandise commonly known as burial vaults, urn vaults, grave boxes, grave liners, and lawn crypts.

Sec. 9. Section 523A.8, subsection 1, paragraph j, Code 1997, is amended to read as follows:

j. Include an explanation of regulatory oversight by the insurance division in twelve point bold type, in substantially the following language:

THIS CONTRACT ~~MUST BE REPORTED TO THE IOWA INSURANCE DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR~~ IS SUBJECT TO RULES ADMINISTERED BY THE IOWA INSURANCE DIVISION. YOU MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE NUMBER) ~~TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED~~. WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE FOLLOWING ADDRESS: ~~IOWA SECURITIES BUREAU,~~ (INSERT ADDRESS).

Sec. 10. Section 523A.14, Code 1997, is amended to read as follows:

523A.14 INJUNCTIONS.

The attorney general or the commissioner may apply to the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from engaging in conduct or practices deemed contrary to the public interest. In any proceeding for an injunction, the attorney general or the commissioner may apply to the court for the issuance of a subpoena to require the appearance of a defendant and the defendant's agents and any documents, books, and records germane to the hearing upon the petition for an injunction. Upon proof of any of the offenses described in the petition for injunction the court may grant the injunction. The attorney general or the commissioner shall not be required to post a bond.

Sec. 11. Section 523B.1, subsection 3, paragraph b, Code 1997, is amended by striking the paragraph.

Sec. 12. Section 523B.2, subsection 4, Code 1997, is amended to read as follows:

4. EFFECTIVE DATE. A registration automatically becomes effective upon the expiration of the ~~tenth~~ fifteenth full business day after the complete filing is received by the administrator, provided that no order has been issued or proceeding is pending under subsection 10. The administrator may by order waive or reduce the time period prior to effectiveness, provided that a complete filing has been made. The administrator may by order defer the effective date until the expiration of the ~~tenth~~ fifteenth full business day after the filing of an amendment with the administrator.

Sec. 13. Section 523B.2, subsection 8, paragraph c, subparagraph (13), Code 1997, is amended to read as follows:

(13) The business opportunity seller that ~~is required to secure~~ secures a bond pursuant to ~~section 523B.4~~ subsection 10 shall include in the disclosure document the following statement: "As required by the state of Iowa, the seller has secured a bond issued by [insert name and address of surety company], a surety company, authorized to do business in this state. Before signing a contract or agreement to purchase this business opportunity, you should check with the surety company to determine the bond's current status."

Sec. 14. Section 523B.2, subsection 10, paragraph a, Code 1997, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (9) The seller does not have a minimum net worth of twenty-five thousand dollars, as determined in accordance with generally accepted accounting principles. A seller may submit a surety bond in lieu of the net worth requirement. The administrator may by rule or order increase the amount of the net worth or bond for the protection of purchasers and may require the seller to file reports of all sales in this state to determine the appropriate amount of the net worth requirement. The surety bond shall be for the period of the registration, issued by a surety company authorized to do business in this state and for the benefit of any purchaser.

Sec. 15. Section 523B.3, subsection 1, Code 1997, is amended to read as follows:

1. ~~TYPES OF~~ EXEMPTIONS. The following business opportunities are exempt from the requirements of section 523B.2:

a. The offer or sale of a business opportunity if the purchaser is a bank, savings and loan association, trust company, insurance company, credit union, or investment company as defined by the federal Investment Company Act of 1940, a pension or profit-sharing trust, or other financial institution or institutional buyer, or a ~~dealer~~ broker-dealer registered pursuant to chapter 502, whether the purchaser is acting for itself or in a fiduciary capacity.

b. An offer or sale of a business opportunity to an ongoing business where the seller will provide products, equipment, supplies, or services which are substantially similar to the products, equipment, supplies, or services sold by the purchaser in connection with the purchaser's ongoing business.

c. An offer or sale of an ongoing business operated by the seller which is to be sold in its entirety.

d. An offer or sale of a business opportunity by an executor, administrator, sheriff, receiver, trustee in bankruptcy, guardian, or conservator, or a judicial offer or sale of a business opportunity.

~~b.~~ e. The offer or sale of a business opportunity which is defined as a franchise under section 523B.1, subsection 4, provided that the seller delivers to each purchaser at the earlier of the first personal meeting between the seller and the purchaser, or ten business days prior to the earlier of the execution by a purchaser of a contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity, one of the following disclosure documents:

(1) A uniform franchise-offering circular prepared in accordance with the guidelines adopted by the North American securities administrators association, inc., as amended through September 21, 1983.

(2) A disclosure document prepared pursuant to the federal trade commission rule entitled "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures", 16 C.F.R. § 436 (1979).

For the purposes of this paragraph, a personal meeting means a face-to-face meeting between the purchaser and the seller or their representatives, which is held for the purpose of discussing the offer or sale of a business opportunity. The administrator may by rule adopt any amendment to the uniform franchise-offering circular that has been adopted by the North American securities administrators association, inc., or any amendment to the disclosure document prepared pursuant to the federal trade commission rule entitled "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures", 16 C.F.R. § 436 (1979), that has been adopted by the federal trade commission.

~~c.~~ f. The offer or sale of a business opportunity for which the cash payment made by a purchaser does not exceed five hundred dollars and the payment is made for the not-for-profit sale of sales demonstration equipment, material, or samples, or the payment is made for product inventory sold to the purchaser at a bona fide wholesale price.

g. An offer or sale of a business opportunity which involves a marketing plan made in conjunction with the licensing of a federally registered trademark or federally registered service mark provided that the seller has a minimum net worth of one million dollars as determined on the basis of the seller's most recent audited financial statement prepared within thirteen months of the first offer in this state. Net worth may be determined on a consolidated basis if the seller is at least eighty percent owned by one person and that person expressly guarantees the obligations of the seller with regard to the offer or sale of a business opportunity claimed to be exempt under this paragraph.

~~d.~~ The offer or sale of a business opportunity which the administrator exempts by order or a class of business opportunities which the administrator exempts by rule upon the finding that the exemption would not be contrary to public interest and that registration would not be necessary or appropriate for the protection of purchasers.

Sec. 16. Section 523B.3, subsection 2, paragraph a, Code 1997, is amended to read as follows:

a. ~~The~~ If the public interest of the protection of purchasers so requires, the administrator may by order deny or revoke an exemption specified in this section with respect to a particular offering of one or more business opportunities. An order shall not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law.

Sec. 17. Section 523B.7, subsection 1, paragraph a, Code 1997, is amended to read as follows:

a. A person who violates ~~section 523B.4 or~~ section 523B.2, subsection 1, 8, or 9, is liable to the purchaser in an action for rescission of the agreement, or for recovery of all money or other valuable consideration paid for the business opportunity, and for actual damages together with interest as determined pursuant to section 668.13 from the date of sale, reasonable attorney's fees, and court costs.

Sec. 18. Section 523B.8, subsection 4, Code 1997, is amended to read as follows:

4. a. If it appears to the administrator that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of this chapter, or of a rule or order adopted or issued under this chapter, the administrator may ~~take either or both of the following actions:~~

~~a. Notify the attorney general who shall~~ bring an action in the district court to enjoin the acts or practices constituting the violation and to enforce compliance with this chapter or any rule or order adopted or issued pursuant to this chapter. Upon a proper showing a permanent or temporary injunction shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

~~b. Bring an action in district court.~~ Upon proper showing by the administrator, the court may enter an order of rescission, restitution, or disgorgement, as well as prejudgment and postjudgment interest, directed at any person who has engaged in an act constituting a violation of this chapter.

b. The administrator, in bringing an action under paragraph "a", shall not be required to post bond.

Sec. 19. Section 523B.11, subsection 1, Code 1997, is amended to read as follows:

1. A seller who willfully violates ~~section 523B.4,~~ section 523B.2, subsection 1, 8, or 9, or section 523B.12, subsection 2, who willfully violates a rule under this chapter, who willfully violates an order of which the person has notice, or who violates section 523B.12, subsection 1, knowing that the statement made was false or misleading in any material respect, upon conviction, is guilty of a class "D" felony. Each of the acts specified constitutes a separate offense and a prosecution or conviction for any one of such offenses does not bar prosecution or conviction for any other offense.

Sec. 20. Section 523B.12, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. MISREPRESENTATIONS, OMISSIONS, AND MISLEADING CONDUCT. It is unlawful for a business opportunity seller to do any of the following:

a. Misrepresent, by failure to disclose or otherwise, the known required total investment for such business opportunity.

b. Misrepresent or fail to disclose efforts to sell or establish more business opportunities than it is reasonable to expect the market or market area for the particular business opportunity to sustain.

c. Misrepresent the quantity or the quality of the products to be sold or distributed through the business opportunity.

d. Misrepresent the training and management assistance available to the business opportunity purchaser.

e. Misrepresent the amount of profits, net or gross, which the business opportunity purchaser can expect from the operation of the business opportunity.

f. Misrepresent, by failure to disclose or otherwise, the termination, transfer, or renewal provision of a business opportunity agreement.

g. Falsely claim or imply that a primary marketer or trademark of products or services sponsors or participates directly or indirectly in the business opportunity.

h. Assign a so-called exclusive territory encompassing the same area to more than one business opportunity purchaser.

i. Provide vending locations for which written authorizations have not been granted by the property owners or lessees.

j. Provide merchandise, machines, or displays of a brand or kind substantially different from or inferior to those promised by the business opportunity seller.

k. Fail to provide the purchaser a written contract.

l. Misrepresent the ability of a person or entity providing services to provide locations or assist the purchaser in finding locations expected to have a positive impact on the success of the business opportunity.

m. Misrepresent or omit to state a material fact or create a false or misleading impression in the sale of a business opportunity.

Sec. 21. Section 523C.7, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 5. A complete copy of the terms of the residential service contract shall be delivered to the prospective service contract holder at or before the time that the prospective service contract holder makes application for the service contract. If there is no separate application procedure, then a complete copy of the residential service contract shall be delivered to the service contract holder at or before the time the service contract holder becomes bound under the contract.

Sec. 22. Section 523E.8, subsection 1, paragraph j, Code 1997, is amended to read as follows:

j. Include an explanation of regulatory oversight by the insurance division in twelve point bold type, in substantially the following language:

THIS CONTRACT ~~MUST BE REPORTED TO THE IOWA INSURANCE DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR~~ IS SUBJECT TO REGULATIONS ADMINISTERED BY THE IOWA INSURANCE DIVISION. YOU MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE NUMBER) ~~TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED~~. WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE FOLLOWING ADDRESS: ~~IOWA SECURITIES BUREAU~~ (INSERT ADDRESS).

Sec. 23. Section 523E.14, Code 1997, is amended to read as follows:

523E.14 INJUNCTIONS.

The attorney general or the commissioner may apply to the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from engaging in conduct or practices deemed contrary to the public interest. In any proceeding for an injunction, the attorney general or the commissioner may apply to the court for the issuance of a subpoena to require the appearance of a defendant and the defendant's agents and any documents, books, and records germane to the hearing upon the petition for an injunction. Upon proof of any of the offenses described in the petition for injunction the court may grant the injunction. The attorney general or the commissioner shall not be required to post a bond.

Sec. 24. Section 523I.6, subsection 1, paragraph e, Code 1997, is amended to read as follows:

e. The nonexclusive preneed and at-need sale of ~~monuments, memorials, markers, burial vaults, urns, flower vases, floral arrangements, and other~~ the following:

(1) Monuments.
(2) Memorials.
(3) Markers.
(4) Installation of monuments, memorials, or markers.
(5) Burial vaults.
(6) Urns.
(7) Flower vases.
(8) Floral arrangements.
(9) Other similar merchandise for use within the cemetery.

Sec. 25. Section 566A.1, subsection 1, Code 1997, is amended to read as follows:

1. A corporation or other form of organization engaging in the business of the ownership, maintenance, or operation of a cemetery, which provides lots or other interment space for the remains of human bodies, is subject to this chapter. However, a religious cemetery is subject only to subsection 2, and sections 566A.2A and 566A.2B. ~~A cemetery with average retail sales equal to or less than five thousand dollars for the previous three calendar years is exempt from section 566A.2C.~~ Political subdivisions of the state which are counties are exempt from this chapter. Political subdivisions of the state other than counties are subject only to sections 566A.1A, 566A.2A, 566A.2B, and 566A.2D.

Sec. 26. Section 566A.2C, subsection 2, Code 1997, is amended to read as follows:

2. The commissioner shall permit the filing of a unified annual report in the event of commonly owned or affiliated cemeteries. ~~A political subdivision subject to this section may commingle perpetual care funds for purposes of investment and administration and may file a single report, if each cemetery is appropriately identified and separate records are maintained for each cemetery.~~

Sec. 27. Section 566A.2C, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 5. This section does not apply to a cemetery with average retail sales equal to or less than five thousand dollars for the previous three calendar years.

Sec. 28. Section 566A.3, unnumbered paragraph 3, Code 1997, is amended to read as follows:

The initial perpetual care fund established for any cemetery shall remain in an irrevocable trust fund until such time as this fund has reached ~~fifty~~ one hundred thousand dollars, when ~~it~~ the initial twenty-five thousand dollar deposit may be withdrawn ~~at the rate of one thousand dollars from the original twenty-five thousand dollars for each additional three thousand dollars added to the fund, until all of the twenty-five thousand dollars has been withdrawn~~. An affidavit shall be filed with the commissioner providing prior notice of the withdrawal and attesting that the money has not previously been withdrawn. Except as approved by the commissioner upon sufficient proof that the money has not previously been withdrawn, the withdrawal must take place within one year after the fund reaches one hundred thousand dollars.

Sec. 29. Section 566A.12, subsection 4, paragraph b, Code 1997, is amended to read as follows:

b. The commissioner or the attorney general may apply to the district court in any county of the state for a receivership. Upon proof of any of the grounds for a receivership described in this section the court may grant a receivership.

Sec. 30. Section 566A.12, subsection 5, Code 1997, is amended to read as follows:

5. INJUNCTIONS. The commissioner or the attorney general may apply to the district court for an injunction to restrain any cemetery subject to this chapter and any agents,

employees, trustees, or associates of the cemetery from engaging in conduct or practices deemed a violation of this chapter or rules adopted pursuant to this chapter. Upon proof of any violation of this chapter described in the petition for injunction, the court may grant the injunction. The commissioner or the attorney general shall not be required to post a bond. Failure to obey a court order under this subsection constitutes contempt of court.

Sec. 31. Section 523B.4, Code 1997, is repealed.

Approved May 14, 1998

CHAPTER 1190

JUVENILE JUSTICE — OUT-OF-HOME PLACEMENT, TERMINATION OF PARENTAL RIGHTS, AND ADOPTION

S.F. 2345

AN ACT relating to juvenile justice system provisions involving foster care, termination of parental rights, and adoption preplacement investigations.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 232.2, subsection 4, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. h. If reasonable efforts to place a child for adoption or with a guardian are made concurrently with reasonable efforts as defined in section 232.102, the concurrent goals and timelines may be identified. Concurrent case permanency plan goals for reunification, and for adoption or for other permanent out-of-home placement of a child shall not be considered inconsistent in that the goals reflect divergent possible outcomes for a child in an out-of-home placement.

Sec. 2. Section 232.2, subsection 21, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

"Guardian" means a person who is not the parent of a child, but who has been appointed by a court or juvenile court having jurisdiction over the child, to have a permanent self-sustaining relationship with the child and to make important decisions which have a permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.

Sec. 3. Section 232.2, subsection 21, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. To make other decisions involving protection, education, and care and control of the child.

Sec. 4. Section 232.78, subsection 1, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. The application for the order includes a statement of the facts to support the findings specified in paragraphs "a", "b", and "c".

Sec. 5. Section 232.78, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. The person making the application for an order shall assert facts showing there is reasonable cause to believe that the child cannot either be returned to the place where the child was residing or placed with the parent who does not have physical care of the child.

Sec. 6. Section 232.78, subsection 5, Code 1997, is amended to read as follows:

5. Any person who may file a petition under this chapter may apply for, or the court on its own motion may issue, an order for temporary removal under this section. An appropriate person designated by the court shall confer with a person seeking the removal order, shall make every reasonable effort to inform the parent or other person legally responsible for the child's care of the application, and shall make such inquiries as will aid the court in disposing of such application. The person designated by the court shall file with the court a complete written report providing all details of the designee's conference with the person seeking the removal order, the designee's efforts to inform the parents or other person legally responsible for the child's care of the application, any inquiries made by the designee to aid the court in disposing of the application, and all information the designee communicated to the court. The report shall be filed within five days of the date of the removal order. If the court does not designate an appropriate person who performs the required duties, notwithstanding section 234.39 or any other provision of law, the child's parent shall not be responsible for paying the cost of care and services for the duration of the removal order. Any order entered under this section authorizing temporary removal of a child shall include a statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

Sec. 7. Section 232.91, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3. Any person who is entitled under section 232.88 to receive notice of a hearing concerning a child shall be given the opportunity to be heard in any other review or hearing involving the child.

Sec. 8. Section 232.95, subsection 2, paragraph a, unnumbered paragraph 2, Code 1997, is amended to read as follows:

If removal is ordered, the order shall, in addition, contain a statement that removal from the home is the result of a determination that continuation ~~therein~~ in the home would be contrary to the welfare of the child, and that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home. The order shall also include a statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

Sec. 9. Section 232.96, subsection 10, Code 1997, is amended to read as follows:

10. If the court enters an order adjudicating the child to be a child in need of assistance, the court, if it has not previously done so, may issue an order authorizing temporary removal of the child from the child's home as set forth in section 232.95, subsection 2, paragraph "a", pending a final order of disposition. The order shall include a statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

Sec. 10. Section 232.99, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. In the initial dispositional hearing, any hearing held under section 232.103, and any dispositional review or permanency hearing, the court shall inquire of the parties as to the sufficiency of the services being provided and whether additional services are needed to facilitate the safe return of the child to the child's home. If the court determines such services are needed, the court shall order the services to be provided. The court shall advise the parties that failure to identify a deficiency in services or to request additional services may preclude the party from challenging the sufficiency of the services in a termination of parent-child relationship proceeding.

Sec. 11. Section 232.102, subsection 1, paragraph a, Code Supplement 1997, is amended to read as follows:

a. A parent who does not have physical care of the child, other relative, or other suitable person.

Sec. 12. Section 232.102, subsection 5, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

The order shall, in addition, contain a statement that removal from the home is the result of a determination that continuation ~~therein~~ in the home would be contrary to the welfare of the child, and ~~that~~ shall identify the reasonable efforts that have been made ~~to prevent or eliminate the need for removal of the child from the child's home~~.

Sec. 13. Section 232.102, subsection 7, Code Supplement 1997, is amended to read as follows:

7. In any order transferring custody to the department or an agency, or in orders pursuant to a custody order, the court shall specify the nature and category of disposition which will serve the best interests of the child, and shall prescribe the means by which the placement shall be monitored by the court. If the court orders the transfer of the custody of the child to the department of human services or other agency for placement, the department or agency shall submit a case permanency plan to the court and shall make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interest of the child. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency shall consider placing the child in the same licensed foster care facility. If the court orders the transfer of custody to a parent who does not have physical care of the child, other relative, or other suitable person, the court may direct the department or other agency to provide services to the child's parent, guardian, or custodian in order to enable them to resume custody of the child. If the court orders the transfer of custody to the department of human services or to another agency for placement in foster group care, the department or agency shall make every reasonable effort to place the child within Iowa, in the least restrictive, most family-like, and most appropriate setting available, and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

Sec. 14. Section 232.102, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 7A. Any order transferring custody to the department or an agency shall include a statement informing the child's parent that the consequences of a permanent removal may include the termination of the parent's rights with respect to the child.

Sec. 15. Section 232.102, subsection 8, paragraph c, Code Supplement 1997, is amended to read as follows:

c. For purposes of this subsection, a hearing held pursuant to section 232.103 ~~or 232.104~~ satisfies the requirements for initial dispositional review or subsequent ~~dispositional review~~ permanency hearing.

Sec. 16. Section 232.102, subsection 9, paragraph a, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

As used in this section, "reasonable efforts" means the efforts made to ~~prevent~~ preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of ~~a~~ the child ~~from~~ or make it possible for the child to safely return to the ~~child's~~ family's home. A child's health and safety shall be the paramount concern in making reasonable efforts. Reasonable efforts may include intensive family preservation services or family-centered services, if the child's safety in the home can be maintained during the time the services are provided. In determining whether reasonable efforts have been made, the court shall consider both of the following:

Sec. 17. Section 232.102, Code Supplement 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 10. The performance of reasonable efforts to place a child for adoption or with a guardian may be made concurrently with making reasonable efforts as defined in this section.

NEW SUBSECTION. 11. If the court determines aggravated circumstances exist, with written findings of fact based upon evidence in the record, the court may waive the requirement for making reasonable efforts. The existence of aggravated circumstances is indicated by any of the following:

a. The parent has abandoned the child.

b. The court finds the circumstances described in section 232.116, subsection 1, paragraph "h", are applicable to the child.

c. The parent's parental rights have been terminated under section 232.116 with respect to another child who is a member of the same family, and there is clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child's removal.

d. The parent has been convicted of the murder of another child of the parent.

e. The parent has been convicted of the voluntary manslaughter of another child of the parent.

f. The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.

g. The parent has been convicted of a felony assault which resulted in serious bodily injury of the child or of another child of the parent.

Sec. 18. Section 232.104, subsection 1, Code 1997, is amended to read as follows:

1. a. ~~If a child has been placed in foster care for a period of twelve months, or if the prior legal custodian of a child has abandoned efforts to regain custody of the child, the court shall, on its own motion, or upon application by any interested party, including the child's foster parent if the child has been placed with the foster parent for at least twelve months, hold a hearing to consider the issue of the establishment of permanency for the child.~~ The time for the initial permanency hearing for a child subject to out-of-home placement shall be the earlier of the following:

(1) For a temporary removal order entered under section 232.78, 232.95, or 232.96, for a child who was removed without a court order under section 232.79, or for an order entered under section 232.102, for which the court has not waived reasonable efforts requirements, the permanency hearing shall be held within twelve months of the date the child was removed from the home.

(2) For an order entered under section 232.102, for which the court has waived reasonable efforts requirements under section 232.102, subsection 11, the permanency hearing shall be held within thirty days of the date the requirements were waived.

b. ~~Such a~~ The permanency hearing may be held concurrently with a hearing under section 232.103 to review, modify, substitute, vacate, or terminate a dispositional order.

c. Reasonable notice of a permanency hearing in a case of juvenile delinquency shall be provided pursuant to section 232.37. A permanency hearing shall be conducted in substantial conformance with the provisions of section 232.99. During the hearing the court shall consider the child's need for a secure and permanent placement in light of any permanency plan or evidence submitted to the court. Upon completion of the hearing the court shall enter written findings and make a determination based upon the permanency plan which will best serve the child's individual interests at that time.

Sec. 19. Section 232.104, subsection 6, Code 1997, is amended to read as follows:

6. Following an initial permanency hearing and the entry of a permanency order which places a child in the custody or guardianship of another person or agency, the court shall

retain jurisdiction and annually review the order to ascertain whether the best interest of the child is being served. When ~~such~~ the order places the child in the custody of the department for the purpose of long-term foster care placement in a facility, the review shall be in a hearing that shall not be waived or continued beyond twelve months after the initial permanency hearing or the last permanency review hearing. Any modification shall be accomplished through a hearing procedure following reasonable notice. During the hearing, all relevant and material evidence shall be admitted and procedural due process shall be provided to all parties.

Sec. 20. Section 232.111, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. a. Unless any of the circumstances described in paragraph "b" exist, the county attorney shall file a petition for termination of the parent-child relationship and parental rights with respect to a child or if a petition has been filed, join in the petition, under any of the following circumstances:

(1) The child has been placed in foster care for fifteen months or more of the most recent twenty-two-month period.

(2) A court has determined aggravated circumstances exist and has waived the requirement for making reasonable efforts under section 232.102 because the court has found the circumstances described in section 232.116, subsection 1, paragraph "h", are applicable to the child.

(3) The child is less than twelve months of age and has been judicially determined to meet the definition of abandonment of a child.

(4) The parent has been convicted of the murder or the voluntary manslaughter of another child of the parent.

(5) The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.

(6) The parent has been convicted of a felony assault which resulted in serious bodily injury of the child or of another child of the parent.

b. If any of the following conditions exist, the county attorney is not required to file a petition or join in an existing petition as provided in paragraph "a":

(1) At the option of the department or by order of the court, the child is being cared for by a relative.

(2) The department or a state agency has documented in the child's case permanency plan provided or available to the court a compelling reason for determining that filing the petition would not be in the best interest of the child. A compelling reason shall include but is not limited to documentation in the child's case permanency plan indicating it is reasonably likely the completion of the services being received in accordance with the permanency plan will eliminate the need for removal of the child or make it possible for the child to safely return to the family's home within six months.

(3) The department has not provided the child's family, consistent with the time frames outlined in the child's case permanency plan, with those services the state deems necessary for the safe return of the child to the child's home, and the limited extension of time necessary to complete the services is clearly documented in the case permanency plan.

Sec. 21. Section 232.111, subsection 3, Code 1997, is amended by adding the following new paragraph after paragraph d and renumbering the subsequent paragraph:

NEW PARAGRAPH. e. A complete list of the services which have been offered to preserve the family and a statement specifying the services provided to address the reasons stated in any order for removal or in any dispositional or permanency order which did not return the child to the child's home.

Sec. 22. Section 232.112, subsection 1, Code 1997, is amended to read as follows:

1. Persons listed in section 232.111, subsection 3, shall be necessary parties to a termination of parent-child relationship proceeding and are entitled to receive notice and an opportunity to be heard, except that notice may be dispensed with in the case of any such person whose name or whereabouts the court determines is unknown and cannot be ascertained by reasonably diligent search. In addition to the persons who are necessary parties who may be parties under section 232.111, notice for any hearing under this division shall be provided to the child's foster parent, an individual providing preadoptive care for the child, or a relative providing care for the child.

Sec. 23. Section 232.116, subsection 2, unnumbered paragraph 1, Code 1997, is amended to read as follows:

In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child. ~~Such~~ This consideration may include any of the following:

Sec. 24. Section 232.117, subsection 3, paragraph c, Code 1997, is amended to read as follows:

c. A parent who does not have physical care of the child, other relative, or other suitable person.

Sec. 25. Section 232.117, subsection 4, Code 1997, is amended to read as follows:

4. If after a hearing the court does not order the termination of parental rights but finds that there is clear and convincing evidence that the child is a child in need of assistance, under section 232.2, subsection 6, due to the acts or omissions of one or both of the child's parents the court may adjudicate the child to be a child in need of assistance and may enter an order in accordance with the provisions of ~~sections~~ section 232.100, 232.101, ~~or~~ 232.102, or 232.104.

Sec. 26. Section 232.119, subsection 4, Code 1997, is amended to read as follows:

4. The exchange shall include a matching service for children registered or listed in the adoption photo-listing book and prospective adoptive families listed on the exchange. The department shall register a child with the national electronic exchange and electronic photolisting system if the child has not been placed for adoption after three months on the exchange established pursuant to this section.

Sec. 27. NEW SECTION. 232.120 PREADOPTIVE CARE — CONTINUED PLACEMENT.

If a foster parent is providing preadoptive care to a child for whom a termination of parental rights petition has been filed, the placement of the child with that foster parent shall continue through the termination of parental rights proceeding unless the court orders otherwise based upon the best interests of the child.

Sec. 28. Section 232.189, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Based upon a model reasonable efforts family court initiative, the director of human services and the chief justice of the supreme court or their designees shall jointly establish and implement a statewide protocol for reasonable efforts ~~to prevent or eliminate the need for placement of a child outside the child's home~~, as defined in section 232.102. In addition, the director and the chief justice shall design and implement a system for judicial and departmental reasonable efforts education for deployment throughout the state. The system for reasonable efforts education shall be developed in a manner which addresses the particular needs of rural areas and shall include but is not limited to all of the following topics:

Sec. 29. Section 237.8, subsection 2, paragraphs a and b, Code 1997, are amended to read as follows:

a. (1) If a person is being considered for licensure under this chapter, or for employment involving direct responsibility for a child or with access to a child when the child is alone, by a licensee under this chapter, or if a person will reside in a facility utilized by a licensee, and if the person has been convicted of a crime or has a record of founded child abuse, the department and the licensee for an employee of the licensee shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, employment, or residence in the facility. The department shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

(2) An individual applying to be a foster parent licensee shall not be granted a license and an evaluation shall not be performed under this subsection if the individual has been convicted of any of the following felony offenses:

(a) Within the five-year period preceding the application date, a drug-related offense.

(b) Child endangerment or neglect or abandonment of a dependent person.

(c) Domestic abuse.

(d) A crime against a child, including but not limited to sexual exploitation of a minor.

(e) A forcible felony.

b. ~~If~~ Except as otherwise provided in paragraph "a", if the department determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a licensee, or resides in a licensed facility the department shall notify the licensee that an evaluation will be conducted to determine whether prohibition of the person's licensure, employment, or residence is warranted.

Sec. 30. Section 600.8, subsection 2, paragraph b, Code 1997, is amended to read as follows:

b. (1) The person making the investigation shall not approve a prospective adoption petitioner pursuant to subsection 1, paragraph "a", subparagraph (3), and an evaluation shall not be performed under subparagraph (2), if the petitioner has been convicted of any of the following felony offenses:

(a) Within the five-year period preceding the petition date, a drug-related offense.

(b) Child endangerment or neglect or abandonment of a dependent person.

(c) Domestic abuse.

(d) A crime against a child, including but not limited to sexual exploitation of a minor.

(e) A forcible felony.

(2) The person making the investigation shall not approve a prospective adoption petitioner pursuant to subsection 1, paragraph "a", subparagraph (3), unless an evaluation has been made which considers the nature and seriousness of the crime or founded abuse in relation to the adoption, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuse committed by the person involved.

Sec. 31. Section 600.12A, if enacted by the 1998 Iowa Acts, Senate File 2338,* is amended by adding the following new subsection:

NEW SUBSECTION. 1A. If the person to be adopted dies following termination of the parental rights of the person's biological parents but prior to the filing of an adoption petition, the person who was the guardian or custodian of the person to be adopted prior to the person's death or the person who was in a parent-child relationship with the person to be adopted prior to the person's death may file an adoption petition and the court in the interest of justice may waive any other procedures or requirements related to the adoption, proceed to the adoption hearing, and issue a final adoption decree, unless any person to whom notice is to be provided pursuant to section 600.11 objects to the adoption.

* See chapter 1064 herein

Sec. 32. PRESERVATION OF REASONABLE PARENTING. Nothing in this Act is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting.

Approved May 14, 1998

CHAPTER 1191

CITIZENS' AIDE REVIEW OF CHILD PROTECTION SYSTEM

S.F. 2359

AN ACT providing for a review of juvenile justice provisions involving child protection by the citizens' aide and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. CHILD PROTECTION SYSTEM REVIEW.

1. The citizens' aide shall conduct a review of the state's child protection system in accordance with this section. The review shall encompass all aspects of the system, including child abuse reporting, investigation, and assessment, child removal, child in need of assistance proceedings, review and appeals, and termination of parental rights. The purpose of review is to determine whether the current system adequately provides fairness and due process protections for all persons involved with the system.

2. The review may include but is not limited to all of the following:

a. Surveys of attorneys experienced in representing subjects of child abuse investigations and assessments and in child welfare and family law.

b. Surveys of persons who have been the subject of a child abuse investigation or assessment.

c. Reviews of known complaints concerning the system.

d. Reviews of previous testimony and submissions by critics and proponents of the system to legislative, administrative, and other bodies organized to provide oversight of the child protection system. In addition, the review may include review of the reports and findings of these bodies.

e. Review of legal information concerning child protection including state and federal statutory requirements, rules, regulations, and policies, judicial decisions including dissenting opinions, and opinions of the attorney general.

f. Interviews of recognized critics and supporters of the child protection system.

g. Use of focus groups to refine the issues for consideration.

h. Random sample reviews of closed child abuse investigations and assessments.

3. The citizens' aide may appoint a project team or contract for a project team to perform the review. Any project team shall include persons with skills and knowledge concerning child welfare and juvenile justice and due process rights. The project team may include an attorney, an authority on social work, and a skilled general investigator or a paralegal. The citizens' aide may also utilize a broad-based advisory group.

4. The citizens' aide shall submit a report containing findings and recommendations in accordance with chapter 2C to the department of human services, chief juvenile court officer of each judicial district, governor, and general assembly. The report shall be submitted on or before February 1, 1999.

5. Implementation of this section is subject to authorization of funding for the purposes of this section by the legislative council.*

Sec. 2. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 14, 1998

CHAPTER 1192

MINIMUM TERM OF INCARCERATION FOR FELONY DOMESTIC ABUSE ASSAULT

S.F. 2385

AN ACT relating to the mandatory minimum term of incarceration for felony domestic abuse assault.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 708.2A, subsection 6, paragraph b, Code Supplement 1997, is amended to read as follows:

b. A person convicted of violating subsection 4 shall be sentenced as provided under section 902.9, subsection 4, committed to the custody of the director of the department of corrections, ~~shall serve a minimum of one year of the sentence imposed,~~ and shall be assessed a fine of at least seven hundred fifty dollars. The person shall be denied parole or work release until the person has served a minimum of one year of the person's sentence. Notwithstanding section 901.5, subsection 3, and section 907.3, subsection 3, the ~~sentence~~ person cannot ~~be~~ receive a suspended or deferred sentence or a deferred judgment; however, the person sentenced shall receive credit for any time the person was confined in a jail or detention facility following arrest.

Approved May 14, 1998

CHAPTER 1193

SOLID WASTE — TONNAGE FEES AND STANDARDS AND CRITERIA FOR LANDFILLS

S.F. 2413

AN ACT relating to exemptions from and reductions in solid waste tonnage fees for certain persons and the installation and use of scales by sanitary disposal projects.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 455B.304, subsection 15, Code Supplement 1997, is amended to read as follows:

15. The commission shall adopt rules which require all sanitary ~~landfills~~ disposal projects

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* Funding authorized at the legislative council meeting held on June 23, 1998

in which the tonnage fee pursuant to section 455B.310 is imposed, to install scales ~~by January 1, 1994~~ and utilize these scales to calculate payment of the tonnage fee.

Sec. 2. Section 455B.310, subsections 1,* 2, 3, and 6, Code 1997, are amended to read as follows:

1. Except as provided in subsection 3, the operator of a sanitary landfill shall pay a tonnage fee to the department for each ton or equivalent volume of solid waste received and disposed of at the sanitary landfill during the preceding reporting period. The department shall determine by rule the volume which is equivalent to a ton of waste.

2. The tonnage fee is four dollars and twenty-five cents per ton of solid waste.

2A. If a sanitary landfill required to pay a tonnage fee under this section has an updated comprehensive plan approved by the department, the sanitary landfill operator shall retain, in addition to the ninety-five cents retained pursuant to subsection 2B, twenty-five cents of the tonnage fee per ton of solid waste in the fiscal year beginning July 1, 1998, and every year thereafter. In the fiscal year beginning July 1, 1999, and every year thereafter, any planning area which meets the statewide average, as determined by the department on July 1, 1999, shall retain, in addition to the twenty-five cents retained pursuant to this subsection, ten cents of the tonnage fee per ton of solid waste regardless of whether the planning area subsequently fails to meet the statewide average. Any tonnage fees retained pursuant to this subsection shall be used for waste reduction, recycling, or small business pollution prevention purposes. Any tonnage fee retained pursuant to this subsection shall be taken from that portion of the tonnage fee which would have been allocated to funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph "a", subparagraph (1).

2B. ~~Of that amount, ninety-five~~ Ninety-five cents of the tonnage fee shall be retained by a city, county, or public or private agency and used as follows:

a. To meet comprehensive planning requirements of section 455B.306, the development of a closure or postclosure plan, the development of a plan for the control and treatment of leachate including the preparation of facility plans and detailed plans and specifications, and the preparation of a financial plan.

b. Forty-five cents of the retained funds shall be used for implementing waste volume reduction and recycling requirements of comprehensive plans filed under section 455B.306. The funds shall be distributed to a city, county, or public agency served by the sanitary disposal project. Fees collected by a private agency which provides for the final disposal of solid waste shall be remitted to the city, county, or public agency served by the sanitary disposal project. However, if a private agency is designated to develop and implement the comprehensive plan pursuant to section 455B.306, fees under this paragraph shall be retained by the private agency.

c. For other environmental protection ~~and compliance~~ activities.

d. Each sanitary landfill owner or operator shall submit a return to the department identifying the use of all fees retained under this ~~subsection~~ section including the manner in which the fees were distributed. The return shall be submitted concurrently with the return required under subsection 5.

3. Solid waste disposal facilities with special provisions which limit the site to disposal of construction and demolition waste, landscape waste, coal combustion waste, foundry sand, and solid waste materials approved by the department for lining or capping, or for construction berms, dikes, or roads in a sanitary disposal project or sanitary landfill are exempt from the tonnage fees imposed under this section. However, solid waste disposal facilities under this subsection are subject to the fees imposed pursuant to section 455B.105, subsection 11, paragraph "a". Notwithstanding the provisions of section 455B.105, subsection 11, paragraph "b", the fees collected pursuant to this subsection shall be deposited in the solid waste account as established in section 455E.11, subsection 2, paragraph "a", to be used by the department for the regulation of these solid waste disposal facilities.

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* Subsection 1 not amended

6. A person required to pay fees by this section who fails or refuses to pay the fees imposed by this section or who fails or refuses to provide the return required by this section shall be assessed a penalty of two percent of the fee due for each month the fee or return is overdue. The penalty shall be paid in addition to the fee due.

Sec. 3. Section 455D.3, subsection 3, Code 1997, is amended to read as follows:

3. DEPARTMENTAL MONITORING.

a. By October 31, 1994, a planning area shall submit to the department a solid waste abatement table which is updated through June 30, 1994. By April 1, 1995, the department shall report to the general assembly on the progress that has been made by each planning area on attainment of the July 1, 1994, twenty-five percent goal.

If at any time the department determines that a planning area has met or exceeded the twenty-five percent goal, a planning area shall subtract fifty cents from the total amount of the tonnage fee imposed pursuant to section 455B.310~~, subsection 2~~. The reduction in tonnage fees pursuant to this paragraph shall be taken from that portion of the tonnage fees which would have been allocated for funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph "a", subparagraph (1).

If the department determines that a planning area has failed to meet the July 1, 1994, twenty-five percent goal, the planning area shall, at a minimum, implement the solid waste management techniques as listed in subsection 4. Evidence of implementation of the solid waste management techniques shall be documented in subsequent comprehensive plans submitted to the department.

b. By October 31, 2000, a planning area shall submit to the department, a solid waste abatement table which is updated through June 30, 2000. By April 1, 2001, the department shall report to the general assembly on the progress that has been made by each planning area on attainment of the July 1, 2000, fifty percent goal.

If at any time the department determines that a planning area has met or exceeded the fifty percent goal, the planning area shall subtract fifty cents from the total amount of the tonnage fee imposed pursuant to section 455B.310~~, subsection 2~~. This amount shall be in addition to any amount subtracted pursuant to paragraph "a" of this subsection. The reduction in tonnage fees pursuant to this paragraph shall be taken from that portion of the tonnage fees which would have been allocated to funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph "a", subparagraph (1). Except for fees required under subsection 4, paragraph "a", a planning area failing to meet the fifty percent goal is not required to remit any additional tonnage fees to the department.

Sec. 4. The general assembly reiterates support for the fifty percent waste stream reduction goal stated in section 455D.3.

Sec. 5. The department of natural resources is requested to evaluate, assess, and suggest amendments to the design standards and criteria for nonmunicipal solid waste landfills.

Sec. 6. The environmental protection division of the department of natural resources is requested to implement a permitting fee schedule for the administration of permits to tonnage fee exempt foundry sand and coal combustion residue disposal sites.

Approved May 14, 1998

CHAPTER 1194

UTILITIES — PROPERTY TAX REPLACEMENT AND STATEWIDE PROPERTY TAX

S.F. 2416

AN ACT relating to the replacement of property tax on property associated with electricity and natural gas with excise taxes associated with electricity and natural gas, establishing a statewide property tax on property associated with electricity and natural gas, providing for a special utility property tax levy or tax credit, providing for the Act's retroactive applicability, providing an effective date, and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I — INTRODUCTORY PROVISION

Section 1. LEGISLATIVE FINDINGS. The general assembly finds that with the advent of restructuring of the electric and natural gas utility industry, a competitive environment will replace the current regulated monopoly environment. Currently, utility companies are subject to property taxes which are levied in various amounts with respect to utility property located in areas serviced by the utility companies. If the property tax, as currently levied, continues, the property tax costs in Iowa will become a factor among competitors in the pricing of electricity and natural gas. Moreover, non-Iowa located electricity and natural gas suppliers do not have property in Iowa subject to property tax and to the extent that they are located in a low property tax state, such property tax costs would grant to such non-Iowa suppliers an unfair tax advantage over Iowa-based utility companies.

The general assembly also finds that restructuring may result in the loss of in-lieu-of-tax transfers from surplus funds made by a municipal utility to the city. These transfers take the place of a property tax and are recognized in this Act as such.

Therefore, the general assembly finds that a need exists to replace the current Iowa property tax system levied on electric and natural gas utility companies located in Iowa. However, any replacement tax needs to be revenue neutral so as not to harm the fiscal stability of local governments which depend upon such utility property taxes and municipal transfers, and further, so as to negate tax costs as a factor in a competitive utility industry environment. Additionally, such replacement tax must allow fair and competitive prices for consumers of electric and natural gas services, and minimize the impact on the cost of such services to consumers.

The general assembly, therefore, finds that the replacement tax should be imposed on the generation, transmission, and delivery of electricity and natural gas. Statewide generation and transmission taxes are necessary to ensure that in the event such functions are conducted by stand-alone generation and transmission companies, such companies will continue to contribute to the tax base. However, imposition of a single statewide delivery tax rate would unfairly increase tax costs for some taxpayers while reducing such costs for others. Such a result would impede a competitive environment and disrupt the tax continuity for taxpayers, and has the potential to unnecessarily increase costs for consumers of gas and electricity. Therefore, to maintain tax continuity and tax revenues for local government and to maintain tax continuity and negate tax costs as a factor in a competitive environment for taxpayers and consumers, the delivery tax rates should be fixed by geographic service areas which are designed and structured to accomplish these goals.

The current property tax valuation process for utility companies is complex and time-consuming to administer. The replacement tax eases this administrative burden on state government.

Replacing the current system of property taxes levied on electric and natural gas utility companies located in Iowa with a system of excise taxes associated with electricity and natural gas represents a significant change in the method of taxing electric and natural gas

utility companies. Due to the importance of the revenues generated by these taxes to local taxing districts, the general assembly finds it desirable to implement this new system of taxation in advance of the impending restructuring of the electric and natural gas industry to ensure that the new system of taxation performs as intended.

SUBCHAPTER 1
INTRODUCTORY PROVISIONS

Sec. 2. NEW SECTION. 437A.1 CLASSIFICATION OF CHAPTER.
The provisions of this chapter are classified and designated as follows:
Subchapter 1 Introductory Provisions.
Subchapter 2 Generation, Transmission, and Delivery Taxes.
Subchapter 3 Statewide Property Tax.
Subchapter 4 General Provisions.

Sec. 3. NEW SECTION. 437A.2 PURPOSES.
The purposes of this chapter are to replace property taxes imposed on electric companies, natural gas companies, electric cooperatives, and municipal utilities with a system of taxation which will remove tax costs as a factor in a competitive environment by imposing like generation, transmission, and delivery taxes on similarly situated competitors who generate, transmit, or deliver electricity or natural gas in the same competitive service area, to preserve revenue neutrality and debt capacity for local governments and taxpayers, to preserve neutrality in the allocation and cost impact of any replacement tax among and upon consumers of electricity and natural gas in this state, and to provide a system of taxation which reduces existing administrative burdens on state government.

Sec. 4. NEW SECTION. 437A.3 DEFINITIONS.
As used in this chapter, unless the context otherwise requires:
1. "Assessed value" means the base year assessed value, as adjusted by section 437A.19, subsection 2. "Base year assessed value", for a taxpayer other than an electric company, natural gas company, or electric cooperative, means the value attributable to property identified in section 427A.1, subsection 1, paragraph "h", certified by the department of revenue and finance to the county auditors for the assessment date of January 1, 1997, and the value attributable to property identified in section 427A.1 and section 427B.17, subsection 5, as certified by the local assessors to the county auditors for the assessment date of January 1, 1997.

For taxpayers that are electric companies, natural gas companies, and electric cooperatives, "base year assessed value" means the average of the total of these values for each taxpayer for the assessment dates of January 1, 1993, through January 1, 1997, allocated among taxing districts in proportion to the allocation of the taxpayer's January 1, 1998, assessed value among taxing districts. "Base year assessed value" does not include value attributable to steam-operating property.

2. "Centrally assessed property tax" means property tax imposed with respect to the value of property determined by the director pursuant to section 427.1, subsection 2, section 428.29, chapter 437, and chapter 438, Code 1997, and allocated to electric service and natural gas service. For purposes of this subsection, "natural gas service" means such service provided by natural gas pipelines permitted pursuant to chapter 479.

3. "Consumer" means an end user of electricity or natural gas used or consumed within this state. "Consumer" includes any master-metered facility even though the electricity or natural gas delivered to such facility may ultimately be used by another person. A person to whom electricity or natural gas is delivered by a master-metered facility is not a consumer. A "master-metered facility" means any multi-occupancy premises where units are separately rented or owned and where electricity or natural gas is used in centralized heating, cooling, water-heating, or ventilation systems, where individual metering is impractical,

where the facility is designated for elderly or handicapped persons and utility costs constitute part of the operating cost and are not apportioned to individual units, or where submetering or resale of service was permitted prior to 1966.

4. "Delivery" means the physical transfer of electricity or natural gas to a consumer. Physical transfer to a consumer occurs when transportation of electricity or natural gas ends and such electricity or natural gas becomes available for use or consumption by a consumer.

5. "Director" means the director of revenue and finance.

6. "Electric company" means a person engaged primarily in the production, delivery, service, or sales of electric energy whether formed or organized under the laws of this state or elsewhere. "Electric company" includes a combination natural gas company and electric company. "Electric company" does not include an electric cooperative or a municipal utility.

7. "Electric competitive service area" means an electric service area assigned by the utilities board under chapter 476 as of January 1, 1999, including utility property and facilities described in section 476.23, subsection 3, which were owned and served by the electric company, electric cooperative, or municipal utility serving such area on January 1, 1999.

8. "Electric cooperative" means an electric utility provider formed or organized as an electric cooperative under the laws of this state or elsewhere. An electric cooperative shall also include an incorporated city utility provider. "Generation and transmission electric cooperative" means an electric cooperative which owns both transmission lines and property which is used to generate electricity. "Distribution electric cooperative" means an electric cooperative other than a generation and transmission electric cooperative or a municipal electric cooperative association.

9. "Electric power generating plant" means a nameplate rated electric power generating plant, which produces electric energy from other forms of energy, including all taxable land, buildings, and equipment used in the production of such electric energy.

10. "Incorporated city utility provider" means a corporation with assets worth one million dollars or more which has one or more platted villages located within the territorial limits of the tract of land which it owns, and which provides electricity to ten thousand or fewer customers.

11. "Lease" means a contract between a lessor and lessee pursuant to which the lessee obtains a present possessory interest in tangible property without obtaining legal title in such property. A contract to transmit or deliver electricity or natural gas using operating property within this state is not a lease. "Capital lease" means a lease classified as a capital lease under generally accepted accounting principles.

12. "Local amount" means the first forty-four million four hundred forty-four thousand four hundred forty-five dollars of the acquisition cost of any major addition which is an electric power generating plant and the total acquisition cost of any other major addition.

13. "Local taxing district" means a city, county, community college, school district, or other taxing district, located in this state and authorized to certify a levy on property located within such district for the payment of bonds and interest or other obligations of such district.

14. "Low capacity factor electric power generating plant" means, for any tax year, an electric power generating plant, with the exception of an electric power generating plant owned or leased by an electric company, an electric cooperative, or a municipal utility, which operated during the preceding calendar year at a net capacity factor of twenty percent or less. "Net capacity factor" means net actual generation during the preceding calendar year divided by the product of nameplate capacity times the number of hours the plant was in the active state during the preceding calendar year. Upon commissioning, a plant is in the active state until it is decommissioned. "Net actual generation" means net electrical megawatt hours produced by a plant during the preceding calendar year.

15. "Major addition" means any acquisition on or after January 1, 1998, by a taxpayer, by transfer of ownership, self-construction, or capital lease of any interest in any of the following:

a. A building in this state where the acquisition cost of all interests acquired exceeds ten million dollars.

b. An electric power generating plant where the acquisition cost of all interests acquired exceeds ten million dollars. For purposes of this paragraph, "electric power generating plant" means each nameplate rated electric power generating plant owned solely or jointly by any person or electric power facility financed under the provisions of chapter 28F in which electrical energy is produced from other forms of energy, including all equipment used in the production of such energy through its step-up transformer.

c. Natural gas operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.

d. Any operating property in this state by a person not previously subject to taxation under this chapter.

For purposes of this chapter, the acquisition cost of an asset acquired by capital lease is its capitalized value determined under generally accepted accounting principles.

16. "Municipal electric cooperative association" means an electric cooperative, the membership of which is composed entirely of municipal utilities.

17. "Municipal utility" means all or part of an electric light and power plant system or a natural gas system, either of which is owned by a city, including all land, easements, rights-of-way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the municipal utility.

18. "Natural gas company" means a person that owns, operates, or is engaged primarily in operating or utilizing pipelines for the purpose of distributing natural gas to consumers located within this state, excluding a gas distributing plant or company located entirely within any city and not a part of a pipeline transportation company. "Natural gas company" includes a combination natural gas company and electric company. "Natural gas company" does not include a municipal utility.

19. a. "Natural gas competitive service area" means any of the fifty-two natural gas competitive service areas described as follows:

(1) Each of the following municipal natural gas competitive service areas:

(a) Taylor county, except for those areas of Taylor county which are contained within another municipal natural gas competitive service area as described in this subsection.

(b) The city of Brighton in Washington county and the area within two miles of the city limits plus sections 5, 6, 7, 8, 17, 18, 19, 20, 29, and 30 in Brighton township; sections 19, 30, and 33 in Franklin township; sections 1, 2, 11, 12, 13, 14, 23, 24, 25, and 36 in Dutch Creek township; and sections 25, 26, 35, and 36 in Seventy-Six township.

(c) Davis county.

(d) The city of Brooklyn in Poweshiek county and the area within two miles of the city limits.

(e) The city of Cascade in Dubuque county and the area within two miles of the city limits.

(f) The city of Cedar Falls in Black Hawk county and the area within one mile of the city limits, not including any part of the city of Waterloo.

(g) The city of Clearfield in Taylor county and the area within two miles of the city limits and sections 20, 21, 26, and 27 of Platte township, Grant township in Taylor county, and Grant township in Ringgold county.

(h) The south half of Carroll county and sections 3 and 4 of Orange township in Guthrie county.

(i) Adams county, except those areas of Adams county which are contained within another municipal natural gas competitive service area as defined in this subsection.

(j) The city of Emmetsburg in Palo Alto county and the area within two miles of the city limits.

(k) The city of Everly, in Clay county and the area within two miles of the city limits.

(l) The city of Fairbank and the area within two miles of the city limits plus the area one-quarter mile on either side of the county line road, Highway 281, from Fairbank to the

intersection of Outer Road and Tenth Street, proceeding twenty-eight hundredths of a mile north in Buchanan and Fayette counties.

(m) The city of Gilmore City in Pocahontas and Humboldt counties and the area within two miles of the city limits.

(n) The city of Graettinger in Palo Alto county and the area within two miles of the city limits.

(o) The city of Guthrie Center, in Guthrie county and the area within one mile of the city limits.

(p) The city of Harlan in Shelby county and the area within two miles of the city limits.

(q) The city of Hartley in O'Brien county and the area within one mile of the city limits, except the eastern one-half of section four in Omega township.

(r) The city of Hawarden in Sioux county and the area within two miles of the city limits.

(s) The city of Lake Park plus Silver Lake township in Dickinson county.

(t) Fayette and New Buda townships in Decatur county.

(u) The city of Lenox in Taylor county including section 1 of Platte township in Taylor county and the townships of Carl, Grant, Mercer, Colony, Union, and Prescott in Adams county.

(v) Grand River township in Wayne county.

(w) New Hope township in Union county and Monroe township in Madison county.

(x) Ewoldt and Eden townships in Carroll county and Iowa township in Crawford county.

(y) The city of Montezuma in Poweshiek county and the area within two miles of the city limits plus Jackson township in Poweshiek county except the city of Barnes City, Pleasant Grove and Monroe townships in Mahaska county except the city of Barnes City.

(z) Morning Sun township in Louisa county.

(aa) Wells and Washington townships in Appanoose county.

(ab) The city of Osage in Mitchell county and the area within two miles of the city limits.

(ac) The city of Prescott in Adams county and the area within two miles of the city limits.

(ad) The city of Preston in Jackson county and the area within two miles of the city limits.

(ae) The city of Remsen in Plymouth county and the area within two miles of the city limits.

(af) The city of Rock Rapids in Lyon county and the area within two miles of the city limits.

(ag) The city of Rolfe in Pocahontas county and the area within two miles of the city limits.

(ah) The city of Sabula in Jackson county and the area within two miles of the city limits.

(ai) The city of Sac City in Sac county and the area within two miles of the city limits.

(aj) The city of Sanborn in O'Brien county and the area within two miles of the city limits.

(ak) The city of Sioux Center in Sioux county and the area within two miles of the city limits.

(al) The city of Tipton in Cedar county and the area within two miles of the city limits.

(am) The city of Waukee in Dallas county.

(an) The city of Wayland plus Jefferson and Trenton townships in Henry county.

(ao) Seventy-Six and Lime Creek townships in Washington county except for those areas of Seventy-Six township which are contained within another municipal natural gas competitive service area as defined in this subsection.

(ap) The city of West Bend in Kossuth and Palo Alto counties and the area within two miles of the city limits.

(aq) The city of Whittemore in Kossuth county and the area within two miles of the city limits.

(ar) Scott, Canaan, and Wayne townships in Henry county.

(as) The city of Woodbine in Harrison county and the area within two miles of the city limits.

(at) Nishnabotna township in Crawford county.

(2) The natural gas competitive service area, excluding any municipal natural gas competitive service area described in subparagraph (1) and consisting of Sioux county; Plymouth county; Woodbury county; Ida county; Harrison county; Shelby county; Audubon county; Palo Alto county; Humboldt county; Mahaska county; Scott county; Lyon county except Wheeler, Dale, Liberal, Grant, Midland, and Elgin townships; O'Brien county except Union, Dale, Summit, Highland, Franklin, and Center townships; Cherokee county except Cherokee and Pilot townships; Monona county except Franklin township and the south half of Ashton township; Pottawattamie county except Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships; Mills county except Glenwood and Center townships; Montgomery county except Douglas, Washington, and East townships; Page county except Valley, Douglas, Nodaway, Nebraska, Harlan, East River, Amity, and Buchanan townships; Fremont county except Green, Scott, Sidney, Benton, Washington, and Madison townships; Brighton and Pleasant townships in Cass county; Sac county except Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships; Newell township in Buena Vista county; Calhoun county except Reading township; Denmark township in Emmet county; Kossuth county except Eagle, Grant, Springfield, Hebron, Swea, Harrison, Ledyard, Lincoln, Seneca, Greenwood, Ramsey, and German townships; Webster county except Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Hardin townships; Guthrie county except Grant, Thompson, and Beaver townships; Union township in Union county; Madison county except Ohio and New Hope townships; Warren county except Virginia, Squaw, Liberty, and White Breast townships; Cedar, Union, Bluff Creek, and Pleasant townships in Monroe county; Marion county except Lake Prairie, Knoxville, Summit, and Union townships; Dallas county except Des Moines and Grant townships; Polk county except sections 4, 5, 6, 7, 8, 9, 16, 17, and 18 in Lincoln township and the city of Grimes, and sections 1, 2, 3, 10, 11, 12, 13, 14, and 15 in Union township; Poweshiek, Washington, Mound Prairie, Des Moines, Elk Creek, and Fairview townships in Jasper county; Wright county except Belmond and Pleasant townships; Geneseo township in Cerro Gordo county; Franklin county except Wisner and Scott townships and the city of Coulter; Butler county except Bennezette, Coldwater, Dayton, and Fremont townships; Floyd county except Rock Grove, Rudd, Rockford, Ulster, Scott, and Union townships; Branford township in Chickasaw county; Bremer county except Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships; Perry, Washington, Westburg, and Sumner townships in Buchanan county; Black Hawk county except Big Creek township; Fremont township in Benton county; Wapello county except Washington township; Benton and Steady Run townships in Keokuk county; the city of Barnes City in Poweshiek county; Iowa township in Washington county; Johnson county except Fremont township; Linn county except Grant Spring Grove, Jackson, Boulder, Washington, Monroe township west and north of Otter Creek and County Home Road, Otter Creek, Maine, Buffalo, Fayette, and Clinton townships; Farmington township in Cedar county; Wapsinonoc, Goshen, Moscow, Wilton, and Fulton townships in Muscatine county; and Lee county except Des Moines, Montrose, Keokuk, and Jackson townships.

(3) The natural gas competitive service area, excluding any municipal natural gas competitive service areas described in subparagraph (1) and consisting of that part of Kossuth county not described in subparagraph (2); Lincoln and Buffalo townships in Winnebago county; Worth county except Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships; Cerro Gordo county except Grimes, Pleasant Valley, and Dougherty townships; Rock Grove and Rudd townships in Floyd county; Eden, Camanche, and Hampshire townships and the city of Clinton in Clinton county; and Stacyville and Union townships in Mitchell county.

(4) The natural gas competitive service area, excluding any municipal natural gas service areas described in subparagraph (1) and consisting of Franklin township and the South Half of Ashton township in Monona county; Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships in Pottawattamie county; Glenwood and Center townships in Mills county; Green, Scott, Sidney, Benton, Washington, and Madison townships in Fremont county;

Cass, Bear Grove, Union, Noble, Edna, Victoria, Massena, Lincoln, and Grant townships in Cass county; Glidden township in Carroll county; Summit township in Adair county; Grant township in Guthrie county; Crawford county except Nishnabotna township; Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac township in Sac county; Reading township in Calhoun county; Marshall, Sherman, Roosevelt, Dover, Grant, Lincoln, and Cedar townships in Pocahontas county; Union, Dale, Summit, Highland, Franklin, and Center townships in O'Brien county; the north half of Clay county plus Clay township; Dickinson county; Emmet county except Denmark, Armstrong Grove, and Iowa Lake townships; Greene county except Bristol, Hardin, Jackson, and Grant townships; Boone county except Worth, Colfax, Des Moines, Jackson, Dodge, and Harrison townships; Des Moines and Grant townships in Dallas county; Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Newark townships in Webster county; Clear Lake, Hamilton, Webster, Freedom, Independence, Cass, and Fremont townships in Hamilton county; Ell, Madison, and Ellington townships in Hancock county; Winnebago county except Lincoln and Buffalo townships; Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships in Worth county; Etna township in Hardin county; Lafayette township and the west one-half of Howard township in Story county; the city of Grimes in Polk county; Independence, Malaka, Mariposa, Hickory Grove, Rock Creek, Kellogg, Newton, Sherman, Palo Alto, Buena Vista, and Richland townships in Jasper county; Palermo, Grant, and Fairfield townships in Grundy county; Bennezette, Coldwater, Dayton, and Fremont townships in Butler county; Rockford, Ulster, Scott, and Union townships in Floyd county; St. Ansgar and Mitchell townships in Mitchell county; Howard county; Chickasaw county except Branford township; Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships in Bremer county; Big Creek township in Black Hawk county; Brown township in Linn county; Madison township and the east half of Buffalo township in Buchanan county; Fayette county except Harlan, Fremont, Oran, and Jefferson townships; Winneshiek county; Alamakee county; Clayton county; Delaware county except Adams and Hazel Green townships; Dubuque county; Jones county except Rome, Hale, Oxford, and the east half of Greenfield townships; and Jackson county.

(5) The natural gas competitive service area consisting of Des Moines, Montrose, Keokuk, and Jackson townships in Lee county.

(6) The natural gas competitive service area consisting of the city of Allerton and the area within two miles of the city limits.

(7) The natural gas competitive service area consisting of all of Iowa not contained in any of the other natural gas competitive service areas described in this paragraph.

b. "Township" includes any city or part of a city located within the exterior boundaries of that township.

c. References to city limits contained in this subsection mean those city limits as they existed on January 1, 1999.

20. "Operating property" means all property owned by or leased to an electric company, electric cooperative, municipal utility, or natural gas company, not otherwise taxed separately, which is necessary to and without which the company could not perform the activities of an electric company, electric cooperative, municipal utility, or natural gas company.

21. "Pole miles" means miles measured along the line of poles, structures, or towers carrying electric conductors regardless of the number of conductors or circuits carried, and miles of conduit bank, regardless of number of conduits or ducts, of all sizes and types, including manholes and handholes. "Conduit bank" means a length of one or more underground conduits or ducts, whether or not enclosed in concrete, designed to contain underground cables, including a gallery or cable tunnel for power cables.

22. "Purchasing member" means a municipal utility which purchases electricity from a municipal electric cooperative association of which it is a member.

23. "Replacement tax" means the excise tax imposed on the generation, transmission, delivery, consumption, or use of electricity or natural gas under sections 437A.4, 437A.5, 437A.6, or 437A.7.

24. "Self-generator" means a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, who generates, by means of an on-site facility wholly owned by or leased in its entirety to such person, electricity solely for its own consumption, except for inadvertent unscheduled deliveries to the electric utility furnishing electric service to that self-generator. A person who generates electricity which is consumed by any other person, including any owner, shareholder, member, beneficiary, partner, or associate of the person who generates electricity, is not a self-generator. For purposes of this subsection, "on-site facility" means an electric power generating plant that is wholly owned by or leased in its entirety to a person and used to generate electricity solely for consumption by such person on the same parcel of land on which such plant is located or on a contiguous parcel of land. For purposes of this subsection, "parcel of land" includes each separate parcel of land shown on the tax list.

25. "Statewide amount" means the acquisition cost of any major addition which is not a local amount.

26. "Taxpayer" means an electric company, natural gas company, electric cooperative, municipal utility, or other person subject to the replacement tax imposed under section 437A.4, 437A.5, 437A.6, or 437A.7.

27. "Tax year" means a calendar year beginning January 1 and ending December 31.

28. "Transfer replacement tax" means the tax imposed in a competitive service area of a municipal utility which replaces transfers made by the municipal utility in accordance with section 384.89.

29. "Transmission line" means a line, wire, or cable which is capable of operating at an electric voltage of at least thirty-four and one-half kilovolts.

30. "Utilities board" means the utilities board created in section 474.1.

SUBCHAPTER 2
GENERATION, TRANSMISSION, AND DELIVERY TAXES

Sec. 5. NEW SECTION. 437A.4 REPLACEMENT TAX IMPOSED ON DELIVERY OF ELECTRICITY.

1. A replacement delivery tax is imposed on every person who makes a delivery of electricity to a consumer within this state. The replacement delivery tax imposed by this section is equal to the sum of the following:

a. The number of kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric replacement delivery tax rate in effect for each such electric competitive service area.

b. Where applicable, and in addition to the tax imposed by paragraph "a", the number of kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric transfer replacement tax rate for each such electric competitive service area.

2. If electricity is consumed in this state, whether such electricity is purchased, transferred, or self-generated, and the delivery, purchase, transference, or self-generation of such electricity is not subject to the tax imposed under subsection 1, a tax is imposed on the consumer at the rates prescribed under subsection 1.

3. Electric replacement delivery tax rates shall be calculated by the director for each electric competitive service area as follows:

a. The director shall determine the average centrally assessed property tax liability allocated to electric service of each taxpayer, other than a municipal utility, principally serving an electric competitive service area and of each generation and transmission electric cooperative for the assessment years 1993 through 1997 based on property tax payments made. In the case of a municipal utility, the average centrally assessed property tax liability allocated to electric service is the centrally assessed property tax liability of such municipal utility allocated to electric service for the 1997 assessment year based on property tax payments made.

b. The director shall determine, for each taxpayer, the number of kilowatt-hours of electricity generated which would have been subject to taxation under section 437A.6, the number of pole miles which would have been subject to taxation under section 437A.7, and the number of kilowatt-hours of electricity delivered to consumers which would have been subject to taxation under this section in calendar year 1998, had such sections been in effect for calendar year 1998.

c. The director shall determine the electric generation, transmission, and delivery tax components of the average centrally assessed property tax liability determined in paragraph "a" for each electric competitive service area as follows:

(1) The electric generation tax component for an electric competitive service area shall be computed by multiplying the tax rate set forth in section 437A.6 by the number of kilowatt-hours of electricity generated by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under section 437A.6 in calendar year 1998, had that section been in effect for calendar year 1998.

(2) The electric transmission tax component for an electric competitive service area shall be computed by multiplying the tax rates set forth in section 437A.7 by the number of pole miles for each line voltage owned or leased by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under section 437A.7 on December 31, 1998, had that section been in effect for calendar year 1998.

(3) The electric delivery tax component for an electric competitive service area shall be the average centrally assessed property tax liability allocated to electric service of the taxpayer principally serving such electric competitive service area less the electric generation and transmission tax components computed for such electric competitive service area.

(4) The electric delivery tax component for each electric competitive service area shall be adjusted, as necessary, to assign the excess property tax liability of each generation and transmission electric cooperative to the electric competitive service areas principally served on January 1, 1999, by its distribution electric cooperative members and by those municipal utilities which were purchasing members of a municipal electric cooperative association that is a member of the generation and transmission electric cooperative. Such assignment of excess property tax liability of each such generation and transmission electric cooperative shall be made in proportion to the appropriate wholesale rate charges in calendar year 1998 to its distribution electric cooperative members and municipal electric cooperative association members which purchased electricity from the generation and transmission electric cooperative. Any amount assignable to a municipal electric cooperative association shall be reassigned to the electric competitive service areas served by such association's purchasing municipal utility members and shall be allocated among them in proportion to the appropriate wholesale rate charges in calendar year 1998 by such municipal electric cooperative association to its purchasing municipal utility members. For purposes of this subsection, "excess property tax liability" means the amount by which the average centrally assessed property tax liability for the assessment years 1993 through 1997 of a generation and transmission electric cooperative exceeds the tentative generation and transmission taxes which would have been imposed on such generation and transmission electric cooperative under sections 437A.6 and 437A.7 for calendar year 1998, had such taxes been in effect for calendar year 1998. An electric cooperative described in section 437A.7, subsection 2, paragraph "c", is deemed not to have any excess property tax liability.

d. The director shall determine an electric delivery tax rate for each electric competitive service area by dividing the electric delivery tax component for the electric competitive service area, as adjusted by paragraph "c", subparagraph (4), by the number of kilowatt-hours delivered by the taxpayer principally serving the electric competitive service area to consumers in calendar year 1998, which would have been subject to taxation under this section if this section had been in effect for calendar year 1998.

4. Municipal electric transfer replacement tax rates shall be calculated annually by the city council of each city located within an electric competitive service area served by a municipal utility as of January 1, 1999, by dividing the average annual dollar amount of

electric related transfers made pursuant to section 384.89 by the municipal utility serving the electric competitive service area, other than those transfers declared exempt from the transfer replacement tax by the city council, plus the municipal transfer replacement tax received by the municipality, if any, during the five immediately preceding calendar years by the number of kilowatt-hours of electricity delivered to consumers in the electric competitive service area during the immediately preceding calendar year which were subject to taxation under this section or which would have been subject to taxation under this section had it been in effect for such calendar year. The city council on its own motion, or in the case of a municipal utility governed by a board of trustees under chapter 388 upon a resolution of the board of trustees requesting such action, may declare any transfer or part of such transfer to be exempt from the transfer replacement tax under this section. Such rates shall be calculated and reported to the director on or before August 31 of each tax year.

5. A municipal utility taxpayer is entitled to a credit against the municipal electric transfer replacement tax equal to the average amount of electric-related transfers made by such municipal utility taxpayer under section 384.89, other than those transfers declared exempt from transfer replacement tax by the city council, during the preceding five calendar years.

6. The following are not subject to the replacement delivery tax imposed by subsections 1 and 2:

a. Delivery of electricity generated by a low capacity factor electric power generating plant.

b. Delivery of electricity to a city from such city's municipal utility, provided such electricity is used by the city for the public purposes of the city.

c. Electricity consumed by a state university or university of science and technology, provided such electricity was generated by property described in section 427.1, subsection 1.

d. Electricity generated and consumed by a self-generator.

7. Notwithstanding subsection 1, the electric delivery tax rate applied to kilowatt-hours of electricity delivered by a taxpayer to utility property and facilities which are placed in service on or after January 1, 1999, and are owned by or leased to and initially served by such taxpayer shall be the electric delivery tax rate in effect for the electric competitive service area principally served by such utility property and facilities even though such utility property and facilities may be physically located in another electric competitive service area.

8. If for any tax year after calendar year 1998, the total taxable kilowatt-hours of electricity required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs "a" and "b", with respect to any electric competitive service area, increases or decreases by more than the threshold percentage from the average of the base year amounts for that electric competitive service area during the immediately preceding five calendar years, the tax rate imposed under subsection 1, paragraph "a", and subsection 2, for that tax year shall be recalculated by the director for that electric competitive service area so that the total of the replacement electric delivery taxes required to be reported pursuant to section 437A.8, subsection 1, paragraph "e", for that electric competitive service area with respect to the tax imposed under subsection 1, paragraph "a", and subsection 2, shall be as follows:

a. If the number of kilowatt-hours of electricity required to be reported increased by more than the threshold percentage, one hundred two percent of such taxes required to be reported by taxpayers for that electric competitive service area for the immediately preceding tax year.

b. If the number of kilowatt-hours of electricity required to be reported decreased by more than the threshold percentage, ninety-eight percent of such taxes required to be reported by taxpayers for that electric competitive service area for the immediately preceding tax year.

For purposes of paragraphs "a" and "b", in computing the tax rate under subsection 1, paragraph "a", and subsection 2, for tax year 1999, the director shall use the electric delivery tax component computed for the electric competitive service area pursuant to subsection 3, paragraph "c", in lieu of the taxes required to be reported for that electric competitive service area for the immediately preceding tax year.

The threshold percentage shall be determined annually and shall be eight percent for any electric competitive service area in which the average of the base year amounts for the preceding five calendar years does not exceed three billion kilowatt-hours, and ten percent for all other electric competitive service areas.

Any such recalculation of an electric delivery tax rate, if required, shall be made and the new rate shall be published in the Iowa administrative bulletin by the director by no later than May 31 following the tax year. The director shall adjust the tentative replacement tax imposed by subsection 1, paragraph "a", and subsection 2 required to be shown on any affected taxpayer's return pursuant to section 437A.8, subsection 1, paragraph "e", to reflect the adjusted delivery tax rate for the tax year, and report such adjustment to the affected taxpayer on or before June 30 following the tax year. The new electric delivery tax rate shall apply prospectively, until such time as further adjustment is required.

For purposes of this section, "base year amount" means for calendar years prior to tax year 1999, the sum of the kilowatt-hours of electricity delivered to consumers within an electric competitive service area by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under this section had this section been in effect for those years; and for tax years after calendar year 1998, the taxable kilowatt-hours of electricity required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs "a" and "b", with respect to any electric competitive service area.

9. a. After calendar year 1998, if a municipal electric cooperative association ceases to purchase electricity from the generation and transmission electric cooperative from which it purchased electricity in 1998, and for a period of one hundred eighty days after such purchases cease, no municipal utility member of such association purchases electricity from such generation and transmission electric cooperative, the excess property tax liability assigned pursuant to subsection 3, paragraph "c", subparagraph (4), to the electric competitive service areas principally served by the municipal utility members on January 1, 1999, shall be removed from the electric delivery tax component of those electric competitive service areas and the electric delivery tax rate for those electric competitive service areas shall be recalculated to reflect that change.

b. After calendar year 1998, if a municipal utility ceases to be a purchasing member of a municipal electric cooperative association which purchased electricity in calendar year 1998 from a generation and transmission electric cooperative, and for a period of one hundred eighty days after the municipal utility ceases to be a purchasing member of such association such municipal utility does not purchase electricity from such generation and transmission electric cooperative, the excess property tax liability assigned pursuant to subsection 3, paragraph "c", subparagraph (4), to the electric competitive service area principally served by the municipal utility on January 1, 1999, shall be removed from the electric delivery tax component of those electric competitive service areas and the electric delivery tax rate for those electric competitive service areas shall be recalculated to reflect that change.

c. If a recalculation has previously been made by the director pursuant to subsection 8 for an electric competitive service area described in this subsection, the recalculation required by this subsection shall be made by the director by modifying the most recent recalculation under subsection 8 to eliminate the excess property tax liability originally allocated to such electric competitive service area under subsection 3, paragraph "c", subparagraph (4).

d. Any recalculation required by this subsection shall be made and the new rate shall be published in the Iowa administrative bulletin by the director by May 31 of the calendar year during which the events described in paragraphs "a" and "b" are reported as provided in section 437A.8, subsection 1, paragraph "f". The new electric delivery tax rate shall be effective January 1 of the tax year in which it is published and shall apply prospectively, until such time as further adjustment is required.

10. The electric delivery tax rate in effect for each electric competitive service area shall be published by the director in the Iowa administrative bulletin on or before November 30, 1999, and annually after that date, during the last quarter of the tax year.

Sec. 6. NEW SECTION. 437A.5 REPLACEMENT TAX IMPOSED ON DELIVERY OF NATURAL GAS.

1. A replacement delivery tax is imposed on every person who makes a delivery of natural gas to a consumer within this state. The replacement delivery tax imposed by this section shall be equal to the sum of the following:

a. The number of therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the natural gas delivery tax rate in effect for each such natural gas competitive service area.

b. Where applicable, and in addition to the tax imposed by paragraph "a", the number of therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the municipal natural gas transfer replacement tax rate for each such natural gas competitive service area.

2. If natural gas is consumed in this state, whether such natural gas is purchased or transferred, and the delivery, purchase, or transference of such natural gas is not subject to the tax imposed under subsection 1, a tax is imposed on the consumer at the rates prescribed under subsection 1.

3. Natural gas delivery tax rates shall be calculated by the director for each natural gas competitive service area as follows:

a. The director shall determine the average centrally assessed property tax liability allocated to natural gas service of each taxpayer, other than a municipal utility, principally serving a natural gas competitive service area for the assessment years 1993 through 1997 based on property tax payments made. In the case of a municipal utility, the average centrally assessed property tax liability allocated to natural gas service is the centrally assessed property tax liability of such municipal utility allocated to natural gas service for the 1997 assessment year based on property tax payments made. For purposes of this subsection, taxpayer does not include a pipeline company defined in section 479A.2.

b. The director shall determine for each taxpayer the number of therms of natural gas delivered to consumers which would have been subject to taxation under this section in calendar year 1998 had this section been in effect for calendar year 1998.

c. The director shall determine a natural gas delivery tax rate for each natural gas competitive service area by dividing the average centrally assessed property tax liability allocated to natural gas service of the taxpayer principally serving the natural gas competitive service area by the number of therms of natural gas delivered by such taxpayer to consumers in calendar year 1998 which would have been subject to taxation under this section had such section been in effect for calendar year 1998.

4. Municipal natural gas transfer replacement tax rates shall be calculated annually by the city council of each city located within a natural gas competitive service area served by a municipal utility as of January 1, 1999, by dividing the average annual dollar amount of natural gas related transfers made pursuant to section 384.89 by the municipal utility serving the natural gas competitive service area, other than those transfers declared exempt from the transfer replacement tax by the city council, plus the municipal transfer replacement tax received by the municipality, if any, during the five immediately preceding calendar years, by the number of therms of natural gas delivered to consumers in the natural gas competitive service area during the immediately preceding calendar year which were subject to taxation under this section or which would have been subject to taxation under this section had it been in effect for such calendar year. The city council on its own motion, or in the case of a municipal utility governed by a board of trustees under chapter 388 upon a resolution of the board of trustees requesting such action, may declare any transfer or part of such transfer to be exempt from the transfer replacement tax under this section. Such rates shall be calculated and reported to the director on or before August 31 of each tax year.

5. A municipal utility taxpayer is entitled to a credit against the municipal natural gas transfer replacement tax equal to the average amount of natural gas related transfers made by such municipal utility taxpayer under section 384.89, other than those transfers declared exempt from transfer replacement tax by the city council, during the preceding five calendar years.

6. Notwithstanding subsection 1, the natural gas delivery tax rate applied to therms of natural gas delivered by a taxpayer to utility property and facilities which are placed in service on or after January 1, 1999, and which are owned by or leased to and initially served by such taxpayer shall be the natural gas delivery tax rate in effect for the natural gas competitive service area principally served by such utility property and facilities even though such utility property and facilities may be physically located in another natural gas competitive service area.

7. Delivery of natural gas to a city from such city's municipal utility is not subject to the replacement delivery tax imposed under subsection 1, paragraph "a", and subsection 2, provided such natural gas is used by the city for the public purposes of the city.

Section 437A.5, subsection 2, does not apply to natural gas consumed by a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, acquired by means of facilities owned by or leased to such person on January 1, 1999, which were physically attached to pipelines that are not permitted pursuant to chapter 479 and used by such person for the purpose of bypassing the local natural gas company or municipal utility.

8. If, for any tax year after calendar year 1998, the total taxable therms of natural gas required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs "a" and "b", with respect to any natural gas competitive service area increases or decreases by more than the threshold percentage from the average of the base year amounts for that natural gas competitive service area during the immediately preceding five calendar years, the tax rate imposed under subsection 1, paragraph "a", and subsection 2 for that tax year shall be recalculated by the director for that natural gas competitive service area so that the total of the replacement natural gas delivery taxes required to be reported pursuant to section 437A.8, subsection 1, paragraph "e", for that natural gas competitive service area with respect to the tax imposed under subsection 1, paragraph "a", and subsection 2 shall be as follows:

a. If the number of therms of natural gas required to be reported increased by more than the threshold percentage, one hundred two percent of such taxes required to be reported by taxpayers for that natural gas competitive service area for the immediately preceding tax year.

b. If the number of therms of natural gas required to be reported decreased by more than the threshold percentage, ninety-eight percent of such taxes required to be reported by taxpayers for that natural gas competitive service area for the immediately preceding tax year.

c. For purposes of paragraphs "a" and "b", in computing the tax rate under subsection 1, paragraph "a", and subsection 2 for calendar year 1999, the director shall use the average centrally assessed property tax liability allocated to natural gas service computed for the natural gas competitive service area pursuant to subsection 3, paragraph "a", in lieu of the taxes required to be reported for that natural gas competitive service area for the immediately preceding tax year.

The threshold percentage shall be determined annually and shall be eight percent for any natural gas competitive service area in which the average of the base year amounts for the preceding five calendar years does not exceed two hundred fifty million therms, and ten percent for all other natural gas competitive service areas.

Recalculation of a natural gas delivery tax rate, if required, shall be made and the new rate published in the Iowa administrative bulletin by the director by no later than May 31 following the tax year. The director shall adjust the tentative replacement tax imposed by subsection 1, paragraph "a", and subsection 2 required to be shown on any affected taxpayer's return pursuant to section 437A.8, subsection 1, paragraph "e", to reflect the adjusted delivery tax rate for the tax year, and report such adjustment to the affected taxpayer on or before June 30 following the tax year. The new natural gas delivery tax rate shall apply prospectively, until such time as further adjustment is required.

For purposes of this subsection, "base year amount" means for calendar years prior to tax year 1999, the sum of the therms of natural gas delivered to consumers within a natural gas

competitive service area by the taxpayer principally serving such natural gas competitive service area which would have been subject to taxation under this section had this section been in effect for those years; and for tax years after calendar year 1998, the taxable therms of natural gas required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs "a" and "b", with respect to any natural gas competitive service area.

9. The natural gas delivery tax rate in effect for each natural gas competitive service area shall be published by the director in the Iowa administrative bulletin on or before November 30, 1999, and annually after that date, during the last quarter of the tax year.

Sec. 7. NEW SECTION. 437A.6 REPLACEMENT TAX IMPOSED ON ELECTRIC GENERATION.

1. A replacement generation tax of six hundredths of a cent per kilowatt-hour of electricity generated within this state during the tax year is imposed on every person generating electricity, except electricity generated by the following:

a. A low capacity factor electric power generating plant.

b. Facilities owned by or leased to a municipal utility when devoted to public use and not held for pecuniary profit, except facilities of a municipally owned electric utility held under joint ownership or lease and facilities of an electric power facility financed under chapter 28F.

c. Wind energy conversion property subject to section 427B.26.

d. Methane gas conversion property subject to section 427.1, subsection 29.

e. Facilities owned by or leased to a state university or university of science and technology, to the extent electricity generated by such facilities is consumed exclusively by such state university or university of science and technology.

f. On-site facilities wholly owned by or leased in their entirety to a self-generator.

2. For purposes of this section, if a generation facility is jointly owned or leased, the taxpayer shall compute the number of kilowatt-hours of electricity subject to the replacement generation tax by multiplying the taxpayer's percentage interest in the jointly held generation facility by the number of kilowatt-hours of electricity generated.

Sec. 8. NEW SECTION. 437A.7 REPLACEMENT TAX IMPOSED ON ELECTRIC TRANSMISSION.

1. A replacement transmission tax is imposed on every person owning or leasing transmission lines within this state and shall be equal to the sum of all of the following:

a. Five hundred fifty dollars per pole mile of transmission line owned or leased by the taxpayer not exceeding one hundred kilovolts.

b. Three thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred kilovolts but not exceeding one hundred fifty kilovolts.

c. Seven hundred dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred fifty kilovolts but not exceeding three hundred kilovolts.

d. Seven thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than three hundred kilovolts.

The replacement transmission tax shall be calculated on the basis of pole miles of transmission line owned or leased by the taxpayer on the last day of the tax year.

2. The following shall not be subject to the replacement transmission tax:

a. Transmission lines owned by or leased to a municipal utility when devoted to public use and not for pecuniary profit, except transmission lines of a municipally owned electric utility held under joint ownership and transmission lines of an electric power facility financed under chapter 28F.

b. Transmission lines owned by or leased to a lessor when the lessee or sublessee of such transmission lines is subject to the replacement transmission tax.

c. Any electric cooperative which owns, leases, or owns and leases in total more than fifty pole miles and less than seven hundred fifty pole miles of transmission lines in this state. Chapter 437 shall apply to such electric cooperatives.

d. Transmission lines owned by or leased to a state university or university of science and technology, provided such transmission lines are used exclusively for the transmission of electricity consumed by such state university or university of science and technology.

e. Transmission lines owned by or leased to a person, other than a public utility, for which a franchise is not required under chapter 478.

3. For purposes of this section, if a transmission line is jointly owned or leased, the taxpayer shall compute the number of pole miles subject to the replacement transmission tax by multiplying the taxpayer's percentage interest in the jointly held transmission lines by the number of pole miles of such lines.

Sec. 9. NEW SECTION. 437A.8 RETURN AND PAYMENT REQUIREMENTS — RATE ADJUSTMENTS.

1. Each taxpayer, on or before February 28 following a tax year, shall file with the director a return including, but not limited to, the following information:

a. The total taxable kilowatt-hours of electricity delivered by the taxpayer to consumers within each electric competitive service area during the tax year, and the total taxable therms of natural gas delivered by the taxpayer to consumers within each natural gas competitive service area during the tax year.

b. The total kilowatt-hours of electricity consumed by the taxpayer within each electric competitive service area during the tax year subject to tax under section 437A.4, subsection 2, and the total therms of natural gas consumed by the taxpayer within each natural gas competitive service area during the tax year subject to tax under section 437A.5, subsection 2.

c. The total taxable kilowatt-hours of electricity generated by the taxpayer in Iowa during the tax year.

d. The total taxable pole miles of electric transmission lines in Iowa, by kilovolt, owned or leased by the taxpayer on the last day of the tax year.

e. The tentative replacement taxes imposed by section 437A.4, subsection 1, paragraph "a", section 437A.4, subsection 2, section 437A.5, subsection 1, paragraph "a", section 437A.5, subsection 2, and sections 437A.6 and 437A.7, due for the tax year.

f. For purposes of a municipal utility which is a member of a municipal electric cooperative association, the occurrence on or before September 1 of the preceding calendar year of an event described in section 437A.4, subsection 9, paragraph "a" or "b", and the date on which the one-hundred-eighty-day requirement under such paragraph was met.

2. Each taxpayer subject to a municipal transfer replacement tax, on or before February 28 following a tax year, shall file with the chief financial officer of each city located within an electric or natural gas competitive service area served by a municipal utility as of January 1, 1999, a return including, but not limited to, the following information:

a. The total taxable kilowatt-hours of electricity delivered by the taxpayer within each electric competitive service area described in section 437A.4, subsection 4, during the tax year and the total taxable therms of natural gas delivered by the taxpayer within each natural gas competitive service area described in section 437A.5, subsection 4, during the tax year.

b. For a municipal utility taxpayer, the total transfers made by the taxpayer under section 384.89 within each competitive service area during the preceding calendar year, allocated between electric-related transfers and natural gas-related transfers and total credits described in sections 437A.4, subsection 5, and 437A.5, subsection 5.

c. The transfer replacement taxes imposed by sections 437A.4, subsection 1, paragraph "b", and 437A.5, subsection 1, paragraph "b", due for the tax year.

3. A return shall be signed by an officer, or other person duly authorized by the taxpayer, and must be certified as correct and in accordance with forms and rules prescribed by the director in the case of a return filed pursuant to subsection 1, and in accordance with forms and rules prescribed by the chief financial officer of the city in the case of a return filed pursuant to subsection 2.

4. At the time of filing the return required by subsection 1 with the director, the taxpayer shall calculate the tentative replacement tax due for the tax year. The director shall compute any adjustments to the replacement tax required by subsection 7 and by section 437A.4, subsection 8, and section 437A.5, subsection 8, and notify the taxpayer of any such adjustments in accordance with the requirements of such provisions. The director and the department of management shall compute the allocation of replacement taxes among local taxing districts and report such allocations to county treasurers pursuant to section 437A.15. Based on such allocations, the treasurer of each county shall notify each taxpayer on or before August 31 following a tax year of its replacement tax obligation to the county treasurer. On or before September 30, 2000, and on or before September 30 of each subsequent year, the taxpayer shall remit to the county treasurer of each county to which such replacement tax is allocated pursuant to section 437A.15, one-half of the replacement tax so allocated, and on or before the succeeding March 31, the taxpayer shall remit to the county treasurers the remaining replacement tax so allocated. If notification of a taxpayer's replacement tax obligation is not mailed by a county treasurer on or before August 31 following a tax year, such taxpayer shall have thirty days from the date the notification is mailed to remit one-half of the replacement tax otherwise required by this subsection to be remitted to such county treasurer on or before September 30. If a taxpayer fails to timely remit replacement taxes as provided in this subsection, the county treasurer of each affected county shall notify the director of such failure.

5. At the time of filing the return required by subsection 2, the taxpayer shall calculate the municipal transfer replacement tax due for the tax year. Municipal transfer replacement taxes shall be paid to the chief financial officer of the city to which the taxes are allocated at such time and place as directed by the city council.

6. Notwithstanding subsections 1 through 5, a taxpayer shall not be required to file a return otherwise required by this section or remit any replacement tax for any tax year in which the taxpayer's replacement tax liability before credits is three hundred dollars or less.

7. Following the determination of electric and natural gas delivery tax rates by the director pursuant to section 437A.4, subsection 3, and section 437A.5, subsection 3, if an adjustment resulting from a taxpayer appeal is made to taxes levied and paid by a taxpayer with respect to any of the assessment years 1993 through 1997 used in determining such rates, the director shall recalculate the delivery tax rate for any affected electric or natural gas competitive service area to reflect the impact of such adjustment as if such adjustment had been reflected in the initial determination of average centrally assessed property tax liability allocated to electric or natural gas service pursuant to section 437A.4, subsection 3, paragraph "a", and section 437A.5, subsection 3, paragraph "a". Rate recalculations shall be made and published in the Iowa administrative bulletin by the director on or before March 31 following the calendar year in which a final determination of the adjustment is made. Taxpayers shall report to the director any increase or decrease in the tentative replacement tax required to be shown to be due pursuant to subsection 1, paragraph "e", for any tax year with the return for the year in which the recalculated tax rates which gave rise to the adjustment are published in the Iowa administrative bulletin. The director and the department of management shall redetermine the allocation of replacement taxes pursuant to section 437A.15 for each affected tax year. If a taxpayer has overpaid replacement taxes, the overpayment shall be reported by the director to such taxpayer and to the appropriate county treasurers and shall be a credit against the replacement taxes owed by such taxpayer for the year in which the recalculated rates which gave rise to the overpayment are published in the Iowa administrative bulletin. If a taxpayer has overpaid centrally assessed property taxes for assessment years prior to tax year 1999, such overpayment shall be a credit against replacement taxes owed by such taxpayer for the year in which the overpayment is determined. Unused credits may be carried forward and used to reduce future replacement tax liabilities until exhausted.

Sec. 10. NEW SECTION. 437A.9 FAILURE TO FILE RETURN — INCORRECT RETURN.

1. As soon as practicable after a return required by section 437A.8, subsection 1, is filed, and in any event within three years after such return is filed, the director shall examine the return, determine the tax due if the return is found to be incorrect, and give notice to the taxpayer of the determination as provided in subsection 2. The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade any tax or in the case of a failure to file a return. The chief financial officer of a city shall have the same authority as is granted to the director under this section with respect to a return filed pursuant to section 437A.8, subsection 2.

2. If a return required by section 437.8,* subsection 1, is not filed, or if such return when filed is incorrect or insufficient and the taxpayer fails to file a corrected or sufficient return within twenty days after such return is required by notice from the director, the director shall determine the amount of tax due from information as the director may be able to obtain and, if necessary, may estimate the tax due on the basis of external indices. The director shall give notice of the determination to the taxpayer liable for the tax and to the county treasurers to whom the tax is owed. The determination shall fix the tax unless the taxpayer against whom it is levied, within sixty days after notice of the determination, applies to the director for a hearing. At the hearing evidence may be offered to support the determination or to prove that it is incorrect. After the hearing the director shall give notice of the decision to the person liable for the tax and to the county treasurers to whom the tax is owed.

3. The three-year period of limitation provided in subsection 1 may be extended by the taxpayer by signing a waiver agreement form provided by the department. The agreement shall stipulate the period of extension and the tax period to which the extension applies. The agreement shall also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

Sec. 11. NEW SECTION. 437A.10 JUDICIAL REVIEW.

1. Judicial review of the actions of the director may be sought pursuant to chapter 17A, the Iowa administrative procedure Act.

2. For cause and upon a showing by the director that collection of the tax in dispute is in doubt, the court may order the petitioner to file with the clerk of the district court a bond for the use of the appropriate local taxing districts, with sureties approved by the clerk of the district court, in the amount of the tax appealed from, conditioned upon the performance by the petitioner of any orders of the court.

3. An appeal may be taken by the taxpayer or the director to the supreme court irrespective of the amount involved.

4. A person aggrieved by a decision of the chief financial officer of a city under this chapter may seek review by writ of certiorari within thirty days of the decision sought to be reviewed.

Sec. 12. NEW SECTION. 437A.11 LIEN — ACTIONS AUTHORIZED.

Whenever a taxpayer who is liable to pay a tax imposed by subchapter 2 refuses or neglects to pay such tax, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue, shall be a lien in favor of the chief financial officer of the city or the county treasurer to which the tax is owed upon all property and rights to property, whether real or personal, belonging to the taxpayer. The lien shall be prior to and superior over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer, without the necessity of recording the lien. The requirement for recording, as applied to the tax imposed by subchapter 2, shall apply only to a lien upon real property. The lien may be preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in a county, by the county treasurer to which replacement tax is owed by filing with the recorder of the county in which the real property is located a notice

* Section 437A.8 probably intended

of the lien. For purposes of the replacement tax collected by a city, the lien may be preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in the county, by the chief financial officer of the city to which replacement tax is owed by filing with the recorder of the county in which the real property is located a notice of the lien.

The county recorder of each county shall prepare and keep in the recorder's office a book to be known as the index of replacement tax liens, so ruled as to show in appropriate columns under the names of taxpayers arranged alphabetically, all of the following:

1. The name of the taxpayer.
2. The name of the county treasurer and county or the name of the chief financial officer and city as claimant.
3. Time the notice of lien was received.
4. Date of notice.
5. Amount of lien then due.
6. Date of assessment.
7. Date when the lien is satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve such notice, and shall promptly record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

The county treasurer or chief financial officer of the city shall pay a recording fee as provided in section 331.604, for the recording of the lien, or for its satisfaction.

Upon the payment of the replacement tax as to which a county treasurer or chief financial officer of a city has filed notice with a county recorder, the county treasurer or chief financial officer of the city shall promptly file with the recorder a satisfaction of the replacement tax. The recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

Section 445.3 applies with respect to the replacement taxes and penalties imposed by this chapter, except for the provisions limiting the commencement of actions.

Sec. 13. NEW SECTION. 437A.12 SERVICE OF NOTICE.

1. A notice authorized or required under this chapter may be given by mailing the notice to the taxpayer, addressed to the taxpayer at the address given in the last return filed by the taxpayer pursuant to this chapter, or if no return has been filed, then to the most recent address of the taxpayer obtainable. The mailing of the notice is presumptive evidence of the receipt of the notice by the taxpayer to whom the notice is addressed. A period of time within which some action must be taken for which notice is provided under this section commences to run from the date of mailing of the notice.

2. There is no limitation for the enforcement of a civil remedy pursuant to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty due under this chapter.

Sec. 14. NEW SECTION. 437A.13 PENALTIES — OFFENSES — LIMITATION.

1. A taxpayer is subject to the penalty provisions in section 421.27 with respect to any replacement tax due under this chapter. A taxpayer shall also pay interest on the delinquent replacement tax at the rate in effect under section 421.7 for each month computed from the date the payment was due, counting each fraction of a month as an entire month. The penalty and interest shall be paid to the county treasurer, or in the case of penalty and interest associated with a municipal transfer replacement tax to the city financial officer, and shall be disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as provided for unpaid replacement tax under this chapter.

2. A taxpayer, or officer, member, or employee of the taxpayer, who willfully attempts to evade the replacement tax imposed or the payment of the replacement tax is guilty of a class "D" felony.

3. The issuance of a certificate by the director or a county treasurer stating that a replacement tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to this chapter is prima facie evidence of such failure.

4. A taxpayer, or officer, member, or employee of the taxpayer, required to pay a replacement tax, or required to make, sign, or file an annual return or supplemental return, who willfully makes a false or fraudulent annual return, or who willfully fails to pay at least ninety percent of the replacement tax or willfully fails to make, sign, or file the annual return, as required, is guilty of a fraudulent practice.

5. For purposes of determining the place of trial for a violation of this section, the situs of an offense is in the county of the residence of the taxpayer, officer, member, or employee of the taxpayer charged with the offense, unless the taxpayer, officer, member, or employee of the taxpayer is a nonresident of this state or the residence cannot be established, in which event the situs of the offense is in Polk county.

6. Prosecution for an offense specified in this section shall be commenced within six years after the commission of the offense.

Sec. 15. NEW SECTION. 437A.14 CORRECTION OF ERRORS — REFUNDS OR CREDITS OF REPLACEMENT TAX PAID — INFORMATION CONFIDENTIAL — PENALTY.

1. a. If an amount of replacement tax, penalty, or interest has been paid which was not due under this chapter, a city's chief financial officer or county treasurer to whom such erroneous payment was made shall do one of the following:

(1) Credit the amount of the erroneous payment against any replacement tax due, or to become due, from the taxpayer on the books of the city or county.

(2) Refund the amount of the erroneous payment to the taxpayer.

b. Claims for refund or credit of replacement taxes paid shall be filed with the director. A claim for refund or credit that is not filed with the director within three years after the replacement tax payment upon which a refund or credit is claimed became due, or one year after the replacement tax payment was made, whichever time is later, shall not be allowed. A claim for refund or credit of tax alleged to be unconstitutional not filed with the director within ninety days after the replacement tax payment upon which a refund or credit is claimed became due shall not be allowed. As a precondition for claiming a refund or credit of alleged unconstitutional taxes, such taxes must be paid under written protest which specifies the particulars of the alleged unconstitutionality. Claims for refund or credit may only be made by, and refunds or credits may only be made to, the person responsible for paying the replacement tax, or such person's successors. The director shall notify affected county treasurers of the acceptance or denial of any refund claim. Section 421.10 applies to claims denied by the director.

2. It is unlawful for any present or former officer or employee of the state to divulge or to make known in any manner to any person the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area disclosed on a tax return, return information, or investigative or audit information. A person who violates this section is guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person, in addition to any other penalty, shall also be dismissed from office or discharged from employment. This section does not prohibit turning over to duly authorized officers of the United States or tax officials of other states such kilowatt-hours or therms pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate or pursuant to a reciprocal agreement with another state.

3. Unless otherwise expressly permitted by a section referencing this chapter, the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area shall not be divulged to any person or entity, other than the taxpayer, the department, or the internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department. A subpoena, order, or process which requires the department to produce such information to a

person or entity, other than the taxpayer, the department, or internal revenue service, for use in a nontax proceeding is void.

4. Notwithstanding subsections 2 and 3, the chief financial officer of any local taxing district and any designee of such officer shall have access to any computations made by the director pursuant to the provisions of this chapter, and any tax return or other information used by the director in making such computations, which affect the replacement tax owed by any such taxpayer.

Notwithstanding this section, providing information relating to the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area to the task force established in section 437A.15, subsection 7, or to the study committee established in section 476.6, subsection 23, is not a violation of this section.

5. Local taxing district employees are deemed to be officers and employees of the state for purposes of subsection 2.

6. Claims for refund or credit of municipal transfer replacement tax shall be filed with the appropriate city's chief financial officer. Subsection 1 applies with respect to the transfer replacement tax and the city's chief financial officer shall have the same authority as is granted to the director under this section with respect to a return filed pursuant to section 437A.8, subsection 2.

7. Claims for refund or credit of special utility property tax levies shall be filed with the appropriate county treasurer. Subsection 1 applies with respect to the special utility property tax levy and the county treasurer shall have the same authority as is granted to the director under this section.

Sec. 16. NEW SECTION. 437A.15 ALLOCATION OF REVENUE.

1. The director and the department of management shall compute the allocation of all replacement tax revenues other than transfer replacement tax revenues among the local taxing districts in accordance with this section and shall report such allocation by local taxing districts to the county treasurers on or before August 15 following a tax year.

2. The director shall determine and report to the department of management the total replacement taxes to be collected from each taxpayer for the tax year on or before July 30 following such tax year.

3. All replacement taxes owed by a taxpayer shall be allocated among the local taxing districts in which such taxpayer's property is located in accordance with a general allocation formula determined by the department of management on the basis of general property tax equivalents. General property tax equivalents shall be determined by applying the levy rates reported by each local taxing district to the department of management on or before June 30 following a tax year to the assessed value of taxpayer property allocated to each such local taxing district as adjusted and reported to the department of management in such tax year by the director pursuant to section 437A.19, subsection 2. The general allocation formula for a tax year shall allocate to each local taxing district that portion of the replacement taxes owed by each taxpayer which bears the same ratio as such taxpayer's general property tax equivalents for each local taxing district bears to such taxpayer's total general property tax equivalents for all local taxing districts in Iowa.

4. On or before August 31 following tax years 1999, 2000, and 2001, each county treasurer shall compute a special utility property tax levy or tax credit for each taxpayer for which a replacement tax liability for each such tax year is reported to the county treasurer pursuant to subsection 1, and shall notify the taxpayer of the amount of such tax levy or tax credit. The amount of the special utility property tax levy or credit shall be determined for each taxpayer by the county treasurer by comparing the taxpayer's total replacement tax liability allocated to taxing districts in the county pursuant to this section with the anticipated tax revenues from the taxpayer for all taxing districts in the county. If the taxpayer's total replacement tax liability allocated to taxing districts in the county is less than the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall levy a special utility property tax equal to the shortfall which shall be added to

and collected with the replacement tax owed by the taxpayer to the county treasurer for the tax year pursuant to section 437A.8, subsection 4. If the taxpayer's total replacement tax liability allocated to taxing districts in the county exceeds the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall issue a credit to the taxpayer which shall be applied to reduce the taxpayer's replacement tax liability to the county treasurer for the tax year. If the taxpayer's total replacement tax liability allocated to taxing districts in the county equals the anticipated tax revenues from the taxpayer for all taxing districts in the county, no levy or credit is required. Replacement tax liability for purposes of this subsection means replacement tax liability before credits allowed by section 437A.8, subsection 7. A recalculation of a special utility property tax levy or credit shall not be made as a result of a subsequent recalculation of replacement tax liability under section 437A.8, subsection 7, or adjustment to assessed value under section 437A.19, subsection 2, paragraph "f". "Anticipated tax revenues from a taxpayer" means the product of the total levy rates imposed by the taxing districts and the value of taxpayer property allocated to the taxing districts and reported to the county auditor. Special utility property tax levies and credits shall be treated as replacement taxes for purposes of section 437A.11.

It is the intent of the general assembly that the general assembly evaluate the impact of the imposition of the replacement tax for purposes of determining whether this subsection shall remain in effect and whether a determination shall be made as to the necessity of a recalculation as provided in this subsection for tax years beginning after tax year 2000.

5. The replacement tax, as adjusted by any special utility property tax levy or credit and remitted to a county treasurer by each taxpayer, shall be treated as a property tax when received and shall be disposed of by the county treasurer as taxes on real estate. Notwithstanding the allocation provisions of this section, nothing in this section shall deny any affected taxing entity, as defined in section 403.17, subsection 1, which has enacted an ordinance or entered into an agreement for the division and allocation of taxes authorized under section 403.19 and under which ordinance or agreement the taxes collected in respect of properties owned by any of the taxpayers remitting replacement taxes pursuant to the provisions of this chapter are being divided and allocated, the right to receive its share of the replacement tax revenues collected for any year which would otherwise be paid to such affected taxing entity under the terms of any such ordinance or agreement had this chapter not been enacted. To the extent that adjustment must be made to the allocation described in this section to give effect to the terms of such ordinances or agreements, the department of management and the county treasurer shall make such adjustments.

6. In lieu of the adjustment provided for in subsection 5, the assessed value of property described in section 403.19, subsection 1, may be reduced by the city or county by the amount of the taxable value of the property described in section 437A.16 included in such area on January 1, 1997, pursuant to amendment of the ordinance adopted by such city or county pursuant to section 403.19.

7. On or before July 1, 1998, the department of management, in consultation with the department of revenue and finance, shall initiate and coordinate the establishment of a task force and provide staffing assistance to the task force. It is the intent of the general assembly that the task force include representatives of the department of management, department of revenue and finance, electric companies, natural gas companies, municipal utilities, electric cooperatives, counties, cities, school boards, and industrial, commercial, and residential consumers, and other appropriate stakeholders.

The task force shall study the effects of the replacement tax on local taxing districts, consumers, and taxpayers and the department of management shall report to the general assembly by January 1 of each year through January 1, 2003, the results of the study and the specific recommendations of the task force for modifications to the replacement tax, if any, which will further the purposes of tax neutrality for local taxing districts, taxpayers, and consumers, consistent with the stated purposes of this chapter. The department of management shall also report to the legislative council by November 15 of each year through 2002, the status of the task force study and any recommendations.

Sec. 17. NEW SECTION. 437A.16 ASSESSMENT EXCLUSIVE.

All operating property and all other property that is primarily and directly used in the production, generation, transmission, or delivery of electricity or natural gas owned by or leased to a person subject to taxation under this chapter is exempt from taxation except as otherwise provided by this chapter. This exemption shall not extend to taxes imposed under chapters 437, 438, and 468, taxpayers described in section 437A.8, subsection 6, or facilities or property described in section 437A.6, subsection 1, paragraphs "a" through "f", and section 437A.7, subsection 2.

Sec. 18. NEW SECTION. 437A.17 STATUTES APPLICABLE — RATE CALCULATIONS.

1. The director shall administer and enforce the replacement tax imposed by this chapter in the same manner as provided in and subject to sections 422.68, 422.70, 422.71, and 422.75.

2. The calculation of tax rates and adjustments to such rates by the director pursuant to this chapter do not constitute rulemaking subject to the provisions of chapter 17A.

SUBCHAPTER 3
STATEWIDE PROPERTY TAX

Sec. 19. NEW SECTION. 437A.18 TAX IMPOSITION.

An annual statewide property tax of three cents per one thousand dollars of assessed value is imposed upon all property described in section 437A.16 on the assessment date of January 1.

Sec. 20. NEW SECTION. 437A.19 ADJUSTMENT TO ASSESSED VALUE — REPORTING REQUIREMENTS.

1. a. A taxpayer whose property is subject to the statewide property tax shall report to the director by July 1, 1999, and by May 1 of each subsequent tax year, on forms prescribed by the director, the book value, as of the beginning and end of the preceding calendar year, of all of the following:

(1) The local amount of any major addition by local taxing district.

(2) The statewide amount of any major addition without notation of location.

(3) Any building in Iowa at acquisition cost of more than ten million dollars which was originally placed in service by the taxpayer prior to January 1, 1998, and which was transferred or disposed of in the preceding calendar year, without notation of location.

(4) Any electric power generating plant in Iowa at acquisition cost of more than ten million dollars which was originally placed in service by the taxpayer prior to January 1, 1998, and which was transferred or disposed of in the preceding calendar year, without notation of location.

(5) All other taxpayer property without notation of location.

(6) The local amount of any major addition eligible for the urban revitalization exemption provided for in chapter 404, by situs.

b. For purposes of this section:

(1) "Book value" means acquisition cost less accumulated depreciation determined under generally accepted accounting principles.

(2) "Taxpayer property" means property described in section 437A.16.

(3) "To dispose of" means to sell, abandon, decommission, or retire an asset.

(4) "Transfer" means a transaction which results in a change of ownership of taxpayer property and includes a capital lease transaction.

c. For purposes of this subsection, "taxpayer" includes a person who would have been a taxpayer in calendar year 1998 had the provisions of this chapter been in effect for the 1998 assessment year.

d. If a taxpayer owns or leases pursuant to a capital lease less than the entire interest in a

major addition, the local amount and statewide amount, if any, of such major addition shall be apportioned to the taxpayer on the basis of its percentage interest in such major addition.

2. Beginning January 1, 1999, the assessed value of taxpayer property shall be adjusted annually as provided in this section. The director, with respect to each taxpayer, shall do all of the following:

a. Adjust the assessed value of taxpayer property in each local taxing district by the change in book value during the preceding calendar year of the local amount of any major addition reported within such local taxing district.

b. (1) Adjust the assessed value of taxpayer property in each local taxing district by allocating the change in book value during the preceding calendar year of the statewide amount and all other taxpayer property described in subsection 1, paragraph "a", subparagraph (5), to the assessed value of all taxpayer property in the state pro rata according to its preadjustment value.

(2) If, during the preceding calendar year, a taxpayer transferred an electric power generating plant to a taxpayer who owned no other taxpayer property in this state as of the end of such preceding calendar year, in lieu of the adjustment provided in subparagraph (1), the director shall allocate the transferee taxpayer's change in book value of the statewide amount during such preceding calendar year, if any, among local taxing districts in proportion to the allocation of the transferor's assessed value among local taxing districts as of the end of such preceding calendar year.

c. In the case of taxpayer property described in subsection 1, paragraph "a", subparagraphs (3) and (4), decrease the assessed value of taxpayer property in each local taxing district by the taxable value of such property within each such local taxing district on January 1, 1998.

d. In the event of a merger or consolidation of two or more taxpayers, to determine the assessed value of the surviving taxpayer, combine the assessed values of such taxpayers immediately prior to the merger or consolidation.

e. In the event any taxpayer property is eligible for the urban revitalization tax exemption described in chapter 404, adjust the assessed value of taxpayer property within each affected local taxing district to reflect such exemption.

f. In the event the base year assessed value of taxpayer property is adjusted as a result of taxpayer appeals, reduce the assessed value of taxpayer property in each local taxing district to reflect such adjustment. The adjustment shall be allocated in proportion to the allocation of the taxpayer's assessed value among the local taxing districts determined without regard to this adjustment. If an adjustment to the base year assessed value of taxpayer property is finally determined on or before September 30, 1999, it shall be reflected in the January 1, 1999, assessed value. Otherwise, any such adjustment shall be made as of January 1 of the year following the date on which the adjustment is finally determined.

In no event shall the adjustments set forth in this subsection reduce the assessed value of taxpayer property in any local taxing district below zero.

The director, on or before October 31, 1999, in the case of January 1, 1999, assessed values, and on or before August 31 of each subsequent assessment year, shall report to the department of management and to the auditor of each county the adjusted assessed value of taxpayer property as of January 1 of such assessment year for each local taxing district. For purposes of this subsection, the assessed value of taxpayer property in each local taxing district subject to adjustment under this section by the director means the assessed value of such property as of the preceding January 1 as determined and allocated among the local taxing districts by the director.

Nothing in this chapter shall be interpreted to authorize local taxing districts to exclude from the calculation of levy rates the adjusted assessed value of taxpayer property reported to county auditors pursuant to this subsection.

Sec. 21. NEW SECTION. 437A.20 TAX EXEMPTIONS.

Except as provided in section 437A.16, all property tax exemptions in the Code do not apply to property subject to the statewide property tax unless such exemptions expressly refer to the statewide property tax, except that if property was exempt from property tax on January 1, 1999, such exemption shall continue until the exemption expires, is phased out, or is repealed. The property of a taxpayer who does not owe any replacement tax is exempt from the statewide property tax for the coinciding assessment year.

Sec. 22. NEW SECTION. 437A.21 RETURN AND PAYMENT REQUIREMENTS.

1. Each electric company, natural gas company, electric cooperative, municipal utility, and other person whose property is subject to the statewide property tax shall file with the director a return, on or before February 28 following the assessment year, including, but not limited to, the following information:

a. The assessed value of property subject to the statewide property tax.

b. The amount of statewide property tax computed on such assessed value.

2. The first return under subsection 1 is due on or before February 28, 2000.

3. If an electric company, natural gas company, electric cooperative, municipal utility, or person is not required to file a statewide property tax return on or before February 28, 2000, but is required to file a return after such date, the return shall be filed on or before the due date. This subsection also applies in the event of a consolidation.

4. A return shall be signed by an officer, or other person duly authorized by the taxpayer, and must be certified as correct and in accordance with rules and forms prescribed by the director.

5. At the time of filing the return with the director, the taxpayer shall calculate the statewide property tax owed for the assessment year and shall remit to the director the statewide property tax required to be shown to be due on the return.

Sec. 23. NEW SECTION. 437A.22 STATUTES APPLICABLE.

Sections 437A.9, 437A.10, 437A.12, 437A.13, and 437A.14, subsection 1, are applicable to electric companies, natural gas companies, electric cooperatives, municipal utilities, and persons whose property is subject to the statewide property tax. However, a required credit or refund of overpaid statewide property tax pursuant to section 437A.14, subsection 1, as it applies to this subchapter, shall be made by the director and not by city chief financial officers or county treasurers.

Section 422.26 applies with respect to the statewide property tax and penalties imposed by this chapter, except that, as applied to any tax imposed by this chapter, the lien provided shall be prior to and superior over all subsequent liens upon any personal property within this state or right to such personal property belonging to the taxpayer, without the necessity of recording the lien as provided in section 422.26. The requirement for recording, as applied to the statewide property tax imposed by this chapter, shall apply only to a lien upon real property. In order to preserve such lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in a county, the director shall file with the recorder of the county in which the real property is located a notice of the lien.

The county recorder of each county shall prepare and keep in the recorder's office a book to be known as the index of statewide property tax liens, so ruled as to show in appropriate columns under the names of taxpayers arranged alphabetically, all of the following:

1. The name of the taxpayer.
2. The name "State of Iowa" as claimant.
3. Time the notice of lien was received.
4. Date of notice.
5. Amount of lien then due.
6. Date of assessment.
7. Date when the lien is satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve such notice, and shall promptly record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

The director, from moneys appropriated to the department of revenue and finance for this purpose, shall pay a recording fee as provided in section 331.604 for the recording of the lien, or for its satisfaction.

Upon the payment of the replacement tax as to which the director has filed notice with a county recorder, the director shall promptly file with the recorder a satisfaction of the replacement tax. The recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

Sec. 24. NEW SECTION. 437A.23 DEPOSIT OF TAX PROCEEDS.

All revenues received from imposition of the statewide property tax shall be deposited in the general fund of the state. Fifty percent of the revenues shall be available to the department of management for salaries, support, services, and equipment to administer the replacement tax. The balance of the revenues shall be available to the department of revenue and finance for salaries, support, services, and equipment to administer and enforce the replacement tax and the statewide property tax.

SUBCHAPTER 4
GENERAL PROVISIONS

Sec. 25. NEW SECTION. 437A.24 RECORDS.

Each electric company, natural gas company, electric cooperative, municipal utility, and other person who is subject to the replacement tax or the statewide property tax shall maintain records associated with the replacement tax and the assessed value of property subject to the statewide property tax for a period of ten years following the later of the original due date for filing a return pursuant to sections 437A.8 and 437A.21 in which such taxes are reported, or the date on which either such return is filed. Such records shall include those associated with any additions or dispositions of property, and the allocation of such property among local taxing districts.

Sec. 26. NEW SECTION. 437A.25 RULES.

The director of revenue and finance may adopt rules pursuant to chapter 17A for the administration and enforcement of this chapter.

Sec. 27. Section 257.3, subsection 1, Code 1997, is amended by adding the following unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Replacement taxes under chapter 437A shall be regarded as property taxes for purposes of this chapter.

Sec. 28. Section 427.1, subsection 2, Code Supplement 1997, is amended to read as follows:

2. MUNICIPAL AND MILITARY PROPERTY. The property of a county, township, city, school corporation, levee district, drainage district or military company of the state of Iowa, when devoted to public use and not held for pecuniary profit, except property of a municipally owned electric utility held under joint ownership and property of an electric power facility financed under chapter 28F which shall be subject to ~~assessment and~~ taxation under ~~provisions of chapters 428 and 437~~ chapter 437A. The exemption for property owned by a city or county also applies to property which is operated by a city or county as a library, art gallery or museum, conservatory, botanical garden or display, observatory or science museum, or as a location for holding athletic contests, sports or entertainment events, expositions, meetings or conventions, or leased from the city or county for any such purposes. Food and beverages may be served at the events or locations without affecting the exemptions, provided the city has approved the serving of food and beverages on the property if the

property is owned by the city or the county has approved the serving of food and beverages on the property if the property is owned by the county.

Sec. 29. Section 428.24, Code 1997, is amended to read as follows:

428.24 PUBLIC UTILITY PLANTS.

The lands, buildings, machinery, and mains belonging to individuals or corporations operating waterworks or gasworks or pipelines~~; the lands, buildings, machinery, tracks, poles, and wires belonging to individuals, corporations or electric power agencies furnishing electric light or power; and the lands, buildings, machinery, poles, wires, overhead construction, tracks, cables, conduits, and fixtures belonging to individuals or corporations operating railways by cable or electricity, or operating elevated street railways;~~, except those natural gas pipelines permitted pursuant to chapter 479, shall be listed and assessed by the department of revenue and finance. In the making of assessments of waterworks plants, the value of any interest in the property assessed, of the municipal corporation where it is situated, shall be deducted, whether the interest is evidenced by stock, bonds, contracts, or otherwise.

Sec. 30. Section 428.26, Code 1997, is amended to read as follows:

428.26 PERSONAL PROPERTY.

All the personal property of such individuals and corporations used or purchased by them for the purposes of such gas or waterworks~~, electric light plants, electric or cable railways, elevated street railways or street railways operated by animal power, including the rolling stock of such railways and street railways, and the animals belonging to such street railways operated by animal power~~, other than natural gas pipelines permitted pursuant to chapter 479, shall be listed and assessed by the department of revenue and finance. In the making of any such assessment of waterworks plants, the value of any interest in the property so assessed, of the municipal corporation ~~wherein~~ in which the ~~same~~ waterworks is situated, shall be deducted, whether such interest be evidenced by stock, bonds, contracts, or otherwise.

Sec. 31. Section 428.28, Code 1997, is amended to read as follows:

428.28 ANNUAL REPORT BY UTILITY.

Every individual, copartnership, corporation, or association operating for profit, waterworks or gasworks or pipe lines~~, electric light or power plant, railways operated by electricity, elevated street railways, shall~~ other than natural gas pipelines permitted pursuant to chapter 479, annually on or before ~~the first day of~~ May 1 of each calendar year, shall make a report on blanks to be provided by the department of revenue and finance of all of the property owned by such individual, copartnership, corporation, or association within the incorporated limits of any city in the state, and give such other information as the director of revenue and finance shall require.

Every individual, copartnership, corporation, or association which operates a public utility on a nonprofit basis other than a utility subject to tax under chapter 437A, as defined in section 428.24 shall annually, on or before ~~the first day of~~ May 1 of each calendar year, make a report on blanks to be provided by the department of revenue and finance of all of the property owned by the individual, copartnership, corporation, or association within the incorporated limits of any city in the state, and give other information the director of revenue and finance requires.

Sec. 32. Section 437.1, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

437.1 DEFINITIONS.

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

1. "Company" means an electric cooperative referred to in section 437A.7, subsection 2, paragraph "c".

2. "Electric cooperative" means an electric utility provider formed or organized as an electric cooperative under the laws of this state or elsewhere.

3. "Transmission lines" means electric lines and associated facilities operating at thirty-four thousand five hundred volts or higher voltage, and substations, transformers, and associated facilities operated at thirty-four thousand five hundred or more volts on the low voltage side.

Sec. 33. Section 437.3, Code 1997, is amended to read as follows:

437.3 VERIFICATION.

The verification of any statement required by law shall~~, in the case of a person,~~ be made by ~~such person; in the case of a corporation, by the president or secretary thereof; and in case of a copartnership, association, or syndicate, by~~ some member, officer, or agent ~~thereof~~ of the company having knowledge of the facts.

Sec. 34. Section 438.1, Code 1997, is amended to read as follows:

438.1 TAXATION PROCEDURE.

Every person, copartnership, association, corporation, or syndicate engaged in the business of transporting or transmitting gas, gasoline, oils, or motor fuels by means of pipelines other than natural gas pipelines permitted pursuant to chapter 479, whether such pipelines be owned or leased, shall be taxed as ~~herein~~ provided in this chapter.

Sec. 35. Section 438.2, Code 1997, is amended to read as follows:

438.2 ~~DEFINITIONS~~ DEFINITION.

~~The words "pipeline~~ "Pipeline company", as used in this chapter ~~shall be deemed and construed to mean,~~ means any person, copartnership, association, corporation, or syndicate that may own or operate or be engaged in operating or utilizing pipelines, other than natural gas pipelines permitted pursuant to chapter 479, for the purposes described in section 438.1.

Sec. 36. Section 441.73, subsection 1, Code Supplement 1997, is amended to read as follows:

1. A litigation expense fund is created in the state treasury. The litigation expense fund shall be used for the payment of litigation expenses incurred by the state to defend property valuations established by the director of revenue and finance pursuant to section 428.24 and chapters 430A, 433, 434, 436, 437, 437A, and 438, and for the payment of litigation expenses incurred by the state to defend the imposition of replacement taxes and statewide property taxes under chapter 437A.

Sec. 37. Section 476.6, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 22. The costs of the replacement tax imposed pursuant to chapter 437A shall be reflected in the charges of utilities subject to rate regulation, in lieu of the utilities' costs of property taxes. The imposition of the replacement taxes pursuant to chapter 437A is not intended to initiate any change in the rates and charges for the sale of electricity, the sale of natural gas, or the transportation of natural gas that is subject to regulation by the board and in effect on the effective date of chapter 437A.

The cost of the replacement taxes imposed by chapter 437A shall be allocated among and within customer classes in a manner that will replicate the tax cost burden of the current property tax on individual customers to the maximum extent practicable.

Upon the restructuring of the electric industry in this state so that individual consumers are given the right to choose their electric suppliers, replacement tax costs shall be assigned to the service corresponding to the individual generation, transmission, and delivery taxes. In all other respects, the allocation of the replacement tax costs among and within the customer classes shall remain the same to the maximum extent practicable.

Notwithstanding this subsection, the board may determine the amount of replacement tax properly included in retail rates subject to its jurisdiction. The board may determine whether

the base rates or some other form of rate is most appropriate for recovery of the costs of the replacement tax, subject to the requirement that utility rates be reasonable and just. The board may also determine the appropriate allocation of the tax. Any significant modification to rate design relating to the replacement tax shall be made in a manner consistent with this subsection unless made in a contested case proceeding where the impact of such modification on competition and consumer costs is considered.

NEW SUBSECTION. 23. On or before July 1, 2000, the utilities board, in consultation with the department of revenue and finance, shall initiate and coordinate the establishment of a replacement tax study committee and provide staffing assistance to the committee. It is the intent of the general assembly that the committee include representatives of the utilities board, department of revenue and finance, department of management, investor-owned utilities, municipal utilities, cooperative utilities, local governments, major customer classes, and other stakeholders.

The committee shall study the effects of the replacement tax on both restructuring and the development of competition in the gas and electric industries in this state. The board shall report to the general assembly by January 1 of each year through 2003, the results of the study, and the committee's recommendations as to whether the replacement tax, in its then present form, should be continued, whether a different form of taxation of electric and gas utilities should be adopted in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, whether a different basis for determination of the generation, transmission, and delivery taxes should be adopted or whether the relative share of the total replacement tax burden imposed on each of the generation, transmission, and delivery functions should be modified in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, and whether the replacement tax in its then present form, appropriately accounts for the decline in value of electric power generating plants. The replacement tax study committee shall reconvene by January 1, 2006, to further study these same issues, and the board shall report the results of the study and the committee's recommendations to the general assembly by January 1, 2008.

Upon recommendation of the committee, the board may contract for services necessary to the implementation of this subsection with persons who are not state employees, including, but not limited to, facilitators, consultants, and other experts required to assist the committee. The cost of contracted services shall not be paid from appropriated funds, but shall be assessed to entities paying replacement tax pursuant to chapter 437A, subchapter 2, pro rata, based on the amount of tax paid.

Sec. 38. SPECIAL REPORTING REQUIREMENTS. Within ninety days of the effective date of this Act, each electric company, electric cooperative not described in section 437A.7, subsection 2, paragraph "c", municipal utility, and natural gas company shall report to the director, by certified statement subject to audit, the following information:

1. The entity's liability for centrally assessed property tax, as defined in section 437A.3, subsection 2, allocated to electric service for the assessment years 1993 through 1997 on the basis of property tax payments made.

2. The entity's liability for centrally assessed property tax, as defined in section 437A.3, subsection 2, allocated to natural gas service for the assessment years 1993 through 1997 on the basis of property tax payments made.

3. The entity's total kilowatt-hours of electricity generated which would have been subject to taxation under section 437A.6 for the 1998 assessment year had such taxation been in effect for assessment year 1998. Kilowatt-hours of electricity generated by a facility which was jointly owned or leased in assessment year 1998 shall be calculated and reported pursuant to section 437A.6, subsection 2, as if such subsection had been in effect for 1998.

4. The entity's total pole miles of electric transmission lines owned or leased on December 31, 1998, by line voltage, which would have been subject to taxation under section 437A.7 for the 1998 assessment year had such taxation been in effect for assessment year

1998. Pole miles of electric transmission lines which were jointly owned or leased in assessment year 1998 shall be calculated and reported pursuant to section 437A.7, subsection 3, as if such subsection had been in effect for assessment year 1998.

5. The entity's total kilowatt-hours of electricity delivered to consumers which would have been subject to taxation under section 437A.4 for the assessment years 1994 through 1998 had such taxation been in effect for such assessment years.

6. The entity's total therms of natural gas delivered to consumers which would have been subject to taxation under section 437A.5 for the assessment years 1994 through 1998 had such taxation been in effect for such assessment years.

7. For each generation and transmission electric cooperative, the excess property tax liability assignable to each electric competitive service area principally served by its distribution electric cooperative and municipal electric cooperative association members pursuant to section 437A.4, subsection 3, paragraph "c", subparagraph (4).

8. For each municipal electric cooperative association, the excess property tax liability assignable to each electric competitive service area principally served by its municipal utility members on January 1, 1999.

If information necessary to compute the delivery tax rate for any electric or natural gas competitive service area is not timely reported, the director shall estimate a delivery tax rate for such electric or natural gas competitive service area which shall not be lower than the highest electric or natural gas delivery tax rate computed for other electric or natural gas competitive service areas. However, if such information is provided within thirty days after the director has published in the Iowa administrative bulletin the delivery tax rates computed pursuant to section 437A.4, subsection 3, paragraph "d", and section 437A.5, subsection 3, paragraph "c", the director shall recalculate the electric or natural gas delivery tax rate for such electric or natural gas competitive service area and notify the taxpayers of the new electric or natural gas delivery tax rate by publication in the Iowa administrative bulletin on or before January 31, 2000.

Sec. 39. Sections 428.37 and 437.14, Code 1997, are repealed.

Sec. 40. EFFECTIVE AND APPLICABILITY DATES — DIRECTIONS TO CODE EDITOR.

1. Except as provided in subsection 2, this Act takes effect January 1, 1999, and is applicable to property tax assessment years beginning on or after January 1, 1999, and to replacement tax years beginning on or after January 1, 1999.

2. Notwithstanding subsection 1, section 437A.15, subsection 7, as enacted in this Act and which provides for the establishment of a task force to study the effects of the replacement tax, takes effect upon enactment.

Approved May 14, 1998

CHAPTER 1195

PHYSICAL CONTACT WITH STUDENTS

H.F. 2269

AN ACT relating to permissible physical contact involving students.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 280.21, Code 1997, is amended to read as follows:

280.21 CORPORAL PUNISHMENT — BURDEN OF PROOF.

1. An employee of an accredited public school district, accredited nonpublic school, or area education agency shall not inflict, or cause to be inflicted, corporal punishment upon a student. For purposes of this section, "corporal punishment" means the intentional physical punishment of a student. An employee's physical contact with the body of a student shall not be considered corporal punishment if it is reasonable and necessary under the circumstances and is not designed or intended to cause pain or if the employee uses reasonable force, as defined under section 704.1, for the protection of the employee, the student, or other students; to obtain the possession of a weapon or other dangerous object within a student's control; or for the protection of property. The department of education shall adopt rules to implement this section.

2. A school employee who, in the reasonable course of the employee's employment responsibilities, comes into physical contact with a student shall be granted immunity from any civil or criminal liability which might otherwise be incurred or imposed as a result of such physical contact, if the physical contact is reasonable under the circumstances and involves the following:

a. Encouraging, supporting, or disciplining the student.

b. Protecting the employee, the student, or other students.

c. Obtaining possession of a weapon or other dangerous object within a student's control.

d. Protecting employee, student, or school property.

e. Quelling a disturbance or preventing an act threatening physical harm to any person.

f. Removing a disruptive student from class or any area of the school premises, or from school-sponsored activities off school premises.

g. Preventing a student from the self-infliction of harm.

h. Self-defense.

i. Any other legitimate educational activity.

3. To prevail in a civil action alleging a violation of this section the party bringing the action shall prove the violation by clear and convincing evidence. Any school employee determined in a civil action to have been wrongfully accused under this section shall be awarded reasonable monetary damages, in light of the circumstances involved, against the party bringing the action.

Sec. 2. NEW SECTION. 280.26 INTERVENTION IN ALTERCATIONS.

1. An employee of an accredited public school district, accredited nonpublic school, or area education agency may intervene in a fight or physical struggle occurring among students or between students and nonstudents that takes place in the presence of the school employee in a school building, on school premises, or at any school function or school-sponsored activity regardless of its location. The degree and force of the intervention may be as reasonably necessary, in the opinion of the school employee, to restore order and protect the safety of the individuals involved in the altercation and others in the vicinity of the altercation.

2. A person who is not an employee of an accredited public school district, accredited nonpublic school, or area education agency may intervene in a fight or physical struggle occurring among students, or between students and nonstudents, that takes place in the presence of the nonemployee in a school building, on school premises, or at any school

function or school-sponsored activity regardless of its location. The intervention may occur in the absence of an employee of an accredited public school district, accredited nonpublic school, or area education agency, or at the request of such an employee, utilizing the degree and force of intervention reasonably necessary to restore order and protect the safety of the individuals involved in the altercation and others in the vicinity of the altercation. However, a person who intervenes in the absence of an employee of an accredited public school district, accredited nonpublic school, or area education agency shall report the intervention and all relevant information regarding the situation as soon as reasonably possible to such an employee.

3. An employee of an accredited public school district, accredited nonpublic school, or area education agency who intervenes in a fight or physical struggle pursuant to subsection 1 shall be awarded reasonable monetary damages against a party bringing a civil action alleging a violation of this section, if it is determined in the action that the employee has been wrongfully accused. A nonemployee of an accredited public school district, accredited nonpublic school, or area education agency who intervenes in a fight or physical struggle pursuant to subsection 2 shall be limited to the recovery of reasonable attorney fees and court costs, if it is determined in a civil action alleging a violation of this section that the nonemployee has been wrongfully accused.

Approved May 14, 1998

CHAPTER 1196

HEALTHY AND WELL KIDS IN IOWA PROGRAM

H.F. 2517

AN ACT establishing a healthy and well kids in Iowa (HAWK-I) program to provide health insurance to eligible children, providing for a repeal, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 432.13 PREMIUM TAX EXEMPTION — HAWK-I PROGRAM.

Premiums collected by participating insurers under chapter 514I, are exempt from premium tax.

Sec. 2. NEW SECTION. 514I.1 INTENT OF THE GENERAL ASSEMBLY.

1. It is the intent of the general assembly to provide health care coverage to eligible children that improves access to preventive, diagnostic, and treatment health services which result in improved health status using in part resources made available from the passage of Title XXI of the federal Social Security Act.

2. It is the intent of the general assembly that the program be implemented and administered in compliance with Title XXI of the federal Social Security Act. If, as a condition of receiving federal funds for the program, federal law requires implementation and administration of the program in a manner not provided in this chapter, during a period when the general assembly is not in session, the department, with the approval of the HAWK-I board, shall proceed to implement and administer those provisions, subject to review by the next regular session of the general assembly.

3. It is the intent of the general assembly, recognizing the importance of outreach to the successful utilization of the program by eligible children, that within the limitations of

funding allowed for outreach and administration expenses, the maximum amount possible be used for outreach.

4. It is the intent of the general assembly that the HAWK-I program be an integral part of the continuum of health insurance coverage and that the program be developed and implemented in such a manner as to facilitate movement of families between health insurance providers and to facilitate the transition of families to private sector health insurance coverage.

Sec. 3. NEW SECTION. 514I.2 DEFINITIONS.

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

1. "Administrative contractor" means the person with whom the department enters a contract to administer the HAWK-I program under this chapter.

2. "Benchmark benefit package" means any of the following:

a. The standard blue cross/blue shield preferred provider option service benefit plan, described in and offered under 5 U.S.C. § 8903(1).

b. A health benefits coverage plan that is offered and generally available to state employees in this state.

c. The plan of a health maintenance organization as defined in 42 U.S.C. § 300e, with the largest insured commercial, nonmedical assistance enrollment of covered lives in the state.

3. "Cost sharing" means the payment of a premium or copayment as provided for by Title XXI of the federal Social Security Act and section 514I.9.

4. "Department" means the department of human services.

5. "Director" means the director of human services.

6. "Eligible child" means an individual who meets the criteria for participation in the program under section 514I.7.

7. "HAWK-I board" or "board" means the entity which adopts rules and establishes policy for, and directs the department regarding, the HAWK-I program.

8. "HAWK-I program" or "program" means the healthy and well kids in Iowa program created in this chapter to provide health insurance coverage to eligible children.

9. "Health insurance coverage" means health insurance coverage as defined in 42 U.S.C. § 300gg(91).

10. "Participating insurer" means any entity licensed by the division of insurance of the department of commerce to provide health insurance in Iowa or an organized delivery system licensed by the director of public health that has contracted with the department to provide health insurance coverage to eligible children under this chapter.

11. "Qualified child health plan" or "plan" means health insurance coverage provided by a participating insurer under this chapter.

Sec. 4. NEW SECTION. 514I.3 HAWK-I PROGRAM — ESTABLISHED.

1. The HAWK-I program, a statewide program designed to improve the health of children and to provide health insurance coverage to eligible children on a regional basis which complies with Title XXI of the federal Social Security Act, is established and shall be implemented January 1, 1999.

2. Health insurance coverage under the program shall be provided by participating insurers and through qualified child health plans.

3. The department of human services is designated to receive the state and federal funds appropriated or provided for the program, and to submit and maintain the state plan for the program, which is approved by the health care financing administration of the United States department of health and human services.

4. Nothing in this chapter shall be construed or is intended as, or shall imply, a grant of entitlement for services to persons who are eligible for participation in the program based upon eligibility consistent with the requirements of this chapter. Any state obligation to provide services pursuant to this chapter is limited to the extent of the funds appropriated or provided for this chapter.

5. Participating insurers under this chapter are not subject to the requirements of chapters 513B and 513C.

Sec. 5. NEW SECTION. 514I.3A DIRECTOR AND DEPARTMENT — DUTIES — POWERS.

1. The director, with the approval of the HAWK-I board, shall implement this chapter. The director shall do all of the following:

a. At least every six months, evaluate the scope of the program currently being provided under this chapter, project the probable cost of continuing the program, and compare the probable cost with the remaining balance of the state appropriation made for payment of assistance under this chapter during the current appropriation period. The director shall report the findings of the evaluation to the board and shall annually report findings to the governor and the general assembly by January 1.

b. Establish premiums to be paid to participating insurers for provision of health insurance coverage.

c. Contract with participating insurers to provide health insurance coverage under this chapter.

d. Recommend to the board proposed rules necessary to implement the program.

e. Recommend to the board individuals to serve as members of the clinical advisory committee.

2. The director, with the concurrence of the board, shall enter into a contract with an administrative contractor. Such contract shall be entered into in accordance with the criteria established by the board.

3. The department may enter into contracts with other persons whereby the other person provides some or all of the functions, pursuant to rules adopted by the board, which are required of the director or the department under this section. All contracts entered into pursuant to this section shall be made available to the public.

4. The department shall do or shall provide for all of the following:

a. Develop a program application form not to exceed two pages in length, which is consistent with the rules of the board, which is easy to understand, complete, and concise, and which, to the greatest extent possible, coordinates with the medical assistance program.

b. Establish the family cost sharing amount, based on a sliding fee scale, if established by the board.

c. Perform other duties as determined by the department with the approval of the board.

Sec. 6. NEW SECTION. 514I.4 HAWK-I BOARD.

1. A HAWK-I board for the HAWK-I program is established. The board shall meet not less than ten times annually, for the purposes of establishing policy for, directing the department on, and adopting rules for the program. The board shall consist of seven members, including, all of the following:

a. The commissioner of insurance, or the commissioner's designee.

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

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

d. Four public members appointed by the governor and subject to confirmation by the senate. The public members shall be members of the general public who have experience, knowledge, or expertise in the subject matter embraced within this chapter.

e. Two members of the senate and two members of the house of representatives, serving as ex officio members. The legislative members of the board shall be appointed by the majority leader of the senate, after consultation with the president of the senate, and by the minority leader of the senate, and by the speaker of the house, after consultation with the majority leader, and by the minority leader of the house of representatives. Legislative members shall receive compensation pursuant to section 2.12.

2. A public member shall not have a conflict of interest with the administrative contractor.

3. Members appointed by the governor and legislative members of the board shall serve two-year terms. The filling of positions reserved for the public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of the members are governed by chapter 69. Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties. Public members of the board are also eligible to receive compensation as provided in section 7E.6. The members shall select a chairperson on an annual basis from among the membership of the board.

4. The board shall approve any contract entered into pursuant to this chapter. All contracts entered into pursuant to this chapter shall be made available to the public.

5. The department of human services shall act as support staff to the board.

6. The board may receive and accept grants, loans, or advances of funds from any person and may receive and accept from any source contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of the program.

7. The HAWK-I board shall do all of the following:

a. Develop the criteria to be included in a request for proposals for the selection of any administrative contractor for the program.

b. Define, in consultation with the department, the regions of the state for which plans are offered in a manner as to ensure access to services for all children participating in the program.

c. Approve the benefit package design, review the benefit package design on a periodic basis, and make necessary changes in the benefit design to reflect the results of the periodic reviews.

d. Develop, with the assistance of the department, an outreach plan for implementation by the administrative contractor, and provide for periodic assessment of the effectiveness of the outreach plan. The plan shall provide outreach to families of children likely to be eligible for assistance under the program or for other health insurance coverage or care programs, to inform them of the availability of and to assist the families in enrolling children in the program. The outreach efforts shall include, but are not limited to, a comprehensive, statewide media campaign, solicitation of cooperation from programs, agencies, and other persons who are likely to have contact with eligible children, including but not limited to those associated with the educational system, and the development of community plans for outreach and marketing.

e. In consultation with the clinical advisory committee, select a single, nationally recognized functional health assessment form for an initial assessment of all eligible children participating in the program, establish a baseline for comparison purposes, and develop appropriate indicators to measure the health status of eligible children participating in the program.

f. Review, in consultation with the department, and take necessary steps to improve interaction between the program and other public and private programs which provide services to the population of eligible children. The board, in consultation with the department, shall also develop and implement a plan to improve the medical assistance program in coordination with the Hawk-I program, including but not limited to a provision to coordinate eligibility between the medical assistance program and the HAWK-I program, and to provide for common processes and procedures under both programs to reduce duplication and bureaucracy.

g. By January 1, annually, prepare, with the assistance of the department, and submit a report to the governor, the general assembly, and the council on human services, concerning the board's activities, findings, and recommendations.

h. Solicit input from the public regarding the program and related issues and services.

i. Perform periodic random reviews of enrollee applications to assure compliance with program eligibility and enrollment policies. Quality assurance reports shall be made based upon the data maintained by the administrative contractor.

j. Establish and consult with a clinical advisory committee to make recommendations to the board regarding the clinical aspects of the HAWK-I program.

k. Prescribe the elements to be included in a health improvement program plan required to be developed by a participating insurer. The elements shall include but are not limited to health maintenance and prevention and health risk assessment.

l. Establish an advisory committee to make recommendations to the board and to the general assembly on or before January 1, 1999, concerning the provision of health insurance coverage to children with special health care needs under the program. The committee shall include individuals with experience in, knowledge of, or expertise in this area. The recommendations shall address, but are not limited to, all of the following:

(1) The definition of the target population of children with special health care needs for the purposes of determining eligibility under the program.

(2) Eligibility options for and assessment of children with special health care needs for eligibility.

(3) Benefit options for children with special health care needs.

(4) Options for enrollment of children with special health care needs in and disenrollment of children with special health care needs from qualified child health plans utilizing a capitated fee form of payment.

(5) The appropriateness and quality of care for children with special health care needs.

(6) The coordination of health services provided for children with special health care needs under the program with services provided by other publicly funded programs.

8. The HAWK-I board, in consultation with the department of human services, shall adopt rules which address, but are not limited to addressing, all of the following:

a. Implementation and administration of the program.

b. The program application form. The form shall include a request for information regarding other health insurance coverage for each child.

c. Criteria for the selection of an administrative contractor for the program.

d. Qualifying standards for selecting participating insurers for the program.

e. The benefits to be included in a qualified child health plan which are those included in a benchmark or benchmark equivalent plan and which comply with Title XXI of the federal Social Security Act. Benefits covered shall include but are not limited to all of the following:

(1) Inpatient hospital services including medical, surgical, intensive care unit, mental health, and substance abuse services.

(2) Nursing care services including skilled nursing facility services.

(3) Outpatient hospital services including emergency room, surgery, lab, and x-ray services and other services.

(4) Physician services, including surgical and medical, and including office visits, newborn care, well-baby and well-child care, immunizations, urgent care, specialist care, allergy testing and treatment, mental health visits, and substance abuse visits.

(5) Ambulance services.

(6) Physical therapy.

(7) Speech therapy.

(8) Durable medical equipment.

(9) Home health care.

(10) Hospice services.

(11) Prescription drugs.

(12) Dental services including preventive services.

(13) Medically necessary hearing services.

(14) Vision services including corrective lenses.

f. Standards for program eligibility. The standards shall not discriminate on the basis of diagnosis. Within a defined group of covered eligible children, the standards shall not cover children of higher income families without covering children of families with lower incomes. The standards shall not deny eligibility based on a child having a preexisting medical condition.

g. Presumptive eligibility criteria for the program.

h. The amount of any cost sharing under the program which shall be assessed on a sliding fee scale based on family income, which provides for a minimum amount of cost sharing, and which complies with federal law.

i. The reasons for disenrollment including, but not limited to, nonpayment of premiums, eligibility for medical assistance or other insurance coverage, admission to a public institution, relocation from the area, and change in income.

j. Conflict of interest provisions applicable to the administrative contractor and participating insurers, and between public members of the board and the administrative contractor and participating insurers.

k. Penalties for breach of contract or other violations of requirements or provisions under the program.

l. A mechanism for participating insurers to report any rebates received, to the department.

m. The reasons allowed for approval of an application in cases in which prior employer-sponsored coverage ended less than six months prior to the determination of eligibility for the HAWK-I program. The reasons established by rule shall include, but are not limited to, all of the following:

(1) Loss of employment due to factors other than voluntary termination.

(2) Death of a parent.

(3) Change in employment to a new employer that does not provide an option for dependent coverage.

(4) Change of address so that no employer-sponsored coverage is available.

(5) Discontinuation of health benefits to all employees of the applicant's employer.

(6) Expiration of the coverage periods established by the federal Consolidated Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-272, as amended.

(7) Self-employment.

(8) Termination of health benefits due to a long-term disability.

(9) Termination of dependent coverage due to an extreme economic hardship on the part of either the employee or the employer, as determined by rule.

(10) Substantial reduction in either lifetime medical benefits or benefit category available to an employee and dependents under an employer's health care plan.

If the board determines that the allowance of the six-month period from the time of dropping coverage to be eligible for participation in the HAWK-I program is insufficient to effectively deter applicants or employers of applicants from discontinuing employer-sponsored dependent care coverage for the purpose of participation in the HAWK-I program, the board may adopt rules to extend the time period to a period not to exceed twelve months.

n. The data to be maintained by the administrative contractor including data to be collected for the purposes of quality assurance reports.

Sec. 7. NEW SECTION. 514I.5 PARTICIPATING INSURERS.

Participating insurers shall meet the qualifying standards established by rule under this chapter and shall perform all of the following functions:

1. Provide plan cards and membership booklets to qualifying families.

2. Provide or reimburse accessible, quality medical services.

3. Submit a marketing plan to the HAWK-I board which is consistent with the board's outreach plan, for approval by the board.

4. Require that any plan provided by the participating insurer establishes and maintains a conflict management system that includes methods for both preventing and resolving disputes involving the health care needs of eligible children, and a process for resolution of such disputes.

5. Provide the administrative contractor with all of the following information pertaining to the participating insurer's plan:

a. A list of providers of medical services under the plan.

b. Information regarding plan rules relating to referrals to specialists.

c. Information regarding the plan's conflict management system.

d. Other information as directed by the board.

6. Submit a plan for a health improvement program to the department, for approval by the board.

7. Develop a plan for provider network development including criteria for access to pediatric subspecialty services.

Sec. 8. NEW SECTION. 514I.6 ADMINISTRATIVE CONTRACTOR.

1. An administrative contractor shall be selected by the HAWK-I board through a request for proposals process.

2. The administrative contractor shall do all of the following:

a. Perform outreach activities, based upon the outreach plan approved by the HAWK-I board, primarily through coordination with locally based outreach efforts, including but not limited to those associated with the educational system.

b. Determine individual eligibility for program enrollment based upon review of completed applications and supporting documentation. The administrative contractor shall not enroll a child who has group health coverage or any child who has dropped coverage in the previous six months, unless the coverage was involuntarily lost or unless the reason for dropping coverage is allowed by rule of the board.

c. Enroll qualifying children in the program with maintenance of a supporting eligibility file or database.

d. Forward names of children who appear to be eligible for medical assistance or other public health insurance coverage to local department of human services offices or other appropriate person or agency for follow up and retain the identifying data on children who are referred.

e. Monitor and assess the medical care provided through or by participating insurers as well as complaints and grievances.

f. Verify and forward to the department participating insurers' payment requests.

g. Develop and issue appropriate approval, denial, and cancellation notifications to inform applicants and enrollees of the status of the applicant's or enrollee's eligibility to participate in the program. Additionally, the administrative contractor shall process applications, including verifications and mailing of approvals and denials, within ten working days of receipt of the application, unless the application cannot be processed within this period for a reason that is beyond the control of the administrative contractor.

h. Create and maintain eligibility files that are compatible with the data system of the department including, but not limited to, data regarding beneficiaries, enrollment dates, disenrollments, and annual financial redeterminations.

i. Make program applications available through the mail and through local sites, as determined by the department, including, but not limited to, schools, local health departments, local department of human services offices, and other locations.

j. Provide electronic access to the administrative contractor's database to the department.

k. Provide periodic reports to the department for administrative oversight and monitoring of federal requirements.

l. Perform annual financial reviews of eligibility for each beneficiary.

m. Receive completed applications and verifications at a central location.

n. Collect and track monthly family premiums to assure that payments are current.

o. Notify each participating insurer of new program enrollees who are enrolled by the administrative contractor in that participating insurer's plan.

p. Verify the number of program enrollees with each participating insurer for determination of the amount of premiums to be paid to each participating insurer.

q. Maintain data for the purpose of quality assurance reports as required by rule of the board.

Sec. 9. NEW SECTION. 514I.7 ELIGIBLE CHILD.

1. Effective July 1, 1998, and notwithstanding any medical assistance program eligibility criteria to the contrary, medical assistance shall be provided to, or on behalf of, an eligible child under the age of nineteen whose family income does not exceed one hundred thirty-three percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

2. A child may participate in the HAWK-I program if the child meets all of the following criteria:

a. Is less than nineteen years of age.

b. Is a resident of this state.

c. Is a member of a family whose adjusted gross income does not exceed one hundred eighty-five percent of the federal poverty level, as defined in 42 U.S.C. § 9902(2), including any revision required by such section.

d. Is not eligible for medical assistance pursuant to chapter 249A.

e. Is not currently covered under or was not covered within the prior six months under a group health plan as defined in 42 U.S.C. § 300Ggg-91(a)(1) or other health benefit plan, unless the coverage was involuntarily lost or unless dropping the coverage is allowed by rule of the board.

f. Is not a member of a family that is eligible for health benefits coverage under a state health benefits plan on the basis of a family member's employment with a public agency in this state.

g. Is not an inmate of a public institution or a patient in an institution for mental diseases.

3. In accordance with the rules adopted by the board, a child may be determined to be presumptively eligible for the program pending a final eligibility determination. Following final determination of eligibility by the administrative contractor, a child shall be eligible for a twelve-month period. At the end of the twelve-month period, the administrative contractor shall conduct a review of the circumstances of the eligible child's family to establish eligibility and cost sharing for the subsequent twelve-month period.

4. Once an eligible child is enrolled in a plan, the eligible child shall remain enrolled in the plan unless a determination is made, according to criteria established by the board, that the eligible child should be allowed to enroll in another qualified child health plan or should be disenrolled. An enrollee may change plan enrollment once a year on the enrollee's anniversary date.

5. The board shall study and shall make recommendations to the governor and to the general assembly regarding the level of family income which is appropriate for application of the program, and the feasibility of allowing families with incomes above the level of eligibility for the program to purchase insurance for children through the program.

6. The board and the council on human services shall cooperate and seek appropriate coordination in administration of the program and the medical assistance program and shall develop a plan for a unified medical assistance and HAWK-I program system which includes the use of a single health insurance card by enrollees of either program.

Sec. 10. NEW SECTION. 514I.8 PROGRAM BENEFITS.

1. Until June 30, 1999, the benefits provided under the program shall be those benefits established by rule of the board and in compliance with Title XXI of the federal Social Security Act.

2. On or before June 30, 1999, the HAWK-I board shall adopt rules to amend the benefits package based upon review of the results of the initial benefits package used.

3. Subsequent to June 30, 1999, the HAWK-I board shall review the benefits package annually and shall determine additions to or deletions from the benefits package offered. The HAWK-I board shall submit the recommendations to the general assembly for any amendment to the benefits package.

4. Benefits, in addition to those required by rule, may be provided to eligible children by a participating insurer if the benefits are provided at no additional cost to the state.

Sec. 11. NEW SECTION. 514I.9 COST SHARING.

1. Cost sharing for eligible children whose family adjusted gross income is at or below one hundred fifty percent of the federal poverty level shall not exceed the standards permitted under 42 U.S.C. § 1396(o)(a)(3) or § 1396(o)(b)(1).

2. Cost sharing for eligible children whose family adjusted gross income is between one hundred fifty percent and one hundred eighty-five percent of the federal poverty level shall include a premium or copayment amount which is at least a minimum amount but which does not exceed five percent of the annual family adjusted gross income. The amount of the premium or the copayment amount shall be based on a sliding fee scale established by rule which is based on family adjusted gross income and the size of the family.

Sec. 12. APPOINTMENT OF MEMBERS OF THE HAWK-I BOARD. The members of the HAWK-I board shall be appointed within thirty days of enactment of this Act and may begin performing board duties prior to the beginning of the official commencement of the terms of the appointed board members as provided under this Act.

Sec. 13. OUTREACH. Notwithstanding any provision to the contrary, including section 8.33, any moneys remaining in the Iowa healthy kids trust fund pursuant to chapter 514H and any moneys remaining from grants, contributions, or other sources which were designated for the purposes of the healthy kids program shall be transferred to the department of human services and used to implement outreach activities for the HAWK-I program immediately upon enactment of this Act.

Sec. 14. EMERGENCY RULES. The department of human services may adopt emergency rules to implement changes in the medical assistance program by July 1, 1998, and the department of human services and the board may each adopt emergency rules only to the extent necessary to implement the HAWK-I program by January 1, 1999. Any rules adopted in accordance with this section shall also be published as notice of intended action as provided in section 17A.4.

Sec. 15. Chapter 514H is repealed.

Sec. 16. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 14, 1998

CHAPTER 1197

PROBATION PROCEDURES — SIXTH JUDICIAL DISTRICT

S.F. 2377

AN ACT relating to the sixth judicial district pilot probation revocation project and providing for effective dates and for repeal of the pilot project provisions.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I

Section 1. Section 907.8A, subsection 1, Code Supplement 1997, is amended by striking the subsection and inserting in lieu thereof the following:

1. Except as otherwise provided, the probation violation sanctioning jurisdiction of the court in the sixth judicial district shall be transferred to an administrative parole and probation judge upon entry of the sentencing order for each person who is sentenced to the custody of the director of the department of corrections and whose sentence is suspended. The court shall retain jurisdiction to establish the amount of restitution, approve the plan of restitution, and for reconsideration of the original sentence. The court shall also retain jurisdiction for arrest warrants, initial appearances, preliminary probation violation informations, bond proceedings, violations of restitution plans, and appointment of counsel. If a person is not sentenced to the custody of the director of the department of corrections the court shall retain the jurisdiction over matters relating to those cases.

Sec. 2. Section 908.11, subsections 4 and 5, Code Supplement 1997, are amended to read as follows:

4. If the person who is believed to have violated the conditions of probation was sentenced and placed on probation in the sixth judicial district under section 907.8A, or jurisdiction over the person was transferred to the sixth judicial district as a result of transfer of the person's probation supervision, the functions of the liaison officer and the board of parole ~~shall~~ may be performed by the administrative parole and probation judge as provided in section 907.8A.

5. If the probation officer proceeds by arrest and section 907.8A applies, the administrative parole and probation judge may ~~receive the complaint, issue an arrest warrant, or~~ conduct the ~~initial appearance and~~ probable cause hearing and probation revocation hearing. The ~~initial appearance,~~ probable cause hearing, and probation revocation hearing, ~~or any of them,~~ may, at the discretion of the administrative parole and probation judge, be merged into a single hearing when it appears that the alleged violator will not be prejudiced by the merger. An administrative parole and probation judge may conduct any or all appearances or hearings electronically or by telephone. An administrative parole and probation judge may reconsider a person's sentence in the manner provided in sections 902.4 and 903.2 if reconsideration is deemed appropriate and the person's probation was revoked by an administrative parole and probation judge in the sixth judicial district. The sheriff shall coordinate and provide transportation and security for probation hearings conducted by an administrative parole and probation judge.

Sec. 3. Section 908.11, subsection 6, Code Supplement 1997, is amended by striking the subsection and inserting in lieu thereof the following:

6. If the violation is established, the court or the administrative parole and probation judge may take any of the following actions:

a. Continue the probation with or without an alteration of the conditions of probation.

b. Sentence the defendant to a jail term while continuing the probation.

c. Order the defendant to be placed in a violator facility established pursuant to section 904.207 while continuing the probation.

d. Revoke the probation and require the defendant to serve the sentence imposed or any lesser sentence.

The order of an administrative parole and probation judge shall become a final decision, unless the defendant appeals the decision to the board of parole within the time provided in rules adopted by the board. The appeal shall be conducted pursuant to rules adopted by the board and the record on appeal shall be the record made at the hearing conducted by the administrative parole and probation judge.

DIVISION II

Sec. 4. Section 907.2, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

Probation officers employed by the judicial district department of correctional services, while performing the duties prescribed by that department, are peace officers. Probation

officers shall investigate all persons referred to them for investigation by the director of the judicial district department of correctional services which employs them. They shall furnish to each person released under their supervision or committed to a community corrections residential facility operated by the judicial district department of correctional services, a written statement of the conditions of probation or commitment. They shall keep informed of each person's conduct and condition and shall use all suitable methods prescribed by the judicial district department of correctional services to aid and encourage the person to bring about improvements in the person's conduct and condition. Probation officers shall keep records of their work and~~, unless section 907.8A applies,~~ shall make reports to the court when alleged violations occur and within no less than thirty days before the period of probation will expire. ~~If section 907.8A applies, the probation officers shall make the reports of alleged violations to the administrative parole and probation judge within no less than thirty days before the period of probation will expire.~~ Probation officers shall coordinate their work with other social welfare agencies which offer services of a corrective nature operating in the area to which they are assigned.

Sec. 5. Section 907.7, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

The length of the probation shall not be less than one year if the offense is a misdemeanor and shall not be less than two years if the offense is a felony. However, the court ~~or the administrative parole and probation judge, if section 907.8A applies,~~ may subsequently reduce the length of the probation if the court ~~or the administrative parole and probation judge~~ determines that the purposes of probation have been fulfilled and the fees imposed under section 905.14 have been paid to or waived by the judicial district department of correctional services. The purposes of probation are to provide maximum opportunity for the rehabilitation of the defendant and to protect the community from further offenses by the defendant and others.

Sec. 6. Section 907.8, unnumbered paragraph 3, Code Supplement 1997, is amended to read as follows:

~~Except as otherwise provided in section 907.8A, the court shall retain jurisdiction~~ Jurisdiction over these persons shall remain with the sentencing court. ~~Jurisdiction may be transferred to a court in another jurisdiction, or to the administrative parole and probation judge under section 907.8A, if a person's probation supervision is transferred to a judicial district department of correctional services in a district other than the district in which the person was sentenced.~~

Sec. 7. Section 907.9, subsections 1 through 4, Code Supplement 1997, are amended to read as follows:

1. ~~Except as otherwise provided in section 907.8A, at~~ At any time that the court determines that the purposes of probation have been fulfilled and the fees imposed under section 905.14 have been paid to or waived by the judicial district department of correctional services, the court may order the discharge of a person from probation.

2. At any time that a probation officer determines that the purposes of probation have been fulfilled and the fees imposed under section 905.14 have been paid to or waived by the judicial district department of correctional services, the officer may order the discharge of a person from probation after approval of the district director and notification of the sentencing court~~, the administrative parole and probation judge if section 907.8A applies,~~ and the county attorney who prosecuted the case.

3. The sentencing judge ~~or, if section 907.8A applies, the administrative parole and probation judge,~~ may order a hearing on its own motion, or shall order a hearing upon the request of the county attorney, for review of such discharge. If the sentencing judge is no longer serving or unable to order such hearing, the chief judge of the district or the chief judge's designee shall order any hearing pursuant to this section~~, if section 907.8A does not apply~~. Following the hearing, the court ~~or the administrative parole and probation judge~~ shall

approve or rescind such discharge. If a hearing is not ordered within thirty days after notification by the probation officer, the person shall be discharged and the probation officer shall notify the state court administrator of such discharge.

4. At the expiration of the period of probation and if the fees imposed under section 905.14 have been paid to or waived by the judicial district department of correctional services, the court ~~or, if section 907.8A applies, the administrative parole and probation judge,~~ shall order the discharge of the person from probation, and the court ~~or administrative parole and probation judge~~ shall forward to the governor a recommendation for or against restoration of citizenship rights to that person. A person who has been discharged from probation shall no longer be held to answer for the person's offense. Upon discharge from probation, if judgment has been deferred under section 907.3, the court's criminal record with reference to the deferred judgment shall be expunged. The record maintained by the state court administrator as required by section 907.4 shall not be expunged. The court's record shall not be expunged in any other circumstances.

Sec. 8. Section 908.11, subsections 2 through 6, Code Supplement 1997, are amended to read as follows:

2. ~~Except as otherwise provided in sections 907.8 and 907.8A, the~~ The functions of the liaison officer and the board of parole shall be performed by the judge or magistrate who placed the alleged violator on probation if that judge or magistrate is available, otherwise by another judge or magistrate who would have had jurisdiction to try the original offense.

3. If the probation officer proceeds by arrest ~~and section 907.8A does not apply~~, any magistrate may receive the complaint, issue an arrest warrant, or conduct the initial appearance and probable cause hearing if it is not convenient for the judge who placed the alleged violator on probation to do so. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may at the discretion of the court be merged into a single hearing when it appears that the alleged violator will not be prejudiced by the merger.

~~4. If the person who is believed to have violated the conditions of probation was sentenced and placed on probation in the sixth judicial district under section 907.8A, or jurisdiction over the person was transferred to the sixth judicial district as a result of transfer of the person's probation supervision, the functions of the liaison officer and the board of parole shall be performed by the administrative parole and probation judge as provided in section 907.8A.~~

~~5. If the probation officer proceeds by arrest and section 907.8A applies, the administrative parole and probation judge may receive the complaint, issue an arrest warrant, or conduct the initial appearance and probable cause hearing. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may, at the discretion of the administrative parole and probation judge, be merged into a single hearing when it appears that the alleged violator will not be prejudiced by the merger.~~

6. If the violation is established, the court ~~or the administrative parole and probation judge~~ may continue the probation or youthful offender status with or without an alteration of the conditions of probation or a youthful offender status. If the defendant is an adult or a youthful offender the court may hold the defendant in contempt of court and sentence the defendant to a jail term while continuing the probation or youthful offender status, order the defendant to be placed in a violator facility established pursuant to section 904.207 while continuing the probation or youthful offender status, or revoke the probation or youthful offender status and require the defendant to serve the sentence imposed or any lesser sentence, and, if imposition of sentence was deferred, may impose any sentence which might originally have been imposed. ~~The administrative parole and probation judge may revoke the probation and require the defendant to serve the sentence which was originally imposed. The administrative parole and probation judge may grant credit against the sentence, for any time served while the defendant was on probation. The order of the administrative parole and probation judge shall become a final decision, unless the defendant appeals the decision to the board of parole within the time provided in rules adopted by the~~

~~board. The appeal shall be conducted pursuant to rules adopted by the board and the record on appeal shall be the record made at the hearing conducted by the administrative parole and probation judge.~~

Sec. 9. Sections 906.16, 908.4, 908.5, 908.6, 908.7, 908.10, and 908.10A, Code Supplement 1997, are amended by striking from the sections the words "administrative parole and probation judge" and "administrative parole and probation judge's" and inserting in lieu thereof the words "administrative parole judge" and "administrative parole judge's", respectively.

Sec. 10. Section 907.8A, Code Supplement 1997, is repealed.

Sec. 11. PILOT PROJECT EVALUATION. The division of criminal and juvenile justice planning of the department of human rights, in cooperation with the court, prosecutors, and community corrections personnel of the sixth judicial district and representatives of the board of parole, shall conduct an evaluation of the effectiveness of the sixth judicial district probation pilot project. The evaluation shall include but shall not be limited to a comparative assessment of the effect of the use of an administrative parole and probation judge on the efficient processing of cases, sentences imposed, number of revocations, and offender compliance with sentence terms in the sixth judicial district. The evaluation shall be submitted in a report to the general assembly which convenes in January 2001.

Sec. 12. CONSTRUCTION — DIRECTIONS TO CODE EDITOR. It is the intent of the general assembly that sections 4 through 10 of this Act be construed only to remove references to the pilot probation project in the sixth judicial district and not to substantively conflict with or supersede any other or intervening amendments to those sections which do not relate to that pilot project. The Code editor is specifically directed to harmonize the removal of any references to the sixth judicial district with any intervening or other amendments to those Code sections to allow those intervening or other amendments to take effect.

DIVISION III

Sec. 13. EFFECTIVE DATES — REPEALS.

1. This division and Division I of this Act, being deemed of immediate importance, take effect upon enactment.
2. Division I of this Act is repealed June 30, 2000.
3. Division II of this Act takes effect July 1, 2000.

Approved May 18, 1998

CHAPTER 1198

PRIZES AWARDED IN RAFFLES AND GAMES

H.F. 2532

AN ACT relating to the maximum value of prizes awarded in raffles and certain games of skill and chance.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 99B.7, subsection 1, paragraph d, Code 1997, is amended to read as follows:

d. Cash prizes shall not be awarded in games other than bingo and raffles. The value of a prize shall not exceed ~~two hundred~~ one thousand dollars and merchandise prizes shall not be repurchased. If a prize consists of more than one item, unit, or part, the aggregate value of all items, units, or parts shall not exceed ~~two hundred~~ one thousand dollars. However, one raffle may be conducted per calendar year at which prizes having a combined value of more than ~~two hundred~~ one thousand dollars may be awarded. If the prize is merchandise, its value shall be determined by purchase price paid by the organization or donor.

Sec. 2. Section 99B.7, subsection 1, paragraph q, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A licensee under this section may hold one real property raffle per calendar year at which the value of the real property may exceed ~~two hundred~~ one thousand dollars in lieu of the annual raffle authorized in subsection 1, paragraph "d", if all of the following requirements are met:

Approved May 18, 1998

CHAPTER 1199

FISHING AND HUNTING — LICENSES AND FEES

S.F. 187

AN ACT relating to the issuance of licenses and the imposition of fees for the fishing, trapping, hunting, pursuing, catching, killing, or taking of wild animals, birds, game, or fish, providing for other properly related matters, and subjecting violators to existing penalties, and providing effective and applicability dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 308.2, Code 1997, is amended to read as follows:

308.2 ASSENT TO FEDERAL ACT.

The general assembly of the state of Iowa hereby declares that the intent of this chapter is to assent to any Act of the United States Congress authorizing the development of any national parkway located wholly or partly within the state of Iowa, to the full extent that is necessary to secure any benefits under such Act, provided that the hunting of migratory ~~waterfowl~~ game birds and other game and fishing shall not be prohibited or otherwise restricted by the United States government or any of its designated agencies in control of said project, and to authorize the appropriate state boards, commissions, departments and the governing bodies of counties, cities and villages and especially the state transportation commission to co-operate in the planning and development of all national parkways that may be proposed for development in Iowa, with any agency or department of the government of the United States in which is vested the necessary authority to construct or otherwise develop such national parkways. Whenever authority shall exist for the planning and development of any national parkway, of which any portion shall be located in the state of Iowa, it shall be the duty of the state transportation commission to make such investigations and studies in co-operation with the appropriate federal agency, and such state boards, commissions and departments as shall have an interest in such parkway development, to the extent that shall be desirable and necessary in order to provide that the state shall secure all advantages that may accrue through such parkway development and that the interests of the counties, cities and villages along the route shall be served.

Sec. 2. Section 331.602, subsection 11, Code Supplement 1997, is amended to read as follows:

11. ~~Issue~~ Collect migratory ~~waterfowl stamps~~ game bird fees as provided in chapter 484A.

Sec. 3. Section 331.605, subsection 2, paragraph a, Code 1997, is amended to read as follows:

a. The fees specified in section 483A.1. ~~The recorder may designate depositaries to issue the licenses and collect the appropriate fees as provided in section 483A.11.~~

Sec. 4. Section 331.605, subsection 3, Code 1997, is amended to read as follows:

3. ~~For the issuance of a state migratory waterfowl stamp, a~~ A state migratory game bird fee as provided in section 484A.3.

Sec. 5. Section 483A.1, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

483A.1 LICENSES — FEES.

Except as otherwise provided in this chapter, a person shall not fish, trap, hunt, pursue, catch, kill, take in any manner, use, have possession of, sell, or transport all or a part of any wild animal, bird, game, or fish, the protection and regulation of which is desirable for the conservation of resources of the state, without first obtaining a license for that purpose and the payment of a fee as follows:

1. Residents:

a. Fishing license	$ 10.50
b. Fishing license, lifetime, sixty-five years or older	$ 50.50
c. Hunting license	$ 12.50
d. Hunting license, lifetime, sixty-five years or older	$ 50.50
e. Deer hunting license	$ 25.50
f. Wild turkey hunting license	$ 22.50
g. Fur harvester license, sixteen years or older	$ 20.50
h. Fur harvester license, under sixteen years of age	$ 5.50
i. Fur dealer license	$ 225.50
j. Aquaculture unit license	$ 25.50
k. Bait dealer license	$ 30.50

2. Nonresidents:

a. Fishing license	$ 22.50
b. Hunting license, eighteen years of age or older	$ 60.50
c. Hunting license, under eighteen years of age	$ 25.50
d. Deer hunting license	$ 150.50
e. Wild turkey hunting license	$ 75.50
f. Fur harvester license	$ 180.50
g. Fur dealer license	$ 500.50
h. Location permit for fur dealers	$ 55.50
i. Aquaculture unit license	$ 50.50
j. Bait dealer license	$ 60.50

3. Residents and Nonresidents:

a. Fishing, seven-day license	$ 8.50
b. Trout fishing fee	$ 10.50
c. Game breeder license	$ 15.50
d. Taxidermy license	$ 15.50
e. Falconry license	$ 20.50
f. Nongame support fee	$ 5.00
g. Wildlife habitat fee	$ 5.50
h. Migratory game bird fee	$ 5.50

Sec. 6. Section 483A.3, Code 1997, is amended to read as follows:

483A.3 WILDLIFE HABITAT ~~STAMP~~ FEE.

1. A resident or nonresident person required to have a hunting~~,~~ or fur harvester~~, or fur, fish, and game~~ license shall not hunt or trap unless the person ~~carries a valid~~ has paid the wildlife habitat ~~stamp signed in ink with the person's signature across the face of the stamp~~ fee. This section shall not apply to residents who have permanent disabilities or who are younger than sixteen or older than sixty-five years of age. ~~Special wildlife~~ Wildlife habitat ~~stamps~~ fees shall be administered in the same manner as hunting and fur harvester licenses except all revenue derived from ~~the sale of the~~ wildlife habitat ~~stamps~~ fees shall be used within the state of Iowa for habitat development and shall be deposited in the state fish and game protection fund, except as provided in subsection 2. The revenue may be used for the matching of federal funds. The revenues and any matched federal funds shall be used for acquisition of land, leasing of land, or obtaining of easements from willing sellers for use as wildlife habitats. Notwithstanding the exemption provided by section 427.1, any land acquired with the revenues and matched federal funds shall be subject to the full consolidated levy of property taxes which shall be paid from those revenues. In addition ~~such~~ the revenue may be used for the development and enhancement of wildlife lands and habitat areas. Not less than fifty percent of all revenue from ~~the sale of~~ wildlife habitat ~~stamps~~ fees shall be used by the commission to enter into agreements with county conservation boards or other public agencies in order to carry out the purposes of this section. The state share of funding of those agreements provided by the revenue from ~~the sale of~~ wildlife habitat ~~stamps~~ fees shall not exceed seventy-five percent.

2. Up to sixty percent of the revenues from ~~the sale of~~ wildlife habitat ~~stamps~~ fees which are not required under subsection 1 to be used by the commission to enter into agreements with county conservation boards or other public agencies may be credited to the wildlife habitat bond fund as provided in section 483A.53.

Sec. 7. Section 483A.5, Code 1997, is amended to read as follows:

483A.5 LICENSE FOR FUR-BEARING ANIMALS.

A fur harvester license ~~or fur, fish and game license~~ is required to hunt and to trap any fur-bearing animal. A hunting license is not required when hunting furbearers with a fur harvester license. However, coyote and groundhog may be hunted with a hunting~~,~~ or a fur harvester ~~or a fur, fish and game~~ license.

Sec. 8. Section 483A.6, Code 1997, is amended to read as follows:

483A.6 TROUT ~~LICENSE STAMP~~ FISHING FEE.

Any person required to have a fishing license shall not possess trout unless that person has ~~at that time on the person an unexpired special trout license stamp validated by that person's signature written across the face of the stamp in ink, a receipt, or other evidence showing that such~~ paid the trout ~~was lawfully acquired~~ fishing fee. The proceeds from the ~~sale of this stamp~~ fee shall be used exclusively ~~to restock~~ for the trout ~~waters~~ program designated by the commission. The commission may grant a permit to a community event in which trout will be stocked in water which is not designated trout water and a person may catch and possess trout during the period and from the water covered by the permit without having ~~a special~~ paid the trout ~~license stamp~~ fishing fee.

Sec. 9. Section 483A.7, subsections 1 and 3, Code 1997, are amended to read as follows:

1. A resident hunting wild turkey who is required to have a license must have a resident hunting license ~~or combined hunting and fishing license or fur, fish and game license and a wildlife habitat stamp~~ in addition to the wild turkey hunting license and must pay the wildlife habitat fee. Upon application and payment of the required fees for archery-only licenses, a resident archer shall be issued two wild turkey licenses for the spring season.

3. A nonresident wild turkey hunter is required to have only a nonresident wild turkey hunting license and ~~a~~ pay the wildlife habitat ~~stamp~~ fee. The commission shall annually limit to two thousand licenses the number of nonresidents allowed to have wild turkey hunting licenses. The number of nonresident wild turkey hunting licenses shall be determined as provided in section 481A.38. The commission shall allocate the nonresident wild

turkey hunting licenses issued among the zones based on the populations of wild turkey. A nonresident applying for a wild turkey hunting license must exhibit proof of having successfully completed a hunter safety and ethics education program as provided in section 483A.27 or its equivalent as determined by the department before the license is issued.

Sec. 10. Section 483A.8, subsections 1 and 3, Code 1997, are amended to read as follows:

1. A resident hunting deer who is required to have a hunting license must have a resident hunting license ~~or resident combined hunting and fishing license or a fur, fish and game license and a wildlife habitat stamp~~ in addition to the deer hunting license and must pay the wildlife habitat fee.

3. A nonresident hunting deer ~~hunter~~ is required to have ~~only~~ a nonresident deer license and ~~a~~ must pay the wildlife habitat ~~stamp~~ fee. The commission shall annually limit to ~~five~~ six thousand licenses the number of nonresidents allowed to have deer hunting licenses. The number of nonresident deer hunting licenses shall be determined as provided in section 481A.38. The commission shall allocate the nonresident deer hunting licenses issued among the zones based on the populations of deer. However, a nonresident applicant may request one or more hunting zones, in order of preference, in which the applicant wishes to hunt. If the request cannot be fulfilled, the applicable fees shall be returned to the applicant. A nonresident applying for a deer hunting license must exhibit proof of having successfully completed a hunter safety and ethics education program as provided in section 483A.27 or its equivalent as determined by the department before the license is issued.

Sec. 11. Section 483A.9, Code 1997, is amended to read as follows:

483A.9 BLANKS.

The director shall provide blanks for, and determine ~~in addition to the following requirements,~~ the method, means, and requirements of issuing licenses including the issuance of licenses by electronic means.

Sec. 12. Section 483A.10, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

483A.10 ISSUANCE OF LICENSES.

The licenses issued pursuant to this chapter shall be issued by the department, the county recorders, or the license depositaries as specified by rules of the commission. The rules shall include the application procedures as necessary. The licenses shall show the cost of the license and the writing fee. A person authorized to issue a license or collect a fee pursuant to this chapter or chapter 484A shall charge the fee specified in this chapter or chapter 484A only plus a writing fee if applicable.

Sec. 13. Section 483A.11, Code 1997, is amended to read as follows:

483A.11 DEPOSITARIES ~~—BOND~~.

~~The county recorder may designate various depositaries for the sale of such licenses other than the office of the county recorder.~~ The director may designate depositaries ~~other than those designated by the recorders of the various counties~~ for the sale of licenses but in so doing the interest of the state shall be fully protected ~~either by a sufficient cash deposit or a satisfactory bond~~.

Sec. 14. Section 483A.12, Code 1997, is amended to read as follows:

483A.12 FEES.

The county recorder shall be responsible for all fees for the issuance of hunting, ~~and~~ fishing, and fur harvester licenses sold through the recorder's office~~, or issued through the recorder's office and sold by others~~. All unused license blanks shall be surrendered to the county recorder upon the recorder's demand.

~~Depositaries designated by the county recorder or the director shall retain twenty-five cents from the sale of each license for the service rendered in issuing the license.~~ The county recorder shall retain a writing fee of fifty cents from the sale of each license sold by the county recorder's office ~~and a writing fee of twenty-five cents from the sale of each license~~

~~sold by a depositary designated by the county recorder~~. The writing fees retained by the county recorder shall be deposited in the general fund of the county. ~~A depositary and county recorder shall not retain any amount from the sale of trout stamps, habitat stamps, and waterfowl stamps.~~ A license depositary designated by the director shall retain a writing fee of fifty cents from each license sold by the depositary. A license depository* may charge and retain a writing fee of one dollar for the issuance of a free deer hunting license or a free wild turkey hunting license as authorized under section 483A.24, subsection 2.

Sec. 15. Section 483A.14, Code 1997, is amended to read as follows:

483A.14 DUPLICATE LICENSES AND PERMITS.

~~Whenever~~ When any license, certificate, or permit, for which a fee has been set, has been lost, destroyed, or stolen, the director, ~~or~~ the county recorder ~~where the license was issued in the first instance~~, or the license depositary, may issue a ~~certificate to replace said~~ replacement license, if ~~written~~ evidence is ~~filed with either director or recorder, in affidavit form, by the person to whom the original was issued, setting forth the circumstances~~ available to demonstrate issuance of the original license and ~~accompanied by~~ a fee of ~~one dollar~~ two dollars is paid, ~~said fee~~ to be ~~kept by the county recorder for the use of the county, if issued by the county recorder, and~~ placed in the fish and game protection fund ~~if issued by the director~~. If, on examination of the evidence, the director, ~~or~~ the recorder, or the license depositary as the case may be, is satisfied that ~~said~~ the license has been lost, destroyed, or stolen, the director, ~~or~~ the recorder, or the license depositary shall issue a duplicate license which shall be plainly marked "duplicate" and ~~said~~ the duplicate shall serve in lieu of the original license and it shall contain the same information and signature as the original. The license depository* may charge and retain a writing fee of one dollar for each duplicate license issued pursuant to this section.

Sec. 16. Section 483A.15, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

483A.15 ACCOUNTING.

The director shall establish, by rule, specific requirements for remittance of funds, and the necessary accounting and reporting for all types of licenses issued based on the manner and location of the issuance.

Sec. 17. Section 483A.19, Code 1997, is amended to read as follows:

483A.19 SHOWING LICENSE TO OFFICER.

Every person shall, while fishing, hunting, or fur harvesting, show the person's license, certificate, or permit, to any peace officer or the owner or person in lawful control of the land or water upon which licensee may be hunting, fishing, or fur harvesting when requested by the persons to do so. Any failure to so carry or refusal to show or so exhibit the person's license, certificate, or permit shall be a violation of this chapter. However, except for possession and exhibition of deer licenses and tags or wild turkey licenses and tags, a person charged with violating this section shall not be convicted if the person produces in court, within a reasonable time, a license, certificate, or permit for hunting, fishing, or fur harvesting issued to that person and valid when the person was charged with a violation of this section.

Sec. 18. NEW SECTION. 483A.22A SALE OF LICENSE LISTS.

The department may establish, by rule, fees for lists of licensees. Notwithstanding section 22.3, the fee for a list of licensees may exceed the cost of preparing the list and providing the copying service.

Sec. 19. Section 483A.24, subsection 2, paragraph b, Code Supplement 1997, is amended to read as follows:

b. Upon written application on forms furnished by the department, the department shall issue annually without fee one deer or one wild turkey license, or both, to the owner of a farm

* The word "depositary" probably intended

unit or to a member of the owner's family, but not to both, and to the tenant or to a member of the tenant's family, but not to both. The deer hunting license or wild turkey hunting license issued shall be valid only on the farm unit for which an applicant qualifies pursuant to this subsection and shall be equivalent to the least restrictive license issued under section 481A.38. The owner or the tenant need not reside on the farm unit to qualify for a free license to hunt on that farm unit. A free deer hunting license issued pursuant to this subsection shall be valid during all shotgun deer seasons.

Sec. 20. Section 483A.24, subsections 3, 4, and 5, Code Supplement 1997, are amended to read as follows:

3. The director shall provide up to twenty-five nonresident deer hunting licenses for allocation as requested by a majority of a committee consisting of the majority leader of the senate, speaker of the house of representatives, and director of the department of economic development, or their designees. The licenses provided pursuant to the subsection shall be in addition to the number of nonresident licenses authorized pursuant to section 483A.8. The purpose of the special nonresident licenses is to allow state officials and local development groups to promote the state and its natural resources to nonresident guests and dignitaries. Photographs, videotapes, or any other form of media resulting from the hunting visitation shall not be used for political campaign purposes. The nonresident licenses shall be issued without application upon payment of the nonresident deer hunting license fee and the wildlife habitat ~~stamp~~ fee. The licenses are valid in all zones open to deer hunting. The hunter safety and ethics education certificate requirement pursuant to section 483A.27 is waived for a nonresident issued a license pursuant to this subsection.

4. The director shall provide up to twenty-five nonresident wild turkey hunting licenses for allocation as requested by a majority of a committee consisting of the majority leader of the senate, speaker of the house of representatives, and director of the department of economic development, or their designees. The licenses provided pursuant to the subsection shall be in addition to the number of nonresident licenses authorized pursuant to section 483A.7. The purpose of the special nonresident licenses is to allow state officials and local development groups to promote the state and its natural resources to nonresident guests and dignitaries. Photographs, videotapes, or any other form of media resulting from the hunting visitation shall not be used for political campaign purposes. The nonresident licenses shall be issued without application upon payment of the nonresident wild turkey hunting license fee and the wildlife habitat ~~stamp~~ fee. The licenses are valid in all zones open to wild turkey hunting. The hunter safety and ethics education certificate requirement pursuant to section 483A.27 is waived for a nonresident issued a license pursuant to this subsection.

5. A resident of the state under sixteen years of age or a nonresident of the state under fourteen years of age is not required to have a license to fish in the waters of the state. However, residents under sixteen years of age and nonresidents under fourteen years of age must ~~possess a valid~~ pay the trout ~~stamp~~ fishing fee to possess trout or they must fish for trout with a licensed adult who ~~possesses a valid~~ has paid the trout ~~stamp~~ fishing fee and limit their combined catch to the daily limit established by the commission.

Sec. 21. Section 484A.1, subsection 2, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

2. "Migratory game bird" means any wild goose, brant, wild duck, snipe, rail, woodcock, or coot.

Sec. 22. Section 484A.1, subsection 3, Code 1997, is amended by striking the subsection.

Sec. 23. Section 484A.2, Code 1997, is amended to read as follows:

484A.2 ~~STAMP~~ FEE REQUIRED.

~~No~~ A person sixteen years of age or older shall not hunt or take any migratory ~~waterfowl~~ game bird within this state without first ~~procuring~~ paying a ~~state~~ migratory ~~waterfowl stamp and having such stamp in the person's possession while hunting or taking any~~

~~migratory waterfowl~~ game bird fee. ~~Each stamp shall be validated by the signature of the licensee written across the face of such stamp.~~ The ~~commission~~ director shall determine the ~~form of the stamp and shall furnish the stamps to the county recorders and their designated depositaries for issuance or sale in the same manner as hunting licenses are issued or sold under chapter 483A~~ means and method of collecting the migratory game bird fees.

Sec. 24. Section 484A.4, unnumbered paragraph 1, Code 1997, is amended to read as follows:

All revenue generated from the migratory game bird fee shall be used for projects approved by the commission for the purpose of protecting and propagating migratory ~~waterfowl~~ game birds and for the acquisition, development, restoration, maintenance or preservation of wetlands, except for that part which is specified by the commission for use in paying administrative expenses as provided in section 456A.17.

Sec. 25. Section 484B.10, subsection 2, Code 1997, is amended to read as follows:

2. Waterfowl shall not be shot over any area where pen-reared mallards may serve as live decoys for wild waterfowl. All persons hunting game birds or ungulates upon a licensed hunting preserve shall secure a hunting license to do so in accordance with the game laws of Iowa, with the exception that an unlicensed person may secure an annual hunting preserve license restricted to hunting preserves only for a license fee of five dollars. ~~A wildlife habitat stamp shall be required of all~~ All persons who hunt on hunting preserves shall pay the wildlife habitat fee.

Sec. 26. Sections 483A.16 and 484A.3, Code 1997, are repealed.

Sec. 27. EFFECTIVE AND APPLICABILITY DATES. This Act takes effect December 15, 1998, and applies to licenses and fees for hunting, fishing, fur harvesting, and related wildlife and game activities for the calendar year beginning January 1, 1999.*

Approved May 19, 1998

CHAPTER 1200

CONSUMER FRAUDS

S.F. 490

AN ACT relating to the consumer fraud law by providing limited immunity from prosecution for providing certain information, authorizing the attorney general to commence an action related to telemarketing, and authorizing the attorney general to establish and accept a civil penalty in settlement of an investigation.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 714.16, subsection 4, paragraphs b and c, Code 1997, are amended by striking the paragraphs and inserting in lieu thereof the following:

b. Subject to paragraph "c", information, documents, testimony, or other evidence provided to the attorney general by a person pursuant to paragraph "a" or subsection 3, or provided by a person as evidence in any civil action brought pursuant to this section, shall not be admitted in evidence, or used in any manner whatsoever, in any criminal prosecution or forfeiture proceeding against that person. If a criminal prosecution or forfeiture proceeding is initiated in a state court against a person who has provided information pursuant to

* See chapter 1223, §30 herein

paragraph "a" or subsection 3, the state shall have the burden of proof that the information provided was not used in any manner to further the criminal investigation, prosecution, or forfeiture proceeding.

c. Paragraph "b" does not apply unless the person has first asserted a right against self-incrimination and the attorney general has elected to provide the person with a written statement that the information, documents, testimony, or other evidence at issue are subject to paragraph "b". After a person has been provided with such a written statement by the attorney general, a claim of privilege against self-incrimination is not a defense to any action or proceeding to obtain the information, documents, testimony, or other evidence. The limitation on the use of evidence in a criminal proceeding contained in this section does not apply to any prosecution or proceeding for perjury or contempt of court committed in the course of the giving or production of the information, documents, testimony, or other evidence.

Sec. 2. Section 714.16, subsection 6, Code 1997, is amended to read as follows:

6. If ~~any~~ a person fails or refuses to file ~~any~~ a statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to ~~a~~ the Polk county district court or the district court for the county in which the person resides or is located and, after hearing ~~thereof~~, request an order:

a. Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons~~;~~.

b. Dissolving a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice~~; and~~.

c. Granting such other relief as may be required~~;~~ until the person files the statement or report, or obeys the subpoena.

Sec. 3. Section 714.16, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 15. The attorney general may bring an action on behalf of the residents of this state, or as parens patriae, under the federal Telemarketing and Consumer Fraud and Abuse Prevention Act, Pub. L. No. 103-297, and pursue any and all enforcement options available under that Act. Subsequent amendments to that Act which do not substantially alter its structure and purpose shall not be construed to affect the authority of the attorney general to pursue an action pursuant to this section, except to the extent the amendments specifically restrict the authority of the attorney general.

Sec. 4. Section 714.16A, subsection 1, Code 1997, is amended to read as follows:

1. If a person violates section 714.16, and the violation is committed against an older person, in an action brought by the attorney general, in addition to any other civil penalty, the court may impose an additional civil penalty not to exceed five thousand dollars for each such violation. Additionally, the attorney general may accept a civil penalty as determined by the attorney general in settlement of an investigation of a violation of section 714.16, regardless of whether an action has been filed pursuant to section 714.16.

A civil penalty imposed by a court or determined and accepted by the attorney general pursuant to this section shall be paid to the treasurer of state, who shall deposit the money in the elderly victim fund, a separate fund created in the state treasury and administered by the attorney general for the investigation and prosecution of frauds against the elderly. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state. An award of reimbursement pursuant to section 714.16 has priority over a civil penalty imposed by the court pursuant to this subsection.

Approved May 19, 1998

CHAPTER 1201

UNIFORM PARTNERSHIP LAW

S.F. 2311

AN ACT relating to partnerships by replacing the existing law with a uniform partnership law and providing penalties and an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

ARTICLE 1
GENERAL PROVISIONS

Section 1. NEW SECTION. 486.101 DEFINITIONS.

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

1. "Business" includes every trade, occupation, and profession.

2. "Debtor in bankruptcy" means a person who is the subject of any of the following:

a. An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application.

b. A comparable order under federal, state, or foreign law governing insolvency.

3. "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

4. "Foreign limited liability partnership" means a partnership that satisfies both of the following:

a. The partnership is formed under laws other than the laws of this state.

b. The partnership has the status of a limited liability partnership under those laws.

5. "Limited liability partnership" means a partnership that has filed a statement of qualification under section 486.1001 and does not have a similar statement in effect in any other jurisdiction.

6. "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under section 486.202, predecessor law, or comparable law of another jurisdiction.

7. "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

8. "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

9. "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

10. "Person" means as defined in section 4.1.

11. "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest in such property.

12. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

13. "Statement" means a statement of partnership authority under section 486.303, a statement of denial under section 486.304, a statement of dissociation under section 486.704, a statement of dissolution under section 486.805, a statement of merger under section 486.907, a statement of qualification under section 486.1001, a statement of foreign qualification under section 486.1102, or an amendment or cancellation of any of the foregoing.

14. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

Sec. 2. NEW SECTION. 486.102 KNOWLEDGE AND NOTICE.

1. A person knows a fact if the person has actual knowledge of it.

2. A person has notice of a fact if any of the following apply:

a. The person knows of it.

b. The person has received a notification of it.

c. The person has reason to know it exists from all of the facts known to the person at the time in question.

3. A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

4. A person receives a notification when any of the following occur:

a. The notification comes to the person's attention.

b. The notification is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

5. Except as otherwise provided in subsection 6, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

6. A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

Sec. 3. NEW SECTION. 486.103 EFFECT OF PARTNERSHIP AGREEMENT — NONWAIVABLE PROVISIONS.

1. Except as otherwise provided in subsection 2, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

2. The partnership agreement shall not do any of the following:

a. Vary the rights and duties under section 486.105 except to eliminate the duty to provide copies of statements to all of the partners.

b. Unreasonably restrict the right of access to books and records under section 486.403, subsection 2.

c. Eliminate the duty of loyalty under section 486.404, subsection 2, or 486.603, subsection 2, paragraph "c", except as follows:

(1) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.

(2) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

d. Unreasonably reduce the duty of care under section 486.404, subsection 3, or 486.603, subsection 2, paragraph "c".

e. Eliminate the obligation of good faith and fair dealing under section 486.404, subsection 4, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable.

f. Vary the power to dissociate as a partner under section 486.602, subsection 1, except to require the notice under section 486.601, subsection 1, to be in writing.

g. Vary the right of a court to expel a partner in the events specified in section 486.601, subsection 5.

h. Vary the requirement to wind up the partnership business in cases specified in section 486.801, subsection 4, 5, or 6.

i. Vary the law applicable to a limited liability partnership under section 486.106, subsection 2.

j. Restrict rights of third parties under this chapter.

Sec. 4. NEW SECTION. 486.104 SUPPLEMENTAL PRINCIPLES OF LAW.

1. Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

2. If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section 535.3.

Sec. 5. NEW SECTION. 486.105 EXECUTION, FILING, AND RECORDING OF STATEMENTS.

1. A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state.

2. A certified copy of a statement that has been filed in the office of the secretary of state and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement filed in the office of the secretary of state does not have the effect provided for recorded statements in this chapter.

3. A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

4. A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

5. A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

6. The secretary of state may collect a fee for filing or providing a certified copy of a statement. The county recorder may collect a fee for recording a statement.

Sec. 6. NEW SECTION. 486.106 GOVERNING LAW.

1. Except as otherwise provided in subsection 2, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

2. The law of this state governs relations among the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

Sec. 7. NEW SECTION. 486.107 PARTNERSHIP SUBJECT TO AMENDMENT OR REPEAL OF CHAPTER.

A partnership governed by this chapter is subject to any amendment to or repeal of this chapter.

ARTICLE 2
NATURE OF PARTNERSHIP

Sec. 8. NEW SECTION. 486.201 PARTNERSHIP AS ENTITY.

1. A partnership is an entity distinct from its partners.

2. A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under section 486.1001.

Sec. 9. NEW SECTION. 486.202 FORMATION OF PARTNERSHIP.

1. Except as otherwise provided in subsection 2, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

2. An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

3. In determining whether a partnership is formed, the following rules apply:

a. Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

b. The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

c. A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment of or for any of the following:

(1) Of a debt by installments or otherwise.

(2) For services as an independent contractor or of wages or other compensation to an employee.

(3) Of rent.

(4) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner.

(5) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral.

(6) For the sale of the goodwill of a business or other property by installments or otherwise.

Sec. 10. NEW SECTION. 486.203 PARTNERSHIP PROPERTY.

Property acquired by a partnership is property of the partnership and not of the partners individually.

Sec. 11. NEW SECTION. 486.204 WHEN PROPERTY IS PARTNERSHIP PROPERTY.

1. Property is partnership property if acquired in the name of any of the following:

a. The partnership.

b. One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

2. Property is acquired in the name of the partnership by a transfer to any of the following:

a. The partnership in its name.

b. One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

3. Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

4. Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

ARTICLE 3
RELATIONS OF PARTNERS TO
PERSONS DEALING WITH PARTNERSHIP

Sec. 12. NEW SECTION. 486.301 PARTNER AGENT OF PARTNERSHIP.

Subject to the effect of a statement of partnership authority under section 486.303:

1. Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

2. An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

Sec. 13. NEW SECTION. 486.302 TRANSFER OF PARTNERSHIP PROPERTY.

1. Partnership property may be transferred as follows:

a. Subject to the effect of a statement of partnership authority under section 486.303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

b. Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to the partners of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

c. Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to the partners of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

2. A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 486.301 and if one of the following applies:

a. As to a subsequent transferee who gave value for property transferred under subsection 1, paragraphs "a" and "b", proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

b. As to a transferee who gave value for property transferred under subsection 1, paragraph "c", proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

3. A partnership shall not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection 2, from any earlier transferee of the property.

4. If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

Sec. 14. NEW SECTION. 486.303 STATEMENT OF PARTNERSHIP AUTHORITY.

1. A partnership may file a statement of partnership authority as provided in this subsection.

a. The statement of partnership authority must include all of the following:

(1) The name of the partnership.

(2) The street address of its chief executive office and of one office in this state, if there is one.

(3) The names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection 2.

(4) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership.

b. The statement of partnership authority may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

2. If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

3. If a filed statement of partnership authority is executed pursuant to section 486.105, subsection 3, and states the name of the partnership but does not contain all of the other information required by subsection 1, the statement nevertheless operates with respect to a person not a partner as provided in subsections 4 and 5.

4. Except as otherwise provided in subsection 7, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

a. Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

b. A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

5. A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

6. Except as otherwise provided in subsections 4 and 5 and sections 486.704 and 486.805, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

7. Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the secretary of state.

Sec. 15. NEW SECTION. 486.304 STATEMENT OF DENIAL.

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to section 486.303, subsection 2, may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in section 486.303, subsections 4 and 5.

Sec. 16. NEW SECTION. 486.305 PARTNERSHIP LIABLE FOR PARTNER'S ACTIONABLE CONDUCT.

1. A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

2. If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

Sec. 17. NEW SECTION. 486.306 PARTNER'S LIABILITY.

1. Except as otherwise provided in subsections 2 and 3, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

2. A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

3. An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under section 486.1001, subsection 2.

Sec. 18. NEW SECTION. 486.307 ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS.

1. A partnership may sue and be sued in the name of the partnership.

2. An action may be brought against the partnership and, to the extent not inconsistent with section 486.306, any or all of the partners in the same action or in separate actions.

3. A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership shall not be satisfied from a partner's assets unless there is also a judgment against the partner.

4. A judgment creditor of a partner shall not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 486.306 and one or more of the following apply:

a. A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part.

b. The partnership is a debtor in bankruptcy.

c. The partner has agreed that the creditor need not exhaust partnership assets.

d. A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers.

e. Liability is imposed on the partner by law or contract independent of the existence of the partnership.

5. This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 486.308.

Sec. 19. NEW SECTION. 486.308 LIABILITY OF PURPORTED PARTNER.

1. If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person,

relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

2. If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind the persons to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

3. A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

4. A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

5. Except as otherwise provided in subsections 1 and 2, persons who are not partners as to each other are not liable as partners to other persons.

ARTICLE 4
RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

Sec. 20. NEW SECTION. 486.401 PARTNER'S RIGHTS AND DUTIES.

1. Each partner is deemed to have an account subject to the following:

a. The account is credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits.

b. The account is charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

2. Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

3. A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property, if such payments were made or liabilities incurred without violation of the partner's duties to the partnership or the other partners.

4. A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

5. A payment or advance made by a partner which gives rise to a partnership obligation under subsection 3 or 4 constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

6. Each partner has equal rights in the management and conduct of the partnership business.

7. A partner may use or possess partnership property only on behalf of the partnership.

8. A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

9. A person may become a partner only with the consent of all of the partners.

10. A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

11. This section does not affect the obligations of a partnership to other persons under section 486.301.

Sec. 21. NEW SECTION. 486.402 DISTRIBUTIONS IN KIND.

A partner has no right to receive, and shall not be required to accept, a distribution in kind.

Sec. 22. NEW SECTION. 486.403 PARTNER'S RIGHTS AND DUTIES WITH RESPECT TO INFORMATION.

1. A partnership shall keep its books and records, if any, at its chief executive office.

2. A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which the former partners were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

3. Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability all of the following:

a. Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter.

b. On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

Sec. 23. NEW SECTION. 486.404 GENERAL STANDARDS OF PARTNER'S CONDUCT.

1. The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections 2 and 3.

2. A partner's duty of loyalty to the partnership and the other partners is limited to the following:

a. To account to the partnership and hold as trustee for the partnership any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity.

b. To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership.

c. To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

3. A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

4. A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

5. A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

6. A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

7. This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

Sec. 24. NEW SECTION. 486.405 ACTIONS BY PARTNERSHIP AND PARTNERS.

1. A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

2. A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to do any of the following:

a. Enforce the partner's rights under the partnership agreement.

b. Enforce the partner's rights under this chapter, including any or all of the following:

(1) The partner's rights under section 486.401, 486.403, or 486.404.

(2) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 486.701 or enforce any other right under article 6 or 7.

(3) The partner's right to compel a dissolution and winding up of the partnership business under section 486.801 or enforce any other right under article 8.

c. Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

3. The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Sec. 25. NEW SECTION. 486.406 CONTINUATION OF PARTNERSHIP BEYOND DEFINITE TERM OR PARTICULAR UNDERTAKING.

1. If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

2. If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

ARTICLE 5
TRANSFEREES AND CREDITORS OF PARTNER

Sec. 26. NEW SECTION. 486.501 PARTNER NOT CO-OWNER OF PARTNERSHIP PROPERTY.

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

Sec. 27. NEW SECTION. 486.502 PARTNER'S TRANSFERABLE INTEREST IN PARTNERSHIP.

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

Sec. 28. NEW SECTION. 486.503 TRANSFER OF PARTNER'S TRANSFERABLE INTEREST.

1. A transfer, in whole or in part, of a partner's transferable interest in the partnership is or does all of the following:

a. Is permissible.

b. Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business.

c. Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

2. A transferee of a partner's transferable interest in the partnership has a right to all of the following:

a. To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

b. To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor.

c. To seek under section 486.801, subsection 6, a judicial determination that it is equitable to wind up the partnership business.

3. In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

4. Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

5. A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

6. A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

Sec. 29. NEW SECTION. 486.504 PARTNER'S TRANSFERABLE INTEREST SUBJECT TO CHARGING ORDER.

1. On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

2. A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

3. At any time before foreclosure, an interest charged may be redeemed by or with any of the following:

a. By the judgment debtor.

b. With property other than partnership property, by one or more of the other partners.

c. With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

4. This chapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

5. This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

ARTICLE 6
PARTNER'S DISSOCIATION

Sec. 30. NEW SECTION. 486.601 EVENTS CAUSING PARTNER'S DISSOCIATION.

A partner is dissociated from a partnership upon the occurrence of any of the following events:

1. The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner.

2. An event agreed to in the partnership agreement as causing the partner's dissociation.

3. The partner's expulsion pursuant to the partnership agreement.

4. The partner's expulsion by the unanimous vote of the other partners if any of the following apply:

a. It is unlawful to carry on the partnership business with that partner.

b. There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed.

c. Within ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business.

d. A partnership, limited partnership, or limited liability company that is a partner has been dissolved and its business is being wound up.

5. On application by the partnership or another partner, the partner's expulsion by judicial determination because of any of the following:

a. The partner engaged in wrongful conduct that adversely and materially affected the partnership business.

b. The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 486.404.

c. The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner.

6. The partner's actions constituting any of the following:

a. Becoming a debtor in bankruptcy.

b. Executing an assignment for the benefit of creditors.

c. Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property.

d. Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated.

7. In the case of a partner who is an individual any of the following:

a. The partner's death.

b. The appointment of a general guardian or general conservator for the partner.

c. A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement.

8. In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee.

9. In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative.

10. Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

Sec. 31. NEW SECTION. 486.602 PARTNER'S POWER TO DISSOCIATE — WRONGFUL DISSOCIATION.

1. A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 486.601, subsection 1.

2. A partner's dissociation is wrongful only if any of the following applies:

a. It is in breach of an express provision of the partnership agreement.

b. In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking if any of the following occur:

(1) The partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death or otherwise under section 486.601, subsections 6 through 10, or wrongful dissociation under this subsection.

(2) The partner is expelled by judicial determination under section 486.601, subsection 5.

(3) The partner is dissociated by becoming a debtor in bankruptcy.

(4) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

3. A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

Sec. 32. NEW SECTION. 486.603 EFFECT OF PARTNER'S DISSOCIATION.

1. If a partner's dissociation results in a dissolution and winding up of the partnership business, article 8 applies; otherwise, article 7 applies.

2. Upon a partner's dissociation all of the following apply:

a. The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 486.803.

b. The partner's duty of loyalty under section 486.404, subsection 2, paragraph "c", terminates.

c. The partner's duty of loyalty under section 486.404, subsection 2, paragraphs "a" and "b", and duty of care under section 486.404, subsection 3, continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 486.803.

ARTICLE 7
PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

Sec. 33. NEW SECTION. 486.701 PURCHASE OF DISSOCIATED PARTNER'S INTEREST.

1. If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 486.801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection 2.

2. The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under section 486.807, subsection 2, if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

3. Damages for wrongful dissociation under section 486.602, subsection 2, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

4. A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 486.702.

5. If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection 3.

6. If a deferred payment is authorized under subsection 8, the partnership may tender a written offer to pay the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets under subsection 3, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

7. The payment or tender required by subsection 5 or 6 must be accompanied by all of the following:

a. A written statement of partnership assets and liabilities as of the date of dissociation.

b. The latest available partnership balance sheet and income statement, if any.

c. A written explanation of how the estimated amount of the payment was calculated.

d. Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection 3, or other terms of the obligation to purchase.

8. A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

9. A dissociated partner may maintain an action against the partnership, pursuant to section 486.405, subsection 2, paragraph "b", subparagraph (2), to determine the buyout price of that partner's interest, any offsets under subsection 3, or other terms of the obligation to purchase. The action must be commenced within one hundred twenty days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection 3, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection 8, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection 7.

Sec. 34. NEW SECTION. 486.702 DISSOCIATED PARTNER'S POWER TO BIND AND LIABILITY TO PARTNERSHIP.

1. For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under article 9, is bound by an act of the dissociated partner which would have bound the partnership under section 486.301 before dissociation only if at the time of entering into the transaction all of the following apply:

a. The other party reasonably believed that the dissociated partner was then a partner.

b. The other party did not have notice of the partner's dissociation.

c. The other party is not deemed to have had knowledge under section 486.303, subsection 5, or notice under section 486.704, subsection 3.

2. A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection 1.

Sec. 35. NEW SECTION. 486.703 DISSOCIATED PARTNER'S LIABILITY TO OTHER PERSONS.

1. A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection 2.

2. A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under article 9, within two years after the partner's dissociation, only if the partner is liable for the obligation under section 486.306 and at the time of entering into the transaction all of the following apply:

a. The other party reasonably believed that the dissociated partner was then a partner.

b. The other party did not have notice of the partner's dissociation.

c. The other party is not deemed to have had knowledge under section 486.303, subsection 5, or notice under section 486.704, subsection 3.

3. By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

4. A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

Sec. 36. NEW SECTION. 486.704 STATEMENT OF DISSOCIATION.

1. A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

2. A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of section 486.303, subsections 4 and 5.

3. For the purposes of sections 486.702, subsection 1, paragraph "c", and 486.703, subsection 2, paragraph "c", a person not a partner is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

Sec. 37. NEW SECTION. 486.705 CONTINUED USE OF PARTNERSHIP NAME.

Continued use of a partnership name, or a dissociated partner's name as part of a partnership name, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

ARTICLE 8
WINDING UP PARTNERSHIP BUSINESS

Sec. 38. NEW SECTION. 486.801 EVENTS CAUSING DISSOLUTION AND WINDING UP OF PARTNERSHIP BUSINESS.

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

1. In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under section 486.601, subsections 2 through 10, of that partner's express will to withdraw as a partner, or on a later date specified by the partner.

2. In a partnership for a definite term or particular undertaking if any of the following occur or are present:

a. The expiration of ninety days after a partner's dissociation by death or otherwise under section 486.601, subsections 6 through 10, or wrongful dissociation under section 486.602, subsection 2, unless before that time a majority in interest of the remaining partners, including partners who have rightfully dissociated pursuant to section 486.602, subsection 2, paragraph "b", subparagraph (1), agree to continue the partnership.

b. The express will of all of the partners to wind up the partnership business.

c. The expiration of the term or the completion of the undertaking.

3. An event agreed to in the partnership agreement resulting in the winding up of the partnership business.

4. An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section.

5. On application by a partner, a judicial determination that concludes any of the following:

a. The economic purpose of the partnership is likely to be unreasonably frustrated.

b. Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner.

c. It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

6. On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business at any of the following times:

a. After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer.

b. At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

Sec. 39. NEW SECTION. 486.802 PARTNERSHIP CONTINUES AFTER DISSOLUTION.

1. Subject to subsection 2, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

2. At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event all of the following apply:

a. The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred.

b. The rights of a third party accruing under section 486.804, subsection 1, or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

Sec. 40. NEW SECTION. 486.803 RIGHT TO WIND UP PARTNERSHIP BUSINESS.

1. After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the court, for good cause shown, may order judicial supervision of the winding up.

2. The legal representative of the last surviving partner may wind up a partnership's business.

3. A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 486.807, settle disputes by mediation or arbitration, and perform other necessary acts.

Sec. 41. NEW SECTION. 486.804 PARTNER'S POWER TO BIND PARTNERSHIP AFTER DISSOLUTION.

Subject to section 486.805, a partnership is bound by a partner's act after dissolution that meets any of the following criteria:

1. Is appropriate for winding up the partnership business.

2. Would have bound the partnership under section 486.301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

Sec. 42. NEW SECTION. 486.805 STATEMENT OF DISSOLUTION.

1. After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

2. A statement of dissolution cancels a filed statement of partnership authority for the purposes of section 486.303, subsection 4, and is a limitation on authority for the purposes of section 486.303, subsection 5.

3. For the purposes of sections 486.301 and 486.804, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety days after it is filed.

4. After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in section 486.303, subsections 4 and 5, in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

Sec. 43. NEW SECTION. 486.806 PARTNER'S LIABILITY TO OTHER PARTNERS AFTER DISSOLUTION.

1. Except as otherwise provided in subsection 2 and section 486.306, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 486.804.

2. A partner who, with knowledge of the dissolution, incurs a partnership liability under section 486.804, subsection 2, by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

Sec. 44. NEW SECTION. 486.807 SETTLEMENT OF ACCOUNTS AND CONTRIBUTIONS AMONG PARTNERS.

1. In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection 2.

2. Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account, but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 486.306.

3. If a partner fails to contribute the full amount required under subsection 2, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 486.306. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 486.306.

4. After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 486.306.

5. The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

6. An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

ARTICLE 9
CONVERSIONS AND MERGERS

Sec. 45. NEW SECTION. 486.901 DEFINITIONS.

In this article:

1. "General partner" means a partner in a partnership and a general partner in a limited partnership.

2. "Limited partner" means a limited partner in a limited partnership.

3. "Limited partnership" means a limited partnership created under chapter 487, predecessor law, or comparable law of another jurisdiction.

4. "Partner" includes both a general partner and a limited partner.

Sec. 46. NEW SECTION. 486.902 CONVERSION OF PARTNERSHIP TO LIMITED PARTNERSHIP.

1. A partnership may be converted to a limited partnership pursuant to this section.

2. The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

3. After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include all of the following:

a. A statement that the partnership was converted to a limited partnership from a partnership.

b. Its former name.

c. A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

4. The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

5. A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in chapter 487.

Sec. 47. NEW SECTION. 486.903 CONVERSION OF LIMITED PARTNERSHIP TO PARTNERSHIP.

1. A limited partnership may be converted to a partnership pursuant to this section.

2. Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

3. After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

4. The conversion takes effect when the certificate of limited partnership is canceled.

5. A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in section 486.306, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

Sec. 48. NEW SECTION. 486.904 EFFECT OF CONVERSION — ENTITY UNCHANGED.

1. A partnership or limited partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

2. When a conversion takes effect all of the following apply:

a. All property owned by the converting partnership or limited partnership remains vested in the converted entity.

b. All obligations of the converting partnership or limited partnership continue as obligations of the converted entity.

c. An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

Sec. 49. NEW SECTION. 486.905 MERGER OF PARTNERSHIPS.

1. Pursuant to a plan of merger approved as provided in subsection 3, a partnership may be merged with one or more partnerships or limited partnerships.

2. The plan of merger must set forth all of the following:

a. The name of each partnership or limited partnership that is a party to the merger.

b. The name of the surviving entity into which the other partnerships or limited partnerships will merge.

c. Whether the surviving entity is a partnership or a limited partnership and the status of each partner.

d. The terms and conditions of the merger.

e. The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part.

f. The street address of the surviving entity's chief executive office.

3. The plan of merger must be approved as follows:

a. In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement.

b. In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

4. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

5. The merger takes effect on the later of any of the following:

a. The approval of the plan of merger by all parties to the merger, as provided in subsection 3.

b. The filing of all documents required by law to be filed as a condition to the effectiveness of the merger.

c. Any effective date specified in the plan of merger.

Sec. 50. NEW SECTION. 486.906 EFFECT OF MERGER.

1. When a merger takes effect all of the following apply:

a. The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases.

b. All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity.

c. All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity.

d. An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

2. The secretary of state of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

3. A partner of the surviving partnership or limited partnership is liable for all of the following:

a. All obligations of a party to the merger for which the partner was personally liable before the merger.

b. All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity.

c. Except as otherwise provided in section 486.306, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

4. If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in section 486.807 or in chapter 487 or under the law of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

5. A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under section 486.701 or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under section 486.702 by an act of a general partner dissociated under this subsection, and the partner is liable under section 486.703 for transactions entered into by the surviving entity after the merger takes effect.

Sec. 51. NEW SECTION. 486.907 STATEMENT OF MERGER.

1. After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

2. A statement of merger must contain all of the following:

a. The name of each partnership or limited partnership that is a party to the merger.

b. The name of the surviving entity into which the other partnerships or limited partnership were merged.

c. The street address of the surviving entity's chief executive office and of an office in this state, if any.

d. Whether the surviving entity is a partnership or a limited partnership.

3. Except as otherwise provided in subsection 4, for the purposes of section 486.302, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

4. For the purposes of section 486.302, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

5. A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to section 486.105, subsection 3, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection 2, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections 3 and 4.

Sec. 52. NEW SECTION. 486.908 NONEXCLUSIVE.

This article is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

ARTICLE 10
LIMITED LIABILITY PARTNERSHIP

Sec. 53. NEW SECTION. 486.1001 STATEMENT OF QUALIFICATION.

1. A partnership may become a limited liability partnership pursuant to this section.

2. The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, by the vote necessary to amend those provisions.

3. After the approval required by subsection 2, a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain all of the following:

a. The name of the partnership.

b. The street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any.

c. The address of a registered office and the name and address of a registered agent for service of process in this state, which the partnership is required to maintain as provided in section 486.1211.

d. A statement that the partnership elects to be a limited liability partnership.

e. A deferred effective date, if any.

4. The statement shall be executed by one or more partners authorized to execute the statement on behalf of the partnership.

5. The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until the statement is canceled pursuant to section 486.105, subsection 4.

6. The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection 3.

7. The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

8. An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

Sec. 54. NEW SECTION. 486.1002 NAME.

The name of a limited liability partnership must end with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

ARTICLE 11
FOREIGN LIMITED LIABILITY PARTNERSHIP

Sec. 55. NEW SECTION. 486.1101 LAW GOVERNING FOREIGN LIMITED LIABILITY PARTNERSHIP.

1. The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

2. A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this state.

3. A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this state as a limited liability partnership.

Sec. 56. NEW SECTION. 486.1102 STATEMENT OF FOREIGN QUALIFICATION.

1. Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain all of the following:

a. The name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

b. The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any.

c. If there is no office of the partnership in this state, the name and street address of the partnership's agent for service of process.

d. A deferred effective date, if any.

2. The agent of a foreign limited liability company for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

3. The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to section 486.105, subsection 4.

4. An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

Sec. 57. NEW SECTION. 486.1103 EFFECT OF FAILURE TO QUALIFY.

1. A foreign limited liability partnership transacting business in this state may not maintain an action or proceeding in this state unless it has in effect a statement of foreign qualification.

2. The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

3. A limitation on personal liability of a partner is not waived solely by transacting business in this state without a statement of foreign qualification.

4. If a foreign limited liability partnership transacts business in this state without a statement of foreign qualification, the secretary of state is its agent for service of process with respect to a right of action arising out of the transaction of business in this state.

Sec. 58. NEW SECTION. 486.1104 ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS.

1. Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this article include all of the following:

a. Maintaining, defending, or settling an action or proceeding.

b. Holding meetings of its partners or carrying on any other activity concerning its internal affairs.

c. Maintaining bank accounts.

d. Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities.

e. Selling through independent contracts.

f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

g. Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property.

h. Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired.

i. Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions.

j. Transacting business in interstate commerce.

2. For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection 1, constitutes transacting business in this state.

3. This section does not apply in determining the contracts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this state.

Sec. 59. NEW SECTION. 486.1105 ACTION BY ATTORNEY GENERAL.

The attorney general may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this article.

ARTICLE 12
FILING PROVISIONS

Sec. 60. NEW SECTION. 486.1201 FILING REQUIREMENTS.

1. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.

2. The document shall be filed in the office of the secretary of state.

3. The document shall contain the information required by this chapter. The document may contain other information as well.

4. The document shall be typewritten or printed. The typewritten or printed portion shall be black. Manually signed photocopies, or other reproduced copies, including facsimiles or other electronically or computer-generated copies of typewritten or printed documents may be filed.

5. The document shall be in the English language. A limited partnership name need not be in English if written in English letters or arabic or roman numerals.

6. Except as otherwise provided in this chapter, the document shall be executed by one of the following methods:

a. By two or more partners.

b. By a person authorized under this chapter, the partnership agreement, or other law to execute the document.

c. If the partnership is in the hands of a receiver, trustee, or other court-appointed fiduciary, by such receiver, trustee, or fiduciary.

d. If the document is that of a registered agent, by the registered agent, if the person is an individual, or by a person authorized by the registered agent to execute the document, if the registered agent is an entity.

7. The person executing the document shall sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. The secretary of state may accept for filing a document containing a copy of a signature, however made.

8. If, pursuant to any provision of this chapter, the secretary of state has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

9. The document shall be delivered to the office of the secretary of state for filing and shall be accompanied by the correct filing fee.

10. The secretary of state may adopt rules for the electronic filing of documents and the certification of electronically filed documents.

Sec. 61. NEW SECTION. 486.1202 FEES.

1. The secretary of state shall collect fees for documents described in this subsection which are delivered to the secretary's office for filing as follows:

DOCUMENT	FEE
a. Statement of qualification	$ 50
b. Statement of foreign qualification	$ 100
c. Amendment to statement of qualification	$ 20
d. Amendment to statement of foreign qualification	$ 20
e. Cancellation of statement of qualification	$ 20
f. Cancellation of statement of foreign qualification	$ 20
g. Application for certificate of existence or qualification	$ 5
h. Any other statement or document required or permitted to be filed	$ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect fees for copying and certifying the copy of any filed document relating to a domestic or foreign partnership as follows:

a. One dollar a page for copying.

b. Five dollars for the certificate.

Sec. 62. NEW SECTION. 486.1203 EFFECTIVE TIME AND DATE OF DOCUMENTS.

1. Except as provided in subsection 2 and section 486.1204, subsection 3, a document accepted for filing is effective at the later of the following:

a. At the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

b. At the time specified in the document as its effective time on the date it is filed.

2. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

Sec. 63. NEW SECTION. 486.1204 CORRECTING FILED DOCUMENTS.

1. A partnership may correct a document filed by the secretary of state if the document satisfies one or both of the following:

a. The document contains an incorrect statement.

b. The document was defectively executed, attested, sealed, verified, or acknowledged.

2. A document is corrected by complying with both of the following:

a. By preparing a statement of correction that satisfies all of the following:

(1) The statement describes the document, including its filing date, or a copy of the document is attached to the statement.

(2) The statement specifies the incorrect statement and the reason it is incorrect or the manner in which the execution was defective.

(3) The statement corrects the incorrect statement or defective execution.

b. By delivering the statement to the secretary of state for filing.

3. Statements of corrections are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, statements of correction are effective when filed.

Sec. 64. NEW SECTION. 486.1205 FILING DUTY OF SECRETARY OF STATE.

1. If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 486.1201, the secretary of state shall file it and issue any necessary certificate.

2. The secretary of state files a document by stamping or otherwise endorsing "filed", together with the secretary of state's name and official title and the date and time of receipt, on both the document and the receipt for the filing fee. After filing a document, and except as provided in sections 486.304 and 486.1213, the secretary of state shall deliver the document, with the filing fee receipt, or acknowledgment of receipt if no fee is required, attached, to the domestic or foreign partnership or its representative.

3. If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign partnership or its representative within ten days after the document was received by the secretary of state, together with a brief, written explanation of the reason for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusing to file a document does not do any of the following:

a. Affect the validity or invalidity of the document in whole or part.

b. Relate to the correctness or incorrectness of information contained in the document.

c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Sec. 65. NEW SECTION. 486.1206 APPEAL FROM SECRETARY OF STATE'S REFUSAL TO FILE DOCUMENT.

1. If the secretary of state refuses to file a document delivered to the secretary of state's office for filing, the domestic or foreign partnership may appeal the refusal, within thirty days after the return of the document, to the district court for the county in which the partnership's principal office is located or, if none is located in this state, for the county in which its registered office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

2. The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

Sec. 66. NEW SECTION. 486.1207 EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT.

A certificate attached to a copy of a document filed by the secretary of state, bearing the secretary of state's signature, which may be in facsimile, and the seal of the secretary of state, is conclusive evidence that the original document is on file with the secretary of state.

Sec. 67. NEW SECTION. 486.1208 CERTIFICATES ISSUED BY SECRETARY OF STATE.

1. The secretary of state shall issue to any person, upon request, a certificate that sets forth any facts recorded in the office of the secretary of state.

2. A certificate issued by the secretary of state may be relied upon, subject to any qualification stated in the certificate, as prima facie evidence of the facts set forth in the certificate.

Sec. 68. NEW SECTION. 486.1209 PENALTY FOR SIGNING FALSE DOCUMENT.

1. A person commits an offense if that person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine not to exceed one thousand dollars.

Sec. 69. NEW SECTION. 486.1210 SECRETARY OF STATE POWERS.

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

Sec. 70. NEW SECTION. 486.1211 REGISTERED OFFICE AND REGISTERED AGENT.

Each partnership that is qualified under section 486.1001 shall continuously maintain in this state the following:

1. A registered office.

2. A registered agent, who is one of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation whose business office is identical with the registered office.

c. A foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

Sec. 71. NEW SECTION. 486.1212 CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT.

1. A partnership may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

a. The name of the partnership.

b. The street address of its current registered office.

c. If the registered office is to be changed, the street address of the new registered office.

d. The name of its current registered agent.

e. If the registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent to the appointment, either on the statement of change or in an accompanying document.

f. That, after the change or changes are made, the street addresses of its registered office and of the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any partnership for which the registered agent is the registered agent by giving written notice to the partnership of the change and executing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection 1 and recites that notice of the change has been given to the partnership.

Sec. 72. NEW SECTION. 486.1213 RESIGNATION OF REGISTERED AGENT.

1. The registered agent of a partnership may resign the agency by delivering to the secretary of state for filing a statement of resignation, which shall be accompanied by two exact or conformed copies of such statement. The statement of resignation may include a statement that the registered office is also discontinued.

2. After filing the statement of resignation, the secretary of state shall deliver one copy to the registered office of the partnership and the other copy to the chief executive office of the partnership.

3. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement of resignation was filed.

Sec. 73. NEW SECTION. 486.1214 SERVICE ON PARTNERSHIP.

1. A partnership's registered agent is the partnership's agent for service of any process, notice, or demand required or permitted by law to be served on the partnership.

2. If a partnership has no registered agent, or the registered agent cannot with reasonable diligence be served, the partnership may be served by registered or certified mail, return receipt requested, addressed to the partnership at its chief executive office. Service is perfected under this subsection at the earliest of the following:

a. The date the partnership receives the process, notice, or demand.

b. The date shown on the return receipt, if signed on behalf of the partnership.

c. Five days after mailing.

3. This section does not prescribe the only means, or necessarily the required means, of serving a partnership.

ARTICLE 13
MISCELLANEOUS PROVISIONS

Sec. 74. NEW SECTION. 486.1301 UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Sec. 75. NEW SECTION. 486.1302 SHORT TITLE.

This chapter may be cited as the "Uniform Partnership Act".

Sec. 76. SEVERABILITY CLAUSE. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Sec. 77. SAVINGS CLAUSE. This Act does not affect an action or proceeding commenced or right accrued before this Act takes effect.

Sec. 78. Chapter 486, Code and Code Supplement 1997, is repealed effective January 1, 2001.

Sec. 79. APPLICABILITY.

1. Prior to January 1, 2001, this Act applies to a partnership formed as follows:

a. On or after January 1, 1999, except a partnership that is continuing the business of a dissolved partnership under section 486.41.

b. Prior to January 1, 2001, if such partnership elects, as provided in subsection 3, to be governed by this Act.

2. On or after January 1, 2001, this Act applies to all partnerships.

3. Prior to January 1, 2001, a partnership, in the manner provided in its partnership agreement or by law for amending the partnership agreement, may voluntarily elect to be governed by this Act. The provisions of this Act relating to the liability of the partnerships' partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year before the partnership's election to be governed by this Act only if the third party knows or has received a notification of the partnership's election to be governed by this Act.

Sec. 80. CODE EDITOR DIRECTIVE. In order to distinguish between chapter 486, Code and Code Supplement 1997, which is not repealed until January 1, 2001, and which will appear in Code 1999, and the new sections of chapter 486 which are created by this Act, which are effective January 1, 1999, and which will also appear in Code 1999, the Code editor shall codify the new sections of chapter 486, as enacted by this Act, as a new chapter 486A.

Sec. 81. EFFECTIVE DATE. Section 80 of this Act, being deemed of immediate importance, takes effect upon enactment.

Sec. 82. EFFECTIVE DATE. This Act takes effect January 1, 1999.

Approved May 19, 1998

CHAPTER 1202

ADMINISTRATIVE PROCEDURE ACT AND DIVISION OF ADMINISTRATIVE HEARINGS

H.F. 667

AN ACT relating to the Iowa administrative procedure Act and providing an effective and applicability date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 10A.104, subsection 5, Code 1997, is amended to read as follows:

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

Sec. 2. Section 10A.106, Code 1997, is amended to read as follows:

10A.106 DIVISIONS OF THE DEPARTMENT.

The department is comprised of the following divisions:

1. ~~Appeals and fair~~ Administrative hearings division.
2. Audits division.
3. Investigations division.
4. Inspections division.

The allocation of departmental duties to the divisions of the department in sections ~~10A.202,~~ 10A.302, 10A.402, and 10A.502 does not prohibit the director from reallocating departmental duties within the department. The director shall not reallocate any of the duties of the division of administrative hearings, created by section 10A.801, to any other unit of the department.

Sec. 3. NEW SECTION. 10A.801 DIVISION OF ADMINISTRATIVE HEARINGS — CREATION, POWERS, DUTIES.

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

a. "Administrator" means the chief administrative law judge who shall coordinate the administration of the division.

b. "Division" means the administrative hearings division of the department of inspections and appeals.

2. The administrator shall coordinate the division's conduct of appeals and administrative hearings as otherwise provided by law.

3. a. The department shall employ a sufficient number of administrative law judges to conduct proceedings for which agencies are required, by section 17A.11 or any other provision of law, to use an administrative law judge employed by the division. An administrative law judge employed by the division shall not perform duties inconsistent with the judge's duties and responsibilities as an administrative law judge and shall be located in an office that is separated from the offices of the agencies for which that person acts as a presiding officer. Administrative law judges shall be covered by the merit system provisions of chapter 19A.

b. The division shall facilitate, insofar as practicable, specialization by its administrative law judges so that particular judges may become expert in presiding over cases in particular agencies. An agency may, by rule, identify particular classes of its contested cases for which the administrative law judge who acts as presiding officer shall have specified technical expertness. After the adoption of such a rule, the division may assign administrative law judges to preside over those identified particular classes of contested cases only if the administrative law judge possesses the technical expertness specified by agency rule. The division may charge the applicable agency for the costs of any training required by the division's administrative law judges to acquire or maintain the technical expertise specified by agency rule.

4. If the division cannot furnish one of its administrative law judges in response to an agency request, the administrator shall designate in writing a full-time employee of an agency other than the requesting agency to serve as administrative law judge for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of administrative law judges employed by the division.

5. The division may furnish administrative law judges on a contract basis to any governmental entity to conduct any proceeding.

6. After the effective date of this Act, a person shall not be newly employed by the division as an administrative law judge to preside over contested case proceedings unless that person has a license to practice law in this state.

7. The division shall adopt rules pursuant to this chapter and chapter 17A to do all of the following:

a. To establish procedures for agencies to request and for the administrator to assign administrative law judges employed by the division.

b. To establish procedures and adopt forms, consistent with chapter 17A and other provisions of law, to govern administrative law judges employed by the division, but any rules adopted under this paragraph shall be applicable to a particular contested case proceeding

only to the extent that they are not inconsistent with the rules of the agency under whose authority that proceeding is conducted. Nothing in this paragraph precludes an agency from establishing procedural requirements otherwise within its authority to govern its contested case proceedings, including requirements with respect to the timeliness of decisions rendered for it by administrative law judges.

c. To establish standards and procedures for the evaluation, training, promotion, and discipline for the administrative law judges employed by the division. Those procedures shall include provisions for each agency for whom a particular administrative law judge presides to submit to the division on a periodic basis the agency's views with respect to the performance of that administrative law judge or the need for specified additional training for that administrative law judge. However, the evaluation, training, promotion, and discipline of all administrative law judges employed by the division shall remain solely within the authority of the division.

d. To establish, consistent with the provisions of this section and chapter 17A, a code of administrative judicial conduct that is similar in function and substantially equivalent to the Iowa code of judicial conduct, to govern the conduct, in relation to their quasi-judicial functions in contested cases, of all persons who act as presiding officers under the authority of section 17A.11, subsection 1. The code of administrative judicial conduct shall separately specify which provisions are applicable to agency heads or members of multimembered agency heads when they act as presiding officers, taking into account the objectives of the code and the fact that agency heads, unlike administrative law judges, have other duties imposed upon them by law. The code of administrative judicial conduct may also contain separate provisions, that are appropriate and consistent with the objectives of such a code, to govern the conduct of agency heads or the members of multimember agency heads when they act as presiding officers. However, a provision of the code of administrative judicial conduct shall not be made applicable to agency heads or members of multimember agency heads unless the application of that provision to agency heads and members of multimember agency heads has previously been approved by the administrative rules coordinator.

e. To facilitate the performance of the responsibilities conferred upon the division by this section, chapter 17A, and any other provision of law.

8. The division may do all of the following:

a. Provide administrative law judges, upon request, to any agency that is required to or wishes to utilize the services of an administrative law judge employed by the division.

b. Maintain a staff of reporters and other personnel.

c. Administer the provisions of this section and rules adopted under its authority.

9. The division may charge agencies for services rendered and the payment received shall be considered repayment receipts as defined in section 8.2.

10. Except to the extent specified otherwise by statute, decisions of administrative law judges employed by the division are subject to review by the agencies for which they act as presiding officers as provided by section 17A.15 or any other provision of law.

Sec. 4. Section 17A.2, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 9A. "Provision of law" means the whole or part of the Constitution of the United States of America or the Constitution of the State of Iowa, or of any federal or state statute, court rule, executive order of the governor, or agency rule.

Sec. 5. Section 17A.2, subsection 10, unnumbered paragraph 1, Code 1997, is amended to read as follows:

"Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency. Notwithstanding any other ~~provision of law~~ statute, the term includes an executive order or directive of the governor which creates an agency or establishes a program or which transfers a program between agencies established by statute or rule. The term includes the amendment or repeal of an existing rule, but does not include:

Sec. 6. Section 17A.2, subsection 10, paragraph b, Code 1997, is amended to read as follows:

b. A declaratory ~~ruling~~ order issued pursuant to section 17A.9, or an interpretation issued by an agency with respect to a specific set of facts and intended to apply only to that specific set of facts.

Sec. 7. Section 17A.3, subsection 1, Code 1997, is amended by adding the following new paragraph after paragraph b and relettering the subsequent paragraphs:

NEW PARAGRAPH. c. As soon as feasible and to the extent practicable, adopt rules, in addition to those otherwise required by this chapter, embodying appropriate standards, principles, and procedural safeguards that the agency will apply to the law it administers.

Sec. 8. Section 17A.4, subsection 1, paragraph b, Code 1997, is amended to read as follows:

b. Afford all interested persons not less than twenty days to submit data, views, or arguments in writing. If timely requested in writing by twenty-five interested persons, by a governmental subdivision, by the administrative rules review committee, by an agency, or by an association having not less than twenty-five members, the agency must give interested persons an opportunity to make oral presentation. The opportunity for oral presentation must be held at least twenty days after publication of the notice of its time and place in the Iowa administrative bulletin. The agency shall consider fully all written and oral submissions respecting the proposed rule. Within one hundred eighty days following either the notice published according to the provisions of paragraph "a" or within one hundred eighty days after the last date of the oral presentations on the proposed rule, whichever is later, the agency shall adopt a rule pursuant to the rulemaking proceeding or shall terminate the proceeding by publishing notice of termination in the Iowa administrative bulletin. ~~If~~

An agency shall include in a preamble to each rule it adopts a brief explanation of the principal reasons for its action and, if applicable, a brief explanation of the principal reasons for its failure to provide in that rule for the waiver of the rule in specified situations if no such waiver provision is included in the rule. This explanatory requirement does not apply when the agency adopts a rule that only defines the meaning of a provision of law if the agency does not possess delegated authority to bind the courts to any extent with its definition. In addition, if requested to do so by an interested person, either prior to adoption or within thirty days thereafter, the agency shall issue a concise statement of the principal reasons for and against the rule ~~it~~ adopted, incorporating therein the reasons for overruling considerations urged against the rule. This concise statement shall be issued either at the time of the adoption of the rule or within thirty-five days after the agency receives the request.

Sec. 9. Section 17A.4, subsection 1, paragraph c, Code 1997, is amended by striking the paragraph.

Sec. 10. NEW SECTION. 17A.4A REGULATORY ANALYSIS.

1. An agency shall issue a regulatory analysis of a proposed rule that complies with subsection 2, paragraph "a", if, within thirty-two days after the published notice of proposed rule adoption, a written request for the analysis is submitted to the agency by the administrative rules review committee or the administrative rules coordinator. An agency shall issue a regulatory analysis of a proposed rule that complies with subsection 2, paragraph "b", if the rule would have a substantial impact on small business and if, within thirty-two days after the published notice of proposed rule adoption, a written request for analysis is submitted to the agency by the administrative rules review committee, the administrative rules coordinator, at least twenty-five persons signing that request who each qualify as a small business or by an organization representing at least twenty-five such persons. If a rule has been adopted without prior notice and an opportunity for public participation in reliance upon section 17A.4, subsection 2, the written request for an analysis that complies

with subsection 2, paragraph "a" or "b", may be made within seventy days of publication of the rule.

2. a. Except to the extent that a written request for a regulatory analysis expressly waives one or more of the following, the regulatory analysis must contain all of the following:

(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

(2) A description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule.

(3) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

(4) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

(5) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.

(6) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

b. In the case of a rule that would have a substantial impact on small business, the regulatory analysis must contain a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rule on small business:

(1) Establish less stringent compliance or reporting requirements in the rule for small business.

(2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.

(3) Consolidate or simplify the rule's compliance or reporting requirements for small business.

(4) Establish performance standards to replace design or operational standards in the rule for small business.

(5) Exempt small business from any or all requirements of the rule.

c. The agency shall reduce the impact of a proposed rule that would have a substantial impact on small business by using a method discussed in paragraph "b" if the agency finds that the method is legal and feasible in meeting the statutory objectives which are the basis of the proposed rule.

3. Each regulatory analysis must include quantifications of the data to the extent practicable and must take account of both short-term and long-term consequences.

4. Upon receipt by an agency of a timely request for a regulatory analysis, the agency shall extend the period specified in this chapter for each of the following until at least twenty days after publication in the administrative bulletin of a concise summary of the regulatory analysis:

a. The end of the period during which persons may make written submissions on the proposed rule.

b. The end of the period during which an oral proceeding may be requested.

c. The date of any required oral proceeding on the proposed rule.

In the case of a rule adopted without prior notice and an opportunity for public participation in reliance upon section 17A.4, subsection 2, the summary must be published within seventy days of the request.

5. The published summary of the regulatory analysis must also indicate where persons may obtain copies of the full text of the regulatory analysis and where, when, and how persons may present their views on the proposed rule and demand an oral proceeding thereon if one is not already provided. Agencies shall make available to the public, to the

maximum extent feasible, the published summary and the full text of the regulatory analysis described in this subsection in an electronic format, including, but not limited to, access to the documents through the internet.

6. If the agency has made a good faith effort to comply with the requirements of subsections 1 through 3, the rule may not be invalidated on the ground that the contents of the regulatory analysis are insufficient or inaccurate.

7. For the purpose of this section, "small business" means any entity including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, to which all of the following apply:

a. It is not an affiliate or subsidiary of an entity dominant in its field of operation.

b. It has either twenty or fewer full-time equivalent positions or less than one million dollars in annual gross revenues in the preceding fiscal year.

For purposes of this definition, "dominant in its field of operation" means having more than twenty full-time equivalent positions and more than one million dollars in annual gross revenues, and "affiliate or subsidiary of an entity dominant in its field of operation" means an entity which is at least twenty percent owned by an entity dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of an entity dominant in that field of operation.

Sec. 11. Section 17A.7, Code 1997, is amended to read as follows:

17A.7 PETITION FOR ADOPTION OF RULES AND REQUEST FOR REVIEW OF RULES.

1. An interested person may petition an agency requesting the ~~promulgation~~ adoption, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within sixty days after submission of a petition, the agency either shall deny the petition in writing on the merits, stating its reasons for the denial, or initiate rulemaking proceedings in accordance with section 17A.4, or issue a rule if it is not required to be issued according to the procedures of section 17A.4, subsection 1.

2. Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator for an agency to conduct a formal review of a specified rule of that agency to determine whether the rule should be repealed or amended or a new rule adopted instead. The administrative rules coordinator shall determine whether the request is reasonable and does not place an unreasonable burden upon the agency.

If the agency has not conducted such a review of the specified rule within a period of five years prior to the filing of the written request, and upon a determination by the administrative rules coordinator that the request is reasonable and does not place an unreasonable burden upon the agency, the agency shall prepare within a reasonable time a written report with respect to the rule summarizing the agency's findings, its supporting reasons, and any proposed course of action. The report must include, for the specified rule, a concise statement of all of the following:

a. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.

b. Written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule tendered to the agency or granted by the agency.

c. Alternative solutions regarding the subject matter of the criticisms and the reasons they were rejected or the changes made in the rule in response to those criticisms and the reasons for the changes.

A copy of the report shall be sent to the administrative rules review committee and the administrative rules coordinator and shall be made available for public inspection.

Sec. 12. Section 17A.8, subsection 9, Code 1997, is amended to read as follows:

9. Upon a vote of two-thirds of its members, the administrative rules review committee may delay the effective date of a rule until the adjournment of the next regular session of the general assembly. The committee shall refer a rule whose effective date has been delayed to

the speaker of the house of representatives and the president of the senate who shall refer the rule to the appropriate standing committees of the general assembly. A standing committee shall review a rule within twenty-one days after the rule is referred to the committee by the speaker of the house of representatives or the president of the senate and shall take formal committee action by sponsoring a joint resolution to disapprove the rule, by proposing legislation relating to the rule, or by refusing to propose a joint resolution or legislation concerning the rule. The standing committee shall inform the administrative rules review committee of the committee action taken concerning the rule. If the general assembly has not disapproved of the rule by a joint resolution, the rule shall become effective. The speaker of the house of representatives and the president of the senate shall notify the administrative code editor of the final disposition of each rule delayed pursuant to this subsection. If a rule is disapproved, it shall not become effective and the agency shall rescind the rule. This section shall not apply to rules made effective under section 17A.5, subsection 2, paragraph "b".

Sec. 13. Section 17A.9, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

17A.9 DECLARATORY ORDERS.

1. Any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency. An agency shall issue a declaratory order in response to a petition for that order unless the agency determines that issuance of the order under the circumstances would be contrary to a rule adopted in accordance with subsection 2.

However, an agency shall not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

2. Each agency shall adopt rules that provide for the form, contents, and filing of petitions for declaratory orders, the procedural rights of persons in relation to the petitions, and the disposition of the petitions. The rules must describe the classes of circumstances in which the agency will not issue a declaratory order and must be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agency issuance of reliable advice.

3. Within fifteen days after receipt of a petition for a declaratory order, an agency shall give notice of the petition to all persons to whom notice is required by any provision of law and may give notice to any other persons.

4. Persons who qualify under any applicable provision of law as an intervenor and who file timely petitions for intervention according to agency rules may intervene in proceedings for declaratory orders. The provisions of sections 17A.10 through 17A.18 apply to agency proceedings for declaratory orders only to the extent an agency so provides by rule or order.

5. Within thirty days after receipt of a petition for a declaratory order, an agency, in writing, shall do one of the following:

a. Issue an order declaring the applicability of the statute, rule, or order in question to the specified circumstances.

b. Set the matter for specified proceedings.

c. Agree to issue a declaratory order by a specified time.

d. Decline to issue a declaratory order, stating the reasons for its action.

6. A copy of all orders issued in response to a petition for a declaratory order must be mailed promptly to the petitioner and any other parties.

7. A declaratory order has the same status and binding effect as any final order issued in a contested case proceeding. A declaratory order must contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusion.

8. If an agency has not issued a declaratory order within sixty days after receipt of a petition therefor, or such later time as agreed by the parties, the petition is deemed to have

been denied. Once a petition for a declaratory order is deemed denied or if the agency declines to issue a declaratory order pursuant to subsection 5, paragraph "d", a party to that proceeding may either seek judicial review or await further agency action with respect to its petition for a declaratory order.

Sec. 14. NEW SECTION. 17A.10A CONTESTED CASES — NO FACTUAL DISPUTE.

Upon petition by a party in a matter that would be a contested case if there was a dispute over the existence of material facts, all of the provisions of this chapter applicable to contested cases, except those relating to presentation of evidence, shall be applicable even though there is no factual dispute in the particular case.

Sec. 15. Section 17A.11, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

17A.11 PRESIDING OFFICER, DISQUALIFICATION, SUBSTITUTION.

1. a. If the agency or an officer of the agency under whose authority the contested case is to take place is a named party to that proceeding or a real party in interest to that proceeding the presiding officer may be, in the discretion of the agency, either the agency, one or more members of a multimember agency, or one or more administrative law judges assigned by the division of administrative hearings in accordance with the provisions of section 10A.801. However, a party may, within a time period specified by rule, request that the presiding officer be an administrative law judge assigned by the division of administrative hearings. Except as otherwise provided by statute, the agency shall grant a request by a party for an administrative law judge unless the agency finds, and states reasons for the finding, that any of the following conditions exist:

(1) There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

(2) A qualified administrative law judge is unavailable to hear the case within a reasonable time.

(3) The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

(4) The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

(5) Funds are unavailable to pay the costs of an administrative law judge and an intra-agency appeal.

(6) The request was not timely filed.

(7) There is other identified good cause, as specified by rule, for denying the request.

b. If the agency or an officer of the agency under whose authority the contested case is to take place is not a named party to that proceeding or a real party in interest to that proceeding the presiding officer may be, in the discretion of the agency, either the agency, one or more members of a multimember agency, an administrative law judge assigned by the division of administrative hearings in accordance with the provisions of section 10A.801, or any other qualified person designated as a presiding officer by the agency. Any other person designated as a presiding officer by the agency may be employed by and officed in the agency for which that person acts as a presiding officer, but such a person shall not perform duties inconsistent with that person's duties and responsibilities as a presiding officer.

c. For purposes of paragraph "a", the division of administrative hearings established in section 10A.801 shall be treated as a wholly separate agency from the department of inspections and appeals.

2. Any person serving or designated to serve alone or with others as a presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is or may be disqualified.

3. Any party may timely request the disqualification of a person as a presiding officer by filing a motion supported by an affidavit asserting an appropriate ground for disqualifica-

tion, after receipt of notice indicating that the person will preside or upon discovering facts establishing grounds for disqualification, whichever is later.

4. A person whose disqualification is requested shall determine whether to grant the request, stating facts and reasons for the determination.

5. If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute shall be appointed by either of the following:

a. The governor, if the disqualified or unavailable person is an elected official.

b. The appointing authority, if the disqualified or unavailable person is an appointed official.

6. Any action taken by a duly-appointed substitute for a disqualified or unavailable person is as effective as if taken by the latter.

Sec. 16. Section 17A.12, subsection 3, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

3. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. The parties shall be duly notified of the decision, together with the presiding officer's reasons for the decision, which is the final decision of the agency, unless within fifteen days, or such period of time as otherwise specified by statute or rule, after the date of notification or mailing of the decision, further appeal is initiated. If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

Sec. 17. Section 17A.15, subsection 3, Code 1997, is amended to read as follows:

3. When the presiding officer makes a proposed decision, that decision then becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties or by rule. The agency may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law that the agency finds to be in error. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the agency, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the agency, present oral arguments to the agency members who are to render the final decision.

Sec. 18. Section 17A.16, subsection 1, Code 1997, is amended to read as follows:

1. A proposed or final decision or order in a contested case shall be in writing or stated in the record. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. The decision shall include an explanation of why the relevant evidence in the record supports each material finding of fact. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. Parties shall be promptly notified of each proposed or final decision or order by the delivery to them of a copy of such decision or order in the manner provided by section 17A.12, subsection 1.

Sec. 19. Section 17A.17, Code 1997, is amended to read as follows:

17A.17 EX PARTE COMMUNICATIONS AND SEPARATION OF FUNCTIONS.

1. Unless required for the disposition of ex parte matters specifically authorized by statute, ~~individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law~~ a presiding officer in a contested case, shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with any person or party, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules.

However, without such notice and opportunity for all parties to participate, ~~individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law~~ a presiding officer in a contested case may communicate with members of the agency, and may have the aid and advice of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties so long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

2. Unless required for the disposition of ex parte matters specifically authorized by statute, parties or their representatives in a contested case and persons with a direct or indirect interest in such a case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with ~~individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law~~ a presiding officer in that contested case, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules. ~~The agency's rules may require the recipient of a prohibited communication to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceeding. As sanctions for violations, the rules may provide for a decision against a party who violates the rules; for censuring, suspending or revoking a privilege to practice before the agency; and for censuring, suspending or dismissing agency personnel.~~

3. If, before serving as the presiding officer in a contested case, a person receives an ex parte communication relating directly to the merits of the proceeding over which that person subsequently presides, the person, promptly after starting to serve, shall disclose to all parties any material factual information so received and not otherwise disclosed to those parties pursuant to section 17A.13, subsection 2, or through discovery.

4. A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all such written communications received, all written responses to the communications, and a memorandum stating the substance of all such oral and other communications received, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the prohibited ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal within ten days after notice of the communication.

5. If the effect of an ex parte communication received in violation of this section is so prejudicial that it cannot be cured by the procedure in subsection 4, a presiding officer who receives the communication shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.

6. The agency and any party may report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule shall provide for appropriate sanctions, including default, suspending or revoking a privilege to practice before the agency, and censuring, suspending, or dismissing agency personnel, for any violations of this section.

7. A party to a contested case proceeding may file a timely and sufficient affidavit alleging a violation of any provision of this section. The agency shall determine the matter as part of

the record in the case. When an agency in these circumstances makes such a determination with respect to an agency member, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.

~~3.~~ 8. ~~No~~ An individual who participates in the making of any proposed or final decision in a contested case shall not have personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or pending factually related controversy that may culminate in a contested case, involving the same parties. ~~Nor shall any~~ In addition, such an individual shall not be subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy, involving the same parties. However, this section shall not be construed to preclude a person from serving as a presiding officer solely because that person determined there was probable cause to initiate the proceeding.

~~4. A party to a contested case proceeding may file a timely and sufficient affidavit asserting disqualification according to the provisions of subsection 3, or asserting personal bias of an individual participating in the making of any proposed or final decision in that case. The agency shall determine the matter as part of the record in the case. When an agency in these circumstances makes such a determination with respect to an agency member, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.~~

Sec. 20. Section 17A.18, subsection 3, Code 1997, is amended to read as follows:

3. No revocation, suspension, annulment or withdrawal, in whole or in part, of any license is lawful unless, prior to the institution of agency proceedings, the agency gave written, timely notice by personal service as in civil actions or by restricted certified mail to the licensee of facts or conduct and the ~~provisions~~ provision of law which ~~warrant~~ warrants the intended action, and the licensee was given an opportunity to show, in an evidentiary hearing conducted according to the provisions of this chapter for contested cases, compliance with all lawful requirements for the retention of the license. ~~If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.~~

Sec. 21. NEW SECTION. 17A.18A EMERGENCY ADJUDICATIVE PROCEEDINGS.

1. Notwithstanding any other provision of this chapter and to the extent consistent with the Constitution, an agency may use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.

2. The agency may take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication.

3. The agency shall issue an order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's discretion, to justify the determination of an immediate danger and the agency's decision to take the specific action.

4. The agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when issued.

5. After issuing an order pursuant to this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

6. The agency record consists of any documents regarding the matter that were considered or prepared by the agency. The agency shall maintain these documents as its official record.

7. Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency adjudicative proceedings or for judicial review thereof.

Sec. 22. Section 17A.19, subsection 1, Code 1997, is amended to read as follows:

1. A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter. When agency action is pursuant to rate regulatory powers over public utilities or common carriers and the aggrievement or adverse effect is to the rates or charges of a public utility or common carrier, the agency action shall not be final until all agency remedies have been exhausted and a decision prescribing rates which satisfy the requirements of those provisions of the Code has been rendered. A preliminary, procedural or intermediate agency action is immediately reviewable if all adequate administrative remedies have been exhausted and review of the final agency action would not provide an adequate remedy. If a declaratory ~~ruling~~ order has not been rendered within ~~thirty~~ sixty days after the filing of a petition therefor under section 17A.9, or by such later time as agreed by the parties, or if the agency declines to issue such a declaratory ~~ruling~~ order after receipt of a petition therefor, any administrative remedy available under section 17A.9 shall be deemed inadequate or exhausted.

Sec. 23. Section 17A.19, subsection 5, Code 1997, is amended to read as follows:

5. a. The filing of the petition for review does not itself stay execution or enforcement of any agency action. ~~Upon application the agency or the reviewing court may, in appropriate cases, order such a stay pending the outcome of the judicial review proceedings~~ Unless precluded by law, the agency may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

b. A party may file an interlocutory motion in the reviewing court, during the pendency of judicial review, seeking review of the agency's action on an application for stay or other temporary remedies.

c. If the agency refuses to grant an application for stay or other temporary remedies, or application to the agency for a stay or other temporary remedies is an inadequate remedy, the court may grant relief but only after a consideration and balancing of all of the following factors:

(1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter.

(2) The extent to which the applicant will suffer irreparable injury if relief if* not granted.

(3) The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.

(4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

d. If the court determines that relief should be granted from the agency's action on an application for stay or other temporary remedies, the court may remand the matter to the agency with directions to deny a stay, to grant a stay on appropriate terms, or to grant other temporary remedies, or the court may issue an order denying a stay, granting a stay on appropriate terms, or granting other temporary remedies.

Sec. 24. Section 17A.19, subsection 8, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

8. Except to the extent that this chapter provides otherwise, in suits for judicial review of agency action all of the following apply:

a. The burden of demonstrating the required prejudice and the invalidity of agency action is on the party asserting invalidity.

b. The validity of agency action must be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time that action was taken.

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* The word "is" probably intended

9. The court shall make a separate and distinct ruling on each material issue on which the court's decision is based.

10. The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is any of the following:

a. Unconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied.

b. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law.

c. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.

d. Based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process.

e. The product of decision making undertaken by persons who were improperly constituted as a decision-making body, were motivated by an improper purpose, or were subject to disqualification.

f. Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole. For purposes of this paragraph, the following terms have the following meanings:

(1) "Substantial evidence" means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

(2) "Record before the court" means the agency record for judicial review, as defined by this chapter, supplemented by any additional evidence received by the court under the provisions of this chapter.

(3) "When that record is viewed as a whole" means that the adequacy of the evidence in the record before the court to support a particular finding of fact must be judged in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact.

g. Action other than a rule that is inconsistent with a rule of the agency.

h. Action other than a rule that is inconsistent with the agency's prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency.

i. The product of reasoning that is so illogical as to render it wholly irrational.

j. The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action.

k. Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy.

l. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.

m. Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.

n. Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

11. In making the determinations required by subsection 10, paragraphs "a" through "n", the court shall do all of the following:

a. Shall not give any deference to the view of the agency with respect to whether particular matters have been vested by a provision of law in the discretion of the agency.

b. Should not give any deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency.

c. Shall give appropriate deference to the view of the agency with respect to particular matters that have been vested by a provision of law in the discretion of the agency.

12. A defendant in a suit for civil enforcement of agency action may defend on any of the grounds specified in subsection 10, paragraphs "a" through "n", if that defendant, at the time the enforcement suit was filed, would have been entitled to rely upon any of those grounds as a basis for invalidating the agency action in a suit for judicial review of that action brought at the time the enforcement suit was filed. If a suit for civil enforcement of agency action in a contested case is filed within the time period in which the defendant could have filed a petition for judicial review of that agency action, and the agency subsequently dismisses its suit for civil enforcement of that agency action against the defendant, the defendant may, within thirty days of that dismissal, file a petition for judicial review of the original agency action at issue if the defendant relied upon any of the grounds for judicial review in subsection 10, paragraphs "a" through "n", in a responsive pleading to the enforcement action, or if the time to file a responsive pleading had not yet expired at the time the enforcement action was dismissed.

Sec. 25. Section 17A.23, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. An agency shall have only that authority or discretion delegated to or conferred upon the agency by law and shall not expand or enlarge its authority or discretion beyond the powers delegated to or conferred upon the agency.

Sec. 26. Section 17A.33, Code 1997, is amended to read as follows:

17A.33 REVIEW BY ADMINISTRATIVE RULES REVIEW COMMITTEE.

The administrative rules review committee shall review existing rules, as time permits, to determine if there are adverse or beneficial effects from these rules. The committee shall give a high priority to rules that are referred to it by small business as defined in section ~~17A.31~~ 17A.4A. The review of these rules shall be forwarded to the appropriate standing committees of the house and senate.

Sec. 27. Section 19A.1A, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Reduction in force appeals shall be subject to review by the director.

Sec. 28. Section 20.6, subsection 4, Code 1997, is amended to read as follows:

4. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such power to a member of the board, ~~or~~ persons appointed or employed by the board, including administrative law judges, or administrative law judges employed by the division of administrative hearings created by section 10A.801, for the performance of its functions. The board may petition the district court at the seat of government or of the county where a hearing is held to enforce a board order compelling the attendance of witnesses and production of records.

Sec. 29. Section 86.17, subsection 1, Code 1997, is amended to read as follows:

1. ~~A~~ Notwithstanding the provisions of section 17A.11, the industrial commissioner or a deputy industrial commissioner ~~may~~ shall preside over any contested case proceeding brought under this chapter, chapter 85, ~~or~~ 85A, or 85B in the manner provided by chapter 17A. The

deputy commissioner or the commissioner may make such inquiries ~~and investigation~~ in contested case proceedings as shall be deemed necessary, ~~consistent with~~ so long as such inquiries do not violate any of the provisions of section 17A.17.

Sec. 30. Section 137E.12, Code 1997, is amended to read as follows:

137E.12 REVOCATION OR ORDER FOR DISCONTINUANCE.

A license issued under this chapter may be revoked by the regulatory authority for violation by the licensee of a provision of this chapter or an applicable rule of the department. In lieu of license revocation, the regulatory authority may require the immediate discontinuance of operation of a vending machine or commissary if it finds unsanitary conditions or other conditions which constitute a substantial hazard to the public health. The order shall apply only to the vending machines, commissary, or product involved. A person whose license is revoked, or who is ordered to discontinue the operation of a vending machine or commissary, may appeal that decision to the director. The director or ~~the chief~~ an administrative law judge ~~of the department~~ appointed according to the requirements of section 17A.11, subsection 1, shall schedule and hold a hearing upon the appeal not later than thirty days from the time of revocation or the order of discontinuance. The director or the ~~chief~~ administrative law judge shall issue a decision immediately following the hearing. Judicial review may be sought in accordance with ~~the Iowa administrative procedure Act~~ chapter 17A.

Sec. 31. Section 148.7, subsection 3, Code 1997, is amended to read as follows:

3. The hearing shall be before a member or members designated by the board or before an administrative law judge appointed by the board according to the requirements of section 17A.11, subsection 1. The presiding board member or administrative law judge may issue subpoenas, administer oaths, and take or cause depositions to be taken in connection with the hearing. The presiding board member or administrative law judge shall issue subpoenas at the request and on behalf of the licensee. The hearing shall be open to the public.

~~The compensation of the administrative law judge shall be fixed by the medical examiners.~~ The administrative law judge shall be an attorney vested with full authority of the board to schedule and conduct hearings. The administrative law judge shall prepare and file with the medical examiners the administrative law judge's findings of fact and conclusions of law, together with a complete written transcript of all testimony and evidence introduced at the hearing and all exhibits, pleas, motions, objections, and rulings of the administrative law judge.

Sec. 32. Section 169.5, subsection 9, paragraph e, Code 1997, is amended to read as follows:

e. Hold hearings on all matters properly brought before the board and administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The board may require by subpoena the attendance and testimony of witnesses and the production of papers, records, or other documentary evidence and commission depositions. An administrative law judge may be appointed pursuant to section 17A.11, ~~subsection 3~~ to perform those functions which properly repose in an administrative law judge.

Sec. 33. Section 169.14, subsection 3, Code 1997, is amended to read as follows:

3. The hearing shall be before a member or members designated by the board or before an administrative law judge appointed by the board according to the requirements of section 17A.11, subsection 1. The presiding board member or administrative law judge may issue subpoenas, administer oaths, and take or cause depositions to be taken in connection with the hearing. The member or officer shall issue subpoenas at the request and on behalf of the licensee.

Sec. 34. Section 203C.10, unnumbered paragraph 2, Code 1997, is amended to read as follows:

If upon the filing of the information or complaint the department finds that the licensee has failed to meet the warehouse operator's obligation or otherwise has violated or failed to comply with the provisions of this chapter or any rule promulgated under this chapter, and if the department finds that the public health, safety or welfare imperatively requires emergency action, then the department without hearing may order a summary suspension of the license in the manner provided in section ~~17A.18~~ 17A.18A. When so ordered, a copy of the order of suspension shall be served upon the licensee at the time the information or complaint is served as provided in this section.

Sec. 35. Section 207.14, subsection 2, unnumbered paragraph 2, Code 1997, is amended to read as follows:

If upon expiration of the time as fixed the administrator finds in writing that the violation has not been abated, the administrator, notwithstanding ~~section~~ sections 17A.18 and 17A.18A, shall immediately order a cessation of coal mining and reclamation operations relating to the violation until the order is modified, vacated, or terminated by the administrator pursuant to procedures outlined in this section. In the order of cessation issued by the administrator under this subsection, the administrator shall include the steps necessary to abate the violation in the most expeditious manner possible.

Sec. 36. Section 216.15, subsection 3, paragraph a, Code 1997, is amended to read as follows:

a. After the filing of a verified complaint, a true copy shall be served within twenty days by certified mail on the person against whom the complaint is filed. An authorized member of the commission staff shall make a prompt investigation and shall issue a recommendation to an administrative law judge ~~under the jurisdiction of~~ employed either by the commission or by the division of administrative hearings created by section 10A.801, who shall then issue a determination of probable cause or no probable cause.

Sec. 37. Section 216.17, subsection 6, Code 1997, is amended to read as follows:

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~~.

Sec. 38. Section 252.27, unnumbered paragraph 2, Code 1997, is amended to read as follows:

The board shall record its proceedings relating to the provision of assistance to specific persons under this chapter. A person who is aggrieved by a decision of the board may appeal the decision as if it were a contested case before an agency and as if the person had exhausted administrative remedies in accordance with the procedures and standards in section 17A.19, subsections 2 to ~~8~~ 12 except subsection 10, paragraphs "b" and ~~"c" of subsection 8~~ "g", and section 17A.20.

Sec. 39. Section 256.7, subsection 6, Code 1997, is amended to read as follows:

6. Hear appeals of persons aggrieved by decisions of boards of directors of school corporations under chapter 290 and other appeals prescribed by law. The state board may review the record and shall review the decision of the director of the department of education or the administrative law judge designated ~~by the director in~~ for any appeals heard and decided by the director under chapter 290, and may affirm, modify, or vacate the decision, or may direct a rehearing before the director.

Sec. 40. Section 368.22, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 4. Subsection 9.

NEW SUBSECTION. 5. Subsection 10.

NEW SUBSECTION. 6. Subsection 11.

Sec. 41. Section 421.17, subsection 20, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

The provisions of sections 17A.10 to ~~17A.18~~ 17A.18A relating to contested cases shall not apply to any matters involving the equalization of valuations of classes of property as authorized by this chapter and chapter 441. This exemption shall not apply to a hearing before the state board of tax review.

Sec. 42. Section 535B.7, subsection 2, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The administrator may order an emergency suspension of a licensee's license pursuant to section ~~17A.18, subsection 3~~ 17A.18A. A written order containing the facts or conduct which warrants the emergency action shall be timely sent to the licensee by restricted certified mail. Upon issuance of the suspension order, the licensee must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

Sec. 43. Section 602.9206, unnumbered paragraph 2, Code 1997, is amended to read as follows:

A senior judge also shall be available to serve in the capacity of administrative law judge under chapter 17A ~~upon the request of an agency~~, and the supreme court may assign a senior judge for temporary duties as an administrative law judge. A senior judge shall not be required to serve a period of time as an administrative law judge which, when added to the period of time being served by the person as a judge, if any, would exceed the maximum period of time the person agreed to serve pursuant to section 602.9203, subsection 2.

Sec. 44. Section 903A.1, Code 1997, is amended to read as follows:

903A.1 CONDUCT REVIEW.

The director of the Iowa department of corrections shall appoint independent administrative law judges whose duties shall include but are not limited to review, as provided in section 903A.3, of the conduct of inmates in institutions under the department. Sections 10A.801 and 17A.11 do not apply to administrative law judges appointed pursuant to this section.

Sec. 45. Sections 10A.201, 10A.202, 17A.31, and 17A.32, Code 1997, are repealed.

Sec. 46. EFFECTIVE DATE. This Act takes effect July 1, 1999, and applies to agency proceedings commenced on or after that date, except that this Act shall apply to any agency proceedings conducted on a remand from a court or another agency on or after that date.

Approved May 19, 1998

CHAPTER 1203

DEER HUNTING AND DEER POPULATION CONTROL

H.F. 2290

AN ACT relating to the regulation of the deer population and to the civil damages and penalties for the illegal taking of antlered deer.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 481A.93, Code 1997, is amended to read as follows:

481A.93 HUNTING BY ARTIFICIAL LIGHT.

1. A person shall not throw or cast the rays of a spotlight, headlight, or other artificial light on a highway, or in a field, woodland, or forest for the purpose of spotting, locating, or taking or attempting to take or hunt a bird or animal, except raccoons or other fur-bearing animals when treed with the aid of dogs, while having in possession or control, either singly or as one of a group of persons, any firearm, bow, or other implement or device whereby a bird or animal could be killed or taken.

2. This section does not apply to deer being taken by or under the control of a local governmental body within its corporate limits pursuant to an approved special deer population control plan.

Sec. 2. Section 481A.130, subsection 1, paragraph g, Code 1997, is amended by striking the paragraph and inserting in lieu thereof the following:

g. For each antlered deer during September, October, November, or December before the regular gun season, two thousand dollars and eighty hours of community service or, in lieu of the community service, a total of four thousand dollars.

Sec. 3. Section 481A.130, subsection 1, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. h. For each deer, except as provided in paragraph "g", one thousand five hundred dollars.

Sec. 4. Section 481C.2, Code Supplement 1997, is amended to read as follows:

481C.2 DUTIES.

The director of the department of natural resources shall enter into a memorandum of agreement with the United States department of agriculture, animal damage control division. The wild animal depredation unit shall serve and act as the liaison to the department for the producers in the state who suffer crop and nursery damage due to wild animals. The department shall issue depredation permits ~~as necessary to reduce~~ to any landowner who incurs crop and nursery damage of one thousand dollars or more due to wild animals. The criteria for issuing depredation permits shall be established in administrative rules in consultation with the farmer advisory committee created in section 481A.10A. The administrative rules adopted pursuant to this section shall not require a producer to erect or maintain fencing at a cost exceeding one thousand dollars as a requisite for receiving a depredation permit or for participation in a depredation plan.

Sec. 5. Section 483A.8, subsection 3, Code 1997, is amended to read as follows:

3. A nonresident deer hunter is required to have only a nonresident deer license and a wildlife habitat stamp. The commission shall annually limit to ~~five~~ seven thousand five hundred licenses the number of nonresidents allowed to have deer hunting licenses. Of the first six thousand nonresident deer licenses issued, not more than thirty-five percent of the licenses shall be bow season licenses and, after the first six thousand nonresident deer licenses have been issued, all additional licenses shall be issued for antlerless deer only. The number of nonresident deer hunting licenses shall be determined as provided in section 481A.38. The commission shall allocate the nonresident deer hunting licenses issued among

the zones based on the populations of deer. However, a nonresident applicant may request one or more hunting zones, in order of preference, in which the applicant wishes to hunt. If the request cannot be fulfilled, the applicable fees shall be returned to the applicant. A nonresident applying for a deer hunting license must exhibit proof of having successfully completed a hunter safety and ethics education program as provided in section 483A.27 or its equivalent as determined by the department before the license is issued.

Sec. 6. Section 483A.8, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. The commission may provide, by rule, for the issuance of an additional antlerless deer license to a person who has been issued an antlerless deer license. The rules shall specify the number of additional antlerless deer licenses which may be issued, and the season and zone in which the license is valid. The fee for an additional antlerless deer license shall be ten dollars for residents.

*Sec. 7. EFFECTIVE DATE. Section 6 of this Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 19, 1998

CHAPTER 1204

ALCOHOL SALES TO MINORS — FINES AND PENALTIES

H.F. 2487

AN ACT relating to the fines and penalties applicable to the sale of alcohol and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 123.50, subsection 1, Code Supplement 1997, is amended to read as follows:

1. Any person who violates any of the provisions of section 123.49, except subsection 2, paragraph "h", shall be guilty of a simple misdemeanor. A person who violates section 123.49, subsection 2, paragraph "h", commits a ~~serious~~ simple misdemeanor punishable ~~by a fine of one thousand five hundred dollars~~ as a scheduled violation under section 805.8, subsection 10, paragraph "a". ~~If the violation is committed by a person who is employed by a licensee or permittee, the licensee or permittee and the individual shall each be deemed to have committed the violation and shall each be punished as provided in this subsection.~~

Sec. 2. Section 123.50, subsection 3, paragraphs a, b, and c, Code Supplement 1997, are amended to read as follows:

a. Upon a first conviction, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of fourteen days. However, if the conviction is for a violation of section 123.49, subsection 2, paragraph "h", the violator's liquor control license or wine or beer permit shall not be suspended, but the violator shall be assessed a civil penalty in the amount of ~~three~~ five hundred dollars. Failure to pay the civil penalty as ordered under section 123.39 for a violation of section 123.49, subsection 2, paragraph "h", or this subsection will result in automatic suspension of the license or permit for a period of fourteen days.

b. Upon a second conviction within a period of two years, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of thirty days. However,

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* See chapter 1223, §28 herein

if the conviction is for a violation of section 123.49, subsection 2, paragraph "h", the violator shall also be assessed a civil penalty in the amount of one thousand five hundred dollars.

c. Upon a third conviction within a period of three years, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of sixty days. However, if the conviction is for a violation of section 123.49, subsection 2, paragraph "h", the violator shall also be assessed a civil penalty in the amount of one thousand five hundred dollars.

Sec. 3. Section 321.284, Code 1997, is amended to read as follows:

321.284 OPEN CONTAINERS IN MOTOR VEHICLES.

A person driving a motor vehicle shall not knowingly possess in a motor vehicle upon a public street or highway an open or unsealed bottle, can, jar, or other receptacle containing an alcoholic beverage, wine, or beer with the intent to consume the alcoholic beverage, wine, or beer while the motor vehicle is upon a public street or highway. Evidence that an open or unsealed receptacle containing an alcoholic beverage, wine, or beer was found during an authorized search in the glove compartment, utility compartment, console, front passenger seat, or any unlocked portable device and within the immediate reach of the driver while the motor vehicle is upon a public street or highway is evidence from which the court or jury may infer that the driver intended to consume the alcoholic beverage, wine, or beer while upon the public street or highway if the inference is supported by corroborative evidence. However, an open or unsealed receptacle containing an alcoholic beverage, wine, or beer may be transported at any time in the trunk of the motor vehicle or in some other area of the interior of the motor vehicle not designed or intended to be occupied by the driver and not readily accessible to the driver while the motor vehicle is in motion. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8, subsection 10, paragraph ~~"c"~~ "b".

Sec. 4. Section 805.8, subsection 10, Code Supplement 1997, is amended to read as follows:

10. ALCOHOLIC BEVERAGE VIOLATIONS.

a. For violations of section 123.49, subsection 2, paragraph "h", the scheduled fine is one hundred dollars.

b. For violations of section 321.284, the scheduled fine is fifty dollars.

Sec. 5. Section 805.8, subsection 10, Code Supplement 1997, is amended to read as follows:

10. ALCOHOLIC BEVERAGE VIOLATIONS.

a. For violations of section 123.49, subsection 2, paragraph "h", the scheduled fine for a licensee or permittee is one thousand five hundred dollars and the scheduled fine for a person who is employed by a licensee or permittee is five hundred dollars.

b. For violations of section 321.284, the scheduled fine is fifty dollars.

Sec. 6. REPEAL AND EFFECTIVE DATE.

1. Section 4 of this Act is repealed December 31, 1998.
2. Section 5 of this Act takes effect January 1, 1999.

Approved May 19, 1998

CHAPTER 1205

ORGANIC AGRICULTURAL PRODUCTS

S.F. 2332

AN ACT relating to agriculture, regulating the sale of agricultural products advertised as organic, providing for fees and appropriations, and providing penalties and an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

SUBCHAPTER 1
DEFINITIONS

Section 1. NEW SECTION. 190C.1 DEFINITIONS.

For purposes of this chapter, unless the context otherwise requires:

1. "Advertise" means to present a commercial message in any medium, including but not limited to print, radio, television, sign, display, label, tag, or articulation.

2. "Agricultural commodity" includes but is not limited to livestock, crops, fiber, or food, such as vegetables, nuts, seeds, honey, eggs, or milk existing in an unprocessed state, which is produced on a farm and marketed for human or livestock consumption.

3. "Agricultural product" means an agricultural commodity or an agricultural processed product.

4. "Agricultural processed product" means an agricultural commodity that has been processed.

5. "Board" means the organic standards board established in section 190C.2.

6. "Certified" means any farm, wild crop harvesting, or handling operation that is verified annually, through an on-site inspection and comprehensive review of the operation by a certifying agent under 21 U.S.C. § 2115 or by the department's certification program, as producing and handling agricultural products in accordance with this chapter and rules adopted pursuant to this chapter.

7. "Department" means the department of agriculture and land stewardship.

8. "Farm" means a site where the agricultural commodities are produced.

9. "Food" means an agricultural product or an agricultural product ingredient which is used or intended for use in whole or in part for human consumption.

10. "Handler" means a person engaged in the business of handling agricultural products, including but not limited to distributors, wholesalers, brokers, and repackers. "Handler" does not include a person selling agricultural products to consumers on a retail basis, including a food service establishment as defined in section 137B.2, retail grocery, meat market, or bakery, if the person does not process the agricultural product.

11. "Label" means a commercial message in a printed medium which is affixed by any method to a product or to a receptacle including a container or package.

12. "Livestock" means an animal belonging to the bovine, caprine, equine, ovine, or porcine species; ostriches, rheas, or emus; farm deer as defined in section 481A.1; or poultry.

13. "Organic agricultural product" means food or fiber that is one of the following:

a. If the food or fiber is an agricultural commodity, it is produced and handled according to the requirements of this chapter.

b. If the food or fiber is an agricultural processed product, it is produced, handled, and processed according to the requirements of this chapter.

14. "Processing" means turning an agricultural commodity into an agricultural processed product by physical or chemical modification, including but not limited to canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, repacking, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, brewing, or slaughtering.

15. "Produce" means to grow, raise, collect, or harvest an agricultural commodity.

16. "Producer" means a person who produces an agricultural commodity.

17. "Processor" means a person who processes an agricultural commodity.

18. "Regional organic association" means a corporation organized under chapter 504 or 504A which has certifying members, elects its own officers and directors, and is independent from the department.

19. "Retailer" means a person, other than an operator of a food service establishment, who is engaged in the business of selling food at retail to the ultimate customer.

20. "Sale" or "sell" means a commercial transfer or offer for sale and distribution in any manner.

21. "Secretary" means the secretary of agriculture.

22. "System of organic farming" means a system that is designed to produce agricultural products by the use of methods and substances that maintain the integrity of organic agricultural products until they reach the consumer. This includes a management system which promotes and enhances agroecosystem health, including biodiversity, biological cycles, and soil biological activity. This is accomplished by using cultural, biological, and mechanical methods, as opposed to using synthetic materials, to fulfill any specific function within the system.

23. "System of organic handling" means a system that is designed to handle agricultural products without the use of synthetic additives, aids, or ingredients that are used during processing, packaging, or storing agricultural products in accordance with this chapter and by the use of methods and substances that maintain the integrity of organic agricultural products until they reach the consumer.

SUBCHAPTER 2
ADMINISTRATION

Sec. 2. NEW SECTION. 190C.2 ORGANIC STANDARDS BOARD.

1. An organic standards board is established within the department. The powers of the board are vested in and shall be exercised by eleven members appointed by the governor and secretary, as provided in this section. The governor and secretary shall accept nominations from persons or organizations representing persons who serve on the board, as determined by the governor and secretary making appointments under this section.

2. The members shall serve staggered terms of four years beginning and ending as provided in section 69.19. However, the governor and secretary shall cooperate to appoint initial members to serve for less than four years to ensure members serve staggered terms. Members appointed under this section shall be persons knowledgeable regarding the production, handling, processing, and retailing of organic agricultural products. The members of the board shall be appointed as follows:

a. Five persons who operate farms producing organic agricultural products. The governor shall appoint two of the persons, at least one of which shall be a producer of livestock, who may be a dairy or egg producer. The secretary shall appoint three of the persons, at least one of which shall be a producer of an agricultural commodity other than livestock. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from the production of organic agricultural products for three years prior to appointment.

b. Two persons who operate businesses processing organic agricultural products. One person shall be appointed by the governor and one person shall be appointed by the secretary. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from processing organic agricultural products for three years prior to appointment.

c. One person appointed by the secretary, who shall be either of the following:

(1) A person who operates a business handling organic agricultural products. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from handling organic agricultural products for three years prior to appointment.

(2) A person who operates a business selling organic agricultural products. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from selling organic agricultural products on a retail basis for three years prior to appointment.

d. Two persons who have an educational degree and experience in agricultural or food science. One person shall be appointed by the governor and one person shall be appointed by the secretary. To qualify for appointment, a person must not have a financial interest in the production, handling, processing, or selling of organic agricultural products.

e. One person appointed by the governor, who represents the public interest, the natural environment, or consumers. To qualify for appointment, the person must be a member of an organization representing the public interest, consumers, or the natural environment. The person must not have a financial interest in the production, handling, processing, or selling of organic agricultural products.

3. A vacancy on the board shall be filled in the same manner as an original appointment. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. The governor may remove a member appointed by the governor and the secretary may remove a member appointed by the secretary, if the removal is based on the member's misfeasance, malfeasance, or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing.

4. Six members of the board constitute a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the board. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the board.

5. The members are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

6. If a member has an interest, either direct or indirect, in a contract to which the board is or is to be a party, the member shall disclose the interest to the board in writing. The writing stating the conflict shall be set forth in the minutes of the board. The member having the interest shall not participate in any action by the board relating to the contract.

7. The board shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of two or more members. The department shall provide administrative support to the board.

Sec. 3. NEW SECTION. 190C.3 BOARD POWERS AND DUTIES.

The organic standards board shall have powers and duties to do all of the following:

1. Monitor conditions, practices, policies, programs, and procedures affecting the production, handling, processing, and sale of organic agricultural products.

2. Establish a schedule of state fees as provided in section 190C.5.

3. Compile materials or a list of materials which may assist producers, handlers, processors, and sellers of organic agricultural products, in complying with this chapter.

4. Assist the department in the development and interpretation of requirements of this chapter, including requirements established pursuant to this chapter, including standards regarding the production, processing, handling, and selling of organic agricultural products and other matters of concern to the producers, handlers, processors, and retailers of organic agricultural products.

5. Approve or disapprove applications for certification, after reviewing applications, inspection reports, and other materials submitted by applicants. The board may suspend a decision to approve or disapprove an application until an application is complete or additional materials relating to the application are provided to the board.

6. Establish procedures pursuant to rules adopted by the department governing appeals of decisions made by the department or board under this chapter, including final agency action under chapter 17A.

Sec. 4. NEW SECTION. 190C.4 ADMINISTRATIVE AUTHORITY.

1. The department, upon approval by the board, shall adopt all rules necessary to administer this chapter.

a. The rules may include regulations governing the production, handling, processing, and selling of agricultural products by persons advertising an agricultural product as organic. These rules may provide for standards, certification, inspections, testing, the assessment and collection of state fees, the maintenance of records, disciplinary action, and the issuance of stop sale orders as provided in this chapter.

b. The rules adopted under this section shall be consistent with federal regulations adopted pursuant to the federal Organic Food Production Act of 1990. The department may adopt rules which are stricter than federal regulations to the extent allowed by federal law.

2. The secretary, who may act through an authorized agent, shall serve as a certifying agent under 21 U.S.C. § 2115. The secretary or the secretary's agent may serve as an inspector in order to conduct investigations at times and places and to such an extent as the secretary and the board deems necessary to determine whether a person is in compliance with this chapter, according to rules adopted by the department.

3. A violation of this chapter includes a violation of any rule adopted or issue ordered pursuant to this chapter as provided in this chapter and under chapter 17A.

Sec. 5. NEW SECTION. 190C.5 STATE FEES — DEPOSIT INTO THE GENERAL FUND OF THE STATE.

1. The board shall establish a schedule of state fees under this chapter by rule adopted by the department, for persons required to be certified as producers, handlers, and processors of agricultural products labeled, sold, or advertised as organic as provided in section 190C.13.

2. Beginning on July 1, 2000, the board shall establish the rate of fees based on an estimate of the amount of revenues from the fees required by the department to administer and enforce this chapter. The department shall annually review the estimate and recommend a change in the rate of fees to the board if the fees must be adjusted in order to comply with this subsection. The board may approve an adjustment in the fees by rule adopted by the department at any time in order to comply with this subsection.

3. The department shall collect state fees under this chapter as provided by the board, which shall be deposited into the general fund of the state.

Sec. 6. NEW SECTION. 190C.6 REGIONAL ORGANIC ASSOCIATIONS.

The department, upon approval by the board, may authorize a regional organic association to assist the board in certifying producers, handlers, and processors of agricultural products under section 190C.13. The regional organic association must be registered with the department. The registered regional organic association, upon approval of the board, may administer the provisions of section 190C.13 by doing all of the following:

1. Reviewing applications and providing applicants with technical assistance in completing applications. The department may authorize a regional organic association to process applications, including collecting and forwarding applications to the department.

2. Preparing a summary of an application, including materials accompanying the application, for review by the department and the organic standards board. A regional organic association may include a recommendation for approval, modification, or disapproval of an application.

SUBCHAPTER 3
REQUIREMENTS

Sec. 7. NEW SECTION. 190C.12 STANDARDS.

1. A person shall not sell an agricultural product as organic, unless the agricultural product is produced and handled in accordance with standards established by rules adopted by the department as provided in this chapter.

2. An agricultural product which is sold or advertised as organic must be produced and handled according to the following standards:

a. The agricultural product must be produced and handled without the use of synthetic chemicals, except as otherwise provided in rules adopted by the department.

b. The agricultural product must not be produced on land to which any prohibited substances have been applied during the three years immediately preceding the harvesting of the agricultural product.

c. The agricultural product must be produced and handled in compliance with an organic plan agreed to by the producer and handler of the product and the certifying agent.

Sec. 8. NEW SECTION. 190C.13 CERTIFICATION.

1. The department shall establish and administer a program to certify producers, handlers, and processors of agricultural products labeled, sold, or advertised as organic. A person shall not be certified unless the certification is approved by the organic standards board.

a. A certification shall expire one year from the date of issuance.

b. In order to be certified by the department, a producer, handler, or processor must submit an organic plan as prescribed by rules adopted by the department. The plan shall include methods used to ensure that the agricultural products are produced, handled, and processed according to requirements established by the department pursuant to this chapter. However, this section shall not require that any of the following persons be certified:

(1) A final retailer of agricultural products who does not process agricultural products.

(2) A person who receives five thousand dollars or less in gross income from the sale of agricultural products.

2. The department shall adopt rules upon approval by the board establishing a certification procedure.

Sec. 9. NEW SECTION. 190C.14 LABELING AND ORGANIC CERTIFICATION SEAL.

1. A label advertising an agricultural product as organic which is produced in this state shall conform with the requirements of this chapter including requirements established in rules adopted by the department pursuant to this chapter. The department shall adopt rules specifying the content of the label.

2. The department may establish a seal certifying that an agricultural product has been produced, handled, and processed in accordance with this chapter. A person shall not use a seal provided in this section to advertise an agricultural product, unless the person is authorized to use the seal by the department in accordance with requirements established by the department pursuant to rules adopted under chapter 17A. The seal may be used in addition to or in lieu of a label provided in subsection 1, as provided by the department.

Sec. 10. NEW SECTION. 190C.15 RECORDS.

A person required to be certified as provided in section 190C.13 shall maintain records regarding the production, processing, and handling of an organic agricultural product for five years. The records shall demonstrate that agricultural products advertised as organic have been produced, processed, and handled in conformance with this chapter.

SUBCHAPTER 4
ENFORCEMENT

Sec. 11. NEW SECTION. 190C.21 GENERAL ENFORCEMENT.

The department and the attorney general shall enforce this chapter. The attorney general may commence legal proceedings in district court at the request of the department or upon the attorney general's own initiative in order to enforce this chapter, including rules adopted

and orders issued by the department pursuant to this chapter. This chapter does not require the attorney general or the department to institute a proceeding for a minor violation, if the attorney general or department concludes that the public interest will be best served by a suitable notice of warning in writing.

Sec. 12. NEW SECTION. 190C.22 INVESTIGATIONS — COMPLAINTS — INSPECTIONS — EXAMINATIONS.

1. The department may conduct an investigation to determine if a person is complying with the requirements of this chapter.

2. Any person may file a complaint with the department regarding a violation of this chapter. The department shall adopt procedures for persons filing complaints. The department shall establish procedures for processing complaints including requiring minimum information to determine the verifiability of a complaint.

3. The department may conduct inspections at times and places, and to an extent that the department determines necessary in order to conclude whether an agricultural product is being produced, handled, processed, or sold in accordance with the provisions of this chapter. The department may inspect records required to be maintained pursuant to section 190C.15. The department may enter upon any public or private premises during regular business hours in a manner consistent with the laws of this state and the United States, including Article I, section 8, of the Constitution of the State of Iowa, or the fourth amendment to the Constitution of the United States for purposes of carrying out an inspection.

4. The department may conduct examinations of agricultural products in order to determine if the products are produced, handled, processed, and sold in compliance with this chapter.

a. The methods for examination shall be the official methods of the association of official agricultural chemists in all cases where methods have been adopted by the association.

b. A sworn statement by the state chemist or the state chemist's deputy stating the results of an analysis of a sample taken from a lot of agricultural products shall constitute prima facie evidence of the correctness of the analysis of that lot in an administrative hearing or court of this state.

Sec. 13. NEW SECTION. 190C.23 DISCIPLINARY ACTION.

1. The board may take disciplinary action concerning a person who is certified pursuant to this chapter by doing any of the following:

a. Issuing a letter of warning or reprimand.

b. Suspending or terminating a certification or denying an application for certification required pursuant to section 190C.13.

2. The disciplinary action must be based upon evidence satisfactory to the board that the person has used fraudulent or deceptive practices in violation of this chapter or has willfully disregarded the requirements of this chapter.

Sec. 14. NEW SECTION. 190C.24 STOP SALE ORDER.

1. If a person sells an agricultural product in violation of this chapter, including a rule adopted or an order issued under this chapter, the department may issue a written order to stop the sale of the agricultural product by a person in control of the agricultural product. The person named in the order shall not sell the item until the department determines that the sale of the agricultural product is in compliance with this chapter.

2. The department may require that the product be held at a designated place until released by the department.

3. The department or the attorney general may enforce the order by petitioning the district court in the county where the agricultural product is being sold.

4. The department shall release the agricultural product when the department issues a release order upon satisfaction that legal requirements compelling the issuance of the stop sale order are satisfied. The board must approve a delay in issuing a release order within

three months after requiring that the agricultural product be held. If the person is found to have violated this chapter, the person shall pay all expenses incurred by the department in connection with the agricultural product's removal.

Sec. 15. NEW SECTION. 190C.25 INJUNCTIONS.

The attorney general, the department, or an individual, private organization or association, county, or city may bring an action in district court to restrain a producer, processor, handler, or retailer from selling an agricultural product by false or misleading advertising claiming that the agricultural product is organic. A petitioner shall not be required to allege facts necessary to show, or tending to show, a lack of adequate remedy at law, or that irreparable damage or loss will result if the action is brought at law or that unique or special circumstances exist.

Sec. 16. NEW SECTION. 190C.26 PENALTIES.

A person who violates this chapter is subject to a civil penalty of not more than five thousand dollars. Civil penalties shall be assessed by the district court in an action initiated by the attorney general. Each day that the offense continues constitutes a separate offense. Civil penalties collected under this section shall be deposited in the general fund of the state.

Sec. 17. Chapter 190B, Code 1997, is repealed.

Sec. 18. IMPLEMENTATION.

1. The department of agriculture and land stewardship shall present proposed rules required to implement this Act to the organic standards board for approval prior to filing the rules pursuant to section 17A.5.

2. Not later than ninety days after the effective date of this Act, the governor and secretary shall appoint the members of the organic standards board as established pursuant to section 190C.2. The governor and secretary shall make the appointments from nominations received by the governor and secretary from interested persons and organizations as recognized by the governor and secretary. Members initially appointed to the board are not required to be certified as provided in section 190C.13.

Sec. 19. STAFF QUALIFICATIONS. The department shall adopt rules regarding the qualifications of departmental personnel responsible for implementing and administering this Act.

Sec. 20. EFFECTIVE AND APPLICABILITY DATES. This Act, being deemed of immediate importance, takes effect upon enactment. However, the department shall not be required to implement all of the provisions of this Act until it receives necessary accreditation or approval by the United States department of agriculture.

Approved May 20, 1998

CHAPTER 1206

IOWA EMPOWERMENT BOARD, COMMUNITY EMPOWERMENT AREAS, AND COMMUNITY EMPOWERMENT AREA BOARDS

S.F. 2406

AN ACT creating and relating to an Iowa empowerment board, community empowerment areas, and community empowerment area boards, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. PURPOSE. The purpose of this Act is to create a partnership between communities and state government by gradually implementing a statewide system of community empowerment areas. An important initial emphasis of the community empowerment areas is to improve the well-being of families with young children. An additional emphasis is to reduce duplicative bureaucratic requirements that are barriers to community efforts to improve the efficiency and effectiveness of local education, health, and human services programs.

Sec. 2. NEW SECTION. 7I.1 DEFINITIONS.

For the purposes of this chapter, unless the context otherwise requires:

1. "Community empowerment area" means a geographic area designated in accordance with this chapter.

2. "Community empowerment area board" or "community board" means the board for a community empowerment area created in accordance with this chapter.

3. "Decategorization project" means a decategorization of child welfare and juvenile justice funding project operated under section 232.188.

4. "Innovation zone" means a local jurisdiction implementing an innovation zone plan in accordance with section 8A.2, Code 1997.

5. "Iowa empowerment board" or "Iowa board" means the Iowa empowerment board created in this chapter.

Sec. 3. NEW SECTION. 7I.2 IOWA EMPOWERMENT BOARD CREATED.

1. An Iowa empowerment board is created to oversee state and community efforts involving community empowerment areas, including strategic planning, funding identification, and guidance, and to promote collaboration among state and local education, health, and human services programs.

2. The Iowa board shall consist of eleven voting members with eight citizen members and three state agency members. The three state agency members shall be the directors of the following departments: education, human services, and public health. The citizen members shall be appointed by the governor, subject to confirmation by the senate. The appointments of citizen members shall be made in a manner so that all of the state's congressional districts are represented along with the ethnic, cultural, social, and economic diversity of the state. In making appointments, preference shall be given to citizens participating on a community empowerment area board. At least one of the citizen members shall be a service consumer or the parent of a service consumer. Terms of office of citizen members are three years.

3. Citizen members shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Members shall be paid a per diem as specified in section 7E.6.

4. In addition to the eleven voting members, the Iowa board shall include six members of the general assembly with not more than two members from each chamber being from the same political party. The three senators shall be appointed by the majority leader of the senate after consultation with the president of the senate and the minority leader of the senate. The three representatives shall be appointed by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representa-

tives. Legislative members shall serve in an ex officio, nonvoting capacity. A legislative member is eligible for per diem and expenses as provided in section 2.10.

5. The Iowa board shall designate a community empowerment assistance team or teams of state agency staff to provide technical assistance and other support to community empowerment areas. The technical assistance shall be available in at least three levels of support as follows:

a. Support to areas experienced in operating an innovation zone or decategorization project with an extensive record of success in collaboration between education, health, or human services interests.

b. Support to areas experienced in operating an innovation zone or decategorization project.

c. Support to areas forming an initial community empowerment area with no previous experience operating an innovation zone or decategorization project.

6. Staffing services to the Iowa board shall be provided by the state agencies which are represented on the Iowa board and by other state agencies making staffing available to the board.

7. The Iowa board may designate an advisory council consisting of representatives from community empowerment area boards.

8. The Iowa board shall elect a chairperson from among the citizen board members and may select other officers from among the citizen board members as determined to be necessary by the board. The board shall meet regularly as determined by the board, upon the call of the board's chairperson, or upon the call of a majority of voting members.

Sec. 4. NEW SECTION. 7I.3 IOWA EMPOWERMENT BOARD DUTIES.

The Iowa board shall perform the following duties:

1. Perform duties relating to community empowerment areas.

2. Oversee the provision of grant funding and other moneys made available to community empowerment areas by combining all or portions of appropriations or other revenues as authorized by law.

3. Develop advanced community empowerment area arrangements for those community empowerment areas which were formed in transition from an innovation zone or from a decategorization governance board or which otherwise provide evidence of extensive successful experience in managing services and funding with high levels of community support and input.

4. Identify boards, commissions, committees, and other bodies in state government with overlapping and similar purposes which contribute to redundancy and fragmentation in education, health, and human services programs provided to the public. The board shall also make recommendations to the governor and general assembly as appropriate for increasing coordination between these bodies, for eliminating bureaucratic duplication, for consolidation where appropriate, and for integration of functions to achieve improved results.

5. Assist with the linkage of child welfare and juvenile justice decategorization projects with community empowerment areas.

6. Integrate the duties relating to innovation zones in the place of the innovation zone board created in section 8A.2, Code 1997, until the Iowa board determines the innovation zones have been replaced with community empowerment areas.

7. Coordinate and respond to any requests from a community board relating to any of the following:

a. Waiver of existing rules, federal regulation, or amendment of state law, or removal of other barriers.

b. Pooling and redirecting of existing federal, state, or other public or private funds.

c. Seeking of federal waivers.

d. Consolidating community-level committees, planning groups, and other bodies with common memberships formed in response to state requirements.

In coordinating and responding to the requests, the Iowa board shall work with state agencies and submit proposals to the governor and general assembly as necessary to fulfill requests deemed appropriate by the Iowa board.

8. Provide for maximum flexibility and creativity in the designation and administration of the responsibilities and authority of community empowerment areas.

9. Adopt rules pursuant to chapter 17A as necessary for the designation, governance, and oversight of community empowerment areas and the administration of this chapter. The Iowa board shall provide for community board input in the rules adoption process. The rules shall include but are not limited to the following:

a. Performance indicators for community empowerment areas, community boards, and the services provided under the auspices of the community boards. The performance indicators shall be developed with input from community boards and shall build upon the core indicators of performance for the school ready grant program, as described in section 7I.7.

b. Minimum standards to further the provision of equal access to services subject to the authority of community boards.

Sec. 5. NEW SECTION. 7I.4 COMMUNITY EMPOWERMENT AREAS.

1. The purpose of a community empowerment area is to enable local citizens to lead collaborative efforts involving education, health, and human services programs on behalf of the children, families, and other citizens residing in the area. Leadership functions may include but are not limited to strategic planning for and oversight and managing of such programs and the funding made available to the community empowerment area for such programs from federal, state, local, and private sources. The initial focus of the purpose is to improve results for families with young children.

2. Each county and school district in the state shall have the option of participating in a community empowerment area. A community empowerment area shall be designated by using existing school district and county boundaries to the extent possible.

3. The designation of a community empowerment area and the creation of a community empowerment area board are subject to the approval of the Iowa empowerment board. Criteria used by the Iowa empowerment board in approving the designation of a community empowerment area shall include but are not limited to the existence of a large enough geographic area and population to efficiently and effectively administer the responsibilities and authority of the community empowerment area. The Iowa empowerment board shall adopt rules pursuant to chapter 17A providing procedures for the initial designation of community empowerment areas and for later changing the initially designated areas.

Sec. 6. NEW SECTION. 7I.5 COMMUNITY EMPOWERMENT AREA BOARDS CREATED.

1. A community empowerment area shall be governed by a community empowerment area board. A majority of the members of a community board shall be citizens and elected officials and the remaining members may be employees of or paid for representing any of the entities listed in this subsection. At least one member shall be a service consumer or the parent of a service consumer. Terms of office of community board members shall be three years. The members of a community empowerment area board may include one or more representatives of any of the following entities:

a. A school district.
b. A county.
c. A local board of health.
d. A hospital.
e. A charitable funding group.
f. The department of human services.
g. A religious institution.
h. An area education agency.
i. Juvenile court services.

j. An area substance abuse agency.
k. A community action program.
l. A city.
m. A business organization.
n. A labor organization.
o. A service club.
p. A business.
q. Consumers.
r. A private community-based organization.
s. A neighborhood association.
t. A child day care resource and referral service.
u. A library.
v. Others as determined by the community board.

2. A community board may designate representatives of service providers or public agency staff to provide technical assistance to the community board.

3. A community board may designate a professional advisory council consisting of persons employed by or otherwise paid to represent an entity listed in subsection 1 or other provider of service.

4. The community board shall elect a chairperson from among the members who are citizens, elected officials, or volunteers.

Sec. 7. NEW SECTION. 7I.6 COMMUNITY EMPOWERMENT AREA BOARD RESPONSIBILITIES AND AUTHORITY.

1. A community empowerment area board shall do the following:

a. Designate a public agency of this state, as defined in section 28E.2, to be the fiscal agent for grant moneys and for other moneys administered by the community board.

b. Administer community empowerment grant moneys available from the state to the community board as provided by law and other federal, state, local, and private moneys made available to the community board. Eligibility for receipt of community empowerment grant moneys shall be limited to those community boards that have developed an approved school ready children grant plan in accordance with this chapter. A community board may apply to the Iowa empowerment board to receive as a community empowerment grant those moneys which would otherwise only be available within the geographic area through categorical funding sources or programs.

c. If a community empowerment area includes a decategorization project, coordinate planning and budgeting with the decategorization governing board. By mutual agreement between the community board and the decategorization governance board, the community board may assume the duties of the decategorization governance board or the decategorization governance board may continue as a committee of the community board.

d. Assume other responsibilities established by law or administrative rule.

2. A community board may do any of the following:

a. Designate one or more committees for oversight of grant moneys awarded to the community empowerment area.

b. Function as a coordinating body for services offered by different entities directed to similar purposes within the community empowerment area.

c. Develop neighborhood bodies for community-level input to the community board and implementation of services.

Sec. 8. NEW SECTION. 7I.7 SCHOOL READY CHILDREN GRANT PROGRAM — ESTABLISHMENT AND ADMINISTRATION.

1. The departments of education, human services, and public health shall jointly develop and promote a school ready children grant program which shall provide for all of the following components:

a. Identify the core indicators of performance that will be used to assess the effectiveness

of the school ready children grants, including encouraging early intellectual stimulation of very young children, increasing the basic skill levels of students entering school, increasing the health status of children, reducing the incidence of child abuse and neglect, increasing the access of children to an adult mentor, increasing parental involvement with their children, and increasing the quality and accessibility of child day care.

b. Identify guidelines and a process to be used for determining the readiness of a community empowerment area for administering school ready children grants.

c. Provide for technical assistance concerning funding sources, program design, and other pertinent areas.

2. The program developed and components identified under subsection 1 are subject to approval by the Iowa empowerment board. The Iowa empowerment board shall provide maximum flexibility to grantees for the use of the grant moneys included in a school ready children grant.

3. A school ready children grant shall, at a minimum, be used to provide the following:

a. Preschool services provided on a voluntary basis to children deemed at risk of not succeeding in elementary school as determined by the community board and specified in the grant plan developed in accordance with this section.

b. Parent support and education programs promoted to parents of children from birth through five years of age. Parent support and education programs shall be offered in a flexible manner to accommodate the varying schedules, meeting place requirements, and other needs of working parents.

c. A comprehensive school ready children grant plan developed by a community board for providing services for children from birth through five years of age including but not limited to child development services, child day care services, training child day care providers to encourage early intellectual stimulation of very young children, children's health and safety services, assessment services to identify chemically exposed infants and children, and parent support and education services. At a minimum, the plan shall do all of the following:

(1) Describe community needs for children from birth through five years of age as identified through ongoing assessments.

(2) Describe the current and desired levels of community coordination of services for children from birth through five years of age, including the involvement and specific responsibilities of all related organizations and entities.

(3) Identify all federal, state, local, and private funding sources available in the community empowerment area that will be used to provide services to children from birth through five years of age.

(4) Describe how funding sources will be used collaboratively and the degree to which the moneys can be combined to provide necessary services to children.

(5) Identify the results the community board expects to achieve through implementation of the school ready children grant program, and identify community-specific quantifiable performance indicators to be reported in the annual report.

4. The community board shall submit an annual report on the effectiveness of the grant program in addressing school readiness and children's health and safety needs to the Iowa empowerment board and to the local governing bodies. The annual report shall indicate the effectiveness of the community board in achieving state and locally determined goals.

5. a. A school ready children grant shall be awarded to a community board for a three-year period, with annual payments made to the community board. The Iowa empowerment board may grant an extension from the award date and any application deadlines based upon the award date, to allow for a later implementation date in the initial year in which a community board submits a comprehensive school ready grant plan to the Iowa empowerment board. However, receipt of continued funding is subject to submission of the required annual report and the Iowa board's determination that the community board is measuring, through the use of performance indicators developed by the Iowa board with input from community boards, progress toward and is achieving the desired results identified in the grant plan. If progress is not measured through the use of performance indicators toward

achieving the identified results, the Iowa board may request a plan of corrective action or may withdraw grant funding.

b. The Iowa empowerment board shall distribute school ready children grant moneys to community boards with approved comprehensive school ready children grant plans based upon the degree of readiness of the community empowerment area to effectively utilize the moneys, with the grant moneys being adjusted for other federal and state grant moneys to be received by the area for services to children from birth through five years of age.

c. A community board's degree of readiness shall be ascertained by evidence of successful collaboration among public or private education, human services, or health interests or a documented program design evincing a strong likelihood of leading to a successful collaboration between these interests. Other criteria which may be used by the Iowa board to ascertain degree of readiness and to determine funding amounts include one or more of the following:

(1) Experience or other evidence of capacity to successfully implement the services in the plan.

(2) Local funding and other resources committed to implementation of the plan.

(3) Adequacy of plans for commitment of local funding and other resources for implementation of the plan.

d. The Iowa board's provisions for distribution of school ready grant moneys shall take into account contingencies for possible increases and decreases in the provision of state and local funding in future fiscal years which may be used for purposes of school ready children grants and for early childhood programs grants and for differences in local capacity for program implementation and provision of local funding. In developing these provisions, the Iowa board shall consider equity concerns; options for making capacity adjustments by restricting grant amounts based on service population size groupings to accommodate small, medium, and large population groupings; and options for making adjustments to accommodate varying amounts of time and assistance needed for implementation, such as extending the grant period to more than one year.

6. The priorities for school ready children grant funds shall include providing preschool services on a voluntary basis to children deemed at risk of not succeeding in elementary school, training child day care providers and others to encourage early intellectual stimulation of very young children, and offering parent support and education programs on a voluntary basis to parents of children from birth through five years of age. The grant funds also may be used to provide other services to children from birth through five years of age as specified in the comprehensive school ready children grant plan.

Sec. 9. NEW SECTION. 7I.8 IOWA EMPOWERMENT FUND.

1. An Iowa empowerment fund is created in the state treasury. The moneys in the Iowa empowerment fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided by law. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the Iowa empowerment fund shall be credited to the fund.

2. A school ready children grants account is created in the Iowa empowerment fund under the authority of the director of the department of education. Moneys credited to the account shall be distributed by the department of education in the form of grants to community empowerment areas pursuant to criteria established by the Iowa board in accordance with law.

3. An early childhood programs grant account is created in the Iowa empowerment fund under the authority of the director of human services. Moneys credited to the account shall be distributed by the department of human services in the form of grants to community empowerment areas pursuant to criteria established by the Iowa board in accordance with law. The criteria shall include but are not limited to a requirement that a community empowerment area must be eligible to receive a school ready children grant in order to receive an early childhood programs grant.

Sec. 10. Section 135.106, subsection 3, Code Supplement 1997, is amended to read as follows:

3. It is the intent of the general assembly to provide communities with the discretion and authority to redesign existing local programs and services targeted at and assisting families expecting babies and families with children who are newborn through five years of age. The Iowa department of public health, department of human services, department of education, and other state agencies and programs, as appropriate, shall provide technical assistance and support to communities desiring to redesign their local programs and shall facilitate the consolidation of existing state funding appropriated and made available to the community for family support services. Funds which are consolidated in accordance with this subsection shall be used to support the redesigned service delivery system. In redesigning services, communities are encouraged to implement a single uniform family risk assessment mechanism and shall demonstrate the potential for improved outcomes for children and families. Requests by local communities for the redesigning of services shall be submitted to ~~and subject to joint approval of~~ the Iowa department of public health, department of human services, and department of education, and are subject to the approval of the Iowa empowerment board in consultation with the departments, based on the innovation ~~zones~~ zone principles established in section 8A.2, Code 1997.

Sec. 11. Section 232.188, subsection 7, Code 1997, is amended to read as follows:

7. The annual child welfare services plan developed by a decategorization governance board pursuant to subsection 2 shall be submitted to the department and the ~~statewide decategorization and family preservation committee~~ Iowa empowerment board. In addition, the decategorization governance board shall submit an annual progress report to the department and the ~~committee~~ Iowa empowerment board which summarizes the progress made toward attaining the objectives contained in the plan. The progress report shall serve as an opportunity for information sharing and feedback.

Sec. 12. LEGISLATIVE FINDINGS AND INTENT.

1. The general assembly recognizes the significant findings of brain research indicating that early intellectual stimulation at a very young age increases the learning ability of a child. In order for children to be ready for school by age five, it is the intent of the general assembly that implementation of the provisions of this Act will accomplish the following:

a. Foster collaboration among state agencies which shall initially include the departments of human services, education, and public health, and allow the blending of these agencies' funding and other resources.

b. Establish community empowerment areas with broad community representation with the goal of providing services collaboratively to children from birth through five years of age for the purpose of improving the quality of these children's lives.

2. It is the intent of the general assembly that over time community empowerment areas will be developed in every part of the state. It is anticipated that as local empowerment areas evolve and most effectively implement the provisions of this Act in their areas, the initial structure for community empowerment areas provided in this Act will be revised by the Iowa empowerment board and by the general assembly in order to best promote collaboration among state and local education, health, and human services programs.

3. It is the intent of the general assembly that the duties of child welfare and juvenile justice decategorization projects and innovation zones will eventually be assumed by community empowerment areas.

Sec. 13. IOWA EMPOWERMENT BOARD. The Iowa empowerment board shall adopt rules, arrange for technical assistance, provide guidance, and take other actions needed to assist the designation of community empowerment areas and creation of community empowerment boards and to enable the community empowerment area boards to submit school ready children grant plans in a timely manner for the initial grants to be awarded and grant

moneys to be paid. For the initial grants, plans shall be submitted by September 1, 1998, or by January 1, 1999,* in accordance with criteria established by the board. The Iowa board shall submit to the governor and the general assembly a proposed funding formula for distribution of school ready children grant moneys as necessary for statewide implementation of the grant program for the fiscal year beginning July 1, 1999, and subsequent fiscal years.

Sec. 14. INITIAL COMMUNITY EMPOWERMENT AREAS AND BOARDS.

1. Notwithstanding section 7I.5, as enacted by this Act, providing for the creation of community empowerment area boards, for an area in which the initial community empowerment area is an innovation zone, one or more school districts, or a decategorization project, the initial community empowerment board shall be the innovation zone board, representatives of the school board or boards, or the decategorization governing board, as determined to be appropriate by the Iowa empowerment board. In addition to any members of the innovation zone board, representatives of the school board or boards, or decategorization governance board, the initial community empowerment board shall include at a minimum, representatives of school districts, county boards of supervisors, cities, juvenile court services, public health and human services administrators in the community empowerment area, and parents of children living in the area. For an area which does not encompass an innovation zone or decategorization project, the chairperson of the county board of supervisors may work with the local school district or districts in initiating a process to designate an initial community empowerment area and board. If the composition of the initial board does not comply with the composition requirements of section 7I.5, the board shall comply with the composition requirements on or before June 30, 1999.

2. For an area which is not included in an innovation zone or a decategorization project or for an area desiring to be included in a different zone or project, the area may by mutual agreement be included in a community empowerment area created from an innovation zone or a decategorization project. Otherwise, the area shall comply with requirements for designation of a community empowerment area adopted for this purpose by the Iowa empowerment board.

3. An area designated as an innovation zone in accordance with section 8A.2, Code 1997, as of June 30, 1998, may continue to develop the area's plans to achieve the results identified in the area's innovation zone application. An innovation zone transitioning to become a designated community empowerment area shall continue to receive technical assistance and guidance from the appropriate state agencies. A transitioning innovation zone may continue to pursue waivers and the reallocation of funds to achieve the identified results. A transitioning innovation zone may amend the zone's previously approved plan to include the provisions identified in section 7I.7, as enacted by this Act, as necessary to be eligible for receipt of a school ready children grant.

Sec. 15. TRANSITION BOARD. For the period beginning on the effective date of this Act and ending December 1, 1998, when the governor shall have completed the appointments to the Iowa empowerment board, the duties of the Iowa empowerment board under section 7I.3, as enacted by this Act, shall be performed by a transition board consisting of the directors of the departments of human services, education, and public health, citizen members of the innovation zone board created in section 8A.2, Code 1997, and the six ex officio, nonvoting legislative members of the board.

Sec. 16. EMERGENCY RULES. The transition Iowa empowerment board, as established by this Act, may adopt emergency rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement the provisions of this Act and the rules shall be effective immediately upon filing unless a later date is specified in the rules. Any rules adopted in accordance with this section shall also be published as a notice of intended action as provided in section 17A.4.

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* See chapter 1223, §32

Sec. 17. FUNDING AUTHORIZATION. For the fiscal year beginning July 1, 1998, and ending June 30, 1999, the Iowa empowerment board may determine amounts of appropriations and categorical program funding for the programs listed in this section which can be attributed to community empowerment areas and may recommend that the appropriate department reallocate the attributable portions to the community empowerment areas which have applied for and are determined to be eligible to receive the funding in the form of a community empowerment grant. Eligibility shall be limited to those community empowerment areas determined by the Iowa empowerment board under section 7I.3, as enacted by this Act, to be eligible for an advanced community empowerment area arrangement. Subject to any federal limitations, the programs for which funding may be reallocated under this section are as follows:

1. Child day care.
2. At-risk programs for preschool children.
3. Head start programs.
4. Parent education programs.
5. Children's health programs.
6. Substance abuse assessment and referral.

Sec. 18. INITIAL APPOINTMENTS. The governor shall make the initial citizen appointments to the Iowa empowerment board created in section 7I.2, as enacted in this Act, as follows:

1. Two members to a one-year term.
2. Three members to a two-year term.
3. Three members to a three-year term.

Sec. 19. Sections 8A.2 and 217.9A, Code 1997, are repealed effective June 30, 1998.

Sec. 20. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 20, 1998

CHAPTER 1207

IOWA AGRICULTURAL INDUSTRY FINANCE ACT AND RELATED PROVISIONS

S.F. 2415

AN ACT relating to agricultural finance, providing an appropriation, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. LEGISLATIVE FINDINGS. The general assembly finds and declares all of the following:

1. a. The economic structure of agriculture, including the production of agricultural commodities and the processing and marketing of agricultural products, is undergoing a period of rapid transformation.

(1) Longstanding government programs supporting prices for agricultural commodities are being phased out, and new technologies and management arrangements are creating large scale integrated systems for producing and processing agricultural commodities, and marketing agricultural processed products.

(2) An increasing world demand exists for high quality agricultural products caused by the simultaneous reduction of trade barriers among nations and an increase in income of those nations' populations.

b. The ability of this state and its agricultural producers to adapt to these forces and their consequences at the threshold of the twenty-first century will determine the degree to which this state will prosper.

2. A need exists to support the production of agricultural commodities and the processing and marketing of agricultural products which are produced by using biological techniques for the development of specialized plant or animal characteristics for beneficial nutritional, commercial, or industrial purposes. A need also exists to support biomass energy sources.

3. A need exists to support forests and the growth and maintenance of forests in this state, including the production of agricultural commodities which are forest products as provided in section 15E.202.

4. a. A need exists for additional sources of financing for local agricultural producer-led ventures to expand production, processing, and marketing of high value agricultural products, to organize new business structures within the state to carry out these ventures, and to market and deliver increasingly high value agricultural products to consumers around the world.

b. Traditional channels of financing and business organization have not been adequate to address this need.

c. A trend toward corporate vertical integration in the production, processing, and marketing of agricultural products exists which requires agricultural producers to develop innovative cooperative ventures in order to successfully compete in a changing marketplace.

5. A need exists for additional sources of financing for ventures designed to support the production, processing, and marketing of high value agricultural products using biological techniques which create increasingly high value agricultural products for consumers around the world.

6. It is necessary for the state to authorize the formation of private corporations in order to provide sources of investment capital to encourage Iowa agricultural industry ventures, including providing limited state financial support necessary to stimulate these ventures.

7. All of the purposes stated in this Act are public purposes. All of the following is necessary in order to satisfy the intent and promote the purposes of this Act:

a. The authorization of the formation of Iowa agricultural industry finance corporations as provided in this Act, including authorizing persons to facilitate the formation of a private corporation.

b. The use of public moneys to support activities identified in this Act, including funding Iowa agricultural industry finance corporations, making available loans to initiate ventures as provided in this Act, and providing incentives included in this Act for qualified Iowa agricultural industry financing corporations.

DIVISION XIX
IOWA AGRICULTURAL INDUSTRY FINANCE CORPORATIONS

Sec. 2. NEW SECTION. 15E.201 SHORT TITLE.

This division shall be known and may be cited as the "Iowa Agricultural Industry Finance Act".

Sec. 3. NEW SECTION. 15E.202 DEFINITIONS.

Except as otherwise provided in this division, or unless the context otherwise requires, the words and phrases used in this division shall have the same meaning as the words and phrases used in chapter 490, including but not limited to the words and phrases used in section 490.140. In addition, all of the following shall apply:

1. "Actively engaged in agriculture" means to do any of the following:

a. Inspect agricultural operations periodically and furnish at least half the direct cost of the operations.

b. Regularly and frequently make or take an important part in making management decisions substantially contributing to or affecting the success of the agricultural operation.

c. Perform physical work which significantly contributes to agricultural operation.

2. "Agricultural commodity" means any unprocessed agricultural product, including livestock as defined in section 717.1, agricultural crops, and forestry products grown, raised, produced, or fed in this state for sale in commercial channels.

3. "Agricultural operation" means an operation concerned with the production of agricultural commodities for processing into agricultural processed products.

4. "Agricultural processed product" means an agricultural commodity that has been processed for sale in commercial markets.

5. "Agricultural producer" means a person who is any of the following:

a. An individual actively engaged in agricultural production.

b. A person other than an individual, if the person is any of the following:

(1) A general partnership in which all the partners are natural persons, and one of the partners is actively engaged in agricultural production.

(2) A family farm entity if any of the following individuals is actively engaged in agricultural production:

(a) A shareholder and an officer, director, or employee of a family farm corporation.

(b) A member or manager of a family farm limited liability company.

(c) A general partner of a family farm limited partnership.

(d) A beneficiary of a family trust.

(3) A networking farmers entity.

6. "Agricultural product" means an agricultural commodity or an agricultural processed product.

7. "Biotechnology enterprise" means an enterprise organized under the laws of this state using biological techniques for the development of specialized plant or animal characteristics for beneficial nutritional, commercial, or industrial purposes.

8. "Certified facility" means a facility used to process agricultural products as certified by a corporation pursuant to section 15E.210.

9. "Department" means the department of economic development as created in section 15.101.

10. "Economic development board" means the economic development board created pursuant to section 15.103.

11. "Family farm entity" means a family farm corporation, family farm limited liability company, family farm limited partnership, or family trust as defined in section 9H.1.

12. "Iowa agricultural industry finance corporation" or "corporation" means a corporation formed under this division.

13. "Iowa agricultural industry finance loan" means a loan made to a qualified Iowa agricultural industry finance corporation pursuant to section 15E.208.

14. "Iowa agricultural industry venture" means an enterprise involving any of the following:

a. Agricultural producers investing in a new facility or acquiring or expanding an existing facility in this state which is used to process agricultural commodities produced in this state, if the purpose of the enterprise is to accomplish all of the following:

(1) The creation and retention of wealth in this state derived from processing and marketing agricultural commodities produced in this state.

(2) Increasing production, processing, and marketing of value-added agricultural products in this state.

(3) Providing for a substantial equitable ownership interest in the enterprise by Iowa agricultural producers.

(4) Providing an alternative in this state to corporate vertical integration in the production, processing, and marketing of agricultural products.

b. An agricultural biotechnology enterprise located in this state, if the purpose of research and application of biological techniques conducted by the enterprise is to accomplish all of the following:

(1) The creation and retention of wealth in this state.

(2) Increasing the value of agricultural commodities.

15. "Loan" means providing financing to a person under an agreement requiring that the amount in financing be repaid at a maturity date, with an interest rate, and other conditions as specified in the agreement.

16. "Networking farmers entity" means the same as defined in section 10.1, as enacted by 1998 Iowa Acts, House File 2335.*

17. "Qualified investor" means any of the following:

a. An agricultural producer.

b. A cooperative corporation organized under chapter 501.

c. A networking farmers entity.

18. "Qualified Iowa agricultural industry finance corporation" or "qualified corporation" means an Iowa agricultural industry financing corporation which meets the eligibility requirements of and is approved by the department pursuant to section 15E.208.

Sec. 4. NEW SECTION. 15E.203 FINDINGS — INTENT AND PURPOSES.

1. The general assembly finds that this state is in a period when the economic structure of agriculture and the production, processing, and marketing of agricultural products is undergoing a period of rapid transformation.

2. It is the intent of the general assembly and purpose of this division that this state capture the greatest benefit from opportunities created during this period, by encouraging local agricultural producer-led ventures to expand production and processing of high value agricultural products, including agricultural processed products, to organize new business structures within the state to carry out these ventures, and to market and deliver increasingly high value agricultural products to consumers around the world. In carrying out this purpose, state resources provided by this division shall be used to assure all of the following:

a. That the majority of the wealth created by Iowa agricultural productivity is retained in this state.

b. That employment in the production, processing, and marketing of agricultural products, and especially agricultural processed products, is increased in this state.

c. That agricultural producers in this state are provided with an opportunity to acquire a majority ownership interest in Iowa agricultural industry ventures promoted under this division.

d. That this state becomes a world model for agricultural producer-based vertical cooperation which depends upon broadly shared access to information, capital, and cooperative action.

e. That the use of private resources with state incentives establish Iowa as the world leader in responsibly produced agricultural products that meet the needs of consumers throughout the world.

3. It is the intent of the general assembly and the purpose of this division that the state encourage Iowa agricultural industry ventures which promote the research and application of biological techniques for the development of specialized plant or animal characteristics for beneficial nutritional, commercial, or industrial purposes.

Sec. 5. NEW SECTION. 15E.204 IOWA AGRICULTURAL INDUSTRY FINANCE CORPORATIONS — SCOPE OF POWERS AND DUTIES.

1. An Iowa agricultural industry finance corporation formed under this division shall be subject to and have the powers and privileges conferred by provisions of chapter 490, unless otherwise limited by or inconsistent with the provisions of this division.

2. Nothing in this division requires any of the following:

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* Chapter 1110 herein

a. That a limited number of Iowa agricultural industry finance corporations are authorized to be formed. However, the department may strictly interpret and apply the requirements of this division in determining whether a corporation is a qualified corporation under section 15E.208.

b. That a corporation be organized on a cooperative basis, including structured, organized, or operated pursuant to 26 U.S.C. § 1381(a).

c. That a corporation is restricted from holding, acquiring, or transferring financial or security instruments, including but not limited to a security regulated under chapter 502, money, accounts, and chattel paper under chapter 554, security interests under chapter 554, or a mortgage or deed of trust under chapter 654.

3. An Iowa agricultural industry finance corporation is a private business corporation and not a public corporation or instrumentality of the state. Except as provided in this division, nothing in this division exempts an Iowa agricultural industry finance corporation from the same requirements under state law which apply to other corporations organized under chapter 490, including taxation provisions under chapter 422 or Title X, subtitle 2 of this Code, or security regulations under chapter 502.

Sec. 6. NEW SECTION. 15E.205 IOWA AGRICULTURAL INDUSTRY FINANCE CORPORATIONS — REQUIREMENTS.

1. A corporation incorporated under chapter 490 is an Iowa agricultural industry finance corporation, if the corporation complies with the requirements of this section and section 15E.206. In addition to the other requirements for a corporation organized under chapter 490, all of the following shall apply:

a. At least fifty-one percent of the corporation's common stock must be held by agricultural producers. At least fifty-one percent of the corporation's voting stock must be held by agricultural producers.

b. A director of the corporation's board of directors shall not serve for more than seven consecutive years as a board director.

c. The purpose of the corporation must be limited to providing financing to eligible persons under section 15E.210 who are engaging in Iowa agricultural industry ventures limited to establishing a business structure in which agricultural producers produce agricultural commodities for processing and marketing as agricultural processed products.

2. The requirements of this section shall be memorialized in the corporation's articles of incorporation.

Sec. 7. NEW SECTION. 15E.206 FORMATION OF AN IOWA AGRICULTURAL INDUSTRY FINANCE CORPORATION.

1. This section authorizes the formation of Iowa agricultural industry finance corporations in order to perfect the manner in which such corporations are formed and operate. Such a corporation is a private business corporation and not a public corporation or instrumentality of the state. The corporation shall not enjoy any of the privileges nor be required to comply with any of the requirements of a state agency.

2. In facilitating the formation of an Iowa agricultural industry finance corporation, the following persons shall serve as incorporators as provided in section 490.201:

a. The chairperson of the economic development board or a designee of the chairperson.

b. The director of the department of economic development, or a designee of the director.

c. The secretary of agriculture or a designee of the secretary.

3. a. After incorporation, such a corporation shall be organized by an initial board of directors as provided in chapter 490, division II. The initial board of directors shall be elected by the members of an appointment committee. The members of the appointment committee shall be appointed by the economic development board. The initial board of directors shall consist of seven members. The members of the appointment committee shall include persons who have an expertise in areas of banking, agricultural lending, business development, agricultural production and processing, seed and venture capital investment, and other areas of expertise as deemed appropriate by the interim board of directors.

b. The members of the appointment committee shall exercise due care to assure that persons appointed to the initial board of directors have the requisite financial experience necessary in order to carry out the duties of the corporation as established in this division, including in areas related to agricultural lending, commercial banking, and investment management.

c. Upon the election of the initial board of directors, the terms of the members of the appointment committee shall expire.

d. The department shall assist the incorporators and the appointment committee in any manner determined necessary and appropriate by the economic development board and the director of the department in order to administer this section.

Sec. 8. NEW SECTION. 15E.207 IOWA AGRICULTURAL INDUSTRY FINANCE CORPORATIONS — GUIDING PRINCIPLES.

In carrying out its duties and exercising its powers under this division, an Iowa agricultural industry finance corporation shall be guided by the following principles:

1. The corporation must exercise diligence and care in the selection of persons and projects to receive financing as provided in section 15E.210. The corporation must apply customary and acceptable business and lending standards and practices in selecting persons and projects designated for financing and managing agreements under which financing is provided.

In selecting projects to receive financing, it is the intent of the general assembly that the corporation seek projects with wage, benefit, and work safety plans which improve the quality of employment in the state and which would not displace employees of existing Iowa agricultural industry ventures.

2. Except as otherwise provided in this section, the corporation shall not become an owner of real or depreciable property, including agricultural land, as provided in section 9H.4. However, this subsection shall not preclude the corporation from holding an interest in real or depreciable property if any of the following apply:

a. The corporation holds nonagricultural property for purposes of carrying out the management of its corporate affairs, including office space, furniture, and supplies.

b. The corporation holds an interest in real or depreciable property on a temporary basis, and any of the following apply:

(1) The interest is a bona fide encumbrance taken for purposes of security in connection with providing financing under section 15E.210.

(2) The interest is acquired by operation of law, including by any of the following:

(a) Devise or bequest.

(b) Court order.

(c) Dissolution under chapter 490, division XIV.

(d) Order in bankruptcy.

(e) Pursuant to a proceeding to enforce a debt against real property under chapter 654, to forfeit a contract to purchase real property under chapter 656, to enforce a secured interest in real or depreciable property under chapter 554, or to otherwise garnish, levy on, execute on, seize, or attach real or depreciable property in the collection of debts, or by any procedure for the enforcement of a lien or claim.

(3) The interest is acquired in order to facilitate a transfer between persons pursuant to a transaction authorized under this division.

Sec. 9. NEW SECTION. 15E.208 QUALIFIED CORPORATIONS — IOWA AGRICULTURAL INDUSTRY FINANCE LOANS.

1. The department may award an Iowa agricultural industry finance loan to an Iowa agricultural industry finance corporation, if the department in its discretion determines that the corporation is qualified under this section.

2. The corporation must apply for an Iowa agricultural industry finance loan on forms and according to procedures required by the department.

3. The department shall loan all of the amounts available to the department pursuant to this division to a qualified corporation with provisions and restrictions as determined by the department and contained in a loan agreement executed between the department and the qualified corporation.

a. The department may attach conditions to the granting of the loan as it deems desirable, including any restrictions on the subordination of the moneys loaned. The attorney general shall assist the department in drafting loan agreements and in collecting on the loan agreement.

b. The loan shall be repayable upon terms and conditions negotiated by the parties. The repayment period shall begin six years following the date when the loan is awarded and end twenty-five years after the date that the repayment period begins. At least four percent of the amount due shall be paid each year to the department. The corporation shall not be subject to a prepayment penalty.

c. The corporation shall not expend moneys originating from the state, including moneys loaned under this section, on political activity or on any attempt to influence legislation.

4. A corporation shall not provide financing to support a person who is any of the following:

a. An agricultural producer, if any of the following applies:

(1) The agricultural producer is a party to a pending action for a violation of chapter 455B concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) The agricultural producer or a confinement feeding operation in which the agricultural producer holds a controlling interest is classified as a habitual violator under section 455B.191.

b. An agricultural products processor, if the processor or a person owning a controlling interest in the processor has demonstrated, within the most recent consecutive three-year period prior to the application for financing, a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment. Violations of environmental protection statutes, rules, or regulations shall be reported for the most recent five-year period prior to application. Evidence of such disregard shall include a history of serious or uncorrected violations of state or federal law protecting occupational health and safety or the environment, including but not limited to serious or uncorrected violations of occupational safety and health standards enforced by the division of labor services of the department of employment services pursuant to chapter 84A, or rules enforced by the environmental protection division of the department of natural resources pursuant to chapter 455B.

c. A member of the economic development board, an employee of the department of economic development, an elected state official, or any director or other officer or an employee of the corporation.

5. In order to be eligible as a qualified Iowa agricultural industry finance corporation, all of the following conditions must be satisfied:

a. The corporation must only provide financing to persons and ventures eligible under section 15E.210.

b. The corporation must demonstrate that it complies with guiding principles for the corporation as provided in section 15E.207.

c. The corporation must adopt policies and procedures which maximize public oversight into the affairs of the corporation, by providing a forum for public comment, an opportunity for public review of the corporation's actions, and methods to ensure accountability for the expenditure of public moneys loaned to the corporation.

d. The corporation's articles of incorporation must comply with requirements established by the department relating to the capacity and integrity of the corporation to carry out the purposes of this division, including but not limited to all of the following:

(1) The capitalization of the corporation.

(2) The manner in which financing is provided by the corporation, including the manner in which an Iowa agricultural industry finance loan can be used by the corporation.

(3) The composition of the corporation's board of directors. The board must be composed of persons knowledgeable in Iowa agricultural industries including a representative number of individuals experienced and knowledgeable in financing new agricultural industries.

(4) The manner of oversight required by the department or the auditor of state. The articles must provide that the corporation shall submit a report to the governor, the general assembly, and the department. The report shall provide a description of the corporation's activities and a summary of its finances, including financial awards. The report shall be submitted not later than January 10 of each year. The articles shall provide that an audit of the corporation must be conducted each year for the preceding year by a certified public accountant licensed pursuant to chapter 542C. The auditor of state may audit the books and accounts of the corporation at any time. The results of the annual audit and any audit for the current year conducted by the auditor of state shall be included as part of the report.

(5) The execution of an agreement between the corporation and an eligible recipient as required by the department as a condition of providing financing, in which the eligible recipient agrees to become a shareholder in the corporation. If the eligible recipient is an agricultural producer as provided in section 15E.210, the agreement shall not be executed unless the agricultural producer holds voting common stock in the corporation equal to at least five percent of the financing provided to the agricultural producer pursuant to the agreement. The agreement shall be for a period of not less than ten years. An agreement shall at least provide all of the following:

(a) The establishment of a common stock pricing system. The stock shall be frozen against price appreciation for the first five years of the life of the corporation. The articles shall contain waivers for death and disability.

(b) The maintenance of stock ownership by an eligible recipient until a financial assistance obligation due the corporation is satisfied.

(c) A requirement that the par value of participating common stock be established prior to providing financial assistance to an eligible recipient.

e. To the extent feasible and fiscally prudent, the corporation must maintain a portfolio which is diversified among the various types of agricultural commodities and agribusiness.

f. Not more than seventy-five percent of moneys originating from the state, including moneys loaned to the corporation pursuant to this section, may be used to finance any one Iowa agricultural industry venture.

g. The corporation may only be terminated by the following methods, unless approved by the department:

(1) Merger or share exchange under chapter 490, division XI.

(2) Dissolution as provided in chapter 490, division XIV, part A.

(3) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

6. The department shall provide for the default of the loan if the qualified corporation does any of the following:

a. Violates a provision of the articles of incorporation or an amendment to the articles of incorporation that is required by this division which violation is not approved by the department.

b. Violates the terms of the loan agreement executed between the department and the corporation, which violation is not approved by the department.

c. Fails to comply with the requirements of section 15E.205.

d. Completes a transaction, if all of the following apply:

(1) The transaction involves any of the following:

(a) A merger or share exchange under chapter 490, division XI.

(b) The sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or

more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

(2) The surviving entity of a merger or share exchange, or the entity acquiring the assets of the corporation fails to meet the requirements of section 15E.205.

7. In an action to enforce a judgment against a qualified corporation, the interest of the state shall be subrogated to the interests of holders of bonds issued by the corporation.

8. Moneys repaid or collected by the department under this section shall be deposited into the road use tax fund created pursuant to section 312.1.

Sec. 10. NEW SECTION. 15E.210 FINANCING PROVIDED BY AN IOWA AGRICULTURAL INDUSTRY FINANCE CORPORATION.

1. An Iowa agricultural industry finance corporation may only provide financing to a person determined eligible by the corporation according to requirements of the corporation and this section. At a minimum, an eligible person must be one of the following:

a. An agricultural producer participating in an Iowa agricultural industry venture as provided according to the terms of an agreement executed by the agricultural producer and the corporation. The agreement may require that the agricultural producer acquire an interest in an agricultural products processor certified by the corporation, or enter into a marketing agreement under which the agricultural producer agrees to market an amount of the agricultural producer's agricultural commodities to the agricultural products processor.

b. An agricultural products processor which participates as part of an Iowa agricultural industry venture as provided according to the terms of an agreement executed by the agricultural products processor and the corporation. The corporation shall only provide financing if the venture involves the construction, expansion, or acquisition of an agricultural products processing facility as certified by the corporation and if all of the following apply:

(1) The certified facility must be located in this state.

(2) Either of the following apply:

(a) More than fifty percent of the ownership interest in the certified facility must be held by qualified investors. If the certified facility is owned by an entity rather than by individuals, more than fifty percent of the interest in the entity and more than fifty percent of the voting interest in the entity must be held by qualified investors.

(b) More than fifty percent of the commodities processed by the certified facility during any twelve-month period is produced in this state. However, the corporation may provide financing, if its board of directors determines that adequate supplies of the commodity are not available for processing as otherwise required in this subparagraph subdivision.

c. An agricultural biotechnology enterprise which qualifies as an Iowa agricultural industry venture as provided according to the terms of an agreement executed by the agricultural biotechnology enterprise and the corporation, if the board of directors for the corporation determines that the enterprise would advance the intent and purposes set out in section 15E.203.

2. Financing may be in the form of a loan, loan guarantee, sale and purchase of mortgage instruments for eligible recipients, or other similar forms of financing. The financing shall be awarded pursuant to an agreement between the corporation and the eligible person.

3. A corporation shall not provide financing to support an outstanding debt or other obligation, regardless of whether the original financing was provided by a corporation.

Sec. 11. NEW SECTION. 15E.211 OBLIGATIONS.

The obligations of the corporation are not obligations of this state or any political subdivision of this state within the meaning of any constitutional or statutory debt limitations, but are obligations of the corporation payable solely and only from the corporation's funds. The corporation shall not pledge the credit or taxing power of this state or any political subdivision of this state or make its debts payable out of any moneys except for those of the corporation.

Sec. 12. NEW SECTION. 15E.212 RULES.

The department may adopt rules pursuant to chapter 17A necessary to administer this division.

Sec. 13. Section 423.24, Code Supplement 1997, is amended by inserting the following new unnumbered paragraph before subsection 1:

NEW UNNUMBERED PARAGRAPH. Except as otherwise provided in section 312.2, subsection 15, all revenues derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to sections 423.7 and 423.7A shall be deposited and credited to the road use tax fund and shall be used exclusively for the construction, maintenance, and supervision of public highways.

Sec. 14. Section 423.24, subsection 1, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

~~Eighty percent of~~ Notwithstanding any provision of this section which provides that all revenues derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7 and section 423.7A shall be deposited and credited to the road use tax fund, eighty percent of the revenues shall be deposited and credited as follows:

Sec. 15. Section 423.24, subsection 1, paragraph a, subparagraph (2), Code Supplement 1997, is amended to read as follows:

(2) ~~Beginning January 1, 1996, through December 31, 1997, two million five hundred thousand dollars per quarter shall be deposited into and credited to the Iowa comprehensive petroleum underground storage tank marketability fund created in section 455G.21.~~ Beginning January 1, 1998, through ~~December 31, 2002~~ June 30, 1999, four million two hundred fifty thousand dollars per quarter shall be ~~deposited into and~~ credited to the ~~Iowa comprehensive petroleum underground storage tank marketability fund created in section 455G.21~~ department of economic development. However, not more than a total of twenty-five million dollars shall be credited to the department. The moneys so ~~deposited~~ credited are a continuing appropriation to be expended ~~in accordance with section 455G.21~~ to carry out the provisions of section 15E.208, and the moneys shall not be used for other purposes.

Sec. 16. Section 423.24, subsection 1, paragraph c, Code Supplement 1997, is amended by striking the paragraph.

Sec. 17. Section 423.24, subsection 2, Code Supplement 1997, is amended to read as follows:

2. ~~Twenty percent of~~ Notwithstanding any other provision of this section that provides that all revenue derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7 shall be deposited and credited to the road use tax fund, twenty percent of the revenues shall be credited and deposited as follows: one-half to the road use tax fund and one-half to the primary road fund to be used for the commercial and industrial highway network, except to the extent that the department directs that moneys are deposited in the highway safety patrol fund created in section 80.41 to fund the appropriations made from the highway safety patrol fund in accordance with the provisions of section 80.41. The department shall determine the amount of moneys to be credited under this subsection to the highway safety patrol fund and shall deposit that amount into the highway safety patrol fund.

Sec. 18. NEW SECTION. 423.24A REIMBURSEMENT FOR THE PRIMARY ROAD FUND.

From moneys deposited into the road use tax fund, the department may credit to the primary road fund any amount of revenues derived from the use tax on motor vehicles, trailers, and motor vehicles accessories and equipment as collected pursuant to sections 423.7 and 423.7A to the extent necessary to reimburse that fund for the expenditures not

otherwise eligible to be made from the primary road fund, which are made for repairing, improving, and maintaining bridges over the rivers bordering the state. Expenditures for those portions of bridges within adjacent states may be included when they are made pursuant to an agreement entered into under section 313.63, 313A.34, or 314.10.

Sec. 19. 1995 Iowa Acts, chapter 215, section 29, subsection 1, is amended to read as follows:

1. Section 423.24, subsection 1, paragraph "a", subparagraph (2) is repealed on ~~January 1, 2003~~ July 1, 1999.

Sec. 20. TRANSFER AND RETROACTIVITY. Moneys deposited in the Iowa comprehensive petroleum underground storage tank marketability fund created in section 455G.21 derived from the use tax as provided in section 423.24, Code Supplement 1997, from January 1, 1998, until July 1, 1998, shall be transferred to the department of economic development for use as provided in section 15E.208, as enacted in this Act. This section shall be retroactively applicable on and after January 1, 1998.

Sec. 21. SEVERABILITY. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which shall be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Sec. 22. EFFECTIVE DATE. Section 20 of this Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 20, 1998

CHAPTER 1208

IDENTIFICATION OF ANIMALS

H.F. 2382

AN ACT relating to the identification of animals and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 169A.1, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 0A. "Animal" means a creature belonging to the bovine, caprine, equine, ovine, or porcine species; ostriches, rheas, or emus; farm deer as defined in section 481A.1; or poultry.

NEW SUBSECTION. 1A. "Computer" means the same as defined in section 22.3A.

NEW SUBSECTION. 2A. "Identification device" means a device which when installed is designed to store information regarding an animal or the animal's owner in an electronic format which may be accessed by a computer for purposes of reading or manipulating the information.

NEW SUBSECTION. 2B. "Install" means to place an identification device onto or beneath the hide or skin of an animal, including but not limited to fixing the device into the ear of an animal or implanting the device beneath the skin of the animal.

Sec. 2. Section 169A.10, Code 1997, is amended to read as follows:

169A.10 EVIDENCE OF OWNERSHIP — INVESTIGATIONS.

1. In a suit at law or equity or in any criminal proceedings in which the title to ~~livestock~~ an animal is an issue, ~~a~~ the following shall be admissible as evidence:

a. A certified copy ~~recorded~~ of a record as provided for in section 169A.6 or 169A.9. The certified copy shall be prima facie evidence of the ownership of ~~the~~ livestock by the person in whose name the brand is recorded.

b. Information stored in an identification device which identifies the owner of an animal. The information shall be prima facie evidence of the ownership of the animal, if all of the following apply:

(1) The identification device meets applicable design standards adopted by the international standard organization, or which may be adopted by the department.

(2) The identification device is installed according to manufacturer's requirements.

(3) The information is not in conflict with a certified copy of a record as provided for in section 169A.6 or 169A.9.

c. The results of a sheriff's investigation as provided in this section.

2. A dispute involving the custody or ownership of ~~livestock~~ an animal branded or subject to electronic identification under this chapter shall be investigated, on request, by the sheriff of the county where the ~~livestock~~ animal is located. The sheriff may call upon the services of an authorized person, approved by the secretary, in reading the brands on animals. The cost of the services shall be paid by the person requesting the investigation. The results of the sheriff's investigation ~~shall be~~ is a public record ~~and is admissible as evidence~~.

Sec. 3. Section 169A.14, Code 1997, is amended to read as follows:

169A.14 TAMPERING ~~WITH BRAND~~.

1. ~~Any~~ A person ~~who~~ shall ~~brand~~, not do any of the following to an animal:

a. Brand, attempt to brand, or cause to be branded ~~the animals of another, or who shall efface~~ livestock, without authorization from the owner.

b. Efface, deface, or obliterate or attempt to efface, deface, or obliterate ~~any~~ a brand ~~upon any animal or animals of another, or who shall brand~~, without authorization from the owner of the livestock.

c. Brand, attempt to brand, or cause to be branded ~~the~~ a recorded brand ~~of another~~ on ~~any animal shall be~~ livestock, without authorization of the owner of the brand.

d. Install an electronic device or remove or damage an installed electronic device, without authorization from the owner of an animal.

2. A person violating this section is guilty of a fraudulent practice as provided in chapter 714.

Approved May 20, 1998

CHAPTER 1209

REGULATION OF ANIMAL FEEDING OPERATIONS AND RELATED PROVISIONS

H.F. 2494

AN ACT providing for agricultural production, including regulating animal feeding operations and making penalties applicable and providing effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 7D.10A ALLOCATION TO MANURE STORAGE INDEMNITY FUND.

If moneys are not sufficient to support the manure storage indemnity fund as provided in chapter 204, the executive council may allocate from moneys in the general fund of the state, which are not otherwise obligated or encumbered, an amount to the manure storage indemnity fund as provided under section 204.2. However, not more than a total of one million dollars shall be allocated to the manure storage indemnity fund at any time.

Sec. 2. Section 204.1, subsections 4, 8, and 9, Code 1997, are amended to read as follows:

4. "Department" means the department of ~~agriculture and land stewardship~~ natural resources.

8. "Manure storage structure" means ~~a structure used to store manure as part of a confinement feeding operation subject to a construction permit issued by the department of natural resources pursuant to section 455B.173. A manure storage structure includes, but is not limited to, an anaerobic lagoon, formed manure storage structure, or earthen manure storage basin,~~ the same as defined in section ~~455B.161~~ 455B.171.

9. "Permittee" means a person who, pursuant to section 455B.200A, obtains a permit for the construction of a manure storage structure, or a confinement feeding operation, if a manure storage structure is connected to the confinement feeding operation.

Sec. 3. Section 204.2, subsections 2, 3, and 5, Code 1997, are amended to read as follows:

2. The fund consists of moneys from indemnity fees remitted by permittees to the department ~~of natural resources and transferred to the department of agriculture and land stewardship~~ as provided in section 204.3; moneys from indemnity fees remitted by persons required to submit manure management plans to the department pursuant to section 204.3A; sums collected on behalf of the fund by the department through legal action or settlement; moneys required to be repaid to the department by a county pursuant to this chapter; civil penalties assessed and collected by the department ~~of natural resources~~ or the attorney general pursuant to chapter 455B, against ~~permittees~~ animal feeding operations; moneys paid as a settlement involving an enforcement action for a civil penalty subject to assessment and collection against permittees by the department ~~of natural resources~~ or the attorney general pursuant to chapter 455B; interest, property, and securities acquired through the use of moneys in the fund; or moneys contributed to the fund from other sources.

3. The moneys collected under this section ~~and~~ shall be deposited in the fund and shall be appropriated to the department for the exclusive purpose of ~~indemnifying a county for expenses related to cleaning up the site of the confinement feeding operation, including removing and disposing of manure from a manure storage structure~~ providing moneys for cleanup of abandoned facilities as provided in section 204.4, and to pay the department for costs related to administering the provisions of this chapter. For each fiscal year, the department shall not use more than one percent of the total amount which is available in the fund or ten thousand dollars, whichever is less, to pay for the costs of administration. Moneys in the fund shall not be subject to appropriation or expenditure for any other purpose than provided in this section.

5. The following shall apply to moneys in the fund:

a. On August 31 following the close of each fiscal year, moneys in the fund which are not

obligated or encumbered on June 30 of the past fiscal year, ~~less~~ not counting the department's estimate of the cost to the fund for pending or unsettled claims and any amount required to be credited to the general fund of the state under this subsection, ~~and which are~~ in excess of ~~one~~ three million dollars, shall be deposited in the organic nutrient management fund as created in section 161C.5 for purposes of supporting the organic nutrient management program.

b. The executive council may allocate moneys from the general fund of the state as provided in section 7D.10A in an amount necessary to support the fund, including payment of claims as provided in section 204.4. However, an allocation of moneys from the general fund of the state shall be made only if the amount of moneys in the fund, which are not obligated or encumbered, and not counting the department's estimate of the cost to the fund for pending or unsettled claims and any amount required to be credited to the general fund of the state under this subsection, is less than one million dollars.

c. The department shall credit an amount to the general fund of the state which is equal to an amount allocated to the fund by the executive council under paragraph "b". The department shall credit the moneys to the general fund of the state, if the moneys in the fund which are not obligated or encumbered, and not counting the department's estimate of the cost to the fund for pending or unsettled claims and any amount required to be transferred to the general fund under this paragraph, are in excess of two million five hundred thousand dollars. The department is not required to credit the total amount to the general fund of the state during any one fiscal year.

Sec. 4. Section 204.3, Code 1997, is amended to read as follows:

204.3 FEES.

An indemnity fee shall be assessed upon permittees which shall be paid to and collected by the department ~~of natural resources~~, prior to issuing a permit for the construction of a confinement feeding operation as provided in section ~~455B.173~~ 455B.200A. The amount of the fees shall be based on the following:

1. If the confinement feeding operation has an animal weight capacity of less than six hundred twenty-five thousand pounds, the following shall apply:

a. For all animals other than poultry, the amount of the fee shall be ~~five~~ ten cents per animal unit of capacity for confinement feeding operations.

b. For poultry, the amount of the fee shall be ~~two~~ four cents per animal unit of capacity for confinement feeding operations.

2. If the confinement feeding operation has an animal weight capacity of six hundred twenty-five thousand or more pounds but less than one million two hundred fifty thousand pounds, the following shall apply:

a. For all animals other than poultry, the amount of the fee shall be ~~seven and one-half~~ fifteen cents per animal unit of capacity for confinement feeding operations.

b. For poultry, the amount of the fee shall be ~~three~~ six cents per animal unit of capacity for confinement feeding operations.

3. If the confinement feeding operation has an animal weight capacity of one million two hundred fifty thousand or more pounds, the following shall apply:

a. For all animals other than poultry, the amount of the fee shall be ~~ten~~ twenty cents per animal unit of capacity for confinement feeding operations.

b. For poultry, the amount of the fee shall be ~~four~~ eight cents per animal unit of capacity for confinement feeding operations.

The department ~~of natural resources~~ shall deposit moneys collected from the fees into the fund according to procedures adopted by the department ~~of agriculture and land stewardship~~.

Sec. 5. NEW SECTION. 204.3A MANURE MANAGEMENT PLAN — INDEMNITY FEE REQUIRED.

An indemnity fee shall be assessed upon persons required to submit a manure management plan as provided in section 455B.203, but not required to obtain a construction permit pursuant to section 455B.200A. The amount of the fees shall be ten cents per animal unit of capacity for confinement feeding operations.

Sec. 6. Section 204.4, subsections 1 and 2, Code 1997, are amended to read as follows:

1. A county that has acquired real estate containing a manure storage structure following nonpayment of taxes pursuant to section 446.19, may make a claim against the fund to pay ~~the costs of cleaning up the site of the confinement feeding operation, including the costs of removing and disposing of the manure from a manure storage structure~~ cleanup costs incurred by the county as provided in section 204.5. Each claim shall include a bid by a qualified person, other than a governmental entity, to remove and dispose of the manure for a fixed amount specified in the bid.

2. ~~The~~ If a county provides cleanup under section 204.5 after acquiring real estate following nonpayment of taxes, the department shall determine if a claim is eligible to be satisfied under this ~~section~~ subsection, and do one of the following:

a. Pay the amount of the claim required in this section, based on the fixed amount specified in the bid submitted by the county upon completion of the work.

b. Obtain a lower fixed amount bid for the work from another qualified person, other than a governmental entity, and pay the amount of the claim required in this section, based on the fixed amount in this bid upon completion of the work. The department is not required to comply with section 18.6 in implementing this section.

2A. If a county provides cleanup of a condition causing a clear, present, and impending danger to the public health or environment, as provided in section 204.5, the county may make a claim against the fund to pay cleanup costs incurred by the county, according to procedures and requirements established by rules adopted by the department. The department shall determine if a claim is eligible to be satisfied under this subsection, and pay the amount of the claim required in this section.

Sec. 7. NEW SECTION. 204.4A USE OF FUND FOR EMERGENCY CLEANUP.

If the department provides cleanup of a condition caused by a confinement feeding operation as provided in section 204.5, the department may use moneys in the fund for purposes of supporting the cleanup. The department shall reimburse the fund from moneys recovered by the department as reimbursement for the cleanup as provided in section 204.5.

Sec. 8. Section 204.5, Code 1997, is amended to read as follows:

204.5 ~~SITE~~ CLEANUP.

1. a. A county ~~which~~ that has acquired real estate ~~containing~~ on which there is located a confinement feeding operation ~~structure, as defined in section 455B.161~~, following the nonpayment of taxes pursuant to section 446.19, may ~~clean up the site~~ provide for cleanup, including removing and disposing of manure at any time, remediating contamination which originates from the confinement feeding operation, or demolishing and disposing of structures relating to the confinement feeding operation. The county may seek reimbursement including by bringing an action for the costs of the ~~removal and disposal~~ cleanup from the person abandoning the real estate.

b. If the confinement feeding operation has caused a clear, present, and impending danger to the public health or the environment, the department may clean up the confinement feeding operation and remediate contamination which originates from the confinement feeding operation, pursuant to sections 455B.381 through 455B.399. If the department fails to commence cleanup within twenty-four hours after being notified of a condition requiring cleanup, the county may provide for the cleanup as provided in this paragraph. The department or county may seek reimbursement including by bringing an action for the costs of the cleanup from a person liable for causing the condition.

2. A person cleaning up a ~~site~~ confinement feeding operation located on real estate acquired by a county may demolish or dispose of any building or equipment ~~used in~~ of the

confinement feeding operation located on the land according to rules adopted by the department ~~of natural resources~~ pursuant to chapter 17A, which apply to the disposal of farm buildings or equipment by an individual or business organization.

Sec. 9. NEW SECTION. 331.304A LIMITATIONS ON COUNTY LEGISLATION.

1. As used in this section:

a. "Aerobic structure", "animal", "animal feeding operation", "animal feeding operation structure", and "manure" mean the same as defined in section 455B.161.

b. "County legislation" means any ordinance, motion, resolution, or amendment adopted by a county pursuant to section 331.302.

2. A county shall not adopt or enforce county legislation regulating a condition or activity occurring on land used for the production, care, feeding, or housing of animals unless the regulation of the production, care, feeding, or housing of animals is expressly authorized by state law. County legislation adopted in violation of this section is void and unenforceable and any enforcement activity conducted in violation of this section is void. A condition or activity occurring on land used for the production, care, feeding, or housing of animals includes but is not limited to the construction, operation, or management of an animal feeding operation, an animal feeding operation structure, or aerobic structure, and to the storage, handling, or application of manure or egg washwater.

Sec. 10. Section 455B.104, Code 1997, is amended to read as follows:

455B.104 DEPARTMENTAL DUTIES — PERMITS — REQUIREMENTS AND ASSISTANCE.

1. The department shall either approve or deny a permit to a person applying for a permit under this chapter, within six months from the date that the department receives a completed application for the permit. An application which is not approved or denied within the six-month period shall be approved by default. The department shall issue a permit to the applicant within ten days following the date of default approval. However, this ~~section~~ subsection shall not apply to applications for permits which are issued under division II, or division IV, parts 2 through 7.

2. For five years after the date of the last violation of this chapter committed by a person or by a confinement feeding operation in which the person holds a controlling interest during which the person or confinement feeding operation was classified as a habitual violator under section 455B.191, all of the following shall apply:

a. The department may not issue a new permit under this chapter to the person or confinement feeding operation.

b. The department may revoke or refuse to renew an existing permit issued under this chapter, to the person or confinement feeding operation, if the permit relates to a confinement feeding operation, and the department determines that the continued operation of the confinement feeding operation under the existing permit constitutes a clear, present, and impending danger to the public health or environment.

3. The department shall assist persons applying for assistance to establish and operate renewable fuel production facilities pursuant to the value-added agricultural products and processes financial assistance program established in section 15E.111.

Sec. 11. Section 455B.110, Code 1997, is amended to read as follows:

455B.110 ANIMAL FEEDING OPERATIONS — ~~COMMISSION APPROVAL OF~~ INVESTIGATIONS AND ENFORCEMENT ACTIONS.

1. A person may file a complaint alleging that an animal feeding operation is in violation of this chapter, including rules adopted by the department, or environmental standards or regulations subject to federal law and enforced by the department.

a. The complaint may be filed with the department according to procedures required by the department or with the county board of supervisors in the county where the violation is alleged to have occurred, according to procedures required by the board. The county auditor may accept the complaint on behalf of the board.

b. If the county board of supervisors receives a complaint, it shall conduct a review to determine if the allegation contained in the complaint constitutes a violation, without investigating whether the facts supporting the allegation are true or untrue.

(1) If the county board of supervisors determines that the allegation does not constitute a violation, it shall notify the complainant, the animal feeding operation which is the subject of the complaint, and the department, according to rules adopted by the department.

(2) If the county board of supervisors determines that the allegation constitutes a violation, it shall forward the complaint to the department which shall investigate the complaint as provided in this section.

c. If the department receives a complaint from a complainant or a county forwarding a complaint, the department shall conduct an investigation of the complaint, if the department determines that the complaint is legally sufficient and an investigation is justified. The department shall receive a complaint filed by a complainant, regardless of whether the complainant has filed a complaint with a county board of supervisors.

(1) The department in its discretion shall determine the urgency of the investigation, and the time and resources required to complete the investigation, based upon the circumstances of the case, including the severity of a threat to the quality of surface or subsurface water.

(2) The department shall notify the county board of supervisors in the county where the violation is alleged to occur prior to investigating the premises of the alleged violation. However, the department is not required to provide notice if the department determines that a clear, present, and impending danger to the public health or environment requires immediate action.

(3) The county board of supervisors may designate a county employee to accompany a departmental official during the investigation of the premises of a confinement feeding operation. The county designee shall have the same right of access to the real estate of the premises as the departmental official conducting the inspection during the period that the county accompanies the departmental official.

(4) Upon the completion of an investigation, the department shall notify the complainant of the results of the investigation, including any anticipated, pending, or completed enforcement action arising from the investigation. The department shall deliver a copy of the notice to the animal feeding operation that is the subject of the complaint and the board of supervisors of the county where the violation is alleged to have occurred.

d. A county board of supervisors or the department is not required to divulge information regarding the identity of the complainant.

2. When entering the premises of an animal feeding operation, a person who is a departmental official, an agent of the department, or a person accompanying the departmental official or agent shall comply with section 455B.103. The person shall also comply with standard biosecurity requirements customarily required by the animal feeding operation which are necessary in order to control the spread of disease among an animal population.

3. The department shall not initiate an enforcement action in response to a violation by an animal feeding operation as provided in this chapter or a rule adopted pursuant to this chapter, or request the commencement of legal action by the attorney general pursuant to section 455B.141, unless the commission has approved the intended action. This ~~section~~ subsection shall not apply to an enforcement action in which the department enforces a civil penalty of three thousand dollars or less. This ~~section~~ subsection shall also not apply to an order to terminate an emergency issued by the director pursuant to section 455B.175.

Sec. 12. Section 455B.161, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 0A. "Aerobic structure" means an animal feeding operation structure other than an egg washwater storage structure which employs bacterial action which is maintained by the utilization of air or oxygen and which includes aeration equipment.

NEW SUBSECTION. 5A. "Cemetery" means a space held for the purpose of permanent burial, entombment, or interment of human remains that is owned or managed by a political

subdivision or private entity, or a cemetery regulated pursuant to chapter 523I or 566A. However, "cemetery" does not include a pioneer cemetery as defined in section 331.325.

NEW SUBSECTION. 19A. "Spray irrigation equipment" means the same as defined in section 455B.171.

NEW SUBSECTION. 21. "Unformed manure storage structure" means a covered or uncovered animal feeding operation structure in which manure is stored, other than a formed manure storage structure, which is an anaerobic lagoon, aerobic structure, or earthen manure storage basin.

Sec. 13. Section 455B.161, subsection 17, Code 1997, is amended to read as follows:

17. "Public use area" means ~~that~~ any of the following:

a. A portion of land owned by the United States, the state, or a political subdivision with facilities which attract the public to congregate and remain in the area for significant periods of time, as provided by rules which shall be adopted by the department pursuant to chapter 17A.

b. A cemetery.

Sec. 14. NEW SECTION. 455B.161A CONFINEMENT FEEDING OPERATIONS — SPECIAL TERMS.

For purposes of this part, all of the following shall apply:

1. Two or more confinement feeding operations are adjacent if all of the following apply:

a. An animal feeding operation structure which is part of one confinement feeding operation is located within the following distance from an animal feeding operation structure which is part of the other confinement feeding operation:

(1) One thousand two hundred fifty feet for all of the following:

(a) Confinement feeding operations having an animal weight capacity of less than one million two hundred fifty thousand pounds for animals other than bovine.

(b) Confinement feeding operations having an animal weight capacity of less than four million pounds for bovine.

(2) One thousand five hundred feet for all of the following:

(a) Confinement feeding operations having an animal weight capacity of one million two hundred fifty thousand pounds or more but less than two million pounds for animals other than swine kept in a farrow-to-finish operation or bovine.

(b) Confinement feeding operations having an animal weight capacity of one million two hundred fifty thousand pounds or more but less than two million five hundred thousand pounds for swine kept in a farrow-to-finish operation.

(c) Confinement feeding operations having an animal weight capacity of four million or more pounds but less than six million pounds for bovine.

(3) Two thousand five hundred feet for all of the following:

(a) Confinement feeding operations having an animal weight capacity of two million pounds or more for animals other than swine kept in a farrow-to-finish operation or bovine.

(b) Confinement feeding operations having an animal weight capacity of two million five hundred thousand pounds for swine kept in a farrow-to-finish operation.

(c) Confinement feeding operations having an animal weight capacity of six million or more pounds for bovine.

b. An animal feeding operation structure subject to the distance requirements of this subsection is constructed after March 20, 1996.

2. An animal feeding operation structure is "constructed" when any of the following occurs:

a. Excavation for a proposed animal feeding operation structure or proposed expansion of an existing animal feeding operation structure, including excavation for the footings of the animal feeding operation structure.

b. Forms for concrete are installed for a proposed animal feeding operation structure or the proposed expansion of an existing animal feeding operation structure.

c. Piping for the movement of manure is installed within or between animal feeding operation structures as proposed or proposed to be expanded.

Sec. 15. Section 455B.162, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The following shall apply to animal feeding operation structures:

1. Except as provided in subsection 2, and sections 455B.163 and 455B.165, this subsection applies to animal feeding operation structures constructed on or after May 31, 1995, but prior to the effective date of this section; and to the expansion of structures constructed ~~on or after May 31, 1995; or, except as provided in section 455B.163, to the expansion of structures constructed~~ prior to ~~May 31, 1995.~~ the effective date of this section.

Sec. 16. Section 455B.162, subsection 1, Code 1997, is amended to read as follows:

~~1. Except as provided in subsection 2, the following table shall apply to animal feeding operation structures:~~

~~a.~~ The following table represents the minimum separation distance in feet required between an animal feeding operation structure and a residence not owned by the owner of the animal feeding operation, or a commercial enterprise, bona fide religious institution, or an educational institution:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than bovine, or 1,600,000 or more pounds but less than 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than bovine, or 4,000,000 or more pounds for bovine
Anaerobic lagoon	1,250	1,875	2,500
Uncovered earthen manure storage basin	1,250	1,875	2,500
Uncovered formed manure storage structure	1,000	1,500	2,000
Covered earthen manure storage basin	750	1,000	1,500
Covered formed manure storage structure	750	1,000	1,500
Confinement building	750	1,000	1,500
Egg washwater storage structure	750	1,000	1,500

1A. Except as provided in subsection 2, and sections 455B.163 and 455B.165, this subsection applies to animal feeding operation structures constructed on or after the effective date of this section and to the expansion of structures constructed on or after the effective date of this section. The following table represents the minimum separation distance in feet required between an animal feeding operation structure and a residence not owned by the owner of the animal feeding operation, or a commercial enterprise, bona fide religious institution, or an educational institution:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than bovine, or 1,600,000 or more pounds but less than 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than bovine, or 4,000,000 or more pounds for bovine
Anaerobic lagoon	1,250	1,875	2,500
Uncovered earthen manure storage basin	1,250	1,875	2,500
Uncovered formed manure storage structure	1,250	1,500	2,000
Covered earthen manure storage basin	1,000	1,250	1,875
Covered formed manure storage structure	1,000	1,250	1,875
Confinement building	1,000	1,250	1,875
Egg washwater storage structure	750	1,000	1,500

~~b.~~ 1B. Except as provided in subsection 2, and sections 455B.163 and 455B.165, this subsection applies to animal feeding operation structures constructed on or after May 31, 1995; to the expansion of structures constructed on or after May 31, 1995; and to the expansion of structures constructed prior to May 31, 1995. The following table represents the minimum separation distance in feet required between animal feeding operation structures and a public use area or a residence not owned by the owner of the animal feeding operation, a commercial enterprise, a bona fide religious institution, or an educational institution located within the corporate limits of a city:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than bovine, or 1,600,000 or more pounds but less than 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than bovine, or 4,000,000 or more pounds for bovine
Animal feeding operation structure	1,250	1,875	2,500

1C. Except as provided in section 455B.165, on and after the effective date of this section an animal feeding operation structure shall not be constructed or expanded within one hundred feet from a thoroughfare, including a road, street, or bridge which is constructed or maintained by the state or a political subdivision.

1D. Except as provided in section 455B.165, a person shall not apply liquid manure from a confinement feeding operation on land located within seven hundred fifty feet from a residence not owned by the titleholder of the land, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

Sec. 17. Section 455B.162, subsection 2, paragraph a, Code 1997, is amended to read as follows:

a. As used in this subsection, a "qualified confinement feeding operation" means a confinement feeding operation having an animal weight capacity of two million or more pounds for animals other than animals kept in a swine farrow-to-finish operation or bovine kept in a confinement feeding operation; a swine farrow-to-finish operation having an animal weight capacity of two million five hundred thousand or more pounds; or a confinement feeding operation having an animal weight capacity of ~~six~~ eight million or more pounds for bovine.

Sec. 18. Section 455B.163, Code 1997, is amended to read as follows:

455B.163 SEPARATION DISTANCE REQUIREMENTS FOR ANIMAL FEEDING OPERATIONS — EXPANSION OF ~~STRUCTURES CONSTRUCTED PRIOR TO MAY 31, 1995~~ PRIOR CONSTRUCTED OPERATIONS.

An animal feeding operation constructed or expanded prior to the date that a distance requirement became effective under section 455B.162 and which does not comply with the section's distance ~~requirements of section 455B.162 on May 31, 1995,~~ requirement may continue to operate regardless of ~~those separation distances~~ the distance requirement. The animal feeding operation may be expanded ~~on or after May 31, 1995, regardless of those separation distances,~~ if ~~either~~ any of the following applies:

1. a. ~~The~~ An animal feeding operation structure as constructed or expanded prior to the effective date of this section, complies with the distance requirements ~~of~~ applying to that structure as provided in section 455B.162.

b. An animal feeding operation structure as constructed or expanded on or after the effective date of this section complies with the distance requirements applying to that structure as provided in section 455B.162.

2. All of the following apply to the expansion of the animal feeding operation:

a. No portion of the animal feeding operation after expansion is closer than before expansion to a location or object for which separation is required under section 455B.162.

b. The animal weight capacity of the animal feeding operation as expanded is not more than the lesser of the following:

(1) Double its capacity on May 31, 1995, for an animal feeding operation structure constructed prior to the effective date of this section, or on the effective date of this section, for an animal feeding operation structure constructed on or after the effective date of this section.

(2) Either of the following:

(a) Six hundred twenty-five thousand pounds animal weight capacity for animals other than bovine.

(b) One million six hundred thousand pounds animal weight capacity for bovine.

3. The animal feeding operation was constructed prior to the effective date of this section and is expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures, if all of the following apply:

a. The animal weight capacity is not increased for that portion of the animal feeding operation that utilizes all replacement formed manure storage structures.

b. Use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

c. The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the animal feeding operation utilizing the formed manure storage structures during any fourteen-month period.

d. No portion of the replacement formed manure storage structure is closer to an object or location for which separation is required under section 455B.162 than any other animal feeding operation structure which is part of the operation.

Sec. 19. Section 455B.164, Code 1997, is amended to read as follows:

455B.164 DISTANCE MEASUREMENTS.

All distances between locations or objects provided in this part shall be measured from their closest points, as provided by rules adopted by the department. However, a distance between a thoroughfare and an animal feeding operation structure shall be measured from the portion of the right-of-way which is closest to the animal feeding operation structure.

Sec. 20. Section 455B.165, subsections 2, 3, and 5, Code 1997, are amended to read as follows:

2. A confinement feeding operation structure, ~~other than an earthen manure storage basin,~~ if the structure is part of a confinement feeding operation which qualifies as a small animal feeding operation. However, this subsection shall not apply if the confinement feeding operation structure is an unformed manure storage structure.

3. a. An animal feeding operation structure which is constructed or expanded, if the titleholder of the land benefiting from the distance separation requirement executes a written waiver with the titleholder of the land where the structure is located~~,~~. If an animal feeding operation structure is constructed or expanded within the separation distance required between an animal feeding operation structure and a thoroughfare as required pursuant to section 455B.162, the state or a political subdivision constructing or maintaining the thoroughfare benefiting from the distance separation requirement may execute a written waiver with the titleholder of the land where the structure is located. The animal feeding operation structure shall be constructed or expanded under such terms and conditions that the parties negotiate.

b. ~~The~~ A written waiver under this subsection becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The filed waiver shall preclude enforcement by the state of ~~this part~~ section 455B.162 as it relates to a distance requirement between the animal feeding operation structure and the location or object benefiting from the separation distance requirement.

5. An animal feeding operation structure which is ~~located~~ constructed or expanded within any distance from a residence, educational institution, commercial enterprise, bona fide religious institution, city, or public use area, if the residence, educational institution, commercial enterprise, or bona fide religious institution was constructed or expanded, or the boundaries of the city or public use area were expanded, after the date that the animal feeding operation was established. The date the animal feeding operation was established is the date on which the animal feeding operation commenced operating. A change in ownership or expansion of the animal feeding operation shall not change the established date of operation.

Sec. 21. Section 455B.165, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 3A. An animal feeding operation structure which is constructed or expanded within a separation distance required between an animal feeding operation structure and a thoroughfare as required pursuant to section 455B.162, if permanent vegetation stands between the animal feeding operation structure and that part of the right-of-way from which the separation distance is measured as provided in section 455B.164. The permanent vegetation must stand along the full length of the animal feeding operation structure. The permanent vegetation must be at least seedlings and have a mature predicted height of at least twenty feet. The department shall adopt rules to carry out this subsection.

NEW SUBSECTION. 6. The application of liquid manure on land within a separation distance required between the applied manure and an object or location for which separation is required under section 455B.162, if any of the following apply:

a. The liquid manure is injected into the soil or incorporated within the soil not later than twenty-four hours from the original application, as provided by rules adopted by the commission.

b. The titleholder of the land benefiting from the separation distance requirement executes a written waiver with the titleholder of the land where the manure is applied.

c. The liquid manure originates from a small animal feeding operation.

d. The liquid manure is applied by spray irrigation equipment using a center pivot mechanism as provided by rules adopted by the department, if all of the following apply:

(1) The spray irrigation equipment uses hoses which discharge the liquid manure in a downward direction at a height of not more than nine feet above the soil.

(2) The spray irrigation equipment disperses manure through an orifice at a rate of not more than twenty-five pounds per square inch.

(3) The liquid manure is not applied within two hundred fifty feet from a residence not owned by the titleholder of the land, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

NEW SUBSECTION. 7. The distance between an animal feeding operation structure and a cemetery, if any of the following applies:

a. The animal feeding operation structure was constructed or expanded prior to the effective date of this section of this Act.

b. The construction or expansion of the animal feeding operation structure began prior to the effective date of this section of this Act.

Sec. 22. Section 455B.171, Code Supplement 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 0A. "Aerobic structure" means the same as defined in section 455B.161.

NEW SUBSECTION. 1A. "Anaerobic lagoon" means the same as defined in section 455B.161.

NEW SUBSECTION. 2A. "Animal feeding operation structure" means the same as defined in section 455B.161.

NEW SUBSECTION. 3A. "Commercial manure applicator" means a person who engages in the business of and charges a fee for applying manure on the land of another person.

NEW SUBSECTION. 7A. "Earthen manure storage basin" means the same as defined in section 455B.161.

NEW SUBSECTION. 12A. "Manure storage structure" means an animal feeding operation structure used to store manure as part of a confinement feeding operation, including but not limited to a formed or unformed manure storage structure.

NEW SUBSECTION. 23A. "Restricted spray irrigation equipment" means spray irrigation equipment which disperses manure through an orifice at a rate of eighty pounds per square inch or more.

NEW SUBSECTION. 31A. "Spray irrigation equipment" means mechanical equipment used for the aerial application of manure, if the equipment receives manure from a manure storage structure during application via a pipe or hose connected to the structure, and includes a type of equipment customarily used for the aerial application of water to aid the growing of general farm crops.

NEW SUBSECTION. 32A. "Unformed manure storage structure" means the same as defined in section 455B.161.

Sec. 23. Section 455B.173, subsection 13, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

13. Adopt, modify, or repeal rules relating to the construction or operation of animal feeding operations, as provided in sections relating to animal feeding operations provided in this part.

Sec. 24. Section 455B.191, subsection 7, unnumbered paragraph 2, Code 1997, is amended to read as follows:

This subsection shall not apply unless the department of natural resources has previously notified the person of the person's classification as a habitual violator ~~as provided in section 455B.173~~. The department shall notify persons classified as habitual violators of their classification, additional restrictions imposed upon the persons pursuant to their classification, and special civil penalties that may be imposed upon the persons. The notice shall be sent to the persons by certified mail.

Sec. 25. NEW SECTION. 455B.200 GENERAL.

The commission shall establish by rule adopted pursuant to chapter 17A, requirements relating to the construction, including expansion, or operation of animal feeding operations, including related animal feeding operation structures. The requirements shall include but are not limited to minimum manure control, the issuance of permits, and departmental investigations, inspections, and testing.

Sec. 26. NEW SECTION. 455B.200A PERMIT REQUIREMENTS.

1. The department shall issue permits for the construction, including the expansion, of animal feeding operation structures, including structures which are part of confinement feeding operations, as provided by rules adopted pursuant to section 455B.200. The department shall issue a permit to an animal feeding operation if an application is submitted according to procedures required by the department and the application meets standards established by the department, regardless of whether the animal feeding operation is required to obtain such a permit. The department shall not require that a person obtain a permit for the construction of an animal feeding operation structure if the structure is part of a small animal feeding operation. For purposes of this section, an animal feeding operation structure includes a manure storage structure.

2. The department shall not issue a permit for the construction of an animal feeding operation structure which is part of a confinement feeding operation unless the person submits all of the following:

a. An indemnity fee as provided in section 204.3 which the department shall deposit into the manure storage indemnity fund created in section 204.2.

b. A manure management plan as provided in section 455B.203.

3. The department shall not issue a permit for the construction of three or more animal feeding operation structures unless the applicant files a statement approved by a professional engineer registered pursuant to chapter 542B certifying that the construction of the animal feeding operation structures will not impede the drainage through established drainage tile lines which cross property boundary lines unless measures are taken to reestablish the drainage prior to completion of construction.

4. Prior to issuing a permit to a person for the construction of an animal feeding operation, the department may require the installation and operation of a hydrological monitoring system for an exclusively earthen manure storage structure according to rules which shall be adopted by the department.

5. An applicant for a construction permit shall not begin construction at the location of a site planned for the construction of an animal feeding operation structure until the person has been granted a permit for the construction of the animal feeding operation structure by the department.

6. The department shall make a determination regarding the approval or denial of a permit within sixty days from the date that the department receives a completed application for a permit.

7. The department shall deliver a copy or require the applicant to deliver a copy of the application for a construction permit for the construction of a confinement feeding operation or related animal feeding operation structure, including supporting documents, to the county board of supervisors in the county where the confinement feeding operation or related animal feeding operation structure subject to the permit is proposed to be constructed.

The county auditor may accept the application on behalf of the board. If the department requires the applicant to deliver a copy of the application to the county board of supervisors, the county shall notify the department that it has received the application according to procedures required by the department.

a. The county board of supervisors shall provide for comment as follows:

(1) The board shall publish a notice that it has received the application in a newspaper having a general circulation in the county. The notice shall include all of the following:

(a) The name of the person applying to receive the construction permit.

(b) The name of the township where the confinement feeding operation or animal feeding operation is to be constructed or expanded.

(c) Each type of animal feeding operation proposed to be constructed or expanded.

(d) The animal weight capacity of the confinement feeding operation if the construction permit is approved.

(e) The time when and the place where the application may be examined as provided in section 22.2.

(f) Procedures for providing public comments to the board of supervisors, as provided by the board.

(2) The board may hold a public hearing to receive public comments regarding the application for the construction permit. The county board of supervisors may submit comments by the board and the public to the department as provided in this section, including but not limited to all of the following:

(a) The existence of an object or location not included in the construction permit application which benefits from a separation distance requirement as provided in section 455B.162 or 455B.204.

(b) The suitability of soils and the hydrology of the site where construction or expansion of a confinement feeding operation or related animal feeding operation structure is proposed.

(c) The availability of land for the application of manure originating from the confinement feeding operation.

(d) Whether the construction or expansion of a proposed animal feeding operation structure will impede drainage through established tile lines, laterals, or other improvements which are constructed to facilitate the drainage of land not owned by the person applying for the construction permit.

b. The department shall notify the county board of supervisors at least three days prior to conducting an inspection of the site that the construction is proposed in the permit application. The county board of supervisors may designate a county employee to accompany a departmental official during the site inspection. The county designee shall have the same right to access to the site's real estate as the departmental official conducting the inspection during the period that the county designee accompanies the departmental official.

c. The department shall not approve the application until thirty days following delivery of the application to the county board of supervisors.

d. The department shall consider and respond to comments submitted by the county board of supervisors regarding compliance by the applicant with the legal requirements for approving the construction permit as provided in this chapter, including rules adopted by the department pursuant to section 455B.200, if the comments are delivered to the department within thirty days after receipt of the application by the county board of supervisors. Upon written request by a county resident, the county board of supervisors shall forward a copy of the board's comments and the department's responses to the county resident as provided in chapter 22.

8. The department shall notify the county board of supervisors of the county where a confinement feeding operation or related animal feeding operation structure subject to a construction permit is proposed to be constructed. The notice shall state the department's decision to approve or disapprove an application for the construction permit. The notice shall be delivered to the county within three days following the department's decision. The county board of supervisors may contest the decision by filing a demand for a hearing before the commission as provided by rules adopted by the department in conformance with chapter 17A. In contesting the decision, the county shall submit a statement to the department, providing all reasons why the application should be approved or disapproved according to legal requirements provided in this chapter.

a. The county board of supervisors must contest the decision within fourteen days following receipt of the department's notice to approve or disapprove the application.

b. The contested decision shall be heard by the commission according to procedures adopted by the commission. The commission may hear the case as a contested case proceeding under chapter 17A. The commission shall render a decision within thirty-five days from the date that the county board of supervisors files a demand for a hearing. The decision of the commission shall be final agency action under chapter 17A.

9. a. The department shall not issue a permit to a person under this section if an enforcement action by the department, relating to a violation of this chapter concerning a confinement feeding operation in which the person has an interest, is pending, as provided in section 455B.202.

b. The department shall not issue a permit to a person under this section for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under section 455B.191.

Sec. 27. NEW SECTION. 455B.200B CONFINEMENT FEEDING OPERATIONS — SPECIAL TERMS.

For purposes of this part, all of the following shall apply:

1. Two or more confinement feeding operations are adjacent if any of the following apply:

a. All of the following apply:

(1) An animal feeding operation structure which is part of one confinement feeding operation is located within one thousand two hundred fifty feet from an animal feeding operation structure which is part of the other confinement feeding operation.

(2) The confinement feeding operations have a combined animal weight capacity of the following:

(a) For animals other than bovine, less than six hundred twenty-five thousand pounds.

(b) For bovine, less than one million six hundred thousand pounds.

(3) An animal feeding operation structure subject to the distance requirements of this paragraph must be constructed or expanded on or after the effective date of this section.

b. All of the following apply:

(1) An animal feeding operation structure which is part of one confinement feeding operation is located within two thousand five hundred feet from an animal feeding operation structure which is part of the other confinement feeding operation.

(2) The confinement feeding operations have a combined animal weight capacity of the following:

(a) For animals other than bovine, six hundred twenty-five thousand pounds or more.

(b) For bovine, one million six hundred thousand pounds or more.

(3) An animal feeding operation structure subject to the distance requirements of this paragraph must be constructed on or after the effective date of this section.

2. An animal feeding operation structure is "constructed" in the same manner as provided in section 455B.161A.

Sec. 28. Section 445B.201,* subsection 4, Code 1997, is amended by striking the subsection.

Sec. 29. Section 455B.202, Code Supplement 1997, is amended to read as follows:

455B.202 CONFINEMENT FEEDING OPERATIONS — PENDING ACTIONS AND HABITUAL VIOLATORS.

1. As used in this section, ~~"construction" means the same as defined by rules adopted by the department applicable to the construction of animal feeding operation structures as provided in this part~~ unless the context otherwise requires:~~.~~

a. "Habitual violator" means a person classified as a habitual violator pursuant to section 455B.191.

b. "Operation of law" means a transfer by inheritance, devise or bequest, court order, dissolution decree, order in bankruptcy, insolvency, replevin, foreclosure, execution sale, the execution of a judgment, the foreclosure of a real estate mortgage, the forfeiture of a real estate contract, or a transfer resulting from a decree for specific performance.

c. "Suspect site" means a confinement feeding operation or land where a confinement feeding operation could be constructed, if the site is subject to a suspect transaction.

d. "Suspect transaction" means a transaction in which a habitual violator does any of the following:

(1) Transfers a controlling interest in a suspect site to any of the following:

(a) An employee of the habitual violator or business in which the person holds a controlling interest.

(b) A person who holds an interest in a business, including a confinement feeding operation, in which the habitual violator holds a controlling interest.

(c) A person related to the habitual violator as spouse, parent, grandparent, lineal ascendant of a grandparent or spouse and any other lineal descendant of the grandparent or spouse, or a person acting in a fiduciary capacity for a related person. This paragraph does not apply to a transaction completed by an operation of law.

(2) Provides financing for the construction or operation of a confinement feeding operation to any person, by providing a contribution or loan to the person, or providing cash or other tangible collateral for a contribution or loan made by a third person.

e. "Transaction" includes a transfer in any manner or by any means, including any of the following:

* Section 455B.201 probably intended

(1) Delivery and acceptance between two parties, including by contract or agreement with or without consideration, including by sale, exchange, barter, or gift.

(2) An operation of law.

2. a. A person shall not construct or expand an animal feeding operation structure which is part of a confinement feeding operation, if the person is ~~a~~ any of the following:

(1) A party to a pending action for a violation of this chapter concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) A habitual violator.

b. A person shall not construct or expand an animal feeding operation structure which is part of a confinement feeding operation for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator ~~under section 455B.191~~.

~~3.~~ c. This ~~section~~ subsection shall not prohibit a person from completing the construction or expansion of an animal feeding operation structure, if any of the following apply:

~~a.~~ (1) The person has an unexpired permit for the construction or expansion of the animal feeding operation structure.

~~b.~~ (2) The person is not required to obtain a permit for the construction or expansion of the animal feeding operation structure.

d. For purposes of this subsection, "construct" or "expand" includes financing and contracting to build an animal feeding operation structure regardless of whether the person subsequently leases, owns, or operates the animal feeding operation structure.

3. A person who receives a controlling interest in a suspect site pursuant to a suspect transaction must submit a notice of the transaction to the department within thirty days. If, after notice and opportunity to be heard, pursuant to the contested case provisions of chapter 17A, the department finds that one purpose of the transaction was to avoid the conditions and enhanced penalties imposed upon a habitual violator, the person shall be subject to the same conditions and enhanced penalties as applied to the habitual violator at the time of the transaction.

4. The department shall conduct an annual review of each confinement feeding operation which is a habitual violator and each confinement feeding operation in which a habitual violator holds a controlling interest.

Sec. 30. Section 455B.203, subsection 1, Code 1997, is amended to read as follows:

1. ~~In order to receive~~ The following persons shall submit a manure management plan to the department:

a. The owner of a confinement feeding operation, other than a small animal feeding operation, if the animal feeding operation was constructed after May 31, 1985, regardless of whether the confinement feeding operation was required to be constructed pursuant to a construction permit approved by rules adopted by the department.

b. The owner of a confinement feeding operation, if the confinement feeding operation is required to be constructed pursuant to a permit issued by the department pursuant to section 455B.200A.

c. A person who applies manure from a confinement feeding operation, other than a small animal feeding operation, which is located in another state, if the manure is applied on land located in this state.

1A. A person shall not remove manure from a manure storage structure which is part of a confinement feeding operation for which a manure management plan is required under this section, unless the department approves a manure management plan submitted by the owner of the confinement feeding operation as provided by the department on forms prescribed by the department. The department may adopt rules allowing a person to remove manure from a manure storage structure until the manure management plan is approved or disapproved by the department according to terms and conditions required by rules adopted by the department. The department shall approve or disapprove a manure management plan within

sixty days of the date that the department receives a completed plan. The department shall not issue a permit for the construction of a confinement feeding operation or a related animal feeding operation structure unless the applicant submits a manure management plan together with an application as provided in section ~~455B.173, a person shall submit a manure management plan to the department together with the application for a construction permit~~ 455B.200A.

Sec. 31. Section 455B.203, subsection 4, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A person ~~receiving a permit for the construction of a confinement feeding operation~~ required to submit a manure management plan to the department shall maintain a current manure management plan and maintain records sufficient to demonstrate compliance with the manure management plan. Chapter 22 shall not apply to the records which shall be kept confidential by the department and its agents and employees. The contents of the records are not subject to disclosure except as follows:

Sec. 32. Section 455B.203, subsection 5, Code 1997, is amended to read as follows:

5. The department may inspect the confinement feeding operation at any time during normal working hours, and may inspect records required to be maintained as part of the manure management plan. The department shall regularly inspect a confinement feeding operation if the operation or a person holding a controlling interest in the operation is classified as a habitual violator pursuant to section 455B.191. The department shall assess and the confinement feeding operation shall pay the actual costs of the inspection. ~~However, in order to access the operation, the departmental inspector must comply with standard disease control restrictions customarily required by the operation. The department shall comply with section 455B.103 in conducting an investigation of the premises where the animals are kept.~~

Sec. 33. NEW SECTION. 455B.203A MANURE APPLICATORS CERTIFICATION.

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

a. "Commercial manure applicator" means the same as defined in section 455B.171.

b. "Confinement site" means a site where there is located a manure storage structure which is part of a confinement feeding operation, other than a small animal feeding operation.

c. "Confinement site manure applicator" means a person who applies manure stored at a confinement site other than a commercial manure applicator.

2. a. A commercial manure applicator shall not apply manure to land, unless the person is certified pursuant this section.

b. A confinement site manure applicator shall not apply manure to land, unless the person is certified pursuant to this section.

3. a. A person required to be certified as a commercial manure applicator must be certified by the department each year. The person shall be certified after completing an educational program which shall consist of an examination required to be passed by the person or three hours of continuing instructional courses which the person must attend each year in lieu of passing the examination.

b. A person required to be certified as a confinement site manure applicator must be certified by the department each three years. The person shall be certified after completing an educational program which shall consist of an examination required to be passed by the person or two hours of continuing instructional courses which the person must attend each year in lieu of passing the examination.

4. The department shall adopt, by rule, requirements for the certification, including educational program requirements. The department may establish different educational programs designed for commercial manure applicators and confinement site manure applicators. The department shall adopt rules necessary to administer this section, including

establishing certification standards, which shall at least include standards for the handling, application, and storage of manure, the potential effects of manure upon surface water and groundwater, and procedures to remediate the potential effects on surface water or groundwater.

a. The department shall adopt by rule criteria for allowing a person required to be certified to complete either a written or oral examination.

b. The department shall administer the continuing instructional courses, by either teaching the courses or selecting persons to teach the courses, according to criteria as provided by rules adopted by the department. The department shall, to the extent possible, select persons to teach the continuing instructional courses. The department is not required to compensate persons to teach the continuing instructional courses. In selecting persons, the department shall consult with organizations interested in the application of manure, including associations representing manure applicators and associations representing agricultural producers. The Iowa cooperative extension service in agriculture and home economics of Iowa state university of science and technology shall cooperate with the department in administering the continuing instructional courses. The Iowa cooperative extension service may teach continuing instructional courses, train persons selected to teach courses, or distribute informational materials to persons teaching the courses.

c. The department, in administering the certification program under this section, and the department of agriculture and land stewardship in administering the certification program for pesticide applicators may cooperate together.

5. a. This section shall not require a person to be certified as a commercial manure applicator if any of the following applies:

(1) The person is any of the following:

(a) Actively engaged in farming who trades work with another such person.

(b) Employed by a person actively engaged in farming not solely as a manure applicator who applies manure as an incidental part of the person's general duties.

(c) Engaged in applying manure as an incidental part of a custom farming operation.

(d) Engaged in applying manure as an incidental part of a person's duties as provided by rules adopted by the department providing for an exemption.

(2) The person applies manure for a period of thirty days from the date of initial employment as a commercial manure applicator if the person applying the manure is acting under the instructions and control of a certified commercial manure applicator who is both of the following:

(a) Physically present at the site where the manure is located.

(b) In sight or hearing distance of the supervised person.

b. This section shall not require a person to be certified as a confinement site manure applicator if all of the following apply:

(1) The person is a part-time employee of a confinement site manure applicator.

(2) The person is acting under the instructions and control of a certified commercial manure applicator who is both of the following:

(a) Physically present at the site where the manure is located.

(b) In sight or hearing distance of the supervised person.

6. a. The department may charge a fee for certifying persons under this section. The fee for certification shall be based on the costs of administering and enforcing this section and paying the expenses of the department relating to certification.

b. All moneys received by the department under the provisions of this chapter shall be handled in the same manner as repayment receipts, as defined in section 8.2, and shall be used solely for the administration and enforcement of this chapter.

Sec. 34. NEW SECTION. 455B.203B APPLICATION REQUIREMENTS.

1. The department shall adopt rules governing the application of manure originating from an anaerobic lagoon or aerobic structure which is part of a confinement feeding operation. The rules shall establish application rates and practices to minimize groundwater or

surface water pollution resulting from application, including pollution caused by runoff or other manure flow resulting from precipitation events. The rules shall establish different application rates and practices based on the water holding capacity of the soil at the time of application.

2. A person shall not apply manure by spray irrigation equipment, except as provided by rules adopted by the department pursuant to chapter 17A. However, a person shall not use restricted spray irrigation equipment to apply manure originating from a confinement feeding operation, unless the manure has been diluted as provided by rules adopted by the department, including diluted by use of an anaerobic lagoon.

Sec. 35. Section 455B.204, Code 1997, is amended to read as follows:

455B.204 DISTANCE REQUIREMENTS.

1. ~~An animal feeding operation structure shall be located at least five hundred feet away from the surface intake of an agricultural drainage well or known sinkhole, and at least two hundred feet away from~~ As used in this section, unless the context otherwise requires:

a. "Major water source" means a lake, reservoir, river, or stream located within the territorial limits of the state, any marginal river area adjacent to the state, which can support a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding which has been identified by rules adopted by the commission.

b. "Watercourse" means any lake, river, creek, ditch, or other body of water or channel having definite banks and bed with water flow or the occurrence of water, except lakes or ponds without outlet to which only one landowner is riparian.

2. Except as provided in subsection 3, the following shall apply:

a. An animal feeding operation structure shall not be constructed closer than five hundred feet away from a surface intake, wellhead, or cistern of an agricultural drainage well or known sinkhole.

b. An animal feeding operation structure shall not be constructed if the animal feeding operation structure as constructed is closer than any of the following:

(1) Two hundred feet away from a watercourse other than a major water source.

(2) Five hundred feet away from a major water source.

c. A watercourse, other than a major water source, shall not be constructed, expanded, or diverted, if the watercourse as constructed, expanded, or diverted is closer than two hundred feet away from an animal feeding operation structure.

d. A major water source shall not be constructed, expanded, or diverted, if the water source as constructed, expanded, or diverted is closer than five hundred feet from an animal feeding operation structure.

3. ~~However, no distance~~ A separation ~~is~~ distance required ~~between a~~ in subsection 2 shall not apply to any of the following:

a. A location or object and a farm pond or privately owned lake, as defined in section 462A.2.

b. A manure storage structure constructed with a secondary containment barrier. The department shall adopt rules providing for the construction and use of a secondary containment barrier, including design standards.

4. All distances between locations or objects shall be measured from their closest points, as provided by rules adopted by the department.

~~2. A person shall not dispose of manure closer to a designated area than provided in section 159.27.~~

5. A person shall not construct or expand an unformed manure storage structure within an agricultural drainage well area as provided in section 455I.5.

Sec. 36. NEW SECTION. 455B.205 MANURE STORAGE STRUCTURES — CONSTRUCTION STANDARDS — INSPECTIONS.

1. The department shall establish by rule engineering standards for the construction of

manure storage structures required to be constructed pursuant to a permit issued under section 455B.200A.

2. The design standards for unformed manure storage structures established by the department shall account for special design characteristics of animal feeding operations, including all of the following:

a. The lining of the structure shall be constructed with materials deemed suitable by the department in order to minimize seepage loss through the lining's seal.

b. The structure shall be constructed with materials deemed suitable by the department in order to control erosion on the structure's berm, side slopes, and base.

c. The structure shall be constructed to minimize seepage into near-surface water sources.

d. The top of the floor of the structure's liner must be above the groundwater table as determined by the department. If the groundwater table is less than two feet below the top of the liner's floor, the structure shall be installed with a synthetic liner. If the department allows an unformed manure storage structure to be located at a site by permanently lowering the groundwater table, the department shall confirm that the proposed system meets standards necessary to ensure that the structure does not pollute groundwater sources. If the department allows drain tile installed to lower a groundwater table to remain where located, the department shall require that a device be installed to allow monitoring of the water in the drain tile line. The department shall also require the installation of a device to allow shutoff of the drain tile lines, if the drain tile lines do not have a surface outlet accessible on the property where the structure is located.

3. a. The department shall conduct a routine inspection of each unformed manure storage structure at least once each year. A routine inspection conducted pursuant to this subsection shall be limited to a visual inspection of the site where the unformed manure storage structure is located. The department shall inspect the site at a reasonable time after providing at least twenty-four hours' notice to the person owning or managing the confinement feeding operation. The visual inspection shall include, but not be limited to, determining whether any of the following exists:

(1) An adequate freeboard level.

(2) The seepage of manure from the unformed manure storage structure.

(3) Erosion.

(4) Inadequate vegetation cover.

(5) The presence of an opening allowing manure to drain from the unformed manure storage structure.

b. Nothing in this subsection restricts the department from conducting an inspection of an animal feeding operation which is not routine.

Sec. 37. NEW SECTION. 455B.206 EXCEPTION TO REGULATION.

1. As used in this section, "research college" means an accredited public or private college or university, including but not limited to a university under the control of the state board of regents as provided in chapter 262, or a community college under the jurisdiction of a board of directors for a merged area as provided in chapter 260C, if the college or university performs research or experimental activities regarding animal agriculture or agronomy.

2. The requirements of this part which regulate animal feeding operations, including rules adopted by the department pursuant to section 455B.200, shall not apply to research activities and experiments performed under the authority and regulations of a research college, if the research activities and experiments relate to animal feeding operations, including but not limited to the confinement of animals and the storage and disposal of manure originating from animal feeding operations.

3. This section shall not apply to requirements provided in any of the following:

a. Section 455B.201, including rules adopted by the department under that section.

b. Section 455B.204, including rules adopted by the department under that section.

Sec. 38. Section 657.11, subsections 2, 3, 5, 6, 7, and 8, Code 1997, are amended to read as follows:

2. ~~If a person has received all permits required pursuant to chapter 455B for an animal feeding operation, as defined in section 455B.161, there shall be a rebuttable presumption that an~~ An animal feeding operation ~~is~~, as defined in section 455B.161, shall not be found to be a public or private nuisance under this chapter or under principles of common law, and ~~that~~ the animal feeding operation ~~does~~ shall not ~~unreasonably and continuously~~ be found to interfere with another person's comfortable use and enjoyment of the person's life or property under any other cause of action. ~~The rebuttable presumption also applies to persons who are not required to obtain a permit pursuant to chapter 455B for an animal feeding operation as defined in section 455B.161. The rebuttable presumption~~ However, this section shall not apply if the person bringing the action proves that an injury to ~~a~~ the person or damage to the person's property is proximately caused by ~~a~~ either of the following:

a. The failure to comply with a federal statute or regulation or a state statute or rule which applies to the animal feeding operation.

b. ~~3. The rebuttable presumption may be overcome by clear and convincing evidence of both~~ Both of the following:

~~a.~~ (1) The animal feeding operation unreasonably and ~~continuously~~ for substantial periods of time interferes with ~~another~~ the person's comfortable use and enjoyment of the person's life or property.

~~b.~~ (2) The ~~injury or damage is proximately caused by the negligent operation of the~~ animal feeding operation failed to use existing prudent generally accepted management practices reasonable for the operation.

5. ~~The rebuttable presumption created by this~~ This section shall apply regardless of the established date of operation or expansion of the animal feeding operation. ~~The rebuttable presumption~~ A defense against a cause of action provided in this section includes, but is not limited to, a defense for actions arising out of the care and feeding of animals; the handling or transportation of animals; the treatment or disposal of manure resulting from animals; the transportation and application of animal manure; and the creation of noise, odor, dust, or fumes arising from an animal feeding operation.

6. ~~An animal feeding operation that complies with the requirements in chapter 455B for animal feeding operations shall be deemed to meet any common law requirements regarding the standard of a normal person living in the locality of the operation.~~

~~7.~~ ~~A~~ If a court determines that a claim is frivolous, a person who brings the claim as part of a losing cause of action against a person ~~for whom the rebuttable presumption created~~ who may raise a defense under this section ~~is not rebutted,~~ shall be liable to the person against whom the action was brought for all costs and expenses incurred in the defense of the action~~, if the court determines that a claim is frivolous~~.

~~8~~ 7. ~~The rebuttable presumption created in this~~ This section does not apply to an injury to a person or damages to property caused by the animal feeding operation before ~~May 31, 1995~~ the effective date of this section.

Sec. 39. Section 657.11, subsection 4, unnumbered paragraph 1, Code 1997, is amended to read as follows:

~~The rebuttable presumption~~ This section does not apply to a person during any period that the person is classified as a chronic violator under this subsection as to any confinement feeding operation in which the person holds a controlling interest, as defined by rules adopted by the department of natural resources. ~~The rebuttable presumption~~ This section shall apply to the person on and after the date that the person is removed from the classification of chronic violator. For purposes of this subsection, "confinement feeding operation" means an animal feeding operation in which animals are confined to areas which are totally roofed, and which are regulated by the department of natural resources or the environmental protection commission.

Sec. 40. 1995 Iowa Acts, chapter 195, section 37, is amended to read as follows:

SEC. 37. ANIMAL AGRICULTURE CONSULTING ORGANIZATION. The department of natural resources shall request that the Iowa pork producers association, the Iowa cattlemen's association, the Iowa poultry association, the Iowa dairy products association,

~~an organization representing agricultural producers generally,~~ Iowa state university, the soil conservation division of the department of agriculture and land stewardship, ~~and~~ the natural resources conservation service of the United States department of agriculture, and after the effective date of this section of this Act as amended by 1998 Iowa Acts, House File 2494,* two organizations representing agricultural producers generally each appoint one member to consult with the department ~~regarding~~. The appointees shall consult with the department regarding this Act, rules adopted pursuant to this Act, and the Act's implementation. The department shall consult with representatives in meetings which shall be conducted by the department, upon the call of the director of the department or the director's designee, or upon the request to the department of any three members. The department shall request that the representatives provide the department with recommendations regarding the adoption of rules required to administer this Act. This section is repealed on March 31, 2005.

Sec. 41. 1995 Iowa Acts, chapter 195, section 38, is amended to read as follows:

SEC. 38. INDEMNITY FEES — PRIOR PERMITTEES.

1. The indemnity fee imposed upon permittees pursuant to section 204.3, as enacted in this Act, shall be imposed upon all persons who have received a permit by the department of natural resources for the construction of a confinement feeding operation with a manure storage structure as defined in section ~~455B.161~~ 204.1, as enacted in this Act, prior to the effective date of this Act. However, an indemnity fee shall not be imposed upon ~~a person~~ the following persons:

a. A person who has received a construction permit more than ten years prior to the effective date of this Act.

b. A person who has received a construction permit within ten years prior to May 31, 1995, if the confinement feeding operation was not constructed under the permit and the permit has expired.

2. To every extent possible, the department of natural resources shall notify all persons required to pay the fee. The notice shall be in writing. The department shall establish a date when the fees must be paid to the department, which shall be not less than three months after the delivery of the notice. If a person is delinquent in paying the indemnity fee when due, or if upon examination, an underpayment of the fee is found by the department, the person is subject to a penalty of ten dollars or an amount equal to the amount of deficiency for each day of the delinquency, whichever is less. ~~After the date required for payment, the department shall transfer all outstanding claims to the department of agriculture and land stewardship.~~

3. The department of natural resources shall ~~deliver to~~ receive from the department of agriculture and land stewardship the most current available information regarding the persons required to pay the fee and any delinquency penalty~~, including the names and addresses of the persons, and the capacity of the confinement feeding operations subject to the permit~~. The department of ~~agriculture and land stewardship~~ natural resources, in cooperation with the attorney general, may bring a court action in order to collect indemnity fees and delinquency penalties required to be paid under this section.

Sec. 42. AMNESTY PERIOD. Notwithstanding 1995 Iowa Acts, chapter 195, section 38, a person who has not paid an indemnity fee as required by that Act, as amended by this Act, shall not be subject to a delinquency penalty as provided in that Act, if the person pays the full amount of the indemnity fee to the department of agriculture and land stewardship** on or before December 31, 1998, as required by the department.

Sec. 43. EFFECT OF THIS ACT — REFUND. Nothing in this Act requires the department of natural resources or the department of agriculture and land stewardship to refund an indemnity fee or delinquency penalty payment paid by permittees pursuant to 1995 Iowa Acts, chapter 195, section 38.

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* This chapter, chapter 1209 herein

** Department of agriculture and land stewardship and department of natural resources probably intended

Sec. 44. INDEMNITY FEES — PRIOR MANURE MANAGEMENT PLAN SUBMITTEES.

1. The indemnity fee imposed upon persons required to submit a manure management plan pursuant to section 204.3A, as enacted in this Act, shall be imposed upon all persons who are required to submit a manure management plan under section 455B.203 as amended in this Act. However, a fee shall not be imposed upon a person who was not required to submit a manure management plan to the department of natural resources pursuant to 1995 Iowa Acts, chapter 195, and 567 IAC section 65.18(455B).

2. To every extent possible, the department shall notify all persons required to pay the fee. The notice shall be in writing. The department shall establish a date when the fees must be paid to the department, which shall be not less than three months after the delivery of the notice. If a person is delinquent in paying the indemnity fee when due, or if upon examination, an underpayment of the fee is found by the department, the person is subject to a penalty of ten dollars or an amount equal to the amount of deficiency for each day of the delinquency, whichever is less.

Sec. 45. INDEMNITY FEES — PRIOR CONSTRUCTION PERMITTEES. The department of agriculture and land stewardship shall deliver to the department of natural resources the most current available information regarding persons required to pay the indemnity fee imposed pursuant to 1995 Iowa Acts, chapter 195, section 38. The department of natural resources, in cooperation with the attorney general, may bring a court action in order to collect indemnity fees and delinquency penalties as provided in that Act for deposit into the manure storage indemnity fund as created in section 204.2.

Sec. 46. MANURE MANAGEMENT PLAN SUBMISSIONS. All persons required to submit a manure management plan pursuant to section 455B.203 as amended by this Act shall submit a manure management plan according to the same requirements, as provided in that section or rules adopted by the department pursuant to that section. Persons who have submitted a manure management plan that complies with those requirements are not required to submit a new manure management plan. Persons who have not submitted a manure management plan that complies with those requirements shall not be required to submit a new manure management plan until July 1, 1999.

Sec. 47. MANURE APPLICATOR CERTIFICATION — DELAYED APPLICABILITY. A person shall not be required to be certified as a commercial manure applicator or a confinement site manure applicator as required pursuant to section 455B.203A, as enacted in this Act, for sixty days following the effective date of that section of this Act.

Sec. 48. ANIMAL AGRICULTURE CONSULTING ORGANIZATION. The department of natural resources shall consult with the members of the animal agriculture consulting organization regarding this Act, rules adopted pursuant to this Act, and the Act's implementation, to the same extent and in the same manner as required in 1995 Iowa Acts, chapter 195, section 37, as amended by this Act.

Sec. 49. DIRECTION TO THE DEPARTMENT OF NATURAL RESOURCES — RULEMAKING. The department of natural resources shall adopt all rules necessary to administer and enforce this Act by January 1, 1999. The department is required to adopt rules under this Act, including adopting new rules or amending existing rules, only to the extent that rules must be adopted in order to comply with the requirements of this Act. This section shall not be construed to limit the authority of the department to adopt rules under this Act or other statutory authority which the department determines is necessary or advisable.

Sec. 50. DIRECTIONS TO IOWA CODE EDITOR.

1. The Iowa Code editor is directed to transfer chapter 204, as amended by this Act, to a chapter determined appropriate by the Iowa Code editor. The Iowa Code editor shall correct internal references as necessary.

2. The Iowa Code editor is directed to transfer section 159.27 to or near section 455B.204A.

Sec. 51. TRANSFER OF PROVISIONS. The transfer of provisions from one section to another section does not affect the effect or applicability of rules adopted by the department of natural resources, except as required by the provisions of this Act.

Sec. 52. SEVERABILITY. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which shall be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Sec. 53. EFFECTIVE DATES.

1. Sections 9, 10, 14, 27, 29, 38, 39, 40 through 43, 48, 49, and this section, being deemed of immediate importance, take effect upon enactment.

2. Sections 11, 13, 15, 16, 18 through 21, 23, 26, 30, 31, and 33 through 35 take effect on January 1, 1999.

Approved May 21, 1998

CHAPTER 1210

FEDERAL BLOCK GRANT APPROPRIATIONS

H.F. 2218

AN ACT appropriating federal funds made available from federal block grants and other federal grants, allocating portions of federal block grants, and providing procedures if federal funds are more or less than anticipated or if federal block grants are more or less than anticipated.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. SUBSTANCE ABUSE APPROPRIATION.

1. There is appropriated from the fund created by section 8.41 to the Iowa department of public health for the federal fiscal year beginning October 1, 1998, and ending September 30, 1999, the following amount:

..... $ 11,945,086

a. Funds appropriated in this subsection are the anticipated funds to be received from the federal government for the designated federal fiscal year under 42 U.S.C., chapter 6A, subchapter XVII, which provides for the substance abuse prevention and treatment block grant. The department shall expend the funds appropriated in this subsection as provided in the federal law making the funds available and in conformance with chapter 17A.

b. Of the funds appropriated in this subsection, an amount not exceeding 5 percent shall be used by the department for administrative expenses.

c. The department shall expend no less than an amount equal to the amount expended for treatment services in state fiscal year beginning July 1, 1997, for pregnant women and women with dependent children.

d. Of the funds appropriated in this subsection, an amount not exceeding $24,585 shall be used for audits.

e. Of the funds appropriated in this subsection, an amount not exceeding $461,342 shall be used for current and former recipients of federal supplemental security income (SSI).

2. The funds remaining from the appropriation made in subsection 1 shall be allocated as follows:

a. At least 20 percent of the allocation shall be for prevention programs.

b. At least 35 percent of the allocation shall be spent on drug treatment and prevention activities.

c. At least 35 percent of the allocation shall be spent on alcohol treatment and prevention activities.

3. The substance abuse block grant funds received from the federal government in excess of the amount of the anticipated federal fiscal year 1998-1999 award appropriated in subsection 1 shall be distributed at least 50 percent to treatment programs and 50 percent to prevention programs except that, based upon federal guidelines, the total amount of the excess awarded to prevention programs shall not exceed $1,000,000.

Sec. 2. COMMUNITY MENTAL HEALTH SERVICES APPROPRIATION.

1. a. There is appropriated from the fund created by section 8.41 to the Iowa department of human services for the federal fiscal year beginning October 1, 1998, and ending September 30, 1999, the following amount:

..... $ 2,740,750

b. Funds appropriated in this subsection are the anticipated funds to be received from the federal government for the designated federal fiscal year under 42 U.S.C., chapter 6A, subchapter XVII, which provides for the community mental health services block grant. The department shall expend the funds appropriated in this subsection as provided in the federal law making the funds available and in conformance with chapter 17A.

c. The administrator of the division of mental health and developmental disabilities shall allocate not less than 95 percent of the amount of the block grant to eligible community mental health services providers for carrying out the plan submitted to and approved by the federal substance abuse and mental health services administration for the fiscal year involved.

2. An amount not exceeding 5 percent of the funds appropriated in subsection 1 shall be used by the department of human services for administrative expenses. From the funds set aside by this subsection for administrative expenses, the division of mental health and developmental disabilities shall pay to the auditor of state an amount sufficient to pay the cost of auditing the use and administration of the state's portion of the funds appropriated in subsection 1. The auditor of state shall bill the division of mental health and developmental disabilities for the costs of the audits.

Sec. 3. MATERNAL AND CHILD HEALTH SERVICES APPROPRIATIONS.

1. There is appropriated from the fund created by section 8.41 to the Iowa department of public health for the federal fiscal year beginning October 1, 1998, and ending September 30, 1999, the following amount:

..... $ 6,888,880

The funds appropriated in this subsection are the funds anticipated to be received from the federal government for the designated federal fiscal year under 42 U.S.C., chapter 7, subchapter V, which provides for the maternal and child health services block grant. The department shall expend the funds appropriated in this subsection as provided in the federal law making the funds available and in conformance with chapter 17A.

Of the funds appropriated in this subsection, an amount not exceeding $45,700 shall be used for audits.

Funds appropriated in this subsection shall not be used by the university of Iowa hospitals and clinics for indirect costs.

2. An amount not exceeding $150,000 of the funds appropriated in subsection 1 to the Iowa department of public health shall be used by the Iowa department of public health for administrative expenses in addition to the amount to be used for audits in subsection 1.

The departments of public health, human services, and education and the university of Iowa's mobile and regional child health specialty clinics shall continue to pursue to the maximum extent feasible the coordination and integration of services to women and children.

3. a. Sixty-three percent of the remaining funds appropriated in subsection 1 shall be allocated to supplement appropriations for maternal and child health programs within the Iowa department of public health. Of these funds, $284,548 shall be set aside for the statewide perinatal care program.

b. Thirty-seven percent of the remaining funds appropriated in subsection 1 shall be allocated to the university of Iowa hospitals and clinics under the control of the state board of regents for mobile and regional child health specialty clinics. The university of Iowa hospitals and clinics shall not receive an allocation for indirect costs from the funds for this program. Priority shall be given to establishment and maintenance of a statewide system of mobile and regional child health specialty clinics.

4. The Iowa department of public health shall administer the statewide maternal and child health program and the crippled children's program by conducting mobile and regional child health specialty clinics and conducting other activities to improve the health of low-income women and children and to promote the welfare of children with actual or potential handicapping conditions and chronic illnesses in accordance with the requirements of Title V of the federal Social Security Act.

Sec. 4. PREVENTIVE HEALTH AND HEALTH SERVICES APPROPRIATIONS.

1. There is appropriated from the fund created by section 8.41 to the Iowa department of public health for the federal fiscal year beginning October 1, 1998, and ending September 30, 1999, the following amount:

..... $ 2,103,338

Funds appropriated in this subsection are the funds anticipated to be received from the federal government for the designated federal fiscal year under 42 U.S.C., chapter 6A, subchapter XVII, which provides for the preventive health and health services block grant. The department shall expend the funds appropriated in this subsection as provided in the federal law making the funds available and in conformance with chapter 17A.

Of the funds appropriated in this subsection, an amount not exceeding $5,522 shall be used for audits.

2. Of the funds appropriated in subsection 1, the specific amount of funds stipulated by the notice of block grant award shall be allocated for services to victims of sex offenses and for rape prevention education.

3. An amount not exceeding $94,670 of the remaining funds appropriated in subsections 1 and 2 shall be used by the Iowa department of public health for administrative expenses in addition to the amount to be used for audits in subsection 1.

4. After deducting the funds allocated in subsections 1, 2, and 3, the remaining funds appropriated in subsection 1 shall be used by the department for healthy people 2000/healthy Iowans 2000 program objectives, preventive health advisory committee, and risk reduction services, including nutrition programs, health incentive programs, chronic disease services, emergency medical services, monitoring of the fluoridation program and start-up fluoridation grants, and acquired immune deficiency syndrome services. The moneys specified in this subsection shall not be used by the university of Iowa hospitals and clinics or by the state hygienic laboratory for the funding of indirect costs. Of the funds used by the department under this subsection, an amount not exceeding $90,000 shall be used for the monitoring of the fluoridation program and for start-up fluoridation grants to public water systems, and at least $50,000 shall be used to provide chlamydia testing.

Sec. 5. DRUG CONTROL AND SYSTEM IMPROVEMENT GRANT PROGRAM APPROPRIATION.

1. There is appropriated from the fund created in section 8.41 to the office of the governor for the drug enforcement and abuse prevention coordinator for the federal fiscal year beginning October 1, 1998, and ending September 30, 1999, the following amount:

..... $ 5,806,000

Funds appropriated in this subsection are the anticipated funds to be received from the federal government for the designated fiscal year under 42 U.S.C., chapter 46, subchapter V,

which provides for the drug control and system improvement grant program. The drug enforcement and abuse prevention coordinator shall expend the funds appropriated in this subsection as provided in the federal law making the funds available and in conformance with chapter 17A.

2. An amount not exceeding 7 percent of the funds appropriated in subsection 1 shall be used by the drug enforcement and abuse prevention coordinator for administrative expenses. From the funds set aside by this subsection for administrative expenses, the drug enforcement and abuse prevention coordinator shall pay to the auditor of state an amount sufficient to pay the cost of auditing the use and administration of the state's portion of the funds appropriated in subsection 1.

Sec. 6. STOP VIOLENCE AGAINST WOMEN GRANT PROGRAM APPROPRIATION.

1. There is appropriated from the fund created in section 8.41 to the office of the governor for the drug enforcement and abuse prevention coordinator for the federal fiscal year beginning October 1, 1998, and ending September 30, 1999, the following amount:

..... $ 1,619,000

Funds appropriated in this subsection are the anticipated funds to be received from the federal government for the designated fiscal year under 42 U.S.C., chapter 46, subchapter XII-H, which provides for grants to combat violent crimes against women. The drug enforcement and abuse prevention coordinator shall expend the funds appropriated in this subsection as provided in the federal law making the funds available and in conformance with chapter 17A.

2. An amount not exceeding 5 percent of the funds appropriated in subsection 1 shall be used by the drug enforcement and abuse prevention coordinator for administrative expenses. From the funds set aside by this subsection for administrative expenses, the drug enforcement and abuse prevention coordinator shall pay to the auditor of the state an amount sufficient to pay the cost of auditing the use and administration of the state's portion of the funds appropriated in subsection 1.

Sec. 7. LOCAL LAW ENFORCEMENT BLOCK GRANT APPROPRIATION.

1. There is appropriated from the fund created in section 8.41 to the office of the governor for the drug enforcement and abuse prevention coordinator for the federal fiscal year beginning October 1, 1998, and ending September 30, 1999, the following amount:

..... $ 382,106

Funds appropriated in this subsection are the funds anticipated to be received from the federal government for the designated federal fiscal year under the federal Omnibus Consolidated Recissions and Appropriations Act of 1997, Pub. L. No. 104-134, which provides for grants to reduce crime and improve public safety. The drug enforcement and abuse prevention coordinator shall expend the funds appropriated in this subsection as provided in the federal law making the funds available and in conformance with chapter 17A.

2. An amount not exceeding 3 percent of the funds appropriated in subsection 1 shall be used by the drug enforcement and abuse prevention coordinator for administrative expenses. From the funds set aside by this subsection for administrative expenses, the drug enforcement and abuse prevention coordinator shall pay to the auditor of state an amount sufficient to pay the cost of auditing the use and administration of the state's portion of the funds appropriated in subsection 1.

Sec. 8. RESIDENTIAL SUBSTANCE ABUSE TREATMENT FOR STATE PRISONERS FORMULA GRANT PROGRAM. There is appropriated from the fund created in section 8.41 to the office of the governor for the drug enforcement and abuse prevention coordinator for the federal fiscal year beginning October 1, 1998, and ending September 30, 1999, the following amount:

..... $ 236,738

Funds appropriated in this subsection are the funds anticipated to be received from the federal government for the designated federal fiscal year under 42 U.S.C., chapter 136, which

provides grants for substance abuse treatment programs in state and local correctional facilities. The drug enforcement and abuse prevention coordinator shall expend the funds appropriated in this subsection as provided in the federal law making the funds available and in conformance with chapter 17A.

Sec. 9. COMMUNITY SERVICES APPROPRIATIONS.

1. a. There is appropriated from the fund created by section 8.41 to the division of community action agencies of the department of human rights for the federal fiscal year beginning October 1, 1998, and ending September 30, 1999, the following amount:

..... $ 5,307,702

Funds appropriated in this subsection are the funds anticipated to be received from the federal government for the designated federal fiscal year under 42 U.S.C., chapter 106, which provides for the community services block grant. The division of community action agencies of the department of human rights shall expend the funds appropriated in this subsection as provided in the federal law making the funds available and in conformance with chapter 17A.

b. The administrator of the division of community action agencies of the department of human rights shall allocate not less than 96 percent of the amount of the block grant to eligible community action agencies for programs benefiting low-income persons. Each eligible agency shall receive a minimum allocation of not less than $100,000. The minimum allocation shall be achieved by redistributing increased funds from agencies experiencing a greater share of available funds. The funds shall be distributed on the basis of the poverty-level population in the area represented by the community action areas compared to the size of the poverty-level population in the state.

2. An amount not exceeding 4 percent of the funds appropriated in subsection 1 shall be used by the division of community action agencies of the department of human rights for administrative expenses. From the funds set aside by this subsection for administrative expenses, the division of community action agencies of the department of human rights shall pay to the auditor of state an amount sufficient to pay the cost of auditing the use and administration of the state's portion of the funds appropriated in subsection 1. The auditor of state shall bill the division of community action agencies for the costs of the audits.

Sec. 10. COMMUNITY DEVELOPMENT APPROPRIATIONS.

1. There is appropriated from the fund created by section 8.41 to the department of economic development for the federal fiscal year beginning October 1, 1998, and ending September 30, 1999, the following amount:

..... $ 30,400,000

Funds appropriated in this subsection are the funds anticipated to be received from the federal government for the designated federal fiscal year under 42 U.S.C., chapter 69, which provides for community development block grants. The department of economic development shall expend the funds appropriated in this subsection as provided in the federal law making the funds available and in conformance with chapter 17A.

2. An amount not exceeding $1,414,000 for the federal fiscal year beginning October 1, 1998, shall be used by the department of economic development for administrative expenses for the community development block grant. The total amount used for administrative expenses includes $707,000 for the federal fiscal year beginning October 1, 1998, of funds appropriated in subsection 1 and a matching contribution from the state equal to $707,000 from the appropriation of state funds for the community development block grant and state appropriations for related activities of the department of economic development. From the funds set aside for administrative expenses by this subsection, the department of economic development shall pay to the auditor of state an amount sufficient to pay the cost of auditing the use and administration of the state's portion of the funds appropriated in subsection 1. The auditor of state shall bill the department for the costs of the audit.

Sec. 11. LOW-INCOME HOME ENERGY ASSISTANCE APPROPRIATIONS.

1. There is appropriated from the fund created by section 8.41 to the division of community action agencies of the department of human rights for the federal fiscal year beginning October 1, 1998, and ending September 30, 1999, the following amount:

..... $ 18,143,877

The funds appropriated in this subsection are the funds anticipated to be received from the federal government for the designated federal fiscal year under 42 U.S.C., chapter 94, subchapter II, which provides for the low-income home energy assistance block grants. The division of community action agencies of the department of human rights shall expend the funds appropriated in this subsection as provided in the federal law making the funds available and in conformance with chapter 17A.

2. An amount not exceeding $1,542,229 or 10 percent of the funds appropriated in subsection 1, whichever is less, may be used for administrative expenses for the low-income home energy assistance program. Not more than $290,000 shall be used for administrative expenses of the division of community action agencies of the department of human rights. From the total funds set aside in this subsection for administrative expenses for the low-income home energy assistance program, an amount sufficient to pay the cost of an audit of the use and administration of the state's portion of the funds appropriated is allocated for that purpose. The auditor of state shall bill the division of community action agencies for the costs of the audits.

3. The remaining funds appropriated in subsection 1 shall be allocated to help eligible households, as defined under 42 U.S.C., chapter 94, subchapter II, to meet the costs of home energy. After reserving a reasonable portion of the remaining funds not to exceed 10 percent of the funds appropriated in subsection 1, to carry forward into the federal fiscal year beginning October 1, 1999, at least 15 percent of the funds appropriated in subsection 1 shall be used for low-income residential weatherization or other related home repairs for low-income households. Of this amount, an amount not exceeding 10 percent may be used for administrative expenses.

4. An eligible household must be willing to allow residential weatherization or other related home repairs in order to receive home energy assistance. If the eligible household resides in rental property, the unwillingness of the landlord to allow residential weatherization or other related home repairs shall not prevent the household from receiving home energy assistance.

5. Not more than 5 percent of the funds appropriated in subsection 1 shall be used for assessment and resolution of energy problems.

Sec. 12. SOCIAL SERVICES APPROPRIATIONS.

1. There is appropriated from the fund created by section 8.41 to the department of human services for the federal fiscal year beginning October 1, 1998, and ending September 30, 1999, the following amount:

..... $ 24,727,375

Funds appropriated in this subsection are the funds anticipated to be received from the federal government for the designated federal fiscal year under 42 U.S.C., chapter 7, subchapter XX, which provides for the social services block grant. The department of human services shall expend the funds appropriated in this subsection as provided in the federal law making the funds available and in conformance with chapter 17A.

2. Not more than $1,572,354 of the funds appropriated in subsection 1 shall be used by the department of human services for general administration. From the funds set aside in this subsection for general administration, the department of human services shall pay to the auditor of state an amount sufficient to pay the cost of auditing the use and administration of the state's portion of the funds appropriated in subsection 1.

3. In addition to the allocation for general administration in subsection 2, the remaining funds appropriated in subsection 1 shall be allocated in the following amounts to supplement appropriations for the federal fiscal year beginning October 1, 1998, for the following programs within the department of human services:

a. Field operations:
..... $ 9,404,423
b. Child and family services:
..... $ 1,406,640
c. Local administrative costs and other local services:
..... $ 997,367
d. Volunteers:
..... $ 109,002
e. Community-based services:
..... $ 125,352
f. MH/MR/DD/BI community service (local purchase):
..... $ 11,112,237

Sec. 13. SOCIAL SERVICES BLOCK GRANT PLAN. The department of human services during each state fiscal year shall develop a plan for the use of federal social services block grant funds for the subsequent state fiscal year.

The proposed plan shall include all programs and services at the state level which the department proposes to fund with federal social services block grant funds, and shall identify state and other funds which the department proposes to use to fund the state programs and services.

The proposed plan shall also include all local programs and services which are eligible to be funded with federal social services block grant funds, the total amount of federal social services block grant funds available for the local programs and services, and the manner of distribution of the federal social services block grant funds to the counties. The proposed plan shall identify state and local funds which will be used to fund the local programs and services.

The proposed plan shall be submitted with the department's budget requests to the governor and the general assembly.

Sec. 14. PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS. Upon receipt of the minimum formula grant from the federal alcohol, drug abuse, and mental health administration to provide mental health services for the homeless, the division of mental health and developmental disabilities of the department of human services shall assure that a project which receives funds under the formula grant from either the federal or local match share of 25 percent in order to provide outreach services to persons who are chronically mentally ill and homeless or who are subject to a significant probability of becoming homeless shall do all of the following:

1. Provide community mental health services, diagnostic services, crisis intervention services, and habilitation and rehabilitation services.

2. Refer clients to medical facilities for necessary hospital services, and to entities that provide primary health services and substance abuse services.

3. Provide appropriate training to persons who provide services to persons targeted by the grant.

4. Provide case management to homeless persons.

5. Provide supportive and supervisory services to certain homeless persons living in residential settings which are not otherwise supported.

6. Projects may expend funds for housing services including minor renovation, expansion and repair of housing, security deposits, planning of housing, technical assistance in applying for housing, improving the coordination of housing services, the costs associated with matching eligible homeless individuals with appropriate housing, and one-time rental payments to prevent eviction.

Sec. 15. CHILD CARE AND DEVELOPMENT FUND. There is appropriated from the fund created by section 8.41 to the department of human services for the federal fiscal year beginning October 1, 1998, and ending September 30, 1999, the following amount:
..... $ 26,452,639

Funds appropriated in this section are the funds anticipated to be received from the federal government under 42 U.S.C., chapter 105, subchapter II-B, which provides for the child care and development fund. The department shall expend the funds appropriated in this section as provided in the federal law making the funds available and in conformance with chapter 17A.

Sec. 16. PROCEDURE FOR REDUCED FEDERAL FUNDS.

1. If the funds received from the federal government for the block grants specified in this Act are less than the amounts appropriated, the funds actually received shall be prorated by the governor for the various programs, other than for the services to victims of sex offenses and for rape prevention education under section 4, subsection 2, of this Act, for which each block grant is available according to the percentages that each program is to receive as specified in this Act. However, if the governor determines that the funds allocated by the percentages will not be sufficient to effect the purposes of a particular program, or if the appropriation is not allocated by percentage, the governor may allocate the funds in a manner which will effect to the greatest extent possible the purposes of the various programs for which the block grants are available.

2. Before the governor implements the actions provided for in subsection 1, the following procedures shall be taken:

a. The chairpersons and ranking members of the senate and house standing committees on appropriations, the appropriate chairpersons and ranking members of subcommittees of those committees, the director of the legislative service bureau, and the director of the legislative fiscal bureau shall be notified of the proposed action.

b. The notice shall include the proposed allocations, and information on the reasons why particular percentages or amounts of funds are allocated to the individual programs, the departments and programs affected, and other information deemed useful. Chairpersons notified shall be allowed at least two weeks to review and comment on the proposed action before the action is taken.

3. If the amount of moneys received from the federal government for a specific grant number specified in this Act is less than the amount appropriated, the amount appropriated shall be reduced accordingly. An annual report listing any such appropriation reduction shall be submitted to the fiscal committee of the legislative council.

Sec. 17. PROCEDURE FOR INCREASED FEDERAL FUNDS.

1. If funds received from the federal government in the form of block grants exceed the amounts appropriated in sections 1, 2, 3, 4, 5, 7, 10, and 12 of this Act, the excess shall be prorated to the appropriate programs according to the percentages specified in those sections, except additional funds shall not be prorated for administrative expenses.

2. If funds received from the federal government from block grants exceed the amount appropriated in section 11 of this Act for the low-income home energy assistance program, 15 percent of the excess shall be allocated to the low-income residential weatherization program.

3. If funds received from the federal government from community services block grants exceed the amount appropriated in section 9 of this Act, 100 percent of the excess is allocated to the community services block grant program.

4. If the amount of moneys received from the federal government for a specific grant number specified in this Act exceeds the amount appropriated, the excess amount is appropriated for the purpose designated in the specific grant's appropriation. An annual report listing any such excess appropriations shall be submitted to the fiscal committee of the legislative council.

Sec. 18. PROCEDURE FOR EXPENDITURE OF ADDITIONAL FEDERAL FUNDS. If other federal grants, receipts, and funds and other nonstate grants, receipts, and funds become available or are awarded which are not available or awarded during the period in

which the general assembly is in session, but which require expenditure by the applicable department or agency prior to March 15 of the fiscal year beginning July 1, 1998, and ending June 30, 1999, these grants, receipts, and funds are appropriated to the extent necessary, provided that the fiscal committee of the legislative council is notified within thirty days of receipt of the grants, receipts, or funds and the fiscal committee of the legislative council has an opportunity to comment on the expenditure of the grants, receipts, or funds.

Sec. 19. DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of agriculture and land stewardship for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the department of agriculture and land stewardship for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For plant and animal disease and pest control, grant number 10025:
..... $ 968,996
2. For assistance for intrastate meat and poultry, grant number 10475:
..... $ 1,071,351
3. For farmers market nutrition program, grant number 10577:
..... $ 553,402
4. For food and drug — research grants, grant number 13103:
..... $ 98,213
5. For surface coal mining regulation, grant number 15250:
..... $ 146,250
6. For abandoned mine land reclamation, grant number 15252:
..... $ 1,536,869
7. For pesticide enforcement program, grant number 66700:
..... $ 646,163
8. For pesticide certification program, grant number 66720:
..... $ 152,642
9. For wetlands protection, grant number 66461:
..... $ 71,000
10. For USDA, grant number 1000:
..... $ 30,549
11. For soil and water, grant number 10902:
..... $ 535,000

Sec. 20. OFFICE OF AUDITOR OF STATE. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the office of auditor of state for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 21. DEPARTMENT FOR THE BLIND. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department for the blind for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the department for the blind for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For vocational rehabilitation — FICA, grant number 13802:
..... $ 266,217
2. For assistive technology information network, grant number 84224:
..... $ 21,400

3. For rehabilitation services — basic support, grant number 84126:
..... $ 4,498,148
4. For rehabilitation training, grant number 84129:
..... $ 19,795
5. For independent living project, grant number 84169:
..... $ 58,349
6. For older blind, grant number 84177:
..... $ 195,000
7. For supported employment, grant number 84187:
..... $ 71,659
8. For blind project, grant number 84235:
..... $ 194,612

Sec. 22. IOWA STATE CIVIL RIGHTS COMMISSION. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the Iowa state civil rights commission for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the Iowa state civil rights commission for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For housing and urban development (HUD) discrimination complaints, grant number 14401:
..... $ 167,300
2. For job discrimination — special projects, grant number 30002:
..... $ 654,700

Sec. 23. COLLEGE STUDENT AID COMMISSION. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the college student aid commission for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amount is appropriated to the college student aid commission for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For the Stafford loan program, grant number 84032:
..... $ 20,699,769
2. Student inc., grant number 84069:
..... $ 274,150

Sec. 24. DEPARTMENT OF COMMERCE. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of commerce for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 25. DEPARTMENT OF CORRECTIONS. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of corrections for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

The following amounts are appropriated to the department of corrections for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For violent offender incarceration/truth in sentencing, grant number 16586:
..... $ 4,800,000
2. For criminal alien assistance, grant number 16572:
..... $ 500,000

Sec. 26. DEPARTMENT OF CULTURAL AFFAIRS. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of cultural affairs for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the department of cultural affairs for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For historic preservation grants-in-aid, grant number 15904:
..... $ 497,395
2. For NEA partner, grant number 45025:
..... $ 454,400
3. For visual arts, grant number 45015:
..... $ 48,000

Sec. 27. DEPARTMENT OF ECONOMIC DEVELOPMENT. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of economic development for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the department of economic development for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For department of agriculture, grant number 10000:
..... $ 80,000
2. For procurement office, department of defense, grant number 12600:
..... $ 125,000
3. For national Affordable Housing Act, grant number 14239:
..... $ 9,600,384
4. For community service Act funds, grant number 94003:
..... $ 993,016
5. For job opportunities and basic skills program, grant number 13781:
..... $ 99,648
6. For environmental protection agency program, grant number 66000:
..... $ 100,000
7. For community development — state, grant number 14228:
..... $ 32,750,966

Sec. 28. DEPARTMENT OF EDUCATION. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of education for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the department of education for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For school breakfast program, grant number 10553:
..... $ 5,788,130
2. For school lunch program, grant number 10555:
..... $ 48,000,000
3. For special milk program for children, grant number 10556:
..... $ 127,219
4. For child care food program, grant number 10558:
..... $ 20,179,762
5. For summer food service for children, grant number 10559:
..... $ 743,138

6. For administration expenses for child nutrition, grant number 10560:
..... $ 955,121
7. For public telecommunication facilities, grant number 11550:
..... $ 150,000
8. For vocational rehabilitation — state supplementary assistance, grant number 13625:
..... $ 528,058
9. For vocational rehabilitation — FICA, grant number 13802:
..... $ 11,175,376
10. For nutrition education and training, grant number 10564:
..... $ 85,233
11. For mine health and safety, grant number 17600:
..... $ 55,000
12. For veterans education, grant number 64111:
..... $ 203,678
13. For adult education, grant number 84002:
..... $ 2,356,238
14. For bilingual education, grant number 84194:
..... $ 100,000
15. For E.C.I.A. — chapter 1, grant number 84010:
..... $ 55,553,041
16. For migrant education, grant number 84011:
..... $ 413,699
17. For education for neglected — delinquent children, grant number 84013:
..... $ 255,987
18. For handicapped education, grant number 84025:
..... $ 110,755
19. For handicapped — state grants, grant number 84027:
..... $ 35,731,718
20. For handicapped professional preparation, grant number 84029:
..... $ 114,750
21. For public library services, grant number 84034:
..... $ 1,137,405
22. For vocational education — state grants, grant number 84048:
..... $ 12,001,764
23. For rehabilitation services — basic support, grant number 84126:
..... $ 21,936,085
24. For rehabilitation training, grant number 84129:
..... $ 54,842
25. For E.E.S.A. Title II, grant number 84281:
..... $ 2,301,179
26. For public library construction, grant number 84154:
..... $ 250,000
27. For emergency immigrant education, grant number 84162:
..... $ 170,000
28. For independent living project, grant number 84169:
..... $ 233,405
29. For education of handicapped — incentive, grant number 84173:
..... $ 3,762,906
30. For education of handicapped — infants and toddlers, grant number 84181:
..... $ 2,831,070
31. For Byrd scholarship program, grant number 84185:
..... $ 325,230
32. For drug free schools/communities, grant number 84186:
..... $ 3,680,084

33. For supported employment, grant number 84187:
..... $ 299,730
34. For homeless youth and children, grant number 84196:
..... $ 213,285
35. For even start, grant number 84213:
..... $ 723,145
36. For E.C.I.A. capital expense, grant number 84216:
..... $ 177,515
37. For AIDS prevention project, grant number 93938:
..... $ 235,577
38. For headstart collaborative grant, grant number 93600:
..... $ 100,000
39. For serve America, grant number 94001:
..... $ 96,264
40. For teacher preparation education, grant number 84243:
..... $ 903,168
41. For goals 2000, grant number 84276:
..... $ 5,399,337
42. For learn and serve America, grant number 94004:
..... $ 114,325
43. For star schools grant, grant number 84203:
..... $ 1,981,250
44. For department of education, grant number 84000:
..... $ 1,449,079
45. E.S.E.A. Title VI, grant number 84298:
..... $ 3,255,805
46. For department of labor, grant number 17249:
..... $ 5,315,389

Sec. 29. DEPARTMENT OF ELDER AFFAIRS. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of elder affairs for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the department of elder affairs for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For nutrition program for elderly, grant number 10570:
..... $ 2,401,461
2. For senior community service employment program, grant number 17235:
..... $ 1,102,866
3. For prevention of elder abuse, grant number 93041:
..... $ 56,982
4. For preventive health, grant number 93043:
..... $ 178,551
5. For supportive services, grant number 93044:
..... $ 4,435,705
6. For nutrition, grant number 93045:
..... $ 5,829,542
7. For frail elderly, grant number 93046:
..... $ 105,866
8. For ombudsman activity, grant number 93042:
..... $ 53,950
9. For health care financing administration, grant number 93779:
..... $ 436,925

Sec. 30. ETHICS AND CAMPAIGN DISCLOSURE BOARD. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the Iowa ethics and campaign disclosure board for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 31. DEPARTMENT OF GENERAL SERVICES. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of general services for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 32. OFFICES OF THE GOVERNOR AND LIEUTENANT GOVERNOR. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the offices of the governor and lieutenant governor for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 33. DRUG ENFORCEMENT AND ABUSE PREVENTION COORDINATOR. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the office of the governor for the drug enforcement and abuse prevention coordinator for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 34. DEPARTMENT OF HUMAN RIGHTS. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of human rights for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the department of human rights for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For juvenile justice and delinquency prevention, grant number 16540:
..... $ 644,000
2. For weatherization assistance, grant number 81042:
..... $ 2,754,602
3. For client assistance, grant number 84161:
..... $ 102,800

Sec. 35. DEPARTMENT OF HUMAN SERVICES. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of human services, for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For food stamps, grant number 10551:
..... $ 2,098,000
2. For administration expense for food stamps, grant number 10561:
..... $ 11,686,963
3. For commodity support food program, grant number 10565:
..... $ 309,557
4. For temporary emergency food assistance, grant number 10568:
..... $ 322,440

5. For Title XVIII Medicare inspections, grant number 13773:
..... $ 100,000
6. For foster grandparents program, grant number 72001:
..... $ 346,542
7. For child care for at-risk families, grant number 93574:
..... $ 65,692
8. For mental health training, grant number 93244:
..... $ 706,365
9. For family support payments to states, grant number 93560:
..... $ 453,000
10. For child support enforcement, grant number 93563:
..... $ 33,016,283
11. For refugee and entrant assistance, grant number 93566:
..... $ 4,224,158
12. For developmental disabilities basic support, grant number 93630:
..... $ 918,860
13. For children's justice, grant number 93643:
..... $ 116,474
14. For child welfare services, grant number 93645:
..... $ 3,222,880
15. For crisis nursery, grant number 93656:
..... $ 372,415
16. For foster care Title IV-E, grant number 93658:
..... $ 21,612,376
17. For adoption assistance, grant number 93659:
..... $ 10,775,766
18. For child abuse basic, grant number 93669:
..... $ 259,653
19. For child abuse challenge, grant number 93672:
..... $ 250,446
20. For Title IV-E independent living, grant number 93674:
..... $ 450,597
21. For sexually transmitted disease control program, grant number 93777:
..... $ 2,550,877
22. For medical assistance, grant number 93778:
..... $ 952,552,729
23. For adoption opportunities, grant number 93652:
..... $ 286,176
24. For Medicaid fraud, grant number 93775:
..... $ 15,555
25. Empowerment, grant number 93585:
..... $ 2,895,762
26. Family preservation, grant number 93556:
..... $ 1,605,378
27. State legalization impact assistance, grant number 93565:
..... $ 922
28. Jobs training, grant number 93561:
..... $ 183,322

Sec. 36. DEPARTMENT OF INSPECTIONS AND APPEALS. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of inspections and appeals for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The

following amounts are appropriated to the department of inspections and appeals for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For assistance for intrastate meat and poultry, grant number 10475:
..... $ 9,801
2. For food and drug research grants, grant number 13103:
..... $ 11,512
3. For Title XVIII Medicare inspections, grant number 13773:
..... $ 1,774,248
4. For state medicaid fraud control unit, grant number 13775:
..... $ 13,698
5. For state medicaid fraud control, grant number 93775:
..... $ 440,277

Sec. 37. JUDICIAL DEPARTMENT. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the judicial department for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amount is appropriated to the judicial department for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

For United States department of health and human services, grant number 13000:
..... $ 150,000

Sec. 38. DEPARTMENT OF JUSTICE. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of justice for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the department of justice for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For United States department of justice, grant number 16000:
..... $ 5,429,000
2. For United States department of health and human services, grant number 13000:
..... $ 500,000

Sec. 39. IOWA LAW ENFORCEMENT ACADEMY. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the Iowa law enforcement academy for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 40. DEPARTMENT OF MANAGEMENT. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of management for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 41. DEPARTMENT OF NATURAL RESOURCES. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of natural resources for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the department of natural resources for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For forestry incentive program, grant number 10064:
..... $ 455,000
2. For cooperative forestry assistance, grant number 10664:
..... $ 425,000

3. For fish restoration, grant number 15605:
..... $ 5,306,676
4. For wildlife restoration, grant number 15611:
..... $ 3,000,000
5. For acquisition, development, and planning, grant number 15916:
..... $ 254,000
6. For recreation boating safety financial assistance, grant number 20005:
..... $ 509,000
7. For consolidated environmental programs support, grant number 66600:
..... $ 7,810,943
8. For energy conservation, grant number 81041:
..... $ 1,380,047
9. For Title VI revolving loan fund, grant number 66458:
..... $ 1,170,000
10. For disaster assistance, grant number 83516:
..... $ 5,000
11. For United States geological survey, soil conservation service, mapping projects, grant number 15808:
..... $ 65,193
12. For rare and endangered species, grant number 15612:
..... $ 27,351

Sec. 42. BOARD OF PAROLE. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the board of parole for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 43. DEPARTMENT OF PERSONNEL. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of personnel for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 44. DEPARTMENT OF PUBLIC DEFENSE. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of public defense for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the department of public defense for the fiscal year beginning July 1, 1998, and ending June 30, 1999:
1. For military operations — Army national guard, grant number 12991:
..... $ 1,396,776
2. For superfund authorization, grant number 83011:
..... $ 81,112
3. For state and local emergency operations centers, grant number 83512:
..... $ 3,000
4. For state disaster preparedness grants, grant number 83505:
..... $ 92,120
5. For state and local assistance, grant number 83534:
..... $ 1,274,952
6. For disaster assistance, grant number 83516:
..... $ 4,754,643
7. For hazardous materials transport, grant number 20703:
..... $ 97,222

8. For operations and maintenance, grant number 12401:
..... $ 8,830,576
9. For operations and projects, grant number 12402:
..... $ 5,557

Sec. 45. PUBLIC EMPLOYMENT RELATIONS BOARD. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the public employment relations board for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 46. IOWA DEPARTMENT OF PUBLIC HEALTH. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the Iowa department of public health for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the Iowa department of public health for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For women, infants, and children, grant number 10557:
..... $ 34,352,589
2. For food and drug — research grants, grant number 13103:
..... $ 14,600
3. For primary care services, grant number 13130:
..... $ 210,189
4. For health services — grants and contracts, grant number 13226:
..... $ 265,000
5. For health programs for refugees, grant number 13987:
..... $ 31,932
6. For radon control, grant number 66032:
..... $ 294,903
7. For toxic substance compliance monitoring, grant number 66701:
..... $ 288,774
8. For asbestos enforcement program, grant number 66702:
..... $ 128,613
9. For drug-free schools — communities, grant number 84186:
..... $ 1,008,925
10. For hazardous waste, grant number 66802:
..... $ 60,942
11. For regional delivery systems, grant number 93110:
..... $ 220,713
12. For TB control — elimination, grant number 93116:
..... $ 281,302
13. For AIDS prevention project, grant number 93118:
..... $ 265,429
14. For physician education, grant number 93161:
..... $ 425,579
15. For childhood lead abatement, grant number 93197:
..... $ 761,904
16. For family planning projects, grant number 93217:
..... $ 614,500
17. For immunization program, grant number 93268:
..... $ 2,748,737
18. For needs assessment grant, grant number 93283:
..... $ 847,718

19. For rural health, grant number 93913:
..... $ 53,519
20. For HIV cares grants, grant number 93917:
..... $ 893,235
21. For trauma care, grant number 93953:
..... $ 14,554
22. For preventive health services, grant number 93977:
..... $ 702,729
23. For AIDS prevention project, grant number 93940:
..... $ 1,255,203
24. For breast and cervical cancer, grant number 93919:
..... $ 2,546,183
25. For consumer protection safety, grant number 87001:
..... $ 1,000
26. For federal emergency medical services for children, grant number 93127:
..... $ 241,734
27. For federal environmental protection agency, grant number 66000:
..... $ 35,000
28. For United States department of health and human services, food and drug administration, grant number 13101:
..... $ 93,490
29. For federal environmental protection agency lead certification program, grant number 66707:
..... $ 310,545
30. Loan repayment, grant number 93165:
..... $ 75,000
31. Primary care services, grant number 93130:
..... $ 26,500
32. Nutrition education and training, grant number 10564:
..... $ 53,128
33. Community scholarship, grant number 93931:
..... $ 36,000
34. For diabetes, grant number 93988:
..... $ 224,525
35. For risk survey, grant number 93945:
..... $ 4,800
36. For AIDS prevention project, grant number 93944:
..... $ 39,200

Sec. 47. DEPARTMENT OF PUBLIC SAFETY. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of public safety, for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the department of public safety for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For department of housing and urban development, grant number 14000:
..... $ 25,000
2. For department of justice, grant number 16000:
..... $ 698,845
3. For marijuana control, grant number 16580:
..... $ 58,000
4. For state and community highway safety, grant number 20600:
..... $ 2,417,348

5. For narcotics control, grant number 16502:
..... $ 750,000

Sec. 48. STATE BOARD OF REGENTS. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the state board of regents for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the state board of regents for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For agricultural experiment, grant number 10203:
..... $ 3,849,235
2. For cooperative extension service, grant number 10500:
..... $ 8,150,000
3. For school breakfast program, grant number 10553:
..... $ 10,800
4. For school lunch program, grant number 10555:
..... $ 202,858
5. For maternal and child health, grant number 13110:
..... $ 131,709
6. For cancer treatment research, grant number 13395:
..... $ 8,105
7. For general research, grant number 83500:
..... $ 220,351,369
8. For handicapped — state grants, grant number 84027:
..... $ 278,826
9. For rehabilitation services basic support, grant number 84126:
..... $ 56,700

Sec. 49. DEPARTMENT OF REVENUE AND FINANCE. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of revenue and finance for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 50. OFFICE OF SECRETARY OF STATE. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the office of secretary of state for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 51. IOWA STATE FAIR AUTHORITY. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the Iowa state fair authority for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 52. OFFICE OF STATE-FEDERAL RELATIONS. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the office of state-federal relations for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 53. IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are

appropriated to the Iowa telecommunications and technology commission for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

The following amount is appropriated to the Iowa telecommunications and technology commission for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

General services administration pilot, grant number 3999:

..... $ 3,500,000

Sec. 54. OFFICE OF TREASURER OF STATE. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the office of treasurer of state for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 55. STATE DEPARTMENT OF TRANSPORTATION. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the state department of transportation for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the state department of transportation for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For airport improvement program — federal aviation administration, grant number 20106:

..... $ 100,000

2. For highway research, plan and construction, grant number 20205:

..... $ 205,078,000

3. For motor carrier safety assistance, grant number 20217:

..... $ 50,000

4. For local rail service assistance, grant number 20308:

..... $ 400,000

5. For urban mass transportation, grant number 20507:

..... $ 8,500,200

Sec. 56. COMMISSION OF VETERANS AFFAIRS. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the commission of veterans affairs for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 57. DEPARTMENT OF WORKFORCE DEVELOPMENT. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are appropriated to the department of workforce development for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law. The following amounts are appropriated to the department of workforce development for the fiscal year beginning July 1, 1998, and ending June 30, 1999:

1. For trade expansion Act, grant number 11309:

..... $ 1,310,000

2. For child support enforcement, grant number 13783:

..... $ 109,068

3. For employment statistics, grant number 17002:

..... $ 1,400,416

4. For research and statistics, grant number 17005:

..... $ 101,649

5. For labor certification, grant number 17202:
..... $ 108,885
6. For employment service, grant number 17207:
..... $ 7,274,490
7. For unemployment insurance grant to state, grant number 17225:
..... $ 13,730,000
8. For occupational safety and health, grant number 17500:
..... $ 1,970,215
9. For disabled veterans outreach, grant number 17801:
..... $ 956,101
10. For local veterans employment representation, grant number 17804:
..... $ 1,282,797
11. For unemployment insurance trust receipts, grant number 17998:
..... $ 184,010,000
12. For the federal Job Training Partnership Act, grant number 17250:
..... $ 37,670,394
13. For the federal department of labor, grant number 17000:
..... $ 1,000,000
14. For the federal young adult conservation corps, grant number 10663:
..... $ 10,000

Sec. 58. LIHEAP FUNDING — DISCONNECTION PROHIBITION. It is the intent of the general assembly that if the governor determines federal funds are insufficient to adequately provide for certification of eligibility for the low-income home energy assistance program by the community action agencies during the federal fiscal year which commences October 1, 1998, the Iowa utilities board shall issue an order prohibiting disconnection of service from November 1 through April 1 by a regulated public utility furnishing gas or electricity to households whose income falls at or below one hundred fifty percent of the federal poverty level as established by the United States office of management and budget. The board shall promptly adopt rules in accordance with section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement this requirement. The energy assistance bureau of the department of human rights, in consultation with the community action agencies, shall certify to the utilities, households that are eligible for moratorium protection utilizing the agency's existing electronic database. Rules adopted under this section shall also be published as a notice of intended action as provided in section 17A.4.

Approved March 23, 1998

CHAPTER 1211

APPROPRIATIONS — ENERGY CONSERVATION TRUST FUNDS

H.F. 2210

AN ACT relating to energy conservation including making appropriations of petroleum overcharge funds and providing for the dissolution of the energy fund disbursement council and intermodal revolving loan fund.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. There is appropriated from those funds designated within the energy conservation trust created in section 473.11, for disbursement pursuant to section 473.11, to the

following named agencies for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. To the division of community action agencies of the department of human rights for qualifying energy conservation programs for low-income persons, including but not limited to energy weatherization projects, which target the highest energy users, and including administrative costs:

a. To be expended first from the office of hearings and appeals second-stage settlement (OHA) fund and then the Warner/Imperial and Stripper Well funds:

..... $ 400,000

b. To be expended from the Diamond Shamrock fund:

..... $ 300,000

2. To the department of natural resources for the following purposes:

a. For the state energy program, from the Exxon fund:

..... $ 115,000

b. For administration of petroleum overcharge programs from the Stripper Well fund, not to exceed the following amount:

..... $ 200,000

3. To the state department of transportation for deposit into the intermodal revolving loan fund established in the department from funds previously advanced to and repaid by the department from the Exxon fund:

..... $ 725,000

The intermodal revolving loan fund shall remain in existence until June 30, 2019.

Notwithstanding section 8.33, the unencumbered or unobligated moneys remaining at the end of any fiscal year from the appropriations made in subsections 1, 2, and 3 shall not revert but shall be available for expenditure during subsequent fiscal years until expended for the purposes for which originally appropriated.

Sec. 2. Section 473.11, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 7. On June 30, 2003, the energy fund disbursement council established in subsection 3 shall be dissolved. At that time, the department of natural resources shall be responsible for the disbursement of any funds either received or remaining in the energy conservation trust. These disbursements shall be for projects and programs consistent with the allowable uses for the energy conservation trust. Also, at that time, and annually thereafter, the state department of transportation shall report to the department of natural resources on the status of the intermodal revolving loan fund established in the department. In the fiscal year beginning July 1, 2019, the department of natural resources shall assume responsibility for funds remaining in the intermodal revolving loan fund and disburse them for energy conservation projects and programs consistent with the allowable uses for the energy conservation trust.

Sec. 3. 1993 Iowa Acts, chapter 11, section 3, is repealed.

Approved March 31, 1998

CHAPTER 1212

APPROPRIATIONS — TRANSPORTATION

H.F. 2499

AN ACT relating to and making transportation and other infrastructure-related appropriations to the state department of transportation and other state agencies, including allocation and use of moneys from the general fund of the state, road use tax fund, primary road fund, and the motorcycle rider education fund, providing for the nonreversion of certain moneys, and making statutory changes relating to appropriations.

Be It Enacted by the General Assembly of the State of Iowa:

STATE DEPARTMENT OF TRANSPORTATION

Section 1. There is appropriated from the general fund of the state to the state department of transportation for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. a. For providing assistance for the restoration, conservation, improvement, and construction of railroad main lines, branch lines, switching yards, and sidings as required in section 327H.18, for use by the Iowa railway finance authority as provided in chapter 327I:
..... $ 1,190,000

b. For airport engineering studies and improvement projects as provided in chapter 328:
..... $ 2,484,000

2. For planning and programming, for salaries, support, maintenance, and miscellaneous purposes:
..... $ 265,465

3. For transfer to the Iowa civil air patrol:
..... $ 16,000

Sec. 2. There is appropriated from the road use tax fund to the state department of transportation for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, for the purposes designated:

1. For the payment of costs associated with the production of motor vehicle licenses, as defined in section 321.1, subsection 43:
..... $ 1,644,000

2. For salaries, support, maintenance, and miscellaneous purposes:

a. Operations and finance:
..... $ 4,603,525

b. Administrative services:
..... $ 901,910

c. Planning and programming:
..... $ 443,490

d. Motor vehicles:
..... $ 23,855,755

3. For payments to the department of personnel for expenses incurred in administering the merit system on behalf of the state department of transportation, as required by chapter 19A:
..... $ 35,000

4. Unemployment compensation:
..... $ 17,000

5. For payments to the department of personnel for paying workers' compensation claims under chapter 85 on behalf of employees of the state department of transportation:
..... $ 77,000

6. For payment to the general fund of the state for indirect cost recoveries:
..... $ 96,000
7. For reimbursement to the auditor of state for audit expenses as provided in section 11.5B:
..... $ 37,520
8. For up to the following amount for membership in the North America's superhighway corridor coalition:
..... $ 150,000
9. For transfer to the department of public safety for operating a system providing toll-free telephone road and weather conditions information:
..... $ 100,000
10. For improvements to scale facility in Fremont county:
..... $ 550,000

Sec. 3. There is appropriated from the primary road fund to the state department of transportation for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For salaries, support, maintenance, miscellaneous purposes and the following full-time equivalent positions:

a. Operations and finance:
..... $ 28,278,797
..... FTEs 271.00

b. Administrative services:
..... $ 5,540,303
..... FTEs 98.00

c. Planning and programming:
..... $ 8,417,646
..... FTEs 174.00

d. Project development:
..... $ 55,478,000
..... FTEs 1,174.00

Not more than $317,000, plus an allocation for salary adjustment, shall be expended from the highway beautification fund for salaries and benefits for not more than 9.00 FTEs.

e. Maintenance:
..... $ 101,812,000
..... FTEs 1,591.00

f. Motor vehicles:
..... $ 917,265
..... FTEs 563.00

2. For deposit in the state department of transportation's highway materials and equipment revolving fund established by section 307.47 for funding the increased replacement cost of equipment:
..... $ 3,939,000

Not more than $3,371,000 plus an allocation for salary adjustment, from the highway materials and equipment revolving fund, shall be expended for salaries and benefits for not more than 89.00 FTEs.

3. For payments to the department of personnel for expenses incurred in administering the merit system on behalf of the state department of transportation, as required by chapter 19A:
..... $ 665,000
4. Unemployment compensation:
..... $ 328,000

5. For payments to the department of personnel for paying workers' compensation claims under chapter 85 on behalf of the employees of the state department of transportation:
..... $ 1,463,000

6. For disposal of hazardous wastes from field locations and the central complex:
..... $ 1,000,000

7. For payment to the general fund for indirect cost recoveries:
..... $ 704,000

8. For reimbursement to the auditor of state for audit expenses as provided in section 11.5B:
..... $ 230,480

9. For improvements to upgrade the handling of wastewater at various field facilities throughout the state:
..... $ 300,000

10. For replacement of roofs according to the department's priority list at field facilities throughout the state:
..... $ 300,000

11. For field garage facilities throughout the state:
..... $ 1,500,000

12. For the federal Americans With Disabilities Act accessibility improvements to department facilities throughout the state:
..... $ 200,000

13. For construction of salt storage building at various field facilities throughout the state:
..... $ 500,000

14. For remodeling the third floor of the administration building in Ames, including the removal of asbestos and the replacement of HVAC and electrical systems:
..... $ 1,250,000

Section 8.33 does not apply to funds appropriated in subsections 9 through 14. Funds appropriated in subsections 9 through 14 shall remain available for expenditure for the purposes designated until June 30, 2001. Unencumbered or unobligated funds remaining on June 30, 2001, from funds appropriated in subsections 9 through 14 shall revert to the primary road fund on August 31, 2001.

Sec. 4. There is appropriated from the motorcycle rider education fund to the department of transportation for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For a grant to a statewide motorcycle rights organization operating a mobile motorcycle education program, for the purchase of motorcycles and related equipment to be used for training and educating persons to operate motorcycles in a safe manner:
..... $ 25,000

Sec. 5. Section 307.49, Code 1997, is amended to read as follows:

307.49 CONTRACT BIDS.

A bidder awarded a contract with the department shall disclose the names of all subcontractors, who will work on the project being bid or who the bidder anticipates will work on the project being bid, within forty-eight hours after the award of the contract. If a subcontractor named by a bidder awarded a contract is replaced, or if the cost of work to be done by a subcontractor is reduced, the bidder shall disclose the name of the new subcontractor or the amount of the reduced cost. If a subcontractor is added by a bidder awarded a contract, the bidder shall disclose the name of the new subcontractor.

The department shall issue electronic project bid notices for distribution to the targeted small business web page located at the department of economic development. The notices shall be provided to the targeted small business marketing manager forty-eight hours prior to the issuance of all project bid notices. The notices shall contain a description of the project, a point of contact for each project, and any subcontract goals included in the bid.

Sec. 6. Section 312.2, subsection 13, Code 1997, is amended to read as follows:

13. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the general fund of the state from revenues credited to the road use tax fund under section 423.24, subsection 1, paragraph "d", an amount equal to ~~twenty-five~~ ten cents on each title issuance for motor vehicle fraud law enforcement and prosecution purposes including, but not limited to, the enforcement of state and federal odometer laws. Moneys deposited to the general fund under this subsection are subject to the requirements of section 8.60. This subsection shall be repealed at the end of fiscal year 1999.

Sec. 7. NEW SECTION. 314.17 MOWING ON INTERSTATES AND PRIMARY HIGHWAYS.

On or after January 1, 2003, the department shall not mow roadside vegetation on the rights-of-way or medians on any primary or interstate highway. Mowing shall be permitted as follows:

1. On rights-of-way which include drainage ditch areas.
2. On rights-of-way within three miles of the corporate limits of a city.
3. To promote native species of vegetation or other long-lived and adaptable vegetation.
4. For establishing control of damaging insect populations, noxious weeds, and invader plant species.
5. For visibility and safety reasons.

Sec. 8. Section 602.8108, subsection 5, Code 1997, is amended to read as follows:

5. The state court administrator shall allocate all of the fines and fees attributable to commercial vehicle violation citations issued by motor vehicle division personnel of the state department of transportation to the treasurer of state for deposit in the road use tax fund. ~~However, the fines and fees to be deposited under this subsection shall not be deposited in the road use tax fund unless and until the deposit to the Iowa prison infrastructure fund provided for in section 602.8108A has been made.~~

Sec. 9. Section 602.8108A, subsection 1, Code Supplement 1997, is amended to read as follows:

1. The Iowa prison infrastructure fund is created and established as a separate and distinct fund in the state treasury. Notwithstanding any other provision of this chapter to the contrary, the first eight million dollars and, beginning July 1, 1997, the first nine million five hundred thousand dollars, of moneys remitted to the treasurer of state from fines, fees, costs, and forfeited bail collected by the clerks of the district court in criminal cases, including those collected for both scheduled and nonscheduled violations, collected in each fiscal year commencing with the fiscal year beginning July 1, 1995, shall be deposited in the fund. Interest and other income earned by the fund shall be deposited in the fund. However, beginning with the fiscal year beginning July 1, 1998, all fines and fees attributable to commercial vehicle violation citations issued after July 1, 1998, shall be deposited as provided in section 602.8108, subsection 5. If the treasurer of state determines pursuant to 1994 Iowa Acts, chapter 1196, that bonds can be issued pursuant to this section and section 16.177, then the moneys in the fund are appropriated to and for the purpose of paying the principal of, premium, if any, and interest on bonds issued by the Iowa finance authority under section 16.177. Except as otherwise provided in subsection 2, amounts in the funds shall not be subject to appropriation for any purpose by the general assembly, but shall be used only for the purposes set forth in this section. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the department of corrections including the automatic disbursement of funds pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund subject to any limitations contained in any applicable bond proceedings. Any amounts remaining in the fund at the end of each fiscal year shall be transferred to the general fund of the state.

Approved April 22, 1998

CHAPTER 1213

COUNTY MENTAL HEALTH, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES SERVICE FUNDING

H.F. 2545

AN ACT relating to county mental health, mental retardation, and developmental disabilities service funding, allocating an appropriation, and providing effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I — INTERFUND TRANSFERS

Section 1. Section 331.432, Code 1997, is amended to read as follows:

331.432 INTERFUND TRANSFERS.

1. It is unlawful to make permanent transfers of money between the general fund and the rural services fund.

2. Moneys credited to the secondary road fund for the construction and maintenance of secondary roads shall not be transferred.

3. Except as authorized in section 331.477, transfers of moneys between the county mental health, mental retardation, and developmental disabilities services fund and any other fund are prohibited.

4. Other transfers, including transfers from the debt service fund made in accordance with section 331.430, and transfers from the general or rural services fund to the secondary road fund in accordance with section 331.429, subsection 1, paragraphs "a" and "b", are not effective until authorized by resolution of the board.

5. The transfer of inactive funds is subject to section 24.21.

Sec. 2. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION II — FY 1999-2000 PROVISIONS

Sec. 3. ALLOWED GROWTH ALLOCATIONS. Moneys appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1999, and ending June 30, 2000, to be used for distribution to counties of the county mental health, mental retardation, and developmental disabilities allowed growth factor adjustment, in accordance with section 331.438, subsection 2, and section 331.439, subsection 3, are allocated as follows:

1. For distribution to counties in accordance with the formula provided in section 331.438, subsection 2, paragraph "b", as amended by this Act for FY 1999-2000:
..... $ 12,000,000

2. For deposit in the per capita expenditure target pool created in the property tax relief fund pursuant to this Act:
..... $ 2,126,362

3. For deposit in the incentive and efficiency pool created within the property tax relief fund pursuant to this Act:
..... $ 2,000,000

4. For deposit in the county risk pool created within the property tax relief fund pursuant to this Act:
..... $ 2,000,000

Sec. 4. Section 331.438, subsection 1, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. aa. "Per capita expenditure" means the amount derived from the sum of a county's expenditures for mental health, mental retardation, and developmental

disabilities services for a fiscal year as reported to the department of human services pursuant to section 331.439, plus the state payment to the county and any payments made under section 426B.5 for that fiscal year, divided by the county's general population for that fiscal year.

Sec. 5. Section 331.438, subsection 2, paragraph b, subparagraphs (1) and (2),* Code Supplement 1997, are amended to read as follows:

(1) ~~One-half~~ Seventy-five percent based upon the county's proportion of the state's general population.

(2) ~~One-half~~ Twenty-five percent based upon the county's proportion of the sum of the following for the fiscal year which commenced two years prior to the beginning date of the fiscal year in which the allowed growth factor adjustment moneys are distributed:

Sec. 6. Section 405A.4, subsection 2, Code 1997, is amended to read as follows:

2. The allocation of a county as determined under subsection 1 may be credited to the general, rural services, secondary road, or other special revenue fund of the county. The allocation of a county under subsection 1 shall not be credited to the county's mental health, mental retardation, and developmental disabilities services fund.

Sec. 7. Section 426B.2, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. As used in this chapter, and in sections 331.438 and 331.439, "population" means the latest applicable population estimate issued by the federal government.

Sec. 8. NEW SECTION. 426B.5 FUNDING POOLS.

1. PER CAPITA EXPENDITURE TARGET POOL.

a. A per capita expenditure target pool is created in the property tax relief fund. The pool shall consist of the moneys credited to the pool by law.

b. A statewide per capita expenditure target amount is established. The statewide per capita expenditure target amount shall be equal to the seventy-fifth percentile of all county per capita expenditures in the fiscal year beginning July 1, 1997, and ending June 30, 1998.

c. Only a county levying the maximum amount allowed for the county's mental health, mental retardation, and development disabilities services fund under section 331.424A is eligible to receive moneys from the per capita expenditure target pool for a fiscal year. Moneys available in the pool for a fiscal year shall be distributed to those eligible counties whose per capita expenditure in the latest fiscal year for which the actual expenditure information is available, is less than the statewide per capita expenditure target amount.

d. The distribution amount a county receives from the moneys available in the pool shall be determined based upon the county's proportion of the general population of the counties eligible to receive moneys from the pool for that fiscal year. However, a county shall not receive moneys in excess of the amount which would cause the county's per capita expenditure to equal the statewide per capita expenditure target. Moneys credited to the per capita expenditure target pool which remain unobligated or unexpended at the close of a fiscal year shall remain in the pool for distribution in the succeeding fiscal year.

e. The department of human services shall annually calculate the amount of moneys due to eligible counties in accordance with this subsection. The department shall authorize the issuance of warrants payable to the county treasurer for the amounts due and the warrants shall be issued in January.

2. INCENTIVE AND EFFICIENCY POOL.

a. An incentive and efficiency pool is created for making incentive payments to those counties achieving desired results and efficiently providing needed services.

b. The state-county management committee shall propose desired results which are attainable by those counties working to transform the service system to best meet the needs of persons with mental illness, mental retardation, or developmental disabilities in a

* "subparagraph (1) and subparagraph (2), unnumbered paragraph 1" probably intended

cost-effective manner. The committee shall propose desired results on an annual or other regular basis which will provide for continuous improvement of the service system. In addition, the committee shall identify objective performance measures for the desired results which may include but are not limited to rates of service provision among eligible populations, access to a range of services, movement toward less facility-based services, and medical loss ratio.

c. The desired results and performance measures shall be implemented in a manner that measures a county's progress compared to its prior history for purposes of making incentive and efficiency payments. The desired results and performance measures proposed by the state-county management committee shall be adopted in rule by the mental health and developmental disabilities commission.

d. Moneys shall be distributed from the incentive and efficiency pool to eligible counties based upon a percentage score for the degree of a county's attainment of the desired results and performance measures. The maximum amount which may be distributed to an eligible county is the county's percentage share of the state's general population applied to the amount available for distribution from the pool. The amount actually paid to an eligible county shall be the product of the county's percentage score and the county's maximum amount.

e. Moneys remaining unexpended or unobligated in the pool at the close of a fiscal year shall remain available for distribution in the succeeding fiscal year.

f. The department of human services shall annually calculate the amount of moneys due to an eligible county in accordance with this subsection. The department shall authorize the issuance of warrants payable to the county treasurer for the amounts due and the warrants shall be issued in January.

3. RISK POOL.

a. A risk pool is created in the property tax relief fund. The pool shall consist of the moneys credited to the pool by law.

b. A risk pool board is created. The board shall consist of two county supervisors, two county auditors, a member of the state-county management committee created in section 331.438 who was not appointed by the Iowa state association of counties, a member of the county finance committee created in chapter 333A who is not an elected official, and two single entry point process administrators, all appointed by the governor, and one member appointed by the director of human services. All members appointed by the governor shall be subject to confirmation by the senate. Members shall serve for three-year terms. A vacancy shall be filled in the same manner as the original appointment. Expenses and other costs of the risk pool board members representing counties shall be paid by the county of origin. Expenses and other costs of risk pool board members who do not represent counties shall be paid from a source determined by the governor. Staff assistance to the board shall be provided by the department of human services and counties. Actuarial expenses and other direct administrative costs shall be charged to the pool.

c. (1) A county must apply to the board for assistance from the risk pool on or before April 1 to cover an unanticipated cost in excess of the county's current fiscal year budget amount for the county's mental health, mental retardation, and development disabilities services fund. For purposes of applying for risk pool assistance and for repaying unused risk pool assistance, the current fiscal year budget amount shall be deemed to be the higher of either the budget amount in the management plan approved under section 331.439 for the fiscal year in which the application is made or the prior fiscal year's gross expenditures from the services fund.

(2) Basic eligibility for risk pool assistance shall require a projected need in excess of the sum of one hundred five percent of the county's current fiscal year budget amount and any amount of the county's prior fiscal year ending fund balance in excess of twenty-five percent of the county's gross expenditures from the services fund in the prior fiscal year.

(3) The board shall review the fiscal year-end financial records for all counties that are granted risk pool assistance. If the board determines a county's actual need for risk pool assistance was less than the amount of risk pool assistance granted to the county, the county shall refund the difference between the amount of assistance granted and the actual need. The county shall submit the refund within thirty days of receiving notice from the board. Refunds shall be credited to the risk pool.

(4) A county receiving risk pool assistance in a fiscal year in which the county did not levy the maximum amount allowed for the county's mental health, mental retardation, and development disabilities services fund under section 331.424A shall be required to repay the risk pool assistance in the succeeding fiscal year. The repayment amount shall be limited to the amount by which the actual amount levied was less than the maximum amount allowed.

(5) The board shall determine application requirements to ensure prudent use of risk pool assistance. The board may accept or reject an application for assistance in whole or in part. The decision of the board is final.

(6) The total amount of risk pool assistance shall be limited to the amount available in the risk pool for a fiscal year. If the total amount of eligible assistance exceeds the amount available in the risk pool the amount of assistance paid shall be prorated among the counties eligible for assistance.

d. A county may apply for preapproval for risk pool assistance based upon an individual who has an unanticipated disability condition with an exceptional cost and the individual is either new to the county's service system or the individual's unanticipated disability condition is new to the individual.

e. The department of human services shall annually calculate the amount of moneys due to eligible counties in accordance with the board's decisions. The department shall authorize the issuance of warrants payable to the county treasurer for the amounts due and the warrants shall be issued before the close of the fiscal year.

Sec. 9. EFFECTIVE DATE — APPLICABILITY.

1. The provisions of section 426B.5, subsection 2, as enacted by this Act, directing the state-county management committee to make recommendations and the mental health and developmental disabilities commission to adopt rules, being deemed of immediate importance, take effect upon enactment for purposes of the recommendations and rules and for counties collecting initial information during the fiscal year beginning July 1, 1998. Payments under section 426B.5, subsection 2, shall commence with the fiscal year beginning July 1, 1999. The rules shall be adopted on or before July 1, 1998. The mental health and mental retardation commission* may adopt emergency rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement the provisions of this Act and the rules shall be effective immediately upon filing unless a later date is specified in the rules. Any rules adopted in accordance with this subsection shall also be published as a notice of intended action as provided in section 17A.4.

2. Except as provided in subsection 1, this division of this Act takes effect July 1, 1998, for purposes of creating the risk pool board and completing required planning. This division of this Act is applicable to county budgets prepared and levies certified commencing with the fiscal year beginning July 1, 1999.

DIVISION III — FY 2000-2001

Sec. 10. Section 331.438, subsection 2, paragraph b, Code Supplement 1997, as amended by this Act, is amended by striking the paragraph and inserting in lieu thereof the following:

b. A county's portion of the allowed growth factor adjustment appropriation for a fiscal year shall be determined based upon the county's proportion of the state's general population.

Sec. 11. EFFECTIVE DATE — APPLICABILITY. This division of this Act takes effect July 1, 2000, and is applicable to county budgets prepared and levies certified for the fiscal

* The mental health and developmental disabilities commission probably intended

year beginning July 1, 2000. Prior to July 1, 2000, the counties shall perform those acts necessary for budget preparation and levy certification in order to implement this division of this Act on July 1, 2000.

Approved April 27, 1998

CHAPTER 1214

COMPENSATION FOR PUBLIC EMPLOYEES

H.F. 2553

AN ACT relating to the compensation and benefits for public officials and employees, providing for related matters, and making appropriations.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. STATE COURTS — JUSTICES, JUDGES, AND MAGISTRATES.

1. The salary rates specified in subsection 2 are for the fiscal year beginning July 1, 1998, effective for the pay period beginning June 26, 1998, and for subsequent fiscal years until otherwise provided by the general assembly. The salaries provided for in this section shall be paid from funds appropriated to the judicial department from the salary adjustment fund or if the appropriation is not sufficient, from the funds appropriated to the judicial department pursuant to any Act of the general assembly.

2. The following annual salary rates shall be paid to the persons holding the judicial positions indicated during the fiscal year beginning July 1, 1998, effective with the pay period beginning June 26, 1998, and for subsequent pay periods.

a. Chief justice of the supreme court:
..... $ 110,700

b. Each justice of the supreme court:
..... $ 106,700

c. Chief judge of the court of appeals:
..... $ 106,600

d. Each associate judge of the court of appeals:
..... $ 102,600

e. Each chief judge of a judicial district:
..... $ 101,700

f. Each district judge except the chief judge of a judicial district:
..... $ 97,600

g. Each district associate judge:
..... $ 85,000

h. Each judicial magistrate:
..... $ 23,100

i. Each senior judge:
..... $ 5,600

Sec. 2. SALARY RATE LIMITS. Persons receiving the salary rates established under section 1 of this Act shall not receive any additional salary adjustments provided by this Act.

Sec. 3. APPOINTED STATE OFFICERS. The governor shall establish a salary for appointed nonelected persons in the executive branch of state government holding a position enumerated in section 4 of this Act within the range provided, by considering, among other

items, the experience of the individual in the position, changes in the duties of the position, the incumbent's performance of assigned duties, and subordinates' salaries. However, the attorney general shall establish the salary for the consumer advocate, the chief justice of the state supreme court shall establish the salary for the state court administrator, the ethics and campaign disclosure board shall establish the salary of the executive director, and the state fair board shall establish the salary of the secretary of the state fair board, each within the salary range provided in section 4 of this Act.

The governor, in establishing salaries as provided in section 4 of this Act, shall take into consideration other employee benefits which may be provided for an individual including, but not limited to, housing.

A person whose salary is established pursuant to section 4 of this Act and who is a full-time permanent employee of the state shall not receive any other remuneration from the state or from any other source for the performance of that person's duties unless the additional remuneration is first approved by the governor or authorized by law. However, this provision does not exclude the reimbursement for necessary travel and expenses incurred in the performance of duties or fringe benefits normally provided to employees of the state.

Sec. 4. STATE OFFICERS — SALARY RATES AND RANGES. The following annual salary ranges are effective for the positions specified in this section for the fiscal year beginning July 1, 1998, and for subsequent fiscal years until otherwise provided by the general assembly. The governor or other person designated in section 3 of this Act shall determine the salary to be paid to the person indicated at a rate within the salary ranges indicated from funds appropriated by the general assembly for that purpose.

1. The following are salary ranges 1 through 5 for the fiscal year beginning July 1, 1998, effective with the pay period beginning June 26, 1998:

SALARY RANGES	Minimum	Maximum
(1) Range 1	$ 8,500	$27,400
(2) Range 2	$31,300	$55,100
(3) Range 3	$42,800	$64,300
(4) Range 4	$51,600	$73,500
(5) Range 5	$60,600	$82,700

2. The following are range 1 positions: There are no range 1 positions for the fiscal year beginning July 1, 1998.

3. The following are range 2 positions: administrator of the arts division of the department of cultural affairs, administrators of the division of persons with disabilities, the division on the status of women, the division on the status of African-Americans, the division of deaf services, and the division of Latino affairs of the department of human rights, administrator of the division of professional licensing and regulation of the department of commerce, and executive director of the commission of veterans affairs.

4. The following are range 3 positions: administrator of the division of emergency management of the department of public defense, administrator of the division of criminal and juvenile justice planning of the department of human rights, administrator of the division of community action agencies of the department of human rights, and chairperson and members of the employment appeal board of the department of inspections and appeals.

5. The following are range 4 positions: superintendent of banking, superintendent of credit unions, drug abuse prevention coordinator, administrator of the alcoholic beverages division of the department of commerce, state public defender, and chairperson, vice chairperson, and members of the board of parole.

6. The following are range 5 positions: consumer advocate, labor commissioner, industrial commissioner, administrator of the historical division of the department of cultural affairs, administrator of the public broadcasting division of the department of education, and commandant of the veterans home.

7. The following are salary ranges 6 through 9 for the fiscal year beginning July 1, 1998, effective with the pay period beginning June 26, 1998:

SALARY RANGES	Minimum	Maximum
(1) Range 6	$46,800	$ 73,500
(2) Range 7	$64,100	$ 83,400
(3) Range 8	$68,700	$ 96,800
(4) Range 9	$76,700	$115,400

8. The following are range 6 positions: director of the department of human rights, director of the Iowa state civil rights commission, executive director of the college student aid commission, director of the department for the blind, and executive director of the ethics and campaign disclosure board.

9. The following are range 7 positions: director of the department of cultural affairs, director of the department of elder affairs, director of the department of commerce, director of the law enforcement academy, and director of the department of inspections and appeals.

10. The following are range 8 positions: the administrator of the state racing and gaming commission of the department of inspections and appeals, director of the department of general services, director of the department of personnel, director of public health, commissioner of public safety, commissioner of insurance, executive director of the Iowa finance authority, director of revenue and finance, director of the department of natural resources, director of the department of corrections, and chairperson of the utilities board. The other members of the utilities board shall receive an annual salary within a range of not less than ninety percent but not more than ninety-five percent of the annual salary of the chairperson of the utilities board.

11. The following are range 9 positions: director of the department of education, director of human services, director of the department of economic development, executive director of the state board of regents, director of the state department of transportation, director of the department of workforce development, lottery commissioner, the state court administrator, secretary of the state fair board, and the director of the department of management.

Sec. 5. PUBLIC EMPLOYMENT RELATIONS BOARD.

1. The salary rates specified in this section are effective for the fiscal year beginning July 1, 1998, with the pay period beginning June 26, 1998, and for subsequent fiscal years until otherwise provided by the general assembly. The salaries provided for in this section shall be paid from funds appropriated to the public employment relations board from the salary adjustment fund, or if the appropriation is not sufficient from funds appropriated to the public employment relations board pursuant to any other Act of the general assembly.

2. The following annual salary rates shall be paid to the persons holding the positions indicated:

a. Chairperson of the public employment relations board:
..... $ 64,800

b. Two members of the public employment relations board:
..... $ 60,300

Sec. 6. COLLECTIVE BARGAINING AGREEMENTS FUNDED — GENERAL FUND. There is appropriated from the general fund of the state to the salary adjustment fund for distribution by the department of management to the various state departments, boards, commissions, councils, and agencies, including the state board of regents, for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the amount of $44,100,000, or so much thereof as may be necessary, to fully fund the following annual pay adjustments, expense reimbursements, and related benefits:

1. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the blue collar bargaining unit.

2. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the public safety bargaining unit.

3. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the security bargaining unit.

4. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the technical bargaining unit.

5. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the professional fiscal and staff bargaining unit.

6. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the university of northern Iowa faculty bargaining unit.

7. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the clerical bargaining unit.

8. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the professional social services bargaining unit.

9. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the community-based corrections bargaining unit.

10. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the judicial branch of government bargaining unit.

11. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the patient care bargaining unit.

12. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the science bargaining unit.

13. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the state university of Iowa graduate student bargaining unit.

14. The annual pay adjustments, related benefits, and expense reimbursements referred to in sections 7 and 8 of this Act for employees not covered by a collective bargaining agreement.

Sec. 7. NONCONTRACT STATE EMPLOYEES — GENERAL.

1. a. For the fiscal year beginning July 1, 1998, the maximum salary levels of all pay plans provided for in section 19A.9, subsection 2, as they exist for the fiscal year ending June 30, 1998, shall be increased by 3 percent for the pay period beginning June 26, 1998.

b. In addition to the increases specified in this subsection, for the fiscal year beginning July 1, 1998, employees may receive a step increase or the equivalent of a step increase.

2. The pay plans for state employees who are exempt from chapter 19A and who are included in the department of revenue and finance's centralized payroll system shall be increased in the same manner as provided in subsection 1.

3. This section does not apply to members of the general assembly, board members, commission members, salaries of persons set by the general assembly pursuant to this Act, or set by the governor, employees designated under section 19A.3, subsection 5, and employees covered by 581 IAC 4.5(17).

4. The pay plans for the bargaining eligible employees of the state shall be increased in the same manner as provided in subsection 1. As used in this section, "bargaining eligible employee" means an employee who is eligible to organize under chapter 20, but has not done so.

5. The policies for implementation of this section shall be approved by the governor.

Sec. 8. STATE EMPLOYEES — STATE BOARD OF REGENTS. Funds from the appropriation in section 6 of this Act shall be allocated to the state board of regents for the purposes of providing increases for state board of regents employees covered by section 6 of this Act and for employees not covered by a collective bargaining agreement as follows:

1. For regents merit system employees and merit supervisory employees to fund for the fiscal year, increases comparable to those provided for similar contract-covered employees in this Act.

2. For faculty members and professional and scientific employees to fund for the fiscal year, percentage increases comparable to those provided for contract-covered employees in section 6, subsection 6, of this Act.

Sec. 9. APPROPRIATIONS FROM ROAD FUNDS.

1. There is appropriated from the road use tax fund to the salary adjustment fund for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as may be necessary, to be used for the purpose designated:

To supplement other funds appropriated by the general assembly:

..... $ 697,759

2. There is appropriated from the primary road fund to the salary adjustment fund, for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as may be necessary, to be used for the purpose designated:

To supplement other funds appropriated by the general assembly:

..... $ 3,877,937

3. Except as otherwise provided in this Act, the amounts appropriated in subsections 1 and 2 shall be used to fund the annual pay adjustments, expense reimbursements, and related benefits for public employees as provided in this Act.

Sec. 10. SALARY ANNUALIZATION APPROPRIATION. There is appropriated from the general fund of the state to the following state departments, state boards, state commissions, and state agencies for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for salary adjustments:

1. Auditor of state — general office
..... $ 8,960
2. Iowa ethics and campaign disclosure board
..... $ 2,826
3. Department of commerce
a. Administration
..... $ 24,106
b. Alcoholic beverages division
..... $ 1,063
c. Banking division
..... $ 12,290
d. Credit union division
..... $ 3,728
e. Insurance division
..... $ 4,956
f. Professional licensing division
..... $ 1,606
g. Utilities division
..... $ 60,118
4. Secretary of state
a. Administration and elections
..... $ 2,554
b. Business services
..... $ 1,045
5. State-federal relations — general office
..... $ 1,802
6. Treasurer of state — general office
..... $ 10,875
7. Department of agriculture and land stewardship
a. Regulatory division
..... $ 868
b. Milk fund — regulatory
..... $ 2,243
c. Soil conservation division
..... $ 6,218

8. Department of natural resources
a. Administrative services ..... $ 2,651
b. Parks and preserves ..... $ 21,944
c. Forestry ..... $ 14,349
d. Energy and geology ..... $ 11,374
e. Environmental protection ..... $ 12,547
9. Department for the blind ..... $ 1,788
10. Department of elder affairs — state administration ..... $ 3,380
11. Drug enforcement and abuse prevention coordinator ..... $ 4,857
12. Department of public health — health protection ..... $ 1,575
13. Department of human rights
a. Central administration ..... $ 1,883
b. Latino affairs ..... $ 3,533
c. Status of African-Americans ..... $ 4,832
14. Department of veteran affairs — Iowa veterans home ..... $ 34,223
15. Department of human services
a. Eldora training school ..... $ 7,192
b. Cherokee mental health institute ..... $ 31,946
c. Clarinda mental health institute ..... $ 56,691
d. Mount Pleasant mental health institute ..... $ 7,244
e. Woodward state-hospital school ..... $ 120,721
f. General administration ..... $ 6,307
16. Department of justice — consumer advocate ..... $ 13,442
17. Department of corrections
a. Iowa state penitentiary — Fort Madison ..... $ 52,347
b. Medical and classification center — Oakdale ..... $ 33,837
c. Correctional release center — Newton ..... $ 113,030
d. Mount Pleasant correctional facility ..... $ 104,556
e. Fort Dodge correctional facility ..... $ 388,808

f. Central office
..... $ 63,491
g. Community-based corrections — district IV
..... $ 32,481
h. Community-based corrections — district V
..... $ 32,560
i. Community-based corrections — district VII
..... $ 21,293
18. Department of inspections and appeals — public defender
..... $ 7,777
19. Iowa law enforcement academy — operations
..... $ 8,056
20. State board of parole
..... $ 7,471
21. Department of public safety
a. Division of criminal investigation
..... $ 15,535
b. Narcotics enforcement
..... $ 4,020
c. Fire marshal
..... $ 1,963
d. Medical examiner
..... $ 2,333
22. Department of economic development
a. General administration
..... $ 2,843
b. Business development operations
..... $ 2,617
c. Small business program
..... $ 1,630
d. Procurement office
..... $ 2,157
e. Strategic investment fund
..... $ 3,261
f. Mainstreet/rural mainstreet
..... $ 2,210
g. Community development program
..... $ 2,123
h. Community development block grant
..... $ 3,982
i. International trade
..... $ 12,034
j. Tourism operations
..... $ 1,820

Sec. 11. SPECIAL FUNDS — AUTHORIZATION. To departmental revolving, trust, or special funds, except for the primary road fund or the road use tax fund, for which the general assembly has established an operating budget, a supplemental expenditure authorization is provided, unless otherwise provided, in an amount necessary to fund salary adjustments as otherwise provided in this Act.

Sec. 12. GENERAL FUND SALARY MONEYS. Funds appropriated from the general fund of the state in this Act relate only to salaries supported from general fund appropriations of the state except for employees of the state board of regents. The funds appropriated from the general fund of the state for employees of the state board of regents shall exclude general university indirect costs and general university federal funds.

Sec. 13. FEDERAL FUNDS APPROPRIATED. All federal grants to and the federal receipts of the agencies affected by this Act which are received and may be expended for purposes of this Act are appropriated for those purposes and as set forth in the federal grants or receipts.

Sec. 14. USE OF SURPLUS HEALTH INSURANCE FUNDS. The executive council shall transfer an amount, as determined by the department of management, from the health insurance surplus account to the health insurance premium operating account for the fiscal year beginning July 1, 1998, to reduce insurance premiums. Any amount remaining in the health insurance premium operating account at the end of the fiscal year beginning July 1, 1998, shall be transferred to the health insurance surplus account.

Sec. 15. STATE TROOPER MEAL ALLOWANCE. The sworn peace officers in the department of public safety who are not covered by a collective bargaining agreement negotiated pursuant to chapter 20, excluding capitol police supervisors, shall receive the same per diem meal allowance as the sworn peace officers in the department of public safety who are covered by a collective bargaining agreement negotiated pursuant to chapter 20.

The department of management shall estimate the cost of providing per diem meal allowances as provided in this section and shall allocate the funding for the allowance from the salary adjustment fund.

Sec. 16. SALARY MODEL ADMINISTRATOR/COORDINATOR. Of the funds appropriated by section 6 of this Act, $57,784 for the fiscal year beginning July 1, 1998, is allocated to the department of management for salary and support of the salary model administrator/coordinator who shall work in conjunction with the legislative fiscal bureau to maintain the state's salary model used for analyzing, comparing, and projecting state employee salary and benefit information, including information relating to employees of the state board of regents. The information shall be used in collective bargaining processes under chapter 20 and in calculating the funding needs contained within the annual salary adjustment legislation. A state employee organization as defined in section 20.3, subsection 4, may request information produced by the model, but the information provided shall not contain information attributable to individual employees.

Approved May 6, 1998

CHAPTER 1215

APPROPRIATIONS — EDUCATION

H.F. 2533

AN ACT relating to the funding of, operation of, and appropriation of moneys to the college student aid commission, the department of cultural affairs, the department of education, and the state board of regents, providing related statutory changes, and providing effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

COLLEGE STUDENT AID COMMISSION

Section 1. There is appropriated from the general fund of the state to the college student aid commission for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as may be necessary, to be used for the purposes designated:

1. GENERAL ADMINISTRATION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 319,936
..... FTEs 5.40

2. UNIVERSITY OF OSTEOPATHIC MEDICINE AND HEALTH SCIENCES

a. For forgivable loans to Iowa students attending the university of osteopathic medicine and health sciences under the forgivable loan program pursuant to section 261.19:

..... $ 379,260

b. For the university of osteopathic medicine and health sciences for an initiative in primary health care to direct primary care physicians to shortage areas in the state:

..... $ 395,000

3. STUDENT AID PROGRAMS

For payments to students for the Iowa grant program:

..... $ 1,161,850

4. NATIONAL GUARD TUITION AID PROGRAM

For purposes of providing national guard tuition aid under the program established in section 261.21:

..... $ 833,900

5. CHIROPRACTIC GRADUATE STUDENT FORGIVABLE LOAN PROGRAM

For purposes of providing forgivable loans under the program established in section 261.71:

..... $ 71,400

Sec. 2. There is appropriated from the loan reserve account to the college student aid commission for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as may be necessary, to be used for the purpose designated:

For operating costs of the Stafford loan program including salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 5,151,983
..... FTEs 34.60

*Sec. 3. *Notwithstanding the maximum allowed balance requirement of the scholarship and tuition grant reserve fund as provided in section 261.20, there is appropriated from the scholarship and tuition grant reserve fund to the college student aid commission for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the moneys remaining in the fund following transfer, pursuant to section 261.20 for the fiscal years ending June 30, 1997, and June 30, 1998, which are to be used for purposes of Iowa vocational-technical tuition grants in accordance with section 261.17. Funds appropriated in this section are in addition to funds appropriated in section 261.25, subsection 3.**

Sec. 4. *The department of revenue and finance shall deposit interest earned on the Pub. L. No. 105-33 recall account within the office of the treasurer of state during the fiscal year ending June 30, 1998, in the fund 61 default reduction account. Moneys in the fund 61 default reduction account are appropriated to the college student aid commission for the fiscal year beginning July 1, 1998, and ending June 30, 1999, for purposes of issuing emergency loans to assist needy students in avoiding default on a guaranteed or parental loan made under chapter 261.

DEPARTMENT OF CULTURAL AFFAIRS

Sec. 5. There is appropriated from the general fund of the state to the department of cultural affairs for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

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* Item veto; see message at end of the Act

1. ARTS DIVISION

For salaries, support, maintenance, miscellaneous purposes, including funds to match federal grants and for not more than the following full-time equivalent positions:

..... $ 1,328,615
..... FTEs 10.00

2. HISTORICAL DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 3,078,788
..... FTEs 65.70

Of the full-time equivalent positions appropriated for in this subsection, 1.20 FTEs represent the transition of personnel services contracts to full-time equivalent positions. The merit system provisions of chapter 19A and the provisions of chapter 20 shall not govern this transition movement into these full-time equivalent positions during the period beginning July 1, 1998, and ending August 31, 1998.

3. HISTORIC SITES

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 587,040
..... FTEs 8.00

4. ADMINISTRATION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 230,571
..... FTEs 4.30

The department of cultural affairs shall coordinate activities with the tourism division of the department of economic development to promote attendance at the state historical building and at this state's historic sites.

5. LOCAL ARTS COMPREHENSIVE EDUCATIONAL STRATEGIES PROGRAM (LACES)

For contracting with the Iowa alliance for arts education to execute their local arts comprehensive educational strategies:

..... $ 25,000

6. COMMUNITY CULTURAL GRANTS

For planning and programming for the community cultural grants program established under section 303.3, and for not more than the following full-time equivalent position:

..... $ 711,757
..... FTE .70

*Sec. 6. *HISTORIC SITES — WESTERN TRAILS CENTER. Notwithstanding section 8.33, the unencumbered or unobligated moneys remaining at the end of the fiscal year ending June 30, 1998, from the appropriations made in 1997 Iowa Acts, chapter 212, section 5, subsection 3, shall not revert but shall be available for expenditure during subsequent fiscal years for purposes of support, staffing, marketing, outreach, and programs at the western trails center in Council Bluffs.**

Sec. 7. NATIONAL ARTS RANKING SURVEYS. The department of cultural affairs shall, when calculating the amount of state financial assistance for the arts in national ranking surveys, include the amount appropriated for the local arts comprehensive educational strategies program, as well as the total estimated cost of the fine arts elements included in a plan and specifications for a state building or group of state buildings in accordance with section 304A.10.

* Item veto; see message at end of the Act

DEPARTMENT OF EDUCATION

Sec. 8. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as may be necessary, to be used for the purposes designated:

1. GENERAL ADMINISTRATION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	5,586,130
.....	FTEs	98.45

Of the full-time equivalent positions appropriated for in this section, 2.50 FTEs represent the transition of personnel services contractors to full-time equivalent positions. The merit system provisions of chapter 19A and the provisions of chapter 20 shall not govern this transition movement into these full-time equivalent positions during the period beginning July 1, 1998, and ending August 31, 1998.

2. VOCATIONAL EDUCATION ADMINISTRATION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	547,642
.....	FTEs	15.60

3. BOARD OF EDUCATIONAL EXAMINERS

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	201,973
.....	FTEs	2.00

4. VOCATIONAL REHABILITATION SERVICES DIVISION

a. For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	4,458,972
.....	FTEs	302.58

Of the full-time equivalent positions appropriated for in this section, .33 FTE represent the transition of personnel services contractors to full-time equivalent positions. The merit system provisions of chapter 19A and the provisions of chapter 20 shall not govern this transition movement into these full-time equivalent positions during the period beginning July 1, 1998, and ending August 31, 1998.

From the funds appropriated in this subsection, up to $2,000,000 shall be used to provide services to persons without regard to an order of selection. The division shall seek additional local matching funds in an amount sufficient to avoid any loss of federal funds.

The division of vocational rehabilitation services shall seek a waiver from the federal government to accept assessments of clients performed by area education agencies or any other governmental subdivision. The division shall also seek additional federal waivers to improve and increase the availability of supported employment services to Iowans.

The division of vocational rehabilitation services shall seek funds other than federal funds, which may include but are not limited to local funds from local provider entities, community colleges, area education agencies, and local education agencies, for purposes of matching federal vocational rehabilitation funds. The funds collected by the division may exceed the amount needed to match available federal vocational rehabilitation funds in an effort to qualify for additional federal funds when such funds become available.

Except where prohibited under federal law, the division of vocational rehabilitation services of the department of education shall accept client assessments, or assessments of potential clients, performed by other agencies in order to reduce duplication of effort.

Notwithstanding the full-time equivalent position limit established in this subsection, for the fiscal year ending June 30, 1999, if federal funding is received to pay the costs of additional employees for the vocational rehabilitation services division who would have duties

relating to vocational rehabilitation services paid for through federal funding, authorization to hire not more than four additional full-time equivalent employees shall be provided, the full-time equivalent position limit shall be exceeded, and the additional employees shall be hired by the division.

The division of vocational rehabilitation services shall enter into a chapter 28E agreement with the creative employment options program at the state university of Iowa to enable the division to count as a local match the state funds appropriated to the university for purposes of the creative employment options program.

b. For matching funds for programs to enable persons with severe physical or mental disabilities to function more independently, including salaries and support, and for not more than the following full-time equivalent positions:

.....	$	75,631
.....	FTEs	1.50

The highest priority use for the moneys appropriated under this lettered paragraph shall be for programs that emphasize employment and assist persons with severe physical or mental disabilities to find and maintain employment to enable them to function more independently.

5. STATE LIBRARY

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	3,072,098
.....	FTEs	21.00

Reimbursement of the institutions of higher learning under the state board of regents for participation in the access plus program during the fiscal year beginning July 1, 1998, and ending June 30, 1999, shall not exceed the total amount of reimbursement paid to the regents institutions of higher learning for participation in the access plus program during the fiscal year beginning July 1, 1997, and ending June 30, 1998.

6. REGIONAL LIBRARY

For state aid:

.....	$	1,637,000

7. PUBLIC BROADCASTING DIVISION

For salaries, support, maintenance, capital expenditures, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	7,374,296
.....	FTEs	105.80

Of the full-time equivalent positions appropriated for in this section, 5.80 FTEs represent the transition of personnel services contractors to full-time equivalent positions. The merit system provisions of chapter 19A and the provisions of chapter 20 shall not govern this transition movement into these full-time equivalent positions during the period beginning July 1, 1998, and ending August 31, 1998.

8. VOCATIONAL EDUCATION TO SECONDARY SCHOOLS

For reimbursement for vocational education expenditures made by secondary schools:

.....	$	3,308,850

Funds appropriated in this subsection shall be used for expenditures made by school districts to meet the standards set in sections 256.11, 258.4, and 260C.14 as a result of the enactment of 1989 Iowa Acts, chapter 278. Funds shall be used as reimbursement for vocational education expenditures made by secondary schools in the manner provided by the department of education for implementation of the standards set in 1989 Iowa Acts, chapter 278.

9. SCHOOL FOOD SERVICE

For use as state matching funds for federal programs that shall be disbursed according to federal regulations, including salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

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* Item veto; see message at end of the Act

..... $ 2,716,859
..... FTEs 14.00

10. TEXTBOOKS OF NONPUBLIC SCHOOL PUPILS

To provide funds for costs of providing textbooks to each resident pupil who attends a nonpublic school as authorized by section 301.1. The funding is limited to $20 per pupil and shall not exceed the comparable services offered to resident public school pupils:

..... $ 700,000

11. VOCATIONAL AGRICULTURE YOUTH ORGANIZATION

To assist a vocational agriculture youth organization sponsored by the schools to support the foundation established by that vocational agriculture youth organization and for other youth activities:

..... $ 107,900

12. FAMILY RESOURCE CENTERS

For support of the family resource center demonstration program established under chapter 256C:

..... $ 120,000

If legislation providing for the creation of an Iowa empowerment board, an Iowa empowerment fund, and for the appropriation of moneys to be administered by a community empowerment area, is enacted by the Seventy-seventh General Assembly, 1998 Session,* funds shall not be appropriated for purposes of the family resource centers in fiscal years succeeding the fiscal year ending June 30, 1999.

13. AREA EDUCATION AGENCY AUDIT

For allocation to the auditor of state for the costs of conducting the audit of area education agencies as provided in section 60 of this Act, if enacted:

..... $ 75,000

14. COMMUNITY COLLEGES

For general state financial aid, including general financial aid to merged areas in lieu of personal property tax replacement payments, to merged areas as defined in section 260C.2, for vocational education programs in accordance with chapters 258 and 260C:

..... $ 135,366,156

The funds appropriated in this subsection shall be allocated as follows:

a. Merged Area I ..... $ 6,480,559
b. Merged Area II ..... $ 7,622,742
c. Merged Area III ..... $ 7,169,222
d. Merged Area IV ..... $ 3,494,817
e. Merged Area V ..... $ 7,303,720
f. Merged Area VI ..... $ 6,784,474
g. Merged Area VII ..... $ 9,696,919
h. Merged Area IX ..... $ 11,891,522
i. Merged Area X ..... $ 18,518,801
j. Merged Area XI ..... $ 19,759,493
k. Merged Area XII ..... $ 7,821,349
l. Merged Area XIII ..... $ 8,011,904
m. Merged Area XIV ..... $ 3,542,758
n. Merged Area XV ..... $ 11,070,562
o. Merged Area XVI ..... $ 6,197,314

Sec. 9. DISTRIBUTION OF FUNDS APPROPRIATED. For the fiscal year beginning July 1, 1998, and ending June 30, 1999, moneys appropriated by the general assembly from the general fund to the department of education for community colleges for a fiscal year shall be allocated to each community college by the department of education in the following manner:

1. BASE FUNDING. The base funding for a fiscal year shall be equal to the amount each community college received as an allocation from appropriations made from the general fund of the state in the most recent fiscal year.

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* See chapters 1206 and 1216 herein

2. DISTRIBUTION FOR INFLATION. First priority shall be to give each college an increase based upon inflation. The inflation increase shall be not less than two percent. However, the inflation increase shall be equal to the national inflation rate, if it exceeds two percent, if the amount of state aid appropriated is equal to or greater than the national inflation rate.

3. DISTRIBUTION BASED ON PROPORTIONAL SHARE OF ENROLLMENT. The balance of the growth in state aid appropriations, once the inflation increase has been satisfied, shall be distributed based on each college's proportional share of enrollment. However, a minimum of one percent of the total growth shall be distributed in this manner.

4. If the total appropriation made by the general assembly is less than two percent growth, the entire increase shall be distributed as inflation.

Sec. 10. READING RECOVERY. The department of education shall analyze the expenditures of the moneys appropriated during the fiscal year beginning July 1, 1997, for purposes of the reading recovery program, and shall provide the analysis to the general assembly and the legislative fiscal bureau in a report not later than January 1, 1999. The analysis shall include moneys appropriated for fiscal year 1997-1998 and fiscal year 1998-1999. Priority for training shall be given to teachers employed by school districts and accredited nonpublic schools in Iowa. The department shall make every reasonable effort to publicize and promote the use of the center.

Sec. 11. Notwithstanding section 8.33 and 1997 Iowa Acts, chapter 209, section 10, the funds appropriated in 1997 Iowa Acts, chapter 209, section 10, subsection 11, to the department of education to develop an initiative to improve access to education through distance learning in postsecondary institutions, which remain unencumbered or unobligated on June 30, 1998, shall not revert to the general fund of the state but shall be reallocated to the division of libraries and information services for purposes of the open access program.

Sec. 12. Notwithstanding section 8.33 and section 294A.25, subsection 5, of the funds appropriated and paid to the department of education for participation in the national assessment of education progress, that remain unencumbered or unobligated on June 30, 1998, the amount remaining shall not revert to the general fund of the state but shall be reallocated to the division of libraries and information services for purposes of the open access program.

**Sec. 13. Notwithstanding section 8.33 and 1997 Iowa Acts, chapter 212, section 7, subsection 15, the funds appropriated to the department of education and allocated for rehabilitating computers for schools and libraries, which remain unencumbered or unobligated on June 30, 1998, shall not revert to the general fund of the state but shall be reallocated to merged areas as defined in section 260C.2. The funds reallocated in this section shall be as follows:*

1. Merged Area I	$	*2,745*
2. Merged Area II	$	*2,803*
3. Merged Area III	$	*1,987*
4. Merged Area IV	$	*1,015*
5. Merged Area V	$	*1,978*
6. Merged Area VI	$	*2,204*
7. Merged Area VII	$	*3,582*
8. Merged Area IX	$	*4,439*
9. Merged Area X	$	*8,303*
10. Merged Area XI	$	*8,294*
11. Merged Area XII	$	*2,672*
12. Merged Area XIII	$	*3,016*
13. Merged Area XIV	$	*1,087*
14. Merged Area XV	$	*3,853*
15. Merged Area XVI	$	*2,022**

* Item veto; see message at end of the Act

Sec. 14. BOARD OF EDUCATIONAL EXAMINERS LICENSING FEES. Notwithstanding section 272.10, up to 85 percent of any funds received resulting from an increase in fees approved and implemented for licensing by the state board of educational examiners after July 1, 1997, shall be available for the fiscal year beginning July 1, 1998, to the state board for purposes related to the state board's duties, including, but not limited to, additional full-time equivalent positions. The director of revenue and finance shall draw warrants upon the treasurer of state from the funds appropriated as provided in this section and shall make the funds resulting from the increase in fees available during the fiscal year to the state board on a monthly basis.

Sec. 15. DIGITAL TELEVISION CONVERSION. If 1998 Iowa Acts, House File 2395, section 5, relating to a study of digital television conversion by the public broadcasting division of the department of education, is enacted,* and upon the request of a public radio broadcaster the division shall include in the study a review of the tower space availability and related cost efficiencies for broadcast antennas and associated equipment for the transmission of public radio station broadcasts.

Sec. 16. 1998 Iowa Acts, Senate File 2366, section 1, subsection 1, unnumbered paragraphs 2 ***and 3***, if enacted,**** are amended by striking the unnumbered paragraphs.

STATE BOARD OF REGENTS

Sec. 17. There is appropriated from the general fund of the state to the state board of regents for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as may be necessary, to be used for the purposes designated:

1. OFFICE OF STATE BOARD OF REGENTS

a. For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 1,188,254
..... FTEs 15.63

The state board of regents, the department of management, and the legislative fiscal bureau shall cooperate to determine and agree upon, by November 15, 1998, the amount that needs to be appropriated for tuition replacement for the fiscal year beginning July 1, 1999.

The state board of regents shall submit a monthly financial report in a format agreed upon by the state board of regents office and the legislative fiscal bureau.

b. For allocation by the state board of regents to the state university of Iowa, the Iowa state university of science and technology, and the university of northern Iowa to reimburse the institutions for deficiencies in their operating funds resulting from the pledging of tuitions, student fees and charges, and institutional income to finance the cost of providing academic and administrative buildings and facilities and utility services at the institutions:

..... $ 27,868,702

c. For funds to be allocated to the southwest Iowa graduate studies center:

..... $ 108,562

d. For funds to be allocated to the siouxland interstate metropolitan planning council for the tristate graduate center under section 262.9, subsection 21:

..... $ 79,198

e. For funds to be allocated to the quad-cities graduate studies center:

..... $ 162,570

2. STATE UNIVERSITY OF IOWA

a. General university, including lakeside laboratory

For salaries, support, maintenance, equipment, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 225,760,397
..... FTEs 4,039.17

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* Chapter 1223 herein
** Item veto; see message at end of the Act
*** Chapter 1216 herein

b. University hospitals

For salaries, support, maintenance, equipment, and miscellaneous purposes and for medical and surgical treatment of indigent patients as provided in chapter 255, for medical education, and for not more than the following full-time equivalent positions:

.....	$	31,018,671
.....	FTEs	5,505.98

The university of Iowa hospitals and clinics shall submit quarterly a report regarding the portion of the appropriation in this lettered paragraph expended on medical education. The report shall be submitted in a format jointly developed by the university of Iowa hospitals and clinics, the legislative fiscal bureau, and the department of management, and shall delineate the expenditures and purposes of the funds.

Funds appropriated in this lettered paragraph shall not be used to perform abortions except medically necessary abortions, and shall not be used to operate the early termination of pregnancy clinic except for the performance of medically necessary abortions. For the purpose of this lettered paragraph, an abortion is the purposeful interruption of pregnancy with the intention other than to produce a live-born infant or to remove a dead fetus, and a medically necessary abortion is one performed under one of the following conditions:

(1) The attending physician certifies that continuing the pregnancy would endanger the life of the pregnant woman.

(2) The attending physician certifies that the fetus is physically deformed, mentally deficient, or afflicted with a congenital illness.

(3) The pregnancy is the result of a rape which is reported within 45 days of the incident to a law enforcement agency or public or private health agency which may include a family physician.

(4) The pregnancy is the result of incest which is reported within 150 days of the incident to a law enforcement agency or public or private health agency which may include a family physician.

(5) The abortion is a spontaneous abortion, commonly known as a miscarriage, wherein not all of the products of conception are expelled.

The total quota allocated to the counties for indigent patients for the fiscal year beginning July 1, 1998, shall not be lower than the total quota allocated to the counties for the fiscal year commencing July 1, 1997. The total quota shall be allocated among the counties on the basis of the 1990 census pursuant to section 255.16.

c. Psychiatric hospital

For salaries, support, maintenance, equipment, miscellaneous purposes, for the care, treatment, and maintenance of committed and voluntary public patients, and for not more than the following full-time equivalent positions:

.....	$	7,715,297
.....	FTEs	291.55

d. Hospital-school

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	6,511,712
.....	FTEs	163.58

e. Oakdale campus

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	3,036,711
.....	FTEs	63.58

f. State hygienic laboratory

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	3,683,664
.....	FTEs	102.49

g. Family practice program

For allocation by the dean of the college of medicine, with approval of the advisory board, to qualified participants, to carry out chapter 148D for the family practice program, including salaries and support, and for not more than the following full-time equivalent positions:

..... $ 2,225,663

..... FTEs 180.74

h. Child health care services

For specialized child health care services, including childhood cancer diagnostic and treatment network programs, rural comprehensive care for hemophilia patients, and the Iowa high-risk infant follow-up program, including salaries and support, and for not more than the following full-time equivalent positions:

..... $ 520,184

..... FTEs 10.18

i. Agricultural health and safety programs

For agricultural health and safety programs, and for not more than the following full-time equivalent positions:

..... $ 266,191

..... FTEs 3.48

j. Statewide cancer registry

For the statewide cancer registry, and for not more than the following full-time equivalent positions:

..... $ 206,084

..... FTEs 3.07

k. Substance abuse consortium

For funds to be allocated to the Iowa consortium for substance abuse research and evaluation, and for not more than the following full-time equivalent positions:

..... $ 69,241

..... FTEs 1.15

l. Center for biocatalysis

For the center for biocatalysis, and for not more than the following full-time equivalent positions:

..... $ 1,040,426

..... FTEs 10.40

m. National advanced driving simulator

For the national advanced driving simulator, and for not more than the following full-time equivalent positions:

..... $ 273,115

..... FTEs 3.58

n. For the primary health care initiative in the college of medicine and for not more than the following full-time equivalent positions:

..... $ 831,776

..... FTEs 11.00

From the funds appropriated in this lettered paragraph, $330,000 shall be allocated to the department of family practice at the state university of Iowa college of medicine for family practice faculty and support staff.

o. Birth defects registry

For the birth defects registry:

..... $ 50,000

p. Creative employment options

For creative employment options:

..... $ 200,000

3. IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY

a. General university

For salaries, support, maintenance, equipment, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	177,823,124
.....	FTEs	3,598.44

From the funds appropriated in this lettered paragraph, $40,000 shall be allocated for purposes of the institute for public leadership.

b. Agricultural experiment station

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	33,859,639
.....	FTEs	546.98

c. Cooperative extension service in agriculture and home economics

For salaries, support, maintenance, miscellaneous purposes, including salaries and support for the fire service institute, and for not more than the following full-time equivalent positions:

.....	$	21,596,852
.....	FTEs	443.91

From the funds appropriated in this lettered paragraph, $5,672 shall be used for salary annualization, $150,000 shall be used for the food, fiber, and environmental science program, and $766,000 shall be used for the value-added agricultural projects as part of the extension 21 program.

d. Leopold center

For agricultural research grants at Iowa state university under section 266.39B, and for not more than the following full-time equivalent positions:

.....	$	573,488
.....	FTEs	11.25

e. World food prize

.....	$	250,000

f. Livestock disease research

For deposit in and the use of the livestock disease research fund under section 267.8, and for not more than the following full-time equivalent positions:

.....	$	276,729
.....	FTEs	3.17

g. Bioinformatics

For salaries, support, maintenance, equipment, miscellaneous purposes, and for not more than the following full-time equivalent position:

.....	$	200,000
.....	FTE	1.00

4. UNIVERSITY OF NORTHERN IOWA

a. General university

For salaries, support, maintenance, equipment, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	79,518,141
.....	FTEs	1,370.98

b. Recycling and reuse center

For purposes of the recycling and reuse center, and for not more than the following full-time equivalent position:

.....	$	240,622
.....	FTE	1.00

5. STATE SCHOOL FOR THE DEAF

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	7,230,884
.....	FTEs	124.14

6. IOWA BRAILLE AND SIGHT SAVING SCHOOL

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	4,029,325
.....	FTEs	91.36

7. TUITION AND TRANSPORTATION COSTS

For payment to local school boards for the tuition and transportation costs of students residing in the Iowa braille and sight saving school and the state school for the deaf pursuant to section 262.43 and for payment of certain clothing and transportation costs for students at these schools pursuant to section 270.5:

.....	$	16,941

Sec. 18. MEDICAL ASSISTANCE — SUPPLEMENTAL AMOUNTS. For the fiscal year beginning July 1, 1998, and ending June 30, 1999, the department of human services shall continue the supplemental disproportionate share and a supplemental indirect medical education adjustment applicable to state-owned acute care hospitals with more than 500 beds and shall reimburse qualifying hospitals pursuant to that adjustment with a supplemental amount for services provided medical assistance recipients. The adjustment shall generate supplemental payments intended to equal the state appropriation made to a qualifying hospital for treatment of indigent patients as provided in chapter 255. To the extent of the supplemental payments, a qualifying hospital shall, after receipt of the funds, transfer to the department of human services an amount equal to the actual supplemental payments that were made in that month. The aggregate amounts for the fiscal year shall not exceed the state appropriation made to the qualifying hospital for treatment of indigent patients as provided in chapter 255. The department of human services shall deposit the portion of these funds equal to the state share in the department's medical assistance account and the balance shall be credited to the general fund of the state. To the extent that state funds appropriated to a qualifying hospital for the treatment of indigent patients as provided in chapter 255 have been transferred to the department of human services as a result of these supplemental payments made to the qualifying hospital, the department shall not, directly or indirectly, recoup the supplemental payments made to a qualifying hospital for any reason, unless an equivalent amount of the funds transferred to the department of human services by a qualifying hospital pursuant to this provision is transferred to the qualifying hospital by the department.

If the state supplemental amount allotted to the state of Iowa for the federal fiscal year beginning October 1, 1998, and ending September 30, 1999, pursuant to section 1923(f)(3) of the federal Social Security Act, as amended, or pursuant to federal payments for indirect medical education is greater than the amount necessary to fund the federal share of the supplemental payments specified in the preceding paragraph, the department of human services shall increase the supplemental disproportionate share or supplemental indirect medical education adjustment by the lesser of the amount necessary to utilize fully the state supplemental amount or the amount of state funds appropriated to the state university of Iowa general education fund and allocated to the university for the college of medicine. The state university of Iowa shall transfer from the allocation for the college of medicine to the department of human services, on a monthly basis, an amount equal to the additional supplemental payments made during the previous month pursuant to this paragraph. A qualifying hospital receiving supplemental payments pursuant to this paragraph that are greater than the state appropriation made to the qualifying hospital for treatment of indigent patients as provided in chapter 255 shall be obligated as a condition of its participation in the medical assistance program to transfer to the state university of Iowa general education fund on a monthly basis an amount equal to the funds transferred by the state university of Iowa to the department of human services. To the extent that state funds appropriated to the state university of Iowa and allocated to the college of medicine have been transferred to the department of human services as a result of these supplemental payments made to the qualifying hospital, the department shall not, directly or indirectly, recoup these supplemental

payments made to a qualifying hospital for any reason, unless an equivalent amount of the funds transferred to the department of human services by the state university of Iowa pursuant to this paragraph is transferred to the qualifying hospital by the department.

Continuation of the supplemental disproportionate share and supplemental indirect medical education adjustment shall preserve the funds available to the university hospital for medical and surgical treatment of indigent patients as provided in chapter 255 and to the state university of Iowa for educational purposes at the same level as provided by the state funds initially appropriated for that purpose.

The department of human services shall, in any compilation of data or other report distributed to the public concerning payments to providers under the medical assistance program, set forth reimbursements to a qualifying hospital through the supplemental disproportionate share and supplemental indirect medical education adjustment as a separate item and shall not include such payments in the amounts otherwise reported as the reimbursement to a qualifying hospital for services to medical assistance recipients.

For purposes of this section, "supplemental payment" means a supplemental payment amount paid for medical assistance to a hospital qualifying for that payment under this section.

Sec. 19. STATE UNIVERSITY OF IOWA — DEPARTMENT OF HUMAN SERVICES. The department of human services shall transfer to the state university of Iowa for the purposes of the creative employment options program the same amount of moneys in the fiscal year beginning July 1, 1998, and ending June 30, 1999, as was transferred in the fiscal year beginning July 1, 1997, and ending June 30, 1998.

Sec. 20. For the fiscal year beginning July 1, 1998, and ending June 30, 1999, the state board of regents may use notes, bonds, or other evidences of indebtedness issued under section 262.48 to finance projects that will result in energy cost savings in an amount that will cause the state board to recover the cost of the projects within an average of six years.

Sec. 21. Notwithstanding section 270.7, the department of revenue and finance shall pay the state school for the deaf and the Iowa braille and sight saving school the moneys collected from the counties during the fiscal year beginning July 1, 1998, for expenses relating to prescription drug costs for students attending the state school for the deaf and the Iowa braille and sight saving school.

Sec. 22. 1997 Iowa Acts, chapter 212, section 11, subsection 1, paragraph b, subparagraph (2), is amended to read as follows:

(2) ~~Notwithstanding section 8.33, funds~~ Funds appropriated in this lettered paragraph remaining unencumbered or unobligated on June 30, 1998, shall ~~not~~ revert to the general fund of the state ~~but shall be available for expenditure for the purposes listed in this lettered paragraph during the subsequent fiscal year~~.

Sec. 23. Section 256.9, subsection 29, Code 1997, is amended by striking the subsection.

*Sec. 24. *Section 256.16, unnumbered paragraph 1, Code 1997, is amended to read as follows:*

*Pursuant to section 256.7, subsection 5, the state board shall adopt rules requiring all higher education institutions providing practitioner preparation to include in the professional education program, preparation that contributes to education of students with disabilities and students who are gifted and talented, along with preparation in reading recovery and other reading programs, which must be successfully completed before graduation from the practitioner preparation program.**

**Sec. 25. *Section 256.22, subsection 1, unnumbered paragraph 1, if enacted by 1998 Iowa Acts, Senate File 2366, is amended to read as follows:*

Subject to an appropriation of sufficient funds by the general assembly, the department shall establish a frontier school and extended year school grant program to provide for the

* Item veto; see message at end of the Act

*allocation of grants to school districts, or a collaboration of school districts, to provide technical assistance for conversion of an existing school to a frontier school or to an extended school year calendar, or for investigating the possibility of converting an existing school within a district to a frontier school or to an extended school year calendar. A district that wants to participate in the program shall submit to the department a written request for a grant by ~~September~~ October 1, ~~1998~~. The school district or collaboration of school districts shall agree to appoint a planning committee composed of parents, guardians, teachers, administrators, and individuals representing business, and the local community. The school district or collaboration shall also indicate in its request its intention to use any grant moneys received under this section to examine, at a minimum, all of the following:**

**Sec. 26. Section 256.22, subsections 2 and 5, if enacted by 1998 Iowa Acts, Senate File 2366, are amended to read as follows:*

2. Grant moneys shall be distributed to qualifying school districts by the department no later than October ~~15, 1998~~ 30 annually. Grant amounts shall be distributed as determined by the department. Not more than fifteen of the grants awarded per year in accordance with this section shall be used for purposes of frontier school planning or conversion. A grant awarded to a school district under this section shall not exceed twenty-five thousand dollars. Notwithstanding the other provisions of this section, the department shall not award grant moneys for technical assistance for conversion of an existing school to a frontier school or to an extended school year calendar prior to July 1, 1999.

*5. Except as provided in this subsection, frontier schools are exempt from all statutes and rules applicable to a school, a school board, or a school district, although a frontier school may elect to comply with one or more provisions of statute or rule. However, a frontier school shall meet all applicable state and local health and safety requirements; ~~the frontier school shall be organized and operated as a nonprofit cooperative association under chapter 498 or nonprofit corporation under chapter 504A;~~ the provisions of chapters 21 and 22 shall apply to meetings and records of the frontier school board; and frontier schools are subject to and shall comply with chapters 216 and 216A relating to civil and human rights, and sections 275.55A, 279.9A, 280.17B, 280.21B, and 282.4, relating to suspension and expulsion of a student. The frontier school shall employ or contract with necessary teachers, as defined in section 272.1, who hold a valid license with an endorsement for the type of service for which the teacher is employed. Frontier schools are subject to the same financial audits, audit procedures, and audit requirements as a school district. The audits shall be consistent with the requirements of sections 11.6, 11.14, 11.19, 256.9, subsection 19, and section 279.29, except to the extent deviations are necessary because of the program at the school. The department, auditor of state, or the legislative fiscal bureau may conduct financial, program, or compliance audits. The provisions of chapter 20 shall not apply to the board of directors of a frontier school or its employees.**

Sec. 27. Section 256.22, if enacted by 1998 Iowa Acts, Senate File 2366, section 4,** is amended by adding the following new subsection:

NEW SUBSECTION. 6. Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30 of the fiscal year for which the funds were appropriated shall not revert but shall be available for expenditure for the following fiscal year for purposes of this section.

**Sec. 28. NEW SECTION. 256.24 MATHEMATICS PILOT PROGRAMS.*

1. The Iowa mathematics and science coalition shall administer a two-year mathematics pilot program to help teachers become aware of possibilities for mathematics instruction other than traditional approaches and discuss those approaches with other teachers, employ new problem-centered approaches, develop routines that create an environment that promotes problem solving and student autonomy, and integrate new approaches to teaching mathematics in the regular mathematics curriculum.

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* Item veto; see message at end of the Act

** Chapter 1216 herein

2. The Iowa mathematics and science coalition shall locate the pilot programs in at least four public school districts, one located in a large school district, one located in a medium-sized school district, and two located in small school districts. In the case of a large school district, the district shall apply for a secondary school in the district provided that the middle and elementary schools within the secondary school attendance area shall be represented in the application. Districts participating in the program shall require all teachers employed by the district who teach mathematics to participate in the pilot program. However, in the case of a large district, only teachers employed to teach mathematics in the secondary school for which the application was made, and the teachers employed to teach mathematics in the middle and elementary schools within the secondary school attendance area, shall be required to participate in the pilot program. For purposes of this section, a large school district is a district with an actual enrollment of five thousand or more pupils; a medium-sized school district is a district with an actual enrollment that is greater than one thousand one hundred ninety-nine pupils, but less than five thousand pupils; and a small school district is a district with an actual enrollment of one thousand one hundred ninety-nine or fewer pupils.

*3. Funds appropriated for purposes of this section may be used for administrative costs of the program and shall be used to provide partial financial assistance to a participating school district. The portion of the program costs for which a district does not receive financial assistance pursuant to this section shall be paid by the district. However, the district may use phase III funds to pay this portion of the program costs.**

**Sec. 29. Section 256.44, subsection 3, if enacted by 1998 Iowa Acts, Senate File 2366, section 5, is amended to read as follows:*

*3. To receive a five-year annual award for achieving certification by the national board of professional teaching standards, a teacher shall apply to the department within one year of eligibility. Payment for awards shall be made only upon departmental approval of an application or recertification of eligibility. A nonrenewable term of eligibility shall be for five years or for the years the certificate is valid, whichever time period is shorter. In order to continue receipt of payments, a recipient shall annually recertify eligibility. It is the intent of the general assembly to appropriate not more than one million dollars from the general fund for purposes of this program during the lifetime of this program.**

Sec. 30. Section 257B.1A, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

257B.1A INTEREST FOR IOWA SCHOOLS FUND — TRANSFER OF INTEREST.

An interest for Iowa schools fund is established in the office of treasurer of state. The department of revenue and finance shall deposit interest earned on the permanent school fund in the interest for Iowa schools fund. The treasurer shall transfer moneys in the interest for Iowa schools fund on a quarterly basis as follows:

1. Fifty-five percent of the moneys deposited in the fund to the department of education for allocation to assist school districts in developing reading recovery programs. From the moneys allocated in this subsection, $100,000 shall be distributed to the reading recovery center, and the remaining balance shall be distributed to the area education agencies in the proportion that the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in the basic enrollment of grades one through six in the area served by an agency, bears to the sum of the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in the basic enrollments of grades one through six in all of the areas served by area education agencies in the state for the budget year.

2. Forty-five percent of the moneys deposited in the fund to the credit of the international center endowment fund of the international center for gifted and talented education established in section 263.8A.

Sec. 31. Section 260C.28, subsection 3, Code 1997, is amended to read as follows:

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* Item veto; see message at end of the Act

3. If the board of directors wishes to certify for a levy under subsection 2, the board shall direct the county commissioner of elections to call an election to submit the question of such authorization for the board at a regular or special election. If a majority of those voting on the question at the election favors authorization of the board to make such a levy, the board may certify for a levy as provided under subsection 2 during each of the ten years following the election. If a majority of those voting on the question at the election does not favor authorization of the board to make a levy under subsection 2, the board shall not submit the question to the voters again until ~~twelve months~~ three hundred fifty-five days have ~~lapsed~~ elapsed from the election.

*Sec. 32. *Section 261.2, Code 1997, is amended by adding the following new subsection:*

NEW SUBSECTION. *15. Be prohibited from expending interest moneys earned on accounts of the commission located within the office of the treasurer of state unless the general assembly specifically appropriates the interest moneys for use by the commission. If the general assembly appropriates interest moneys transferred from the Pub. L. No. 105-33 recall account within the office of the treasurer of state to the fund 61 default reduction account, the commission shall adopt rules for the expenditure of the interest moneys for purposes of issuing emergency loans to assist needy students in avoiding default on a guaranteed or parental loan made under this chapter.**

Sec. 33. Section 261.12, subsection 1, paragraph b, Code Supplement 1997, is amended to read as follows:

b. For the fiscal year beginning July 1, ~~1996~~ 1998, and for each following fiscal year, three thousand ~~four~~ six hundred fifty dollars.

Sec. 34. Section 261.17, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. All classes, including liberal arts classes, identified by the community college as required for completion of the student's vocational-technical or career option program shall be considered a part of the student's vocational-technical or career option program for the purpose of determining the student's eligibility for a grant. Notwithstanding subsection 2, if a student is making satisfactory academic progress but the student cannot complete a vocational-technical or career option program in the time frame allowed for a student to receive a vocational-technical tuition grant as provided in subsection 2 because additional classes are required to complete the program, the student may continue to receive a vocational-technical tuition grant for not more than one additional enrollment period.

Sec. 35. Section 261.17, subsection 6, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. Establish a late application deadline for new applicants which shall not be earlier than August 1 of the fiscal year in which the appropriation received pursuant to section 261.25, subsection 3, is made. From the funds appropriated by section 261.25, subsection 3, not less than sixty-three thousand dollars shall be used for tuition grants for late applicants as provided in this paragraph.

Sec. 36. NEW SECTION. 261.24 IOWA STATE FAIR SCHOLARSHIP.

The Iowa state fair scholarship fund is established in the office of treasurer of state to be administered by the commission. The commission shall adopt rules pursuant to chapter 17A for the administration of this section. The rules shall provide, at a minimum, that only residents of Iowa who have actively participated in the Iowa state fair and graduated from an accredited secondary school in Iowa shall be eligible to receive an Iowa state fair scholarship for matriculation at an eligible institution as defined in section 261.35. Notwithstanding section 12C.7, interest earned on money in the Iowa state fair scholarship fund shall be deposited into the fund and may be used by the commission only for Iowa state fair scholarship awards.

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* Item veto; see message at end of the Act

Sec. 37. Section 261.25, subsections 1 and 3, Code Supplement 1997, are amended to read as follows:

1. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of ~~forty-one~~ forty-four million six hundred sixty-four thousand seven hundred fifty dollars for tuition grants.

3. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of ~~one~~ two million ~~six~~ two hundred ~~eight~~ forty-four thousand ~~two~~ one hundred ~~fifty-seven~~ ninety-seven dollars for vocational-technical tuition grants.

Sec. 38. Section 261.25, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3A. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of ninety thousand dollars for the industrial technology forgivable loan program established in section 261.111.

Sec. 39. NEW SECTION. 261.111 INDUSTRIAL TECHNOLOGY FORGIVABLE LOAN PROGRAM.

1. There is established an industrial technology forgivable loan program to be administered by the college student aid commission. An individual is eligible for the forgivable loan program if the individual meets all of the following conditions:

a. Is a resident of this state who is enrolled as a sophomore, junior, or senior in the area of industrial technology education at an institution of higher learning under the control of the state board of regents or an accredited private institution as defined in section 261.9, or, is a resident of this state who is enrolled in the area of industrial technology at a community college in the state and the credits for the coursework in industrial technology are transferable to an institution of higher learning under the control of the state board of regents, or to an accredited private institution as defined in section 261.9.

b. Completes and files an application for an industrial technology forgivable loan. The individual shall be responsible for the submission of the parents' confidential statement for processing to both the commission and the institution in which the applicant is enrolling.

c. Reports promptly to the commission any information requested.

d. Files a new application and parents' confidential statement annually on the basis of which the applicant's eligibility for a renewed industrial technology forgivable loan will be evaluated and determined.

2. Forgivable loans to eligible students shall not become due until after the student graduates or leaves school. The individual's total loan amount, including principal and interest, shall be reduced by twenty percent for each year in which the individual remains an Iowa resident and is employed by a school district or an accredited nonpublic school as an industrial technology teacher. If the commission determines that the person does not meet the criteria for forgiveness of the principal and interest payments, the commission shall establish a plan for repayment of the principal and interest over a ten-year period. If a person required to make the repayment does not make the required payments, the commission shall provide for payment collection.

3. There is created an industrial technology forgivable loan repayment fund for deposit of payments made by forgivable loan recipients who do not fulfill the conditions of the forgivable loan program. Notwithstanding section 8.33, moneys deposited in the industrial technology forgivable loan repayment fund shall not revert to the general fund of the state at the end of any fiscal year but shall remain in the industrial technology forgivable loan repayment fund and be continuously available to make additional loans under the program.

Sec. 40. NEW SECTION. 261.112 INDUSTRIAL TECHNOLOGY FORGIVABLE LOAN ADMINISTRATION.

1. The college student aid commission shall administer the industrial technology forgivable loan program. The amount of an industrial technology forgivable loan shall not exceed three thousand dollars annually, or the amount of the student's established financial need, whichever is less.

2. The interest rate for the forgivable loan shall be equal to the interest rate collected by an eligible lender under the Iowa guaranteed student loan program for the year in which the forgivable loan is made.

Sec. 41. Section 279.14, subsection 2, if enacted by 1998 Iowa Acts, Senate File 2366,* is amended by striking the subsection and inserting in lieu thereof the following:

2. The determination of standards of performance expected of school district personnel shall be reserved as an exclusive management right of the school board and shall not be subject to mandatory negotiations under chapter 20. Notwithstanding chapter 20, objections to the procedures, use, or content of an evaluation in a teacher termination proceeding brought before the school board in a hearing held in accordance with section 279.16 or 279.27 shall not be subject to the grievance procedures negotiated in accordance with chapter 20. A school district shall not be obligated to process any evaluation grievance after service of a notice and recommendation to terminate an individual's continuing teaching contract in accordance with chapter 279.

Sec. 42. Section 279.14A, subsection 1, if enacted by 1998 Iowa Acts, Senate File 2366,** is amended to read as follows:

1. The department of education shall establish and implement a voluntary practitioner performance improvement program that shall provide technical assistance to teachers and administrators from each public school district and area education agency. Individuals under contract with a school district may receive technical assistance in accordance with this subsection. The department shall consult with the Iowa state education association, the Iowa association of school boards, the school administrators of Iowa, the professional educators of Iowa, and, as practicable, other entities providing similar programs, in developing the program. At a minimum, the program shall provide administrators with training, including but not limited to, seminars and written materials, relating to the areas of employment policies and procedures, employment documentation, performance evaluations, corrective performance techniques, discipline, termination, and support by qualified individuals for implementation of the program. The program shall not be used to provide consultation or assistance on specific employment situations. Training received by an administrator in accordance with this section shall apply toward an administrator's evaluator approval renewal.

Sec. 43. Section 279.19, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Notwithstanding any provision to the contrary, the grievance procedures of section 20.18 relating to job performance or job retention shall not apply to a teacher during the first two years of the teacher's probationary period. However, this paragraph shall not apply to a teacher who has successfully completed a probationary period in a school district in Iowa.

Sec. 44. Section 279.51, subsection 4, Code Supplement 1997, is amended to read as follows:

4. The department shall seek assistance from ~~the first in the nation in education foundation established in chapter 257A and other~~ foundations and public and private agencies in the evaluation of the programs funded under this section, and in the provision of support to school districts in developing and implementing the programs funded under this section.

***Sec. 45. *Section 279.60, subsection 5, if enacted by 1998 Iowa Acts, Senate File 2366, section 29, is amended to read as follows:*

5. The ranked list of nominees shall be submitted to the board of directors of the school district for review and approval. The board of directors shall be responsible for determining the number of awards and the amount of the awards based upon the moneys received by the

* Chapter 1216, §24 herein
** Chapter 1216, §25 herein
*** Item veto; see message at end of the Act

*school district pursuant to section 279.61. The board of directors shall also consult with practitioners to plan appropriate recognition events within the school district for presentation of the awards.**

Sec. 46. Section 294A.19, unnumbered paragraph 2, Code 1997, is amended to read as follows:

Annually, by November 1, the department shall summarize the information contained in the phase III reports filed by the school districts and area education agencies. The ~~reports~~ summary shall ~~be available upon request~~ contain information including the numbers of districts and area education agencies that have implemented a performance-based pay plan, a supplemental pay plan, a combination of a performance-based and supplemental pay plan, and the number of districts and area education agencies that have established comprehensive school transformation programs. The summary shall highlight and briefly describe innovative and successful uses of phase III funds that have had a positive effect on student achievement within the district as measured by means of a widely recognized educational assessment tool or test. The department, in conjunction with the legislative fiscal bureau, shall identify additional items to be reported. Copies of the annual summary shall be submitted to each school district, the general assembly, and the legislative fiscal bureau by December 1.

**Sec. 47.* *Section 294A.25, subsection 5, Code Supplement 1997, is amended by striking the subsection and inserting in lieu thereof the following:*

*5. For the fiscal year beginning July 1, 1998, and for each succeeding fiscal year, the amount of fifty thousand dollars to be paid to the department of cultural affairs for contracting with the Iowa alliance for arts education to execute the local arts comprehensive educational strategies program.**

**Sec. 48.* *Section 294A.25, subsection 6, Code Supplement 1997, is amended to read as follows:*

*6. For the fiscal year beginning July 1, ~~1997~~ 1998, and ~~ending June 30, 1998~~ each succeeding fiscal year, the amount of fifty thousand dollars to the department of education for the geography alliance.**

**Sec. 49.* *Section 294A.25, subsection 9, Code Supplement 1997, is amended by striking the subsection and inserting in lieu thereof the following:*

*9. For the fiscal year beginning July 1, 1998, and for each succeeding fiscal year, the amount of fifty thousand dollars to the department of education for the Iowa mathematics and science coalition from phase III moneys.**

Sec. 50. Section 294A.25, subsection 10, Code Supplement 1997, is amended to read as follows:

10. For the fiscal year beginning July 1, ~~1997~~ 1998, and ~~ending June 30, 1998~~ for each succeeding fiscal year, the amount of seventy thousand dollars to the state board of regents for equal distribution to the Iowa braille and sight saving school and the Iowa state school for the deaf from phase III moneys.

Sec. 51. Section 294A.25, subsection 11, Code Supplement 1997, is amended to read as follows:

11. For the fiscal year beginning July 1, ~~1997~~ 1998, and ending June 30, ~~1998~~ 1999, to the department of education from phase III moneys the amount of one million two hundred fifty thousand dollars for support for the operations of the new Iowa schools development corporation and for school transformation design and implementation projects administered by the corporation. Of the amount provided in this subsection, one hundred fifty thousand dollars shall be used for the school and community planning initiative.

Sec. 52. Section 294A.25, Code Supplement 1997, is amended by adding the following new subsections:

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* Item veto; see message at end of the Act

*NEW SUBSECTION. *6A. For each fiscal year of the fiscal period beginning July 1, 1998, and ending June 30, 2000, the amount of seventy-five thousand dollars from phase III moneys to the department of education for distribution to the Iowa mathematics and science coalition for purposes of mathematics pilot programs in accordance with section 256.24.*

NEW SUBSECTION. *10A. For the fiscal year beginning July 1, 1998, and ending June 30, 1999, the amount of thirty-five thousand dollars from phase III moneys to the department of education for allocation to the Sioux City community school district for purposes of developing and implementing a listening curriculum.**

NEW SUBSECTION. 12. For the fiscal year beginning July 1, 1998, **and for each succeeding fiscal year,** to the department of education from phase III moneys the amount of one hundred fifty thousand dollars to the Iowa public broadcasting division for overnight transmitter feeds.

Sec. 53. Section 303.1, subsection 2, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. Encourage the use of volunteers throughout its divisions, especially for purposes of restoring books and manuscripts.

Sec. 54. NEW SECTION. 303.3A ARTS AND CULTURAL CONFERENCES AND CAUCUSES.

1. For the purposes of this section, the following definitions apply:

a. "Arts" means music, dance, theater, opera and music theater, visual arts, literature, design arts, media arts, and folk and traditional arts.

b. "Culture" or "cultural" means programs and activities which explore past and present human experience.

c. "Department" means the department of cultural affairs.

d. "Enhancement" means programs that allow arts and cultural organizations to improve or enhance the quality of programs currently offered, and increase and support professional and student artists and arts educators.

e. "Outreach" means programs that increase rural access to cultural resources, social awareness, cultural diversity, and which serve special populations.

2. The department shall administer regional conferences and a statewide caucus on arts and cultural enhancement. The purpose of the conferences and caucus is to encourage the development of the arts and culture in the state by identifying opportunities for programs involving education, outreach, and enhancement; by reviewing possible changes in enhancement program policies, programs, and funding; and by making recommendations to the department regarding funding allocations and priorities for arts and cultural enhancement.

3. Every four years beginning in June 2001, the department shall convene a statewide caucus on arts and cultural enhancement.

a. Prior to the statewide caucus, the department shall make arrangements to hold a conference in each of several regions of the state as determined by the Iowa arts council. The department shall promote attendance of interested persons at each conference. A designee of the department shall serve as temporary chairperson until persons attending the conference elect a chairperson. The department shall provide persons attending the conference with current information regarding cultural programs and expenditures. Persons attending the conference shall identify opportunities for programs in the areas of education, outreach, and enhancement, and make recommendations in the form of a resolution. The persons attending the conference shall elect six persons from among the attendees to serve as regional, voting delegates to the statewide caucus. The conference attendees shall elect a chairperson from among the six representatives. Other interested persons are encouraged to attend the statewide caucus as nonvoting attendees.

b. The department shall charge a reasonable fee for attendance at the statewide caucus on arts and cultural enhancement.

c. A designee of the department shall call the statewide caucus to order and serve as

* Item veto; see message at end of the Act

temporary chairperson until persons attending the caucus elect a chairperson. Persons attending the caucus shall discuss the recommendations of the regional conferences and decide upon recommendations to be made to the department and the general assembly. Elected chairpersons of the regional conferences shall meet with representatives of the department and present the recommendations of the caucus.

Sec. 55. Section 304A.10, Code 1997, is amended to read as follows:

304A.10 COST OF FINE ARTS — PERCENTAGE.

The total estimated cost of the fine arts elements included in a plan and specifications for a state building or group of state buildings in accordance with the purposes of this division shall in no case be less than one-half of one percent of the total estimated cost of such building or group of buildings. This percentage allocation shall not be diminished by professional fees. By September 1 annually, the contracting officer or principal user shall submit to the department of cultural affairs the total amount of state financial assistance expended in accordance with this section during the previous fiscal year. If deemed in the best interests of the citizens, funds allocated for the acquisition of fine arts may be accumulated over more than one appropriation or fiscal period or combined to complete significant projects, however, this sentence does not authorize interproject transfers. The total estimated cost of the fine arts elements included in a plan and specifications for a state building or group of state buildings in accordance with this section shall be included by the department of cultural affairs in calculating the amount of state financial assistance for the arts for purposes of national ranking surveys. By January 1 annually, the department of cultural affairs shall submit a summary of the total amount of state financial assistance expended in accordance with this section and for which state buildings the assistance was expended.

Sec. 56. Section 256.17A, if enacted by 1998 Iowa Acts, Senate File 2366, section 3,* is repealed.

Sec. 57. Chapters 257A and 303C, Code 1997, are repealed.

Sec. 58. 1998 Iowa Acts, Senate File 2366, section 40, if enacted,* is amended to read as follows:

SEC. 40. EMERGENCY RULES. The department may adopt emergency rules as necessary for the administration of chapter 256E and sections ~~256.17A~~ 256.22, 257.13, and 279.60, if enacted.

Sec. 59. Notwithstanding section 257A.4, Code 1997, with the repeal of chapter 257A pursuant to this Act, the rights and properties of the first in the nation in education foundation shall remain with the nonprofit corporation which shall continue its existence as a nonprofit corporation but shall no longer be a quasi-public instrumentality. However, debts and other financial obligations shall not succeed to the state.

Sec. 60. AUDIT OF AREA EDUCATION AGENCIES. Subject to an appropriation of sufficient funds by the general assembly, the auditor of state shall analyze area education agency finances and operations for the 1996-1997 fiscal year. In conducting the analysis, the auditor of state shall utilize reports on audits of area education agencies conducted in accordance with section 11.6, information available from the department of education, the department of management, the area education agencies, and from any other source necessary. The auditor of state shall have access to all records of the area education agencies.

The analysis shall include, but shall not be limited to, major areas of expenditure by area education agency districts, such as media services, special education services, additional services pursuant to section 273.7, services to school districts pursuant to section 273.7A, services for preschool children with disabilities, juvenile shelter services, and detention home instruction; and a comparison by area education agency of staffing levels, number of students served, purchase or lease of equipment and facilities, and funding from local school districts. The results of the analysis, and any recommendations, shall be submitted to the

* Chapter 1216 herein

general assembly and the legislative fiscal bureau by January 1, 1999, and shall be utilized in the comprehensive study of school finance requested in accordance with House Concurrent Resolution 15, if resolved by the Seventy-seventh General Assembly.*

Sec. 61. CONTINGENT APPROPRIATION. In the event the funds transferred in accordance with section 257B.1A are not received by the department of education in the fiscal year beginning July 1, 1998, and ending June 30, 1999, for allocation to assist school districts in developing reading recovery programs, in addition to the allocations provided for in section 294A.25, there is allocated to the department of education for the fiscal year beginning July 1, 1998, and ending June 30, 1999, from phase III moneys, $200,000, or so much thereof as is necessary, for allocation to assist school districts in developing reading recovery programs. From the moneys allocated in this section, $100,000 shall be distributed to the reading recovery center, and the remaining balance shall be distributed to the area education agencies in the proportion that the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in the basic enrollment of grades one through six in the area served by an agency, bears to the sum of the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in the basic enrollments of grades one through six in all of the areas served by area education agencies in the state for the budget year.

Sec. 62. EFFECTIVE DATES.

1. Section 6 of this Act, relating to historic sites and the western trails center, being deemed of immediate importance, takes effect upon enactment.

**2. Sections 11 and 12 of this Act, relating to reallocation of moneys to the division of libraries and information services for purposes of the open access program, being deemed of immediate importance, take effect upon enactment.

3. Section 13 of this Act, relating to the nonreversion of funds appropriated for rehabilitating computers for school and libraries, being deemed of immediate importance, takes effect upon enactment.**

4. Section 14 of this Act, relating to the state board of educational examiners licensing fees, being deemed of immediate importance, takes effect upon enactment.

5. Section 22 of this Act, relating to the reversion of funds appropriated for tuition replacement, being deemed of immediate importance, takes effect upon enactment.

Sec. 63. Sections 23 and 59 of this Act, relating to the first in the nation in education foundation, section 36 of this Act, relating to the Iowa state fair scholarship, and the portion of section 57 of this Act repealing chapter 257A, take effect December 31, 1998.

Section 56 of this Act, relating to the repeal of section 256.17A, being deemed of immediate importance, takes effect upon enactment.

Approved May 8, 1998, except the items which I hereby disapprove and which are designated as Sections 3 and 4 in their entirety; Section 6 in its entirety; that portion of Section 8, subsection 4, paragraph a which is herein bracketed in ink and initialed by me; Sections 11, 12 and 13 in their entirety; that portion of Section 16 which is herein bracketed in ink and initialed by me; Sections 24, 25 and 26 in their entirety; Sections 28 and 29 in their entirety; Section 32 in its entirety; Section 45 in its entirety; Sections 47, 48 and 49 in their entirety; those portions of Section 52 which are herein bracketed in ink and initialed by me; Section 61 in its entirety; and Section 62, subsections 1, 2, and 3 in their entirety. My reasons for vetoing these items are delineated in the item veto message pertaining to this Act to the Secretary of State this same date, a copy of which is attached hereto.

TERRY E. BRANSTAD, *Governor*

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* HCR 15 adopted by the General Assembly on April 20, 1998; school finance study approved by the Legislative Council on May 27, 1998

** Item veto; see message at end of the Act

Dear Mr. Secretary:

I hereby transmit House File 2533, an Act relating to the funding of, operation of, and appropriation of moneys to the College Student Aid Commission, the Department of Cultural Affairs, the Department of Education, and the State Board of Regents, providing related statutory changes, and providing effective dates.

House File 2533 is, therefore, approved on this date with the following exceptions, which I hereby disapprove.

I am unable to approve the item designated as Section 3, in its entirety. This item appropriates moneys remaining in the Scholarship and Grant Reserve Fund for Vocational Technical Tuition Grants. The purpose of the Scholarship and Grant Reserve Fund is to alleviate funding shortfalls for scholarship and tuition grant programs. The funds that are currently available need to remain in the fund for this purpose.

I am unable to approve the items designated as Sections 4 and 32, in their entirety. These items specify how the interest earned on Public Law No. 105-33 Recall Account is to be used. Federal law adequately governs the Iowa College Student Aid Commission's use of interest earned on the Recall Account. The College Student Aid Commission should be encouraged to implement a comprehensive default reduction program.

I am unable to approve the items designated as Section 6, and Section 62, subsection 1, in their entirety. These items require the carryover of fiscal year 1998 reversions to be used for marketing, outreach, support and programs at the Western Trails Center. Significant state funding for the Western Trails Center has been provided from the Rebuild Iowa Infrastructure Account.

I am unable to approve the designated portion of Section 8, subsection 4, paragraph a. This item requires the Division of Vocational Rehabilitation to enter into a 28E agreement with Creative Employment Options at the University of Iowa in an effort to count the state funds appropriated to the University as a local match. The United States Department of Education has indicated that implementation of this requirement would result in rejection of the State Plan for Vocational Rehabilitation and preclude federal funding for vocational rehabilitation in Iowa.

I am unable to approve the items designated as Sections 11, 12, 13 and 62, subsections 2 and 3, in their entirety. These items allow anticipated fiscal year 1998 reversions to carry over into fiscal year 1999 to fund ongoing programs. It is inappropriate to use one-time funding sources for ongoing programs.

I am unable to approve the items designated as Sections 28, 47, 48 and 49, in their entirety, the designated portions of Section 52, and Section 61, in its entirety. These items provide appropriations from Phase III of Educational Excellence for ongoing programs that are unrelated to the purpose of Phase III. Appropriations, particularly standing appropriations, which are unrelated to the purpose of Phase III are an inappropriate use of Educational Excellence funding.

I am unable to approve the designated portion of Section 16, and the items designated as Sections 24, 25, 26, 29 and 45, in their entirety. These items contain language that links with the action I am taking on Senate File 2366, the education reform bill. I cannot approve these items until a comprehensive school reform package is enacted, and I cannot support a $1 million lifetime limit on funding for national board certification award recipients.

For the above reasons, I hereby respectfully disapprove these items in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in House File 2533 are hereby approved as of this date.

Sincerely,
TERRY E. BRANSTAD, *Governor*

CHAPTER 1216

EDUCATIONAL PROGRAMMING AND RELATED PROVISIONS AND APPROPRIATIONS

S.F. 2366

AN ACT relating to the licensing and employment of practitioners and the school districts employing them, making appropriations, and including retroactive applicability and effective date provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. DEPARTMENT OF EDUCATION. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

1. For *[1]*frontier school or*[1] extended school year grants:

..... $ 1,500,000

*[2]Of the funds appropriated in this subsection, $300,000 shall be used to provide grants in the amount of $50,000 each to six school districts for extended year school pilot projects, and the department of education shall expend up to $75,000 to contract with an accredited private postsecondary institution or an institution of higher learning under the control of the state board of regents to conduct a study of the effectiveness of extended school years on student achievement.

By September 1, 1998, the department shall establish criteria and a process for the awarding of grants for planning or implementation purposes. Grants shall be equitably distributed geographically among rural and urban areas. Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30 of the fiscal year for which the funds were appropriated shall not revert but shall be available for expenditure for the following fiscal year for the purposes of this subsection.

2. To the board of educational examiners, for purposes of developing and implementing a multi-level voluntary para-educator licensing system in accordance with section 272.12, if enacted:*[3]

..... $ 75,000

3. For deposit in the Iowa empowerment fund if legislation providing for the creation of an Iowa empowerment board, an Iowa empowerment fund, and for the appropriation of moneys to be administered by a community empowerment area, is enacted by the Seventy-seventh General Assembly, 1998 Session:*[4]

..... $ 5,200,000

4. For deposit in the national board for professional teaching standards certification fund in accordance with section 256.44, if enacted:*[5]

..... $ 250,000

*[1]*5. For beginning teacher induction program grants as provided in chapter 256E, if enacted:*

..... $ *240,000*

It is the intent of the general assembly that grants awarded from funds appropriated under this subsection shall provide support to a minimum of one hundred thirty-three teams of mentors and beginning teachers.[1]*

6. For purposes of the practitioner performance improvement program as provided in section 279.14A, if enacted:*[6]

..... $ 300,000

7. *[1]*For the establishment and implementation of an instructional leadership pilot program as provided in sections 279.59 through 279.61, if enacted:*

..... $ *1,000,000*[1]*

*[1] Item veto; see message at end of the Act
*[2] See Chapter 1215, §16 herein
*[3] See §23 of this chapter herein
*[4] See Chapter 1206 herein
*[5] See §5 of this chapter herein
*[6] See §25 of this chapter herein

By January 15, 1999, the department of education shall prepare and submit a proposal for a program for leadership development of practitioners and school board members to the chairpersons and ranking members of the house and senate standing education committees and of the joint subcommittee on education appropriations.

*Sec. 2. Section 256.16, Code 1997, is amended to read as follows:

256.16 SPECIFIC CRITERIA FOR ~~TEACHER~~ PRACTITIONER PREPARATION ~~AND CERTAIN EDUCATORS~~.

1. Pursuant to section 256.7, subsection 5, the state board shall adopt rules requiring all higher education institutions providing practitioner preparation to ~~include in the professional education program, preparation~~ demonstrate that each student who graduates from the practitioner preparation program successfully completed the following:

a. Preparation that contributes to education of students with disabilities and students who are gifted and talented~~, which must be successfully completed before graduation from the practitioner preparation program~~.

b. Preparation for recognizing at-risk students, and for understanding and ameliorating the behavior of at-risk students. For purposes of this section, "at-risk students" shall include students who are "at-risk" as defined under administrative rules adopted by the state board of education, or who are at risk of becoming a substance abuser, or who have been identified as a substance abuser.

c. Preparation for accelerating the achievement of students through the use of learning techniques that shall include, but are not limited to, reading instruction in phonics.

2. A person initially applying for a license shall successfully complete a professional education program containing the subject matter specified in this section, before the initial action by the board of educational examiners takes place.*

*Sec. 3. NEW SECTION. 256.17A TEACHER INTERNSHIP PILOT PROGRAM.

1. If the general assembly appropriates moneys for a teacher internship pilot program, the department of education shall, by November 1, 1998, establish and implement a competitive pilot program approval process open to Iowa colleges and universities with master's programs in practitioner preparation approved by the state board.

2. To be eligible to receive a grant under this section, an eligible institution shall submit to the department of education a plan for an internship program that, at a minimum, includes the following:

a. Student interns enrolled in the program shall complete a one-year teaching experience conducted in a collaborating school district. A student intern shall have graduated from an approved practitioner preparation program offered by an institution of higher education under the state board of regents or an accredited private institution as defined in section 261.9. A student intern shall be an employee of the participating school district. The amount of money a school district shall pay to a student intern shall be negotiated by the school district and the eligible institution in consultation with the department of education.

b. Application of the best teaching practices in diverse settings and in responding to diverse student needs under the supervision of selected district teachers and personnel employed by the eligible institution.

c. Seminars and special projects designed to meet student intern needs.

d. Collaboration and support from a participating school district relating to supervision and assessment of the student intern's performance.

e. Collaboration and support from the eligible institution in developing rigorous graduate coursework and in matters relating to supervision, instruction, and evaluation of the student intern in conjunction with personnel employed by the participating school district.

3. Student interns who enroll in the program shall receive graduate credit for successful completion of teacher internship program coursework. The successful completion of a one-year teacher internship under the program shall be recognized as the equivalent of one year of teaching experience.

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* Item veto; see message at end of the Act

4. A teacher who is employed by a school district and who acts as a clinical supervisor for the teacher internship pilot program shall be eligible for a stipend of one thousand dollars per semester of participation in the program. The stipend and the costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system established under chapter 294, for such amounts by the district, shall be paid from moneys received by the participating school district from moneys appropriated to the department of education pursuant to this section.

5. Moneys received by a school district under this section shall not be commingled with state aid payments made under section 257.16 to a school district and shall be accounted for by the school district separately from state aid payments.

6. Payments made to school districts under this section are miscellaneous income for purposes of chapter 257 and are considered encumbered. A school district shall maintain a separate budget listing for payments received and expenditures made pursuant to this section.

7. Moneys received by a school district under this section shall not be used for payment of any collective bargaining agreement or arbitrator's decision negotiated or awarded under chapter 20.

8. Annually on or by January 15, the eligible institution shall submit a report describing activities associated with the program to the department of education, which shall summarize the reports received and submit the summary to the chairpersons and ranking members of the standing house and senate education committees.

9. a. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the sum of two hundred twenty thousand dollars for the teacher internship pilot program.

*b. There is appropriated from the general fund of the state to the department of education for each fiscal year of the fiscal period beginning July 1, 1999, and ending June 30, 2001, the sum of five hundred seventy-five thousand dollars for the teacher internship pilot program.**

Sec. 4. NEW SECTION. 256.22 **FRONTIER SCHOOL AND** EXTENDED YEAR SCHOOL GRANT PROGRAM.

1. Subject to an appropriation of sufficient funds by the general assembly, the department shall establish a **frontier school and** extended year school grant program to provide for the allocation of grants to school districts, or a collaboration of school districts, to provide technical assistance for conversion of an existing school **to a frontier school or** to an extended school year calendar, or for investigating the possibility of converting an existing school within a district **to a frontier school or** to an extended school year calendar. ***A district that wants to participate in the program shall submit to the department a written request for a grant by September 1, 1998. The school district or collaboration of school districts shall agree to appoint a planning committee composed of parents, guardians, teachers, administrators, and individuals representing business, and the local community. The school district or collaboration shall also indicate in its request its intention to use any grant moneys received under this section to examine, at a minimum, all of the following:*

a. Mission and instructional focus of the school.

b. Organizational structure and management of the school.

c. Impact of labor agreements and contracts on the success of the school.

d. Roles and responsibilities of all involved constituencies.

e. Arrangements for special needs students.

f. Connection of the school to the district.

g. Facility and operation costs.

*h. Measurement of results including student achievement results.**

2. Grant moneys shall be distributed to qualifying school districts by the department no later than October 15, 1998. Grant amounts shall be distributed as determined by the department. ***Not more than fifteen of the grants awarded per year in accordance with this section shall be used for purposes of frontier school planning or conversion.***

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* Item veto; see message at end of the Act

*3. *For purposes of this section, "frontier school" means a school that is nonsectarian in its program, admission policies, employment practices, and all other operations. The school is a public school and is part of the state's system of public education. The primary focus of a frontier school shall be to provide a comprehensive program of instruction for at least one grade or age group from five through eighteen years of age. Frontier schools may be designed to allow significant autonomy to the schools. However, frontier schools shall be accountable for significant results.**

4. By February 15, 1999, a school district or collaboration of districts receiving moneys under this section shall submit an interim report to the department describing the planning activities conducted by the school district or the collaboration and providing preliminary conclusions. The school district or collaboration shall submit a final report by June 1, 1999, to the department. The department shall summarize the school district reports in a final report to the chairpersons and ranking members of the house and senate standing education committees by January 1, 2000.

*5. *Except as provided in this subsection, frontier schools are exempt from all statutes and rules applicable to a school, a school board, or a school district, although a frontier school may elect to comply with one or more provisions of statute or rule. However, a frontier school shall meet all applicable state and local health and safety requirements; the frontier school shall be organized and operated as a nonprofit cooperative association under chapter 498 or nonprofit corporation under chapter 504A; the provisions of chapters 21 and 22 shall apply to meetings and records of the frontier school board; and frontier schools are subject to and shall comply with chapters 216 and 216A relating to civil and human rights, and sections 275.55A, 279.9A, 280.17B, 280.21B, and 282.4, relating to suspension and expulsion of a student. The frontier school shall employ or contract with necessary teachers, as defined in section 272.1, who hold a valid license with an endorsement for the type of service for which the teacher is employed. Frontier schools are subject to the same financial audits, audit procedures, and audit requirements as a school district. The audits shall be consistent with the requirements of sections 11.6, 11.14, 11.19, 256.9, subsection 19, and section 279.29, except to the extent deviations are necessary because of the program at the school. The department, auditor of state, or the legislative fiscal bureau may conduct financial, program, or compliance audits. The provisions of chapter 20 shall not apply to the board of directors of a frontier school or its employees.**

Sec. 5. NEW SECTION. 256.44 NATIONAL BOARD CERTIFICATION AWARD — APPROPRIATION.

1. A teacher, as defined in section 272.1, who registers for a national board for professional teaching standards certificate and is employed by a school district in Iowa shall be eligible for a registration award as provided in subsection 2, and upon achievement of a national board for professional teaching standards certificate, is eligible for an annual award of ten thousand dollars for each year the certificate is valid as provided in this section.

2. To receive a partial registration award in the amount of one-half of the registration fee charged by the national board for professional teaching standards, the teacher shall apply to the department of education within one year of registration, submitting to the department any documentation the department requires. A teacher shall receive a final registration award in the amount of the remaining registration fee charged by the national board if the teacher notifies the department of the teacher's certification achievement and submits any documentation requested by the department.

3. To receive a five-year annual award for achieving certification by the national board of professional teaching standards, a teacher shall apply to the department within one year of eligibility. Payment for awards shall be made only upon departmental approval of an application or recertification of eligibility. A nonrenewable term of eligibility shall be for five years or for the years the certificate is valid, whichever time period is shorter. In order to continue receipt of payments, a recipient shall annually recertify eligibility.

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* Item veto; see message at end of the Act

4. A national board for professional teaching standards certification fund is established in the office of treasurer of state to be administered by the department. Moneys appropriated by the general assembly for deposit in the fund shall be paid as follows:

a. Upon receipt of award documentation as provided in subsection 2.

b. On January 15 to teachers whose applications and recertifications for annual awards as provided in subsection 3 are approved by the department. The treasurer of state shall act as custodian of the fund and may invest the moneys deposited in the fund. The income from any investment shall be credited to and deposited in the fund. The director of revenue and finance shall issue warrants upon the fund pursuant to the order of the department and such warrants shall be paid from the fund by the treasurer of state. Notwithstanding section 8.33, unencumbered or unobligated moneys remaining in the fund on June 30 of the fiscal year for which the funds were appropriated shall not revert but shall be available for subsequent fiscal years for the purposes of this section.

5. An individual shall not qualify for a term of annual award eligibility unless the individual applies, certifying eligibility, to the department prior to June 30, 2003.

Sec. 6. Section 256.45, unnumbered paragraphs 1, 3, and 4, Code 1997, are amended to read as follows:

The department of education shall establish ~~within the department~~ and administer the position of ambassador to education. It shall be the function of the ambassador to education to act as an education liaison to primary and secondary schools in this state. The ambassador to education position shall be filled by the educator selected as teacher of the year by the governor, but only if that person agrees to fill the ambassador to education position.

The ambassador to education shall receive, in lieu of compensation from the district in which the ambassador is regularly employed, a salary ~~which is~~ equal to the amount of salary ~~received by~~ the person ~~during the previous~~ would have received from the district in the person's regular position during the school year for which the person serves as ambassador, or thirty thousand dollars, whichever amount is greater. The ambassador shall also be compensated for actual expenses incurred as a result of the performance of duties under this section.

The ~~district which~~ department shall grant funds in an amount equal to the salary and benefits the person selected as ambassador to education would have received from the district, or thirty thousand dollars, whichever amount is greater, to the school district that employs the person selected as the ambassador ~~to education~~. The department shall also reimburse the school district for actual expenses incurred as a result of the performance of duties under this section. The school district shall grant the person a one-year sabbatical in order to allow the person to be the ambassador to education, and during the sabbatical, shall pay the salary and benefits of the ambassador with funds granted by the department. The person selected as the ambassador to education shall be entitled to return to the person's same or a comparable position without loss of accrued benefits or seniority.

*Sec. 7. NEW SECTION. 256E.1 BEGINNING TEACHER INDUCTION PROGRAM ESTABLISHED — GRANTS.

*If the general assembly appropriates moneys for purposes of teacher induction, the department of education shall coordinate a beginning teacher induction program to promote excellence in teaching, to build a supportive environment within school districts, to increase the retention of promising beginning teachers, and to promote the personal and professional well-being of teachers. The department of education shall develop a process for awarding beginning teacher induction grants to school districts, and shall adopt rules pursuant to chapter 17A relating to the equitable distribution of grants to school districts to reflect diversity geographically and by population.**

*Sec. 8. NEW SECTION. 256E.2 DEFINITIONS.

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

1. "Beginning teacher" means an individual serving under an initial provisional or

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conditional license, issued by the board of educational examiners under chapter 272, who is assuming a position as a classroom teacher.

2. "Board of directors" means the board of directors of a school district or a collaboration of boards of directors of school districts.

3. "Classroom teacher" means an individual who holds a valid practitioner's license and who is employed by a school district under sections 279.13 through 279.19 in a school district or area education agency in this state to provide instruction to students.

4. "Department" means the department of education.

5. "Director" means the director of the department of education.

6. "District facilitator" means a licensed professional pursuant to chapter 272 who is appointed by the board of directors, or a collaboration of districts, to serve as the liaison between the board of directors and the department for the beginning teacher induction program.

*7. "Mentor" means an individual employed by a school district or area education agency as a classroom teacher and who holds a valid license to teach issued under chapter 272.**

**Sec. 9.* NEW SECTION. *256E.3 DISTRICT PLAN.*

1. A board of directors of a school district or the boards of directors of a collaboration of school districts participating in the beginning teacher induction program shall appoint a district facilitator, whose duties shall include, but are not limited to, overseeing the development of a plan for meeting the goals of the program as set forth in section 256E.1, and composing a district committee pursuant to subsection 2. The board of directors may contract with a public or private postsecondary institution with an approved practitioner preparation program, or with a member of the instructional staff of an approved practitioner preparation program, to perform the duties of the district facilitator in accordance with this chapter.

2. The membership of the district committee composed by the district facilitator shall include, but is not limited to, licensed practitioners and an area education agency staff development professional.

3. The district committee shall adopt a plan and written procedures for a mentor program consistent with this chapter. The plan and the written procedures shall, at a minimum, provide the process for the selection of and the number of mentors; the mentor training process; the timetable by which the plan shall be implemented; placement of mentors and beginning teachers; the minimum amount of contact time between mentors and beginning teachers; the minimum amount of release time for mentors and beginning teachers for meetings for planning, demonstration, observation, feedback, and workshops; the process for dissolving mentoring partnerships; and the process for measuring the results of the program. The district committee shall recommend to the board of directors or boards of directors of a collaboration the names of classroom teachers eligible to be mentors.

4. The district facilitator shall submit the plan, and the proposed costs of implementing the plan, to the board of directors or boards of directors of a collaboration, which shall consider the plan and, once approved, submit the plan and a reasonable cost proposal to the department of education, which shall award grants as equitably as possible based on the geographic and population diversity of the school districts submitting plans. Grants may be awarded in subsequent years based upon the most recent plan on file with the department.

*5. The district committee is encouraged to work with area education agencies and postsecondary institutions in the preparation and implementation of a plan.**

**Sec. 10.* NEW SECTION. *256E.4 BEGINNING TEACHER AND MENTOR SELECTION AND PLACEMENT.*

1. To be eligible to be a mentor, a licensed practitioner shall, at a minimum, be employed by a school district as a classroom teacher, have a record of at least four years of effective practice, have been employed for one full year in the district on a nonprobationary basis, and demonstrate professional commitment to the improvement of teaching and learning, and the development of beginning teachers.

*2. The district facilitator shall place beginning teachers in a manner that provides the greatest opportunity to participate with the largest number of mentors.**

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*Sec. 11. NEW SECTION. 256E.5 BEGINNING TEACHER INDUCTION STATE SUBSIDY — FUND.

1. A teacher who is enrolled as a mentor in an approved beginning teacher induction program shall be eligible for an award of five hundred dollars per semester of participation in the program, which shall be paid from moneys received pursuant to this section by the school district employing the mentor.

2. Moneys received by a school district pursuant to this chapter shall be expended to provide mentors with awards in accordance with subsection 1, to implement the plan, to provide for a stipend for the district facilitator, and to pay the costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system or a pension and annuity retirement system established under chapter 294, for such amounts paid by the district.

3. Moneys received by a school district under this chapter are miscellaneous income for purposes of chapter 257 or are considered encumbered. Each local school district shall maintain a separate listing within their budget for payments received and expenditures made pursuant to this section.

4. Moneys received for purposes of this chapter shall not be used for payment of any collective bargaining agreement or arbitrator's decision negotiated or awarded under chapter 20.

5. A beginning teacher induction fund is established in the office of the treasurer of state to be administered by the department. Moneys appropriated by the general assembly for deposit in the fund shall be used to provide funding to school districts pursuant to the requirements of this section.

6. Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30 of the fiscal year for which the funds were appropriated shall not revert but shall be available for expenditure in the following fiscal year for the purposes of this section.*

*Sec. 12. NEW SECTION. 256E.6 REPORTS.

The board of directors of a school district or the boards of directors of a collaboration of school districts implementing an approved beginning teacher induction program as provided in this chapter shall submit an assessment of the program's results by July 1 of the fiscal year succeeding the year in which the school district or the collaboration of school districts received moneys under this chapter. The department shall annually report the statewide results of the program to the chairpersons and the ranking members of the house and senate education committees by January 1.*

*Sec. 13. NEW SECTION. 256F.1 LEGISLATIVE FINDINGS AND INTENT.

The general assembly finds that it is in the best interest of the state to encourage and fund early education programs focused on kindergarten through grade three in the public school districts. The goal of these programs is to improve student achievement in the basic educational subject matters of reading, language arts, and mathematics, and to accomplish proficiency in those subjects by grade four. Toward that goal, it is the intent of this chapter to establish and fund an early childhood education imperatives program.*

*Sec. 14. NEW SECTION. 256F.2 EARLY CHILDHOOD EDUCATION IMPERATIVES PROGRAM APPROPRIATION.

1. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 1998, and for each succeeding fiscal year, the sum of nine million dollars for the early childhood education imperatives program.

2. For each fiscal year for which moneys are appropriated in subsection 1, the amount of moneys allocated to school districts shall be in the proportion that the basic enrollment of a district bears to the sum of the basic enrollments of all school districts in the state for the budget year. However, a district shall not receive less than seven thousand five hundred dollars in a fiscal year.

3. For each year for which an appropriation is made to the early childhood education imperatives program, the department of education shall notify the department of revenue and

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finance of the amount to be paid to each school district based upon the distribution plan set forth for the appropriation made pursuant to this section. The allocation to each school district under this section shall be made in one payment on or about October 15 of the fiscal year for which the appropriation is made, taking into consideration the relative budget and cash position of the state resources. Prior to the receipt of moneys, school districts shall provide to the department of education adequate assurance that they have developed or are developing an early childhood education plan as required by section 256F.3 and that moneys received under this section will be used in accordance with the required early childhood education plan.

4. Moneys received under this section shall not be commingled with state aid payments made under sections 257.16 to a school district and shall be accounted for by the school district separately from state aid payments.

5. Payments made to school districts under this section are miscellaneous income for purposes of chapter 257 or are considered encumbered. Each school district shall maintain a separate listing within their budgets for payments received and expenditures made pursuant to this section.

*6. Moneys received under this section shall not be used for payment of any collective bargaining agreement or arbitrator's decision negotiated or awarded under chapter 20.**

**Sec. 15. NEW SECTION. 256F.3 EARLY CHILDHOOD EDUCATION IMPERATIVES PROGRAM — REPORTS.*

1. Progress, as determined by school districts through appropriate assessments, for children enrolled in kindergarten through grade three in attaining or surpassing student achievement goals as established under the accreditation process in chapter 256, and an accounting of the use of the moneys received by the school districts in accordance with this chapter, shall be submitted in an annual report to the department of education by September 1 in the fiscal year beginning July 1, 1999, and in each succeeding year. Each school district shall also certify, in the annual report to the department, that the school districts used the moneys received under this chapter to supplement, and not to supplant, the moneys otherwise received and used by the school district for kindergarten through grade three education purposes.

2. The department shall submit, to the chairpersons and ranking members of the house and senate education committees by January 1, 2000, a report describing the ways in which the school districts are making use of the moneys received under this chapter, and including the school districts, if any, that used moneys received under this chapter to supplant funds the school district was already receiving for kindergarten through grade three education purposes.

*3. The department shall submit, to the chairpersons and ranking members of the house and senate education committees by January 1, 2002, a report describing school district progress on attaining or surpassing student achievement goals.**

**Sec. 16. NEW SECTION. 256F.4 EARLY CHILDHOOD EDUCATION IMPERATIVES PROGRAM EXPENDITURES.*

*School districts shall expend funds received pursuant to section 256F.2 to support reading instruction in phonics, and other education practices, programs, or assistance for kindergarten through grade three that may include, but are not limited to, the following: reducing adult to student ratios through the hiring of teachers, former teachers, and para-educator teaching assistants; talented and gifted programs; and implementation of instructional programs designed to improve student achievement in the areas of reading, language arts, and mathematics.**

**Sec. 17. NEW SECTION. 256F.5 REPEAL.*

*This chapter is repealed effective July 1, 2001, except that section 256F.3 is not repealed until January 1, 2002.**

**Sec. 18. Section 257.1, subsection 2, unnumbered paragraph 3, Code 1997, is amended to read as follows:*

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*For the budget year commencing July 1, ~~1995~~ 1999, the department of management shall add the amount of the additional budget adjustment computed in section 257.14, subsection 2, to the combined foundation base.**

**Sec. 19.* NEW SECTION. *257.13 ON-TIME FUNDING FOR INCREASED ENROLLMENT.*

1. If a district's actual enrollment for the budget year, determined under section 257.6, is greater than its budget enrollment for the budget year, the district may submit a request to the school budget review committee for on-time funding for increased enrollment. The school budget review committee shall consider the relative increase in enrollment on a district-by-district basis, in determining whether to approve the request, and shall determine the amount of additional funding to be provided if the request is granted. An application for on-time funding must be received by the department of education by October 1. Written notice of the committee's decision shall be given through the department of education to the school board for a district.

2. If the school budget review committee approves a request for on-time funding for increased enrollment, the funding shall be in an amount up to the product of one-third of the state cost per pupil for the budget year multiplied by the difference between the actual enrollment for the budget year and the budget enrollment for the budget year. The additional funding received under this section is miscellaneous income to the district.

3. Moneys appropriated by the general assembly for purposes of this section shall be paid to school districts in one lump sum within thirty days of notification by the school budget review committee of approval for on-time funding for increased enrollment for a budget year. If the requests approved by the school budget review committee exceed the appropriation made for purposes of this section, the payments to school districts receiving approval for on-time funding shall be prorated such that each school district approved for on-time funding shall receive an amount of on-time funding equal to the percentage that the on-time funding to be provided to the district bears to the total amount of on-time funding to be provided to all districts receiving approval.

4. If the board of directors of a school district determines that a need exists for additional funds exceeding the amount provided in this section, a request for supplemental aid based upon increased enrollment may be submitted to the school budget review committee as provided in section 257.31.

5. A school district which is receiving a budget adjustment for a budget year pursuant to section 257.14 shall receive on-time funding for increased enrollment, reduced by the amount of the budget adjustment for that budget year.

*6. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 1999, and for each succeeding fiscal year, the sum of four million dollars or as much thereof as is necessary to pay additional funding authorized under this section.**

**Sec. 20.* *Section 257.14, Code Supplement 1997, is amended to read as follows:*

257.14 BUDGET ADJUSTMENT.

1. For the budget years commencing July 1, 1997, ~~and~~ July 1, 1998, and July 1, 1999, if the department of management determines that the regular program district cost of a school district for a budget year is less than the total of the regular program district cost plus any adjustment added under this section for the base year for that school district, the department of management shall provide a budget adjustment for that district for that budget year that is equal to the difference.

*2. For the budget year beginning July 1, ~~1995~~ 1999, if the department of management determines that the regular program district cost plus the budget adjustment computed under subsection 1 of a school district is less than one hundred one percent of the total of the regular program district cost plus any adjustment added under this section for the base year for that school district, the department of management shall provide an additional budget adjustment for that budget year that is equal to the difference.**

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*Sec. 21. Section 257.20, subsection 2, paragraph a, Code 1997, is amended to read as follows:

a. However, for the fiscal year beginning July 1, 1998, moneys appropriated under this subsection shall not exceed the amount of moneys appropriated as instructional support state aid for the budget year which commenced on July 1, 1992. For the fiscal year beginning July 1, 1999, and for each succeeding fiscal year, moneys appropriated under this subsection shall not exceed the sum of sixteen million seven hundred ninety-eight thousand two hundred twenty-seven dollars.*

Sec. 22. Section 272.1, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4A. "Para-educator" means a person who is licensed to assist a teacher in the performance of instructional tasks to support and assist classroom instruction and related school activities.

Sec. 23. NEW SECTION. 272.12 PARA-EDUCATOR LICENSES.

1. The board of educational examiners shall adopt rules pursuant to chapter 17A relating to a multi-level voluntary licensing system ranging from para-educator generalist to para-educator specialist. The rules shall outline the instructional and other school activity tasks the individuals licensed under this section may perform. The board shall determine whether an applicant is qualified to perform the duties for which a para-educator license is sought.

2. Applicants for a para-educator license as a generalist must hold a high school diploma from an accredited secondary school or a high school equivalency diploma issued in accordance with chapter 259A. The applicant must also have completed additional in-service training in at least all of the following areas:

a. Behavior management.

b. Ethical responsibilities and behavior.

c. Exceptional child and at-risk child behavior.

d. Collaboration skills and interpersonal relations.

e. Child and youth development.

3. Applicants for a para-educator license as a specialist must meet the requirements of subsection 2 and additional requirements as prescribed by rule.

4. A public school district, area education agency, community college, institution of higher education under the state board of regents, or an accredited private institution as defined in section 261.9, subsection 1, with a program approved by the state board of education, may train and recommend individuals for board licensure.

5. Applicants shall be disqualified for any of the following reasons:

a. The applicant is less than eighteen years of age.

b. The applicant has a record of founded child abuse.

c. The applicant has been convicted of a felony.

d. The applicant's application is fraudulent.

e. The applicant's license or certification from another state is suspended or revoked.

f. The applicant fails to meet board standards for application for an initial or renewed license.

6. Qualifications or criteria for the granting or revocation of a license or the determination of an individual's professional standing shall not include membership or nonmembership in any teachers' organization.

Sec. 24. Section 279.14, Code 1997, is amended to read as follows:

279.14 EVALUATION CRITERIA AND PROCEDURES.

1. The board shall establish evaluation criteria and shall implement evaluation procedures. If an exclusive bargaining representative has been certified, the board shall negotiate in good faith with respect to evaluation procedures pursuant to chapter 20.

2. Notwithstanding chapter 20, any challenge to an evaluation raised after the service of the notice of intent to recommend termination of a teacher's continuing contract in

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accordance with section 279.15 shall be brought only in the hearing before the school board held in accordance with section 279.16.

Sec. 25. NEW SECTION. 279.14A PRACTITIONER PERFORMANCE IMPROVEMENT PROGRAM.

1. The department of education shall establish and implement a voluntary practitioner performance improvement program that shall provide technical assistance to teachers and administrators from each public school district and area education agency. Individuals under contract with a school district may receive technical assistance in accordance with this subsection. The department shall consult with the Iowa state education association, the Iowa association of school boards, the school administrators of Iowa, the professional educators of Iowa, and, as practicable, other entities providing similar programs, in developing the program. At a minimum, the program shall provide administrators with training, including but not limited to, seminars and written materials, relating to the areas of employment policies and procedures, employment documentation, performance evaluations, corrective performance techniques, discipline, termination, and support by qualified individuals for implementation of the program. Training received by an administrator in accordance with this section shall apply toward an administrator's evaluator approval renewal.

2. The department shall submit an annual report to the chairpersons and ranking members of the house and senate standing education committees summarizing program activities and describing the department's plans for improving or changing the program.

Sec. 26. Section 279.19, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The first ~~two~~ three consecutive years of employment of a teacher in the same school district are a probationary period. However, ~~a~~ if the teacher has successfully completed a probationary period of employment for another school district located in Iowa, the probationary period in the current district of employment shall not exceed one year. A board of directors may waive the probationary period for any teacher who previously has served a probationary period in another school district and the board may extend the probationary period for an additional year with the consent of the teacher.

Sec. 27. Section 279.46, Code 1997, is amended to read as follows:

279.46 RETIREMENT INCENTIVES — TAX.

The board of directors of a school district may adopt a program for payment of a monetary bonus, continuation of health or medical insurance coverage, or other incentives for encouraging its employees to retire before the normal retirement date as defined in chapter 97B. The program is available only to employees between ~~fifty-nine~~ fifty-five and sixty-five years of age who notify the board of directors prior to ~~March~~ April 1 of the fiscal year that they intend to retire not later than the next following June 30. However, the age at which employees shall be designated eligible for the program, within the age range of fifty-five to sixty-five years of age, shall be at the discretion of the board. An employee retiring under this section shall apply for a retirement allowance under chapter 97B or chapter 294. ~~If~~ The board may include in the district management levy an amount to pay the total estimated accumulated cost to ~~a~~ the school district of the health or medical insurance coverage, bonus, or other incentives for employees who retire under this section ~~does not exceed the estimated savings in salaries and benefits for employees who replace the employees who retire under the program, the board may include in the district management levy an amount to pay the costs of the program provided in this section~~.

*Sec. 28. NEW SECTION. 279.59 STATEMENT OF PURPOSE.

The purpose of the instructional leadership pilot program is to recognize and reward teachers and administrators for outstanding leadership, performance, and service. The program is intended to encourage and reinforce masterful teaching and leadership, and provide

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*extensive professional and financial recognition to teachers and administrators who are achieving outstanding results in their work with students.**

**Sec. 29. NEW SECTION. 279.60 INSTRUCTIONAL LEADERSHIP PILOT PROGRAM.*

1. Subject to an appropriation of sufficient funds by the general assembly, the department shall establish and implement an instructional leadership pilot program to be administered in cooperation with school districts in the state. The instructional leadership pilot program shall include, but not be limited to, all of the following:

a. A nomination procedure that permits nominations to be made by a practitioner or other individuals.

b. Award distribution to individual practitioners or to nominated teams of practitioners.

c. Award eligibility based upon a satisfactory or higher ranking on a performance evaluation by the practitioner's administrator or a recommendation from the board of directors of the school district, and certification by the school district that the practitioner improved student achievement in the school year of award eligibility. To receive an award a practitioner must have successfully completed at least three consecutive years of service under contract with a school district in this state.

d. Voluntary participation by a nominee.

e. Use of objective methods for measuring improvement in student achievement. Multiple measurement and assessment tools may be used to measure student achievement. However, the practitioner or the school district may request approval from the director of the department of education to use an alternative method for measuring improvement in student achievement. The director's decision shall be final.

2. The department shall develop and distribute to school districts a weighting system for criteria evaluation to be used by districts in making awards to practitioners that ranks the criteria in the following order of priority: improvement in student achievement, practitioner participation as a member or leader of a team, initiative to improve student achievement and student change, practitioner advancement through education or professional designation achievement, and community involvement. In addition to the criteria established in accordance with this section, a school district may provide additional weighted criteria for evaluation, including, but not limited to, classroom or school environment and objective measures of teaching skill.

3. To nominate a practitioner or team of practitioners for an award, an individual shall submit an application and report, on a form designed and distributed to school districts by the department of education, to a local school district coordinator designated by the board of directors of the school district. The form shall be completed by the practitioner, one colleague, one administrator, and three parents selected by the practitioner, and shall be forwarded to the local school district coordinator.

4. The local school district coordinator shall submit the forms to the department, which shall tabulate and rank for each school district the applications received according to the minimum criteria established in accordance with subsection 2.

5. The board of directors shall also consult with practitioners to plan appropriate recognition events within the school district for presentation of the awards.

6. Applications submitted under this section shall be considered confidential personnel records under section 22.7.

7. A teacher receiving a national board certification registration or annual award under section 256.44 shall be ineligible for an award under the instructional leadership pilot program as established in this section.

*For purposes of this section, "practitioner" means the same as defined in section 272.1.**

**Sec. 30. NEW SECTION. 279.61 INSTRUCTIONAL LEADERSHIP PILOT PROGRAM — FUNDING.*

1. Subject to an appropriation of sufficient funds by the general assembly, and the establishment of an instructional leadership pilot program, by September 15, each school district

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willing to participate in the instructional leadership pilot program shall notify the department of education of the intent to participate in the program.

2. From the moneys appropriated for purposes of this program, the amount of moneys allocated to school districts that have notified the department of the intent to participate in the program shall be in the proportion that the basic enrollment of a district bears to the sum of the basic enrollments of all school districts in the state for the budget year that are willing to participate in the program. However, the amount of an award to a school district shall not exceed the sum of one hundred thousand dollars.

3. For each year in which an appropriation is made to the instructional leadership pilot program, the department of education shall notify the department of revenue and finance of the amount to be paid to each school district based upon the distribution plan set forth for the appropriation made pursuant to this section. The allocation to each school district under this section shall be made in one payment on or about January 15 of the fiscal year in which the appropriation is made, taking into consideration the relative budget and cash position of the state resources.

4. Moneys received under this section shall not be commingled with state aid payments made under section 257.16 to a school district and shall be accounted for by the local school district separately from state aid payments.

5. Payments made to school districts under this section are miscellaneous income for purposes of chapter 257 or are considered encumbered. Each local school district shall maintain a separate listing within their budget for payments received and expenditures made pursuant to this section.

6. Moneys received under this section shall not be used for payment of any collective bargaining agreement or arbitrator's decision negotiated or awarded under chapter 20.

*7. Awards to practitioners under this program shall not be built into the base pay for the practitioner, but shall be included in the calculation to determine pension contributions in the year in which the award is received.**

**Sec. 31. NEW SECTION. 279.62 FUTURE REPEAL.*

*This section and sections 279.59 through 279.61 are repealed effective July 1, 2003.**

Sec. 32. Section 280.18, unnumbered paragraph 2, Code 1997, is amended to read as follows:

In order to achieve the goal of improving student achievement and performance on a statewide basis, the board of directors of each school district shall adopt goals that will improve student achievement at each grade level in the skills listed in this section and other skills deemed important by the board. ~~Not later than July 1, 1989, the~~ At a minimum, each board shall adopt a goal of addressing the educational inequities among Iowa's minority students and develop plans for improving minority student academic performance. The board of each district shall transmit to the department of education its plans for achieving the goals it has adopted and the periodic assessment that will be used to determine whether its goals have been achieved. The committee appointed by the board under section 280.12 shall advise the board concerning the development of goals, the assessment process to be used, and the measurements to be used.

Sec. 33. Section 294A.5, Code 1997, is amended to read as follows:

294A.5 MINIMUM SALARY SUPPLEMENT.

1. For the school year beginning July 1, ~~1987~~ 1998, and succeeding school years, the minimum annual salary paid to a full-time teacher as regular compensation shall be ~~eighteen~~ twenty-three thousand dollars.

2. The minimum salary supplement shall be the sum of the following, as applicable:

a. For the school year beginning July 1, ~~1987~~ 1998, for phase I, each school district and area education agency shall certify to the department of education by the third Friday in September the names of all teachers employed by the district or area education agency whose regular compensation is less than ~~eighteen~~ twenty-three thousand dollars per year

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for that year and the amounts needed as minimum salary supplements. The minimum salary supplement for each eligible teacher is the total of the difference between ~~eighteen~~ twenty-three thousand dollars and the teacher's regular compensation plus the amount required to pay the employer's share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under chapter 294, payments on the additional salary moneys. However, for purposes of this paragraph, a teacher's regular compensation for the school year beginning July 1, 1998, shall not be lower than eighteen thousand dollars.

b. The total minimum salary supplement paid to a school district under phase I for the school year beginning July 1, 1997.

3. The board of directors shall report the salaries of teachers employed on less than a full-time equivalent basis, and the amount of minimum salary supplement shall be prorated.

Sec. 34. Section 294A.6, unnumbered paragraph 1, Code 1997, is amended to read as follows:

For the school year beginning July 1, ~~1987~~ 1998, the department of education shall notify the department of revenue and finance of the total minimum salary supplement, as described in section 294A.5, subsection 2, paragraphs "a" and "b", to be paid to each school district and area education agency under phase I and the department of revenue and finance shall make the payments. For school years after the school year beginning July 1, ~~1987~~ 1998, if a school district or area education agency reduces the number of its full-time equivalent teachers below the number employed during the school year beginning July 1, ~~1987~~ 1998, the department of revenue and finance shall reduce the total minimum salary supplement payable to that school district or area education agency so that the amount paid is equal to the ratio of the number of full-time equivalent teachers employed in the school district or area education agency for that school year divided by the number of full-time equivalent teachers employed in the school district or area education agency for the school year beginning July 1, ~~1987~~ 1998, and multiplying that fraction by the total minimum salary supplement paid to that school district or area education agency for the school year beginning July 1, ~~1987~~ 1998.

Sec. 35. Section 294A.25, subsection 1, Code Supplement 1997, is amended to read as follows:

1. For the fiscal year beginning July 1, ~~1990~~ 1998, and for each succeeding year, there is appropriated from the general fund of the state to the department of education the amount of ~~ninety-two~~ eighty-two million ~~one~~ eight hundred ninety-one thousand ~~eighty-five~~ three hundred thirty-six dollars to be used to improve teacher salaries. ~~For each fiscal year in the fiscal period commencing July 1, 1991, and ending June 30, 1993, there is appropriated an amount equal to the amount appropriated for the fiscal year beginning July 1, 1990, plus an amount sufficient to pay the costs of the additional funding provided for school districts and area education agencies under sections 294A.9 and 294A.14. For each fiscal year beginning on or after July 1, 1995, there is appropriated the sum which was appropriated for the previous fiscal year, including supplemental payments.~~ The moneys shall be distributed as provided in this section.

Sec. 36. Section 294A.25, subsection 7, Code Supplement 1997, is amended to read as follows:

7. Commencing with the fiscal year beginning July 1, 1990, the amount of ~~sixty~~ seventy-five thousand dollars for the ambassador to education program under section ~~256.43~~ 256.45.

Sec. 37. Section 669.14, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 14. Any claim arising in respect to technical assistance provided by the department of education pursuant to section 279.14A.

Sec. 38. CURRENT NATIONAL BOARD CERTIFICATE HOLDERS. In order to receive payment under section 256.44, as enacted by this Act, a teacher who by July 1, 1998, meets the qualifications for an award under section 256.44 shall apply to the department for payment under section 256.44 by June 30, 1999.

Sec. 39. CONTINGENT APPROPRIATION — TAXABLE VALUATION INCREASE. For the fiscal year beginning July 1, 1998, and ending June 30, 1999, if the actual taxable valuation of real property located in this state, based upon January 1, 1997, assessments, which is used in the computation of property taxes payable in the fiscal year beginning July 1, 1998, increases from the estimate of such taxable valuation, there is appropriated from the general fund of the state the lesser of $4,000,000 or the amount of the reduction in state foundation aid under section 257.1 as a result of such increase in taxable valuation to be used to fund section 257.13, as enacted by this Act, and the moneys shall be allocated as provided in section 257.13, subsection 2, as enacted by this Act.

Sec. 40. EMERGENCY RULES. The department may adopt emergency rules as necessary for the administration of chapter 256E and sections 256.17A and 279.60, if enacted.**

Sec. 41. APPLICABILITY. Section 279.19, as amended by this Act, shall not apply to a teacher employed by a school district prior to July 1, 1998. Section 279.19, Code 1997, shall remain applicable to a teacher employed by a school district prior to July 1, 1998.

Sec. 42. EFFECTIVE DATE. Section 2 of this Act, relating to preparation for recognizing at-risk students and for accelerating the achievement growth of students through the use of learning techniques, takes effect July 1, 1999.

Sec. 43. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY. The section of this Act that amends section 279.46, being deemed of immediate importance, takes effect upon enactment and applies retroactively to retirement incentive programs in existence after December 31, 1997.

Sec. 44. EFFECTIVE DATE. Section 19 of this Act, relating to on-time funding for increased enrollment, being deemed of immediate importance, takes effect upon enactment for the purpose of computations required for payment of state aid to school districts for budget years beginning on or after July 1, 1998. Section 19 of this Act remains in effect until the repeal of chapter 257 on July 1, 2001.

Approved May 8, 1998, except the items which I hereby disapprove and which are designated as that portion of Section 1, subsection 1 which is herein bracketed in ink and initialed by me; Section 1, subsection 5 in its entirety; that portion of Section 1, subsection 7 which is herein bracketed in ink and initialed by me; Sections 2 and 3 in their entirety; those portions of Section 4, subsection 1 which are herein bracketed in ink and initialed by me; that portion of Section 4, subsection 2 which is herein bracketed in ink and initialed by me; Section 4, subsection 3 in its entirety; Section 4, subsection 5 in its entirety; Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 in their entirety; Sections 28, 29, 30, and 31 in their entirety; Section 39 in its entirety; Section 42 in its entirety; and Section 44 in its entirety. My reasons for vetoing these items are delineated in the item veto message pertaining to this Act to the Secretary of State this same date, a copy of which is attached hereto.

TERRY E. BRANSTAD, *Governor*

Dear Mr. Secretary:

I hereby transmit Senate File 2366, an Act relating to licensing and employment of practitioners and the school districts employing them, making appropriations, and including retroactive applicability and effective date provisions.

Senate File 2366 as amended by House File 2533 comprises this General Assembly's education "reform" package. This legislation was passed in response to the recommendations of the

* Item veto; see message at end of the Act

** See this chapter and chapter 1215, §58

Commission on Educational Excellence for the 21st Century. I used the visionary framework for education reform developed by this Commission as a basis for my recommendations for a five-year plan to move Iowa schools from adequacy to excellence.

I am disappointed with the General Assembly's response to my and the Commission's recommendations. Encompassed in this bill are halting, hesitant, half steps toward education reform. Far too frequently this legislation uses pilot projects and the proffering of more money to existing programs as the basis for education "reform." Iowa's school children instead need dramatic and bold steps to reform our education system.

While I am acutely aware of the limitations of the legislative process, I believe it is wrong to measure the success of this legislation against the political realities of the day. What is right for kids may not always be good politics and may not always be embraced by the interest groups.

What is right for Iowa's kids is a good teacher for every child. What is right for Iowa's kids is access to the highest quality of education that can be provided anywhere in the world. It is against that measure and not the standards of political realities that we will all be measured in our efforts to provide a good education to Iowa's children. And in that regard, this legislation is tentative and incomplete.

I am pleased that this legislature did take some steps to provide for some limited reforms. Raising the minimum salary for teachers to $23,000 and providing stipends for teachers who receive national certification are certainly steps in the right direction. With this action I am approving those provisions, without the unnecessary limitations that were included in the legislation.

Moreover, as a result of my item vetoes, reasonable steps can be taken toward providing real incentives to those school districts that provide for an extended school year for their children. This is critically important if Iowa's children are to compete with students around the world.

In addition, I commend the legislature for passing necessary educational accountability provisions and actions to help every child become ready to start school at an early age. I am separately approving those initiatives. But the significant reform stopped there.

While the legislature took appropriate action in this legislation to deal with teachers who aren't passing muster, too little was done to provide rewards for teachers who are doing well.

We all know that access to a great teacher is the key to obtaining a great education. We must do more to prepare and reward those teachers who are doing a great job for Iowa's school children.

Specifically, the legislature failed to adopt the groundbreaking teacher merit pay program that I recommended to them. My recommendation would have provided significant financial incentives to up to 6,000 of our best teachers over the next 5 years. The alternative suggested by this legislation is inadequate, unworkable, and falls short of the meaningful change in the method of paying our teachers that is needed to keep our best teachers in the profession.

In addition, I have disapproved those provisions of this legislation that fail to appropriately reform the way we prepare teachers for the classroom. Fundamental redesign of the teacher preparation programs is necessary and the pilot intern and induction programs included in this legislation are clearly off the mark.

This legislation fails to provide the opportunity for all Iowa's school children to have access to all-day everyday kindergarten. It is wrong for any of Iowa's school children to be denied early access to opportunity.

The legislature did include several provisions that provide substantial additional money to existing education programs. However, education reform is not about just spending more money. It is about fundamentally changing the way we teach our children.

The Center for Continuous Quality Improvement was recommended to help support best practices, efficiency and effectiveness, to sustain relationships integral to the improvement of the teaching profession, and to monitor our progress toward excellence. The legislature failed to commit to these continuous quality improvement concepts supported not only by the Commission, but also by corporations and organizations throughout the world.

I cannot approve these additional appropriations without the fundamental reform that must accompany them. As a result, I am disapproving the K-3 block grant, the advanced increased enrollment funding, the 101% guarantee funding, the extension of the 100% guarantee, and the instructional support increase. Taken together, these programs provide an additional $17.4 million in additional annual general fund spending and an additional $6.2 million property tax increases. In the future, I am willing to consider these proposed spending increases if they are accompanied by the necessary reforms that will make a difference in the education of our kids. But simply providing these additional funds without that reform is unacceptable.

In addition, I have disapproved the proposed frontier school legislation that is included in Senate File 2366. This new program raises serious questions of educational policy and this method of dealing with our schools. Nevertheless, with some modifications and improvements, I am willing to consider this concept along with the other recommendations for reform recommended by the Commission and not acted upon by this General Assembly.

In short, I have approved those items in Senate File 2366 that are consistent with the recommendations of the Commission on Educational Excellence and provide for fundamental reform. However, those reforms are few and far between in this legislation. I have disapproved the other provisions of this legislation that take only tentative, half steps toward education reform or provide more money without the necessary reforms.

It is critically important that we provide all Iowa school children with the best possible teachers by reforming the teacher preparation system and rewarding teachers for outstanding performance. And we should no longer deny Iowa school children the right to all-day everyday kindergarten. These are reforms that should not wait.

I am willing to consider the items that I have disapproved in this legislation in conjunction with these additional fundamental reforms. Providing the best for Iowa's school children leaves no room for partisan politics. I am prepared to work with the members of the General Assembly yet this year in a cooperative effort to pass these necessary reforms. It is not important to me who gets the credit for those actions. It is not important to me which party is perceived the winner in that legislative effort. All I care about is what is best for the kids of Iowa.

Senate File 2366 is, therefore, approved on this date with the following exceptions, which I hereby disapprove, for the reasons stated above:

The designated portion of Section 1, subsection 1; Section 1, subsection 5, in its entirety; the designated portion of Section 1, subsection 7; Sections 2 and 3, in their entirety; the designated portions of Section 4, subsection 1; the designated portions of Section 4, subsection 2; Section 4, subsection 3, in its entirety; Section 4, subsection 5, in its entirety; Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21, in their entirety; Sections 28, 29, 30, and 31, in their entirety; Section 39, in its entirety; Section 42, in its entirety; and Section 44, in its entirety.

For the above reasons, I hereby respectfully disapprove these items in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in Senate File 2366 are hereby approved as of this date.

Sincerely,
TERRY E. BRANSTAD, *Governor*

CHAPTER 1217

APPROPRIATIONS — ADMINISTRATION AND REGULATION

H.F. 2498

AN ACT relating to and making appropriations to certain state departments, agencies, funds, and certain other entities, providing for regulatory authority, and other properly related matters, and providing effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. AUDITOR OF STATE. There is appropriated from the general fund of the state to the office of the auditor of state for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	1,426,124
.....	FTEs	112.50

The auditor of state may retain additional full-time equivalent positions as is reasonable and necessary to perform governmental subdivision audits which are reimbursable pursuant to section 11.20 or 11.21, to perform audits which are requested by and reimbursable from the federal government, and to perform work requested by and reimbursable from departments or agencies pursuant to section 11.5A or 11.5B. The auditor of state shall notify the department of management, the legislative fiscal committee, and the legislative fiscal bureau of the additional full-time equivalent positions retained.

There is appropriated from the innovation fund in the department of management to the office of auditor of state, a sum not to exceed $50,000 which shall be used to fund a contract to train a six-member team from the office of auditor of state to review the processes used by governmental departments and agencies and determine methods of improving the processes. The request for proposal for the training contract is subject to review by the chairpersons and ranking members of the joint appropriation subcommittee on administration and regulation before the request for proposal is released for bidding.

Sec. 2. IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD. There is appropriated from the general fund of the state to the Iowa ethics and campaign disclosure board for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, for the purposes designated:

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	492,002
.....	FTEs	8.00

Sec. 3. DEPARTMENT OF COMMERCE. There is appropriated from the general fund of the state to the department of commerce for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, for the purposes designated:

1. ADMINISTRATIVE SERVICES DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	1,033,788
.....	FTEs	18.50

The administrative services division shall assess each division within the department of commerce and the office of consumer advocate within the department of justice a pro rata share of the operating expenses of the administrative services division. The pro rata share

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* Item veto; see message at end of the Act

shall be determined pursuant to a cost allocation plan established by the administrative services division and agreed to by the administrators of the divisions and the consumer advocate. To the extent practicable, the cost allocation plan shall be based on the proportion of the administrative expenses incurred on behalf of each division and the office of consumer advocate. Each division and the office of consumer advocate shall include in its charges assessed or revenues generated, an amount sufficient to cover the amount stated in its appropriation, any state assessed indirect costs determined by the department of revenue and finance, and the cost of services provided by the administrative services division.

2. ALCOHOLIC BEVERAGES DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	1,541,982
.....	FTEs	25.00

3. BANKING DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	5,670,073
.....	FTEs	77.00

4. CREDIT UNION DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	1,104,001
.....	FTEs	19.00

5. INSURANCE DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	3,710,765
.....	FTEs	94.50

Of the amounts appropriated in this subsection to the insurance division, not more than $100,000 shall be used for the regulation of health insurance reform.

Of the amounts appropriated in this subsection to the insurance division, at least $300,000 shall be used for the investigation of insurance fraud.

The insurance division may reallocate authorized full-time equivalent positions as necessary to respond to accreditation recommendations or requirements. The insurance division expenditures for examination purposes may exceed the projected receipts, refunds, and reimbursements, estimated pursuant to section 505.7, subsection 7, including the expenditures for retention of additional personnel, if the expenditures are fully reimbursable and the division first does both of the following:

a. Notifies the department of management, legislative fiscal bureau, and the legislative fiscal committee of the need for the expenditures.

b. Files with each of the entities named in paragraph "a" the legislative and regulatory justification for the expenditures, along with an estimate of the expenditures.

6. PROFESSIONAL LICENSING AND REGULATION DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	869,304
.....	FTEs	12.00

7. UTILITIES DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	5,689,831
.....	FTEs	75.00

The utilities division may expend additional funds, including funds for additional personnel, if those additional expenditures are actual expenses which exceed the funds budgeted

for utility regulation. Before the division expends or encumbers an amount in excess of the funds budgeted for regulation, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the regulation expenses exceed the funds budgeted by the general assembly to the division and that the division does not have other funds from which regulation expenses can be paid. Upon approval of the director of the department of management the division may expend and encumber funds for excess regulation expenses. The amounts necessary to fund the excess regulation expenses shall be collected from those utility companies being regulated which caused the excess expenditures, and the collections shall be treated as repayment receipts as defined in section 8.2.

Sec. 4. LEGISLATIVE AGENCIES. There is appropriated from the general fund of the state to the following named agencies for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. COMMISSION ON UNIFORM STATE LAWS

For support of the commission and expenses of the members:

..... $ 24,055

2. NATIONAL CONFERENCE OF STATE LEGISLATURES

For support of the membership assessment:

..... $ 98,557

3. NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

For support of the membership assessment:

..... $ 3,000

Sec. 5. DEPARTMENT OF GENERAL SERVICES. There is appropriated from the general fund of the state to the department of general services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. ADMINISTRATION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 1,834,878
..... FTEs 48.85

2. PROPERTY MANAGEMENT

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 4,425,534
..... FTEs 118.00

Of the moneys appropriated in this subsection, $12,000 shall be used for establishing a horticulture internship program with the Des Moines area community college to provide training, an educational horticulture program, and to enhance the overall beauty of the capitol complex grounds and facilities.

3. CAPITOL PLANNING COMMISSION

For expenses of the members in carrying out their duties under chapter 18A:

..... $ 2,000

4. RENTAL SPACE

For payment of lease or rental costs of buildings and office space at the seat of government as provided in section 18.12, subsection 9, notwithstanding section 18.16:

..... $ 835,898

5. UTILITY COSTS

For payment of utility costs:

..... $ 2,324,489

Notwithstanding sections 8.33 and 18.12, subsection 11, any excess funds appropriated for utility costs in this subsection shall not revert to the general fund of the state on June 30,

1999, but shall remain available for expenditure for the purposes of this subsection during the fiscal year beginning July 1, 1999.

6. TERRACE HILL OPERATIONS

For salaries, support, maintenance, and miscellaneous purposes necessary for the operation of Terrace Hill and for not more than the following full-time equivalent positions:

.....	$	210,494
.....	FTEs	5.00

Sec. 6. REVOLVING FUNDS. There is appropriated from the designated revolving funds to the department of general services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. CENTRALIZED PRINTING

From the centralized printing permanent revolving fund established by section 18.57 for salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	1,025,355
.....	FTEs	27.30

2. CENTRALIZED PRINTING — REMAINDER

The remainder of the centralized printing permanent revolving fund is appropriated for the expense incurred in supplying paper stock, offset printing, copy preparation, binding, distribution costs, original payment of printing and binding claims and contingencies arising during the fiscal year beginning July 1, 1998, and ending June 30, 1999, which are legally payable from this fund.

3. CENTRALIZED PURCHASING

From the centralized purchasing permanent revolving fund established by section 18.9 for salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	927,663
.....	FTEs	17.95

4. CENTRALIZED PURCHASING — REMAINDER

The remainder of the centralized purchasing permanent revolving fund is appropriated for the payment of expenses incurred through purchases by various state departments and for contingencies arising during the fiscal year beginning July 1, 1998, and ending June 30, 1999, which are legally payable from this fund.

5. VEHICLE DISPATCHER

From the vehicle dispatcher revolving fund established by section 18.119 for salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	722,636
.....	FTEs	15.85

6. VEHICLE DISPATCHER — REMAINDER

The remainder of the vehicle dispatcher revolving fund is appropriated for the purchase of gasoline, gasohol, oil, tires, repairs, and all other maintenance expenses incurred in the operation of state-owned motor vehicles and for contingencies arising during the fiscal year beginning July 1, 1998, and ending June 30, 1999, which are legally payable from this fund.

Sec. 7. GOVERNOR AND LIEUTENANT GOVERNOR. There is appropriated from the general fund of the state to the offices of the governor and the lieutenant governor for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. GENERAL OFFICE

For salaries, support, maintenance, and miscellaneous purposes for the general office of the governor and the general office of the lieutenant governor, and for not more than the following full-time equivalent positions:

..... $ 1,282,348
..... FTEs 17.25

The sum of $2,243 shall revert from the juvenile violence/safe schools fund in the office of the governor to the general fund of the state on July 1, 1998.

The sum of $140 shall be transferred from the congress on the environment fund in the office of the governor to the Iowa resources enhancement and protection fund created in section 455A.18 on July 1, 1998.

2. TERRACE HILL QUARTERS

For salaries, support, maintenance, and miscellaneous purposes for the governor's quarters at Terrace Hill, and for not more than the following full-time equivalent positions:

..... $ 75,017
..... FTEs 2.00

3. ADMINISTRATIVE RULES COORDINATOR

For salaries, support, maintenance, and miscellaneous purposes for the office of administrative rules coordinator, and for not more than the following full-time equivalent positions:

..... $ 135,047
..... FTEs 3.00

4. NATIONAL GOVERNORS ASSOCIATION

For payment of Iowa's membership in the national governors association:

..... $ 66,200

5. GUBERNATORIAL TRANSITION

For expenses incurred during the gubernatorial transition:

..... $ 15,000

Sec. 8. DEPARTMENT OF INSPECTIONS AND APPEALS. There is appropriated from the general fund of the state to the department of inspections and appeals for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, for the purposes designated:

1. FINANCE AND SERVICES DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 536,695
..... FTEs 20.20

2. AUDITS DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 509,419
..... FTEs 12.00

3. APPEALS AND FAIR HEARINGS DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 250,428
..... FTEs 25.50

4. INVESTIGATIONS DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 951,855
..... FTEs 40.00

It is the intent of the general assembly that $24,098 and 1 FTE included in this subsection shall be used for additional welfare fraud investigations.

5. HEALTH FACILITIES DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 2,145,961*
..... FTEs 100.00

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* See chapter 1223, §13 herein

*Of the moneys appropriated in this subsection, $90,000 shall be used by the health facilities division to pay the salary, support, and miscellaneous expenses of a building inspector position.

Of the moneys appropriated in this subsection, $5,000 shall be used by the department of inspections and appeals to develop criteria for, and implement, a statewide education program for care review committee members. The department of inspections and appeals shall consult with the department of elder affairs to develop a program designed to educate nursing facility care review committee members regarding their roles and responsibilities in the inspections process, conflict resolution, and elder care.

The department of inspections and appeals may conduct, contract for, or permit health facilities to contract for the performance of health facility construction inspections as required under chapter 135C. The department may authorize local government building officials to conduct health facility construction inspections except the final inspection and any costs incurred conducting the inspections by a local government shall be paid by the facility or the contractor. The department shall review all proposed plans and specifications, and shall conduct the final on-site review and approval of all alterations, additions, or new construction prior to occupancy. The director shall adopt rules pursuant to chapter 17A to implement this paragraph.

The department of inspections and appeals and the department of public health, in consultation with the department of human services and the department of elder affairs, shall review the need for a state licensing program for home health agencies. The review shall include, but is not limited to, determination of the scope of Iowa agencies and home care services not currently regulated by Medicare, fiscal information concerning the cost of implementation of a licensing program, feasibility analysis of implementing state regulation of the providers, and other information deemed appropriate by the departments. The department shall submit a report of findings and recommendations to the general assembly on or before December 15, 1998.

6. INSPECTIONS DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	617,150
.....	FTEs	12.00

The department of inspections and appeals shall cooperate with the department of human services, the Iowa foundation for medical care, and the Iowa state university social and behavioral research center for rural health, in implementing a positive incentives for nursing care in an Iowa nursing home pilot project. The positive incentives may include best practice awards, extended reinspection periods, and other waivers to reduce documentation, staffing, and inspection survey length.

7. EMPLOYMENT APPEAL BOARD

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	34,398
.....	FTEs	15.00

The employment appeal board shall be reimbursed by the labor services division of the department of employment services for all costs associated with hearings conducted under chapter 91C, related to contractor registration. The board may expend, in addition to the amount appropriated under this subsection, additional amounts as are directly billable to the labor services division under this subsection and to retain the additional full-time equivalent positions as needed to conduct hearings required pursuant to chapter 91C.

8. STATE FOSTER CARE REVIEW BOARD

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	573,811
.....	FTEs	13.00

* See chapter 1223, §13 herein

The department of human services, in coordination with the state foster care review board and the department of inspections and appeals, shall submit an application for funding available pursuant to Title IV-E of the federal Social Security Act for claims for state foster care review board administrative review costs.

Sec. 9. RACETRACK REGULATION. There is appropriated from the general fund of the state to the racing and gaming commission of the department of inspections and appeals for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, miscellaneous purposes, for the regulation of pari-mutuel racetracks, and for not more than the following full-time equivalent positions:

..... $ 2,067,328
..... FTEs 23.51

It is the intent of the general assembly that the state racing and gaming commission shall require jockeys or drivers, trainers, and handlers to submit to drug and alcohol testing pursuant to rules adopted by the state commission and applicable to all such persons. **The rules shall establish procedures and standards for the drug and alcohol testing of jockeys or drivers, trainers, and handlers, which shall be consistent with the procedures and standards established for drug and alcohol testing of persons under section 730.5.**

Sec. 10. Section 99D.25A, subsection 7, Code Supplement 1997, as amended by 1998 Iowa Acts, Senate File 2121,** section 1, is amended to read as follows:

7. A horse entered to race with lasix must be treated at least four hours prior to post time. The lasix shall be administered intravenously by a veterinarian employed by the owner or trainer of the horse. The commission shall adopt rules to ensure that lasix is administered as provided in this section. The commission shall require that the practicing veterinarian deliver an affidavit signed by the veterinarian which certifies information regarding the treatment of the horse. The affidavit must be delivered to a commission veterinarian within twenty minutes following the treatment. The statement must at least include the name of the practicing veterinarian, the tattoo number of the horse, the location of the barn and stall where the treatment occurred, the race number of the horse, the name of the trainer, and the time that the lasix was administered. Lasix shall only be administered in a dose level of two hundred fifty milligrams. ~~The commission veterinarian shall extract a test sample of the horse's blood, urine, or saliva to determine whether the horse was improperly drugged after the race is run.~~

Sec. 11. EXCURSION BOAT REGULATION. There is appropriated from the general fund of the state to the racing and gaming commission of the department of inspections and appeals for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, and miscellaneous purposes for administration and enforcement of the excursion boat gambling laws, and for not more than the following full-time equivalent positions:

..... $ 1,317,060
..... FTEs 25.29

It is the intent of the general assembly that the racing and gaming commission shall only employ additional full-time equivalent positions for riverboat gambling enforcement as authorized by the department of management as needed for enforcement on new riverboats. If more than nine riverboats are operating during the fiscal year beginning July 1, 1998, and ending June 30, 1999, the commission may expend no more than $120,349 for no more than 2 FTEs for each additional riverboat in excess of nine. The additional expense associated with the positions shall be paid from fees assessed by the commission as provided in chapter 99F.

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* Item veto; see message at end of the Act
** Chapter 1006 herein

Sec. 12. USE TAX APPROPRIATION. There is appropriated from the use tax receipts collected pursuant to sections 423.7 and 423.7A prior to their deposit in the road use tax fund pursuant to section 423.24, subsection 1, to the appeals and fair hearings division of the department of inspections and appeals for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, for the purposes designated:

For salaries, support, maintenance, and miscellaneous purposes:

..... $ 1,075,030

Sec. 13. DEPARTMENT OF MANAGEMENT. There is appropriated from the general fund of the state to the department of management for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. GENERAL OFFICE

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 1,987,450
..... FTEs 28.00

The department of management shall report to the chairpersons and ranking members of the joint appropriations subcommittee on administration and regulation and the legislative fiscal bureau concerning the recommendations received from the $300,000 fleet management services study received by the department, the recommendations implemented by state agencies, increased service levels attained due to implementation, recommendations to be implemented during the fiscal year ending June 30, 1999, and the savings realized from the recommendations which have been implemented. The report submitted to the joint appropriations subcommittee on administration and regulation and the legislative fiscal bureau shall be for the fiscal year ending June 30, 1998, and shall be submitted not later than January 1, 1999.

2. LAW ENFORCEMENT TRAINING REIMBURSEMENTS

For reimbursement to local law enforcement agencies for the training of officers who resign pursuant to section 384.15, subsection 7:

..... $ 47,500

3. COUNCIL OF STATE GOVERNMENTS

For support of the membership assessment:

..... $ 81,585

4. COUNCIL ON HUMAN INVESTMENT

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 158,843
..... FTEs 2.00

Sec. 14. ROAD USE TAX APPROPRIATION. There is appropriated from the road use tax fund to the department of management for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, and miscellaneous purposes:

..... $ 56,000

Sec. 15. DEPARTMENT OF PERSONNEL. There is appropriated from the general fund of the state to the department of personnel for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated including the filing of quarterly reports as required in this section:

1. OPERATIONS

For salaries, support, maintenance, and miscellaneous purposes for the director's staff, information services, data processing, and financial services, and for not more than the following full-time equivalent positions:

..... $ 1,382,290
..... FTEs 20.42

2. PROGRAM DELIVERY SERVICES

For salaries for personnel services, employment law and labor relations and training for not more than the following full-time equivalent positions:

..... $ 1,335,811
..... FTEs 32.55

3. PROGRAM ADMINISTRATION AND DEVELOPMENT

For salaries for employment, compensation, and benefits and workers' compensation and for not more than the following full-time equivalent positions:

..... $ 1,672,761
..... FTEs 34.80

Any funds received by the department for workers' compensation purposes other than the funds appropriated in subsection 3 shall be used only for the payment of workers' compensation claims.

The funds for support, maintenance, and miscellaneous purposes for personnel assigned to program delivery services under subsection 2 and program administration and development under subsection 3 are payable from the appropriation made in subsection 1.

The department of personnel shall report annually to the chairpersons and ranking members of the joint appropriations subcommittee on administration and regulation concerning the number of private consultant contracts of one year or more which are entered into or extended each year by the departments and agencies of the state. All departments and agencies of the state shall cooperate with the department in the preparation of this report.

It is the intent of the general assembly that members of the general assembly serving as members of the deferred compensation advisory board shall be entitled to receive per diem and necessary travel and actual expenses pursuant to section 2.10, subsection 5, while carrying out their official duties as members of the board.

Sec. 16. HEALTH INSURANCE REFORM PROGRAM. There is transferred from the surplus funds in the health insurance operating account to the department of personnel for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For the salary and support costs for the insurance reform specialist and the program and administrative costs associated with the health insurance reform effort in Iowa:

..... $ 550,499

Sec. 17. HEALTH INSURANCE OVERSIGHT PROGRAM. There is transferred from the surplus funds in the health insurance operating account to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For the salary and support costs to provide reporting and oversight of health care purchasing in Iowa:

..... $ 112,000

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 1999, from the funds transferred in this section, shall revert to the health insurance operating account on August 31, 1999.

Sec. 18. IPERS. There is appropriated from the Iowa public employees' retirement system fund to the department of personnel for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

1. For salaries, support, maintenance, and other operational purposes to pay the costs of the Iowa public employees' retirement system:

..... $ 5,045,622
..... FTEs 69.77

2. It is the intent of the general assembly that the Iowa public employees' retirement system employ sufficient staff within the appropriation provided in this section to meet the developing requirements of the investment program.

3. For costs associated with the acquisition, remodeling, and relocation of a headquarters building for offices and related facilities for employees and storage of applicable records of the Iowa public employees' retirement system and notwithstanding any provision of chapter 18 to the contrary:

..... $ 4,000,000

The Iowa public employees' retirement system division shall use a competitive bid process for the proposed acquisition of a headquarters building and related facilities and accept, if any, the most cost-effective bid which best meets the needs of the system's members.

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2000, from the funds appropriated in this subsection, shall revert to the Iowa public employees' retirement system fund on August 31, 2000.

Sec. 19. SPECIAL STUDIES APPROPRIATIONS. There is appropriated from the Iowa public employees' retirement system fund to the Iowa public employees' retirement system division of the department of personnel for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For costs associated with completing the study of the possible establishment of a statewide deferred compensation plan for active members of the Iowa public employees' retirement system:

..... $ 20,000

2. For costs associated with performing the study of whether adjunct instructors employed by a community college or regents university should be allowed to become members of the Iowa public employees' retirement system:

..... $ 15,000

3. For costs associated with performing, in concert with the retirement systems established in chapter 97A and chapter 411, a comprehensive examination of plan design of benefit parity issues:

..... $ 35,000

It is the intent of the general assembly that each public retirement system responsible for performing the examination as described in this subsection shall share proportionately the cost of conducting the examination. Moneys appropriated in this subsection shall be used by the Iowa public employees' retirement system to provide its proportionate share of the cost of the examination.

Sec. 20. PRIMARY ROAD FUND APPROPRIATION. There is appropriated from the primary road fund to the department of personnel for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, and miscellaneous purposes to provide personnel services for the state department of transportation:

..... $ 371,215

Sec. 21. ROAD USE TAX FUND APPROPRIATION. There is appropriated from the road use tax fund to the department of personnel for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, and miscellaneous purposes to provide personnel services for the state department of transportation:

..... $ 60,430

Sec. 22. STATE WORKERS' COMPENSATION CLAIMS. There is appropriated from the general fund of the state to the department of personnel for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For distribution, subject to approval of the department of management, to various state departments to fund the premiums for paying workers' compensation claims which are assessed to and collected from the state department by the department of personnel based upon a rating formula established by the department of personnel:

..... $ 5,884,740

The premiums collected by the department of personnel shall be segregated into a separate workers' compensation fund in the state treasury to be used for payment of state employees' workers' compensation claims. Notwithstanding section 8.33, unencumbered or unobligated moneys remaining in this workers' compensation fund at the end of the fiscal year shall not revert but shall be available for expenditure for purposes of the fund for subsequent fiscal years.

Sec. 23. DEPARTMENT OF REVENUE AND FINANCE. There is appropriated from the general fund of the state to the department of revenue and finance for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated, and for not more than the following full-time equivalent positions used for the purposes designated in subsections 1 through 3:

..... FTEs 536.25

1. COMPLIANCE

For salaries, support, maintenance, and miscellaneous purposes:

..... $ 10,585,161

2. STATE FINANCIAL MANAGEMENT

For salaries, support, maintenance, and miscellaneous purposes:

..... $ 10,980,931

3. INTERNAL RESOURCES MANAGEMENT

For salaries, support, maintenance, and miscellaneous purposes:

..... $ 6,806,935

4. COLLECTION COSTS AND FEES

For payment of collection costs and fees pursuant to section 422.26:

..... $ 45,000

5. The director of revenue and finance shall prepare and issue a state appraisal manual and the revisions to the state appraisal manual as provided in section 421.17, subsection 18, without cost to a city or county.

Sec. 24. LOTTERY. There is appropriated from the lottery fund to the department of revenue and finance for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, miscellaneous purposes for the administration and operation of lottery games, and for not more than the following full-time equivalent positions:

..... $ 8,022,793

..... FTEs 117.00

Sec. 25. MOTOR VEHICLE FUEL TAX APPROPRIATION. There is appropriated from the motor vehicle fuel tax fund created by section 452A.77 to the department of revenue and

finance for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, and miscellaneous purposes for administration and enforcement of the provisions of chapter 452A and the motor vehicle use tax program:

..... $ 1,024,630

Sec. 26. SECRETARY OF STATE. There is appropriated from the general fund of the state to the office of the secretary of state for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. ADMINISTRATION AND ELECTIONS

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 677,121
..... FTEs 10.00

It is the intent of the general assembly that the state department or state agency which provides data processing services to support voter registration file maintenance and storage shall provide those services without charge.

2. BUSINESS SERVICES

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 1,805,201
..... FTEs 32.00

3. OFFICIAL REGISTER

For costs incurred in the printing of the official register:

..... $ 5,000

Sec. 27. STATE-FEDERAL RELATIONS. There is appropriated from the general fund of the state to the office of state-federal relations for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 255,658
..... FTEs 3.00

Sec. 28. TREASURER. There is appropriated from the general fund of the state to the office of treasurer of state for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 971,483
..... FTEs 27.80

The office of treasurer of state shall supply clerical and secretarial support for the executive council.

Sec. 29. ELIMINATION OF VACANT UNFUNDED JOBS. Within sixty days after an unfunded vacancy occurs, a state department, agency, or office receiving appropriations under this Act shall eliminate the vacant unfunded position from the table of organization of the state department, agency, or office.

Sec. 30. 1993 Iowa Acts, chapter 151, section 3, is amended by striking the section.

Sec. 31. 1994 Iowa Acts, chapter 1072, section 9, as amended by 1995 Iowa Acts, chapter 185, section 46, is repealed.

Sec. 32. TRANSITION OF PERSONNEL SERVICES CONTRACTORS. Two and one-fourth full-time equivalent positions (FTEs) appropriated for in this Act represent the transition of personnel services contractors to FTEs. The merit system provisions of chapter 19A and the provisions of the state's/union's collective bargaining agreements shall not govern movement into these FTE positions during the period beginning July 1, 1998, and ending August 31, 1998. This section is void September 1, 1998.

*Sec. 33. *CELLULAR TELEPHONE REPORT. Each state department, agency, or office receiving appropriations under this Act shall report individual cellular telephone usage by its employees for the fiscal year ending June 30, 1998, to the chairpersons and ranking members of the joint appropriations subcommittee on administration and regulation and the legislative fiscal bureau. The report shall be submitted not later than January 1, 1999.**

Sec. 34. Section 47.7, subsections 1 and 2, Code Supplement 1997, are amended to read as follows:

1. The ~~senior administrator of data processing services in the department of general services~~ state commissioner of elections is designated the state registrar of voters, and shall regulate the preparation, preservation, and maintenance of voter registration records, the preparation of precinct election registers for all elections administered by the commissioner of any county, and the preparation of other data on voter registration and participation in elections which is requested and purchased at actual cost of preparation and production by a political party or any resident of this state. The registrar shall maintain a log, which is a public record, showing all lists and reports which have been requested or generated or which are capable of being generated by existing programs of the data processing services ~~in the department of general services~~ of the registrar. In the execution of the duties provided by this chapter, the state registrar of voters ~~and the state commissioner of elections~~ shall provide the maximum public access to the electoral process permitted by law.

2. The registrar shall offer to each county in the state the opportunity to arrange for performance of all functions referred to in subsection 1 by the data processing facilities of the ~~department of general services~~ registrar, commencing at the earliest practicable time, at a cost to the county determined in accordance with the standard charges for those services adopted annually by the registration commission. A county may accept this offer without taking bids under section 47.5.

*Sec. 35. *Section 18.12, Code 1997, is amended by adding the following new subsection:*

*NEW SUBSECTION. 19A. Determine and recommend to the governor and the general assembly a reimbursement amount to the city of Des Moines for police and fire protection provided by the city for state-owned buildings and facilities located in the city. The recommendation shall be a cost benefit analysis based on current state practices in other Iowa cities with state-owned facilities and shall be applicable for inclusion in the budget for the fiscal year 2000 and subsequent fiscal years.**

Sec. 36. SINGLE CONTACT REPOSITORY — DEPARTMENT OF INSPECTIONS AND APPEALS.

1. It is the intent of the general assembly that the department of inspections and appeals shall implement a single contact repository for criminal history, child abuse, adult abuse, and sex offender registries, and nurse aide and other health professional certification and licensing information.

2. For the purposes of this section, "facility" or "facility licensed under chapter 135C" includes all of the following:

a. An elder group home certified under chapter 231B.

b. An assisted living facility certified or voluntarily accredited under chapter 231C.

c. A provider of homemaker, home-health aide, home-care aide, or adult day care services.

d. A hospice.

e. A provider of services under a federal medical assistance home and community-based services waiver.

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* Item veto; see message at end of the Act

3. The department of inspections and appeals, in conjunction with other departments and agencies of state government involved with criminal history, child abuse, adult abuse, and sex offender registries, and nurse aide and other health professional certification and licensing information, shall establish a single contact repository for facilities licensed under chapter 135C to have electronic access to data to perform background checks for purposes of employment.

4. The department shall provide information for purposes of the single contact repository established pursuant to this section, in accordance with rules adopted by the department.

Sec. 37. COMMUNITY HEALTH INFORMATION SYSTEM. Any unobligated or unencumbered funds appropriated pursuant to 1997 Iowa Acts, chapter 209, section 10, subsection 5, remaining on the effective date of this Act may be used in developing a transition plan for the community health management information system.

Sec. 38. Section 505.21, subsection 4, Code 1997, is amended by striking the subsection.

Sec. 39. EFFECTIVE DATE. Section 37 of this Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 19, 1998, except the items which I hereby disapprove and which are designated as Section 1, unnumbered and unlettered paragraph 3, which is herein bracketed in ink and initialed by me; that portion of Section 9, unnumbered and unlettered paragraph 2, which is hereby bracketed in ink and initialed by me; Section 33 in its entirety; and Section 35 in its entirety. My reasons for vetoing these items are delineated in the item veto message pertaining to this Act to the Secretary of State this same date, a copy of which is attached hereto.

TERRY E. BRANSTAD, *Governor*

Dear Mr. Secretary:

I hereby transmit House File 2498, an Act relating to and making appropriations to certain state departments, agencies, funds, and certain other entities, providing for regulatory authority, and other properly related matters, and providing effective dates.

House File 2498 is, therefore, approved on this date with the following exceptions, which I hereby disapprove.

I am unable to approve the item designated as Section 1, unnumbered and unlettered paragraph 3. This item establishes an appropriation from the Innovation Fund to the Auditor of State for training. The Innovation Fund was created to provide loans to departments for innovative endeavors. The appropriation in this section does not meet that criteria.

I am unable to approve the designated portion of Section 9, unnumbered and unlettered paragraph 2. This item requires the Racing and Gaming Commission to adopt rules consistent with newly enacted legislation for drug and alcohol testing in employer/employee relationships. However, the participants in the racing industry do not have an employer/employee relationship with the Commission. The Commission currently has rules in place to test participants in the racing industry for drugs and alcohol that more appropriately reflect the relationship between regulator and participant.

I am unable to approve the item designated as Section 33, in its entirety. This item requires each state department, agency or office receiving appropriations under this Act to prepare a report on the usage of individual cellular telephones by its employees. Management and oversight of cellular telephone usage by administrative and regulatory agencies is more appropriately a function of the executive branch. I have directed every agency to develop policies on both cell phone and internet use.

I am unable to approve the item designated as Section 35, in its entirety. This item requires the Department of General Services to determine and recommend to the Governor and the General Assembly a reimbursement amount to the City of Des Moines for police and fire protection provided by the city for state-owned buildings and facilities located in the city. The language in this section of the bill requires General Services to conduct a comprehensive study of reimbursement practices, yet no resources were provided to undertake the study. The bill directs further action, which presupposes an outcome to the study.

For the above reasons, I hereby respectfully disapprove these items in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in House File 2498 are hereby approved as of this date.

Sincerely,
TERRY E. BRANSTAD, *Governor*

CHAPTER 1218

HUMAN SERVICES APPROPRIATIONS AND RELATED PROVISIONS

S.F. 2410

AN ACT relating to appropriations for the department of human services and the prevention of disabilities policy council and including other provisions and appropriations involving human services and health care, and providing effective dates and a retroactive applicability provision.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I — APPROPRIATIONS

Section 1. SOCIAL SERVICES BLOCK GRANT SUPPLEMENTATION. There is appropriated from the fund created in section 8.41 to the department of human services for the fiscal year beginning July 1, 1997, and ending June 30, 1998, from moneys received under the federal temporary assistance for needy families block grant, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For supplementation of the federal social services block grant appropriation in 1997 Iowa Acts, chapter 202, section 12, due to the federal reduction in this block grant and the corresponding decrease pursuant to 1997 Iowa Acts, chapter 202, section 16:

..... $ 682,194

The moneys appropriated in this section are allocated for the indicated programs and functions within the department as follows:

1. General administration:

..... $ 43,379

2. Field operations:

..... $ 259,455

3. Child and family services:

..... $ 38,808

4. Local administrative costs and other local services:

..... $ 27,517

5. Volunteers:

..... $ 3,007

6. Community-based services:
..... $ 3,458
7. MH/MR/DD/BI community services (local purchase):
..... $ 306,570

Sec. 2. EARLY CHILDHOOD. There is appropriated from the fund created in section 8.41 to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the fiscal year beginning July 1, 1999, and ending June 30, 2000, the fiscal year beginning July 1, 2000, and ending June 30, 2001, and the fiscal year beginning July 1, 2001, and ending June 30, 2002, from moneys received under the federal temporary assistance for needy families block grant, the following amount, or so much thereof as is necessary in each of the indicated fiscal years, to be used for the purpose designated:

For funding of community-based programs targeted to children from birth through five years of age, developed by community empowerment areas:
..... $ 3,800,000

1. The department may transfer federal temporary assistance for needy families block grant funding allocated in this section to the child care and development block grant in accordance with federal law as necessary to comply with the provisions of this section. The funding shall then be provided to community empowerment areas for the fiscal year beginning July 1, 1998, in accordance with all of the following:

a. The area must be approved as a community empowerment area by the Iowa empowerment board.

b. The maximum funding amount a community empowerment area is eligible to receive shall be determined by applying the area's percentage of the state's average monthly family investment program population in the preceding fiscal year to the total amount appropriated in this section for fiscal year 1998-1999. If the community empowerment board's request for funding is received by the Iowa empowerment board on or after August 1, 1998, the maximum funding amount shall be prorated for the fiscal year and rounded up to the nearest full month.

c. A community empowerment area receiving funding shall comply with any federal reporting requirements associated with the use of that funding and other results and reporting requirements established by the Iowa empowerment board. The department shall provide technical assistance in identifying and meeting the federal requirements.

d. The availability of funding provided under this section is subject to changes in federal requirements and amendments to Iowa law.

2. Moneys appropriated in this section shall be used by communities for the purposes of enhancing quality child day care capacity in support of parent capability to obtain or retain employment. The moneys shall be used with a primary emphasis on low-income families and children from birth to five years of age. Moneys shall be provided in a flexible manner to communities, and shall be used to implement strategies identified by the communities to achieve such purposes. The strategies may include but are not limited to developing capacity for regular child day care, sick child care, night shifts child care, and emergency child care; enhancing linkages between the head start and early head start programs, early childhood development programs, and child day care assistance programs; and implementing other strategies to enhance access to child day care. The moneys may be used to either build capacity or for support of ongoing efforts. In addition to the full-time equivalent positions authorized in this Act, 1.00 FTE is authorized and the department may use up to $50,000 for provision of technical assistance and other support to communities developing and implementing strategies with moneys appropriated in this section.

3. Moneys appropriated in this section which are not distributed to a community empowerment area or otherwise remain unobligated or unexpended at the end of the fiscal year shall revert to the fund created in section 8.41 to be available for appropriation by the general assembly in a subsequent fiscal year.

Sec. 3. FAMILY INVESTMENT PROGRAM GENERAL FUND. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

To be credited to the family investment program account and used for family investment program assistance under chapter 239B:

..... $ 31,420,000

1. The department of workforce development, in consultation with the department of human services, shall continue to utilize recruitment and employment practices to include former and current family investment program recipients. The department of workforce development shall submit a report of the practices utilized and the results of the utilization to the general assembly by January 1, 1999.

2. It is the intent of the general assembly that the department of human services shall continue to work with the department of workforce development and local community collaborative efforts to provide support services for family investment program participants. The support services shall be directed to those participant families who would benefit from the support services and are likely to have success in achieving economic independence.

3. Of the funds appropriated in this section, $9,564,352 is allocated for the JOBS program.

4. The department shall continue to work with religious organizations and other charitable institutions to increase the availability of host homes, referred to as second chance homes or other living arrangements under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 103. The purpose of the homes or arrangements is to provide a supportive and supervised living arrangement for minor parents receiving assistance under the family investment program who, under chapter 239B, may receive assistance while living in an alternative setting other than with their parent or legal guardian.

Sec. 4. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT. There is appropriated from the fund created in section 8.41 to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, from moneys received under the federal temporary assistance for needy families block grant pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, which are federally appropriated for the federal fiscal years beginning October 1, 1996, and ending September 30, 1997, beginning October 1, 1997, and ending September 30, 1998, and beginning October 1, 1998, and ending September 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

Moneys appropriated in this section shall be used in accordance with the federal law making the funds available, applicable Iowa law, appropriations made from the general fund of the state in this Act for the purpose designated, and administrative rules adopted to implement the federal and Iowa law. If actual federal revenues credited to the fund created in section 8.41 through June 30, 1999, are less than the amounts appropriated in this section, the amounts appropriated shall be reduced proportionately and the department may reduce expenditures as deemed necessary by the department to meet the reduced funding level:

1. To be credited to the family investment program account and used for assistance under the family investment program under chapter 239B:

..... $ 65,125,688

2. To be credited to the family investment program account and used for the job opportunities and basic skills (JOBS) program, and implementing family investment agreements, in accordance with chapter 239B:

..... $ 19,480,113

3. For field operations:

..... $ 10,579,210

4. For general administration:

..... $ 2,844,612

5. For local administrative costs:
..... $ 1,904,371
6. For state child care assistance:
..... $ 7,214,089
7. For emergency assistance:
..... $ 2,557,000
8. For mental health and developmental disabilities community services:
..... $ 1,913,592
9. For child and family services:
..... $ 22,587,871
10. For pregnancy prevention grants on the condition that family planning services are funded:
..... $ 1,536,938
11. For technology needs and other resources necessary to meet federal welfare reform reporting, tracking, and case management requirements:
..... $ 1,000,000
12. For supervised community treatment under child and family services:
..... $ 300,000
13. For volunteers:
..... $ 18,771

The department shall report quarterly, any changes in allocations of temporary assistance for needy families moneys, to the legislative fiscal bureau and to the chairpersons and ranking members of the joint appropriations subcommittee on human services.

Sec. 5. FAMILY INVESTMENT PROGRAM ACCOUNT.

1. Moneys credited to the family investment program (FIP) account for the fiscal year beginning July 1, 1998, and ending June 30, 1999, shall be used in accordance with the following requirements:

a. The department shall provide assistance in accordance with chapter 239B.

b. The department shall continue the special needs program under the family investment program.

c. The department shall implement federal welfare reform data requirements pursuant to the appropriations made for that purpose.

d. The department shall continue expansion of the electronic benefit transfer program as necessary to comply with federal requirements. The target date for statewide implementation of the program is July 1, 2000. The department shall establish a cost-sharing policy with participants that guarantees at least four free transactions per month for participants' FIP account, unlimited free transactions for the participants' food stamp account as required by federal law, and at least one free electronic benefit transfer card replacement per six month period if a replacement is necessary. The department shall submit a progress report of the program to the general assembly by January 1, 1999. The report shall include a summary of the implementation plan for mandatory statewide usage of the electronic benefit transfer program, including timelines, projected costs and projected savings. If legislation is enacted by the Seventy-seventh General Assembly, 1998 Session, establishing fee payments to any retailers who participate in the electronic benefit transfer program,* the report shall include a projection of the costs of the fee payments and a projection of savings to the department in each of the state fiscal years beginning July 1, 1999, 2000, 2001, and 2002, and an updated comparison of fees being paid in other states. Notwithstanding any other legislation enacted by the Seventy-seventh General Assembly, 1998 Session, any retailer fees established shall not apply to any electronic benefit transfer pilot project until such time as the department begins implementation of the electronic benefit transfer program to counties in addition to the pilot project counties. An acquirer's fee for each transaction shall also not apply to any electronic benefit transfer pilot project until such time as the

* See chapter 1066 herein

department begins implementation of the electronic benefit transfer program to counties in addition to the pilot project counties.

e. The department shall continue to conduct an evaluation of the welfare reform program and child well-being provisions to measure the program's effectiveness, impacts on children and families, and impacts across programs, and to identify effective strategies.

f. The department shall continue to contract for services in developing and monitoring an entrepreneurial training program to provide technical assistance to families which receive assistance under the family investment program.

g. For family investment agreements entered into on or after July 1, 1996, the maximum allowable time period for supported postsecondary education is limited to a total of twenty-four months. The twenty-four-month allowance shall only be available for a period of thirty-six consecutive months.

2. The department may transfer funds in accordance with section 8.39, either federal or state, to or from the child day care appropriations made for the fiscal year beginning July 1, 1998, if the department deems this would be a more effective method of paying for JOBS program child care, to maximize federal funding, or to meet federal maintenance of effort requirements.

3. Moneys appropriated in this Act and credited to the family investment program account for the fiscal year beginning July 1, 1998, and ending June 30, 1999, are allocated as follows:

a. For the food stamp employment and training program:

..... $ 129,985

b. For the family development and self-sufficiency grant program as provided under section 217.12:

..... $ 5,197,825

(1) Of the funds allocated for the family development and self-sufficiency grant program in this lettered paragraph, not more than 5 percent of the funds shall be used for the administration of the grant program.

(2) Based upon the annual evaluation report concerning each grantee funded by previously appropriated funds and through the solicitation of additional grant proposals, the family development and self-sufficiency council may use the allocated funds to renew or expand existing grants or award new grants. In utilizing the increased funding to expand the program, the council shall give consideration, in addition to other criteria established by the council, to a grant proposal's intended use of local funds with a grant and to whether a grant proposal would expand the availability of the program's services to a wider geographic area.

(3) Family development and self-sufficiency grantees shall not supplant previous local funding with state or federal funds.

(4) The department and the family development and self-sufficiency council shall identify a limited number of consistent performance measures to be tracked at both the grantee and the statewide levels. These performance measures shall be incorporated into grantee contracts awarded on or after July 1, 1998, and shall include at least two measures relating to FIP usage, at least two measures relating to family stability or family structure, at least two measures relating to participant employment, and other measures deemed appropriate by the department and the council. A grantee may also identify additional measures if the grantee believes additional measures will provide important information for public policy decisions. The council may also establish and track other measures that the council determines are necessary for making public policy decisions. The performance measures identified pursuant to this subparagraph shall be designed to reinforce the goal of supporting families in moving into employment and away from welfare dependency. The department and the family development and self-sufficiency council shall also identify existing performance measures reported by grantees that can be eliminated and shall take steps to simplify and streamline existing reporting requirements. Any performance measures established

pursuant to this paragraph shall be reported to the general assembly for purposes of determining the effectiveness of the grant program.

(5) The family development and self-sufficiency grant program shall be implemented statewide during FY 1998-1999.

c. For income maintenance reengineering:

..... $ 200,000

d. For an employer verification pilot project:

..... $ 50,000

The department may streamline and simplify the employer verification process for applicants, participants, and employers in the administration of the department's programs. The department may contract with companies collecting data from employers when the information is needed in the administration of these programs. The department may limit the availability of the initiative on the basis of geographic area or number of individuals. The department shall submit a report by January 15, 1999, regarding the potential benefits of expanding the initiative.

e. For the diversion program and incentive grants as follows:

(1) For the diversion subaccount of the family investment program account:

..... $ 2,700,000

Moneys allocated to the diversion subaccount shall be used to continue the pilot initiative of providing incentives to assist families who meet income eligibility requirements for the family investment program in obtaining or retaining employment, to assist participant families in overcoming barriers to obtaining employment, and to assist families in stabilizing employment and in reducing the likelihood of the family returning to the family investment program. Incentives may be provided in the form of payment or services. The department may limit the availability of the pilot initiative on the basis of geographic area or numbers of individuals provided with incentives. The department shall attempt to assess and screen individuals who would most likely benefit from the services. The department shall expand the diversion initiative beginning in the fiscal year 1998-1999. In addition to the full-time equivalent positions authorized in this Act, 1.00 FTE is authorized and the department may use up to $50,000 to facilitate community investment in welfare reform and to support expansion of the diversion program. The department may grant diversion moneys to the level of the entity operating an initiative. The department may adopt additional eligibility criteria as necessary for compliance with federal law and for screening those families who would be most likely to become eligible for the family investment program if diversion incentives would not be provided.

(2) For implementation of innovative strategies on a statewide or pilot project basis for supporting job retention, family structure, or both, including services to noncustodial parents and young parents. The department shall consult with members of the joint appropriations subcommittee on human services, designated by the subcommittee co-chairpersons and ranking members, concerning development of the strategies in advance of implementation:

..... $ 500,000

(3) Of the moneys allocated in subparagraph (2), not more than $50,000 shall be used to develop at least one community-level parental obligation pilot project. A pilot project shall be operated with the goal of assisting parents who are living apart in meeting their parental obligations and in supporting their children. Any pilot project shall maximize the use of existing community resources for family counseling, legal services, job training and job skills development, substance abuse treatment and prevention, health maintenance, and personal mentoring. Local communities shall also be encouraged to provide financial resources.

(a) Notwithstanding any other provision of law to the contrary, the department shall develop procedures for the pilot projects to expedite all of the following:

(i) The establishment and adjustment of support obligations, with the consent of both parents, in a manner which may deviate from the child support guidelines.

(ii) Changes in income withholding orders based on individual case circumstances.

(iii) Satisfaction of a portion of support amounts owed to the state based on cooperation and compliance by the noncustodial parent with project requirements.

(iv) Adjustment of visitation and shared custody arrangements in a manner which enhances the ability of each parent to meet parental obligations.

(b) The department shall adopt rules for the development, operation, and monitoring of a project; to establish the minimum required amount of community support; to establish expedited procedures; and to establish other criteria and procedures as appropriate.

(c) The department shall use the funds authorized in this subparagraph to employ one full-time equivalent position to manage the pilot project or projects. The department shall also use the authorized funds to employ other full-time equivalent positions, as necessary, to assist in the coordination, development, and operation of community-level pilot projects and to achieve the expedited procedures established. Any full-time equivalent positions authorized in this subparagraph subdivision are in addition to any other full-time equivalent positions authorized by law.

(4) Of the moneys allocated in subparagraph (2), not more than $200,000 shall be used to conduct a study of the impact that moving unemployed family investment program parents into employment has on the well-being of the children, the parent, and the family. The department shall include in this well-being study a method of actual contact with the families and children, and shall consider broad-based impacts, such as educational achievement, health status, housing stability, family stability, and use of supportive social services. The department shall also seek funding through foundations and the federal government in order to supplement the funding for this study. The results of the study shall be submitted to the persons required by this Act to receive reports.

(5) Of the moneys allocated in subsection* (2), not more than $100,000 shall be used for providing additional incentive payments to contracted agencies who demonstrate success at completing well-being visits for families terminated from the family investment program under a limited benefit plan. The department shall use these funds to increase payments to agencies who complete a higher percentage of well-being visits, who achieve a significant percentage of visits in a face-to-face format, or who are able to observe and interact with the children during a significant percentage of visits.

f. For implementation of the domestic violence option in accordance with the provisions of the division of this Act providing for that purpose and for awareness training:

..... $ 25,000

4. Of the child support collections assigned under the family investment program, an amount equal to the federal share of support collections shall be credited to the child support recovery appropriation. The remainder of the assigned child support collections and the state share of incentives received by the child support recovery unit shall be credited to the family investment program account.

5. Effective July 1, 1998, the department shall discontinue payment of the first $50 of the assigned child support collected by the department. A participant shall be entitled to any rebate of assigned support that should have been paid for June 1998 or earlier even though the rebate payment may not be authorized or paid until July 1, 1998, or after. The department may adopt emergency rules to implement this subsection.

6. The department may adopt emergency administrative rules for the family investment, food stamp, and medical assistance programs, if necessary, to comply with federal requirements. Prior to adoption of the rules, the department shall consult with the welfare reform council and the chairpersons and ranking members of the joint appropriations subcommittee on human services.

7. Notwithstanding 1997 Iowa Acts, chapter 208, section 3, subsection 9, moneys appropriated to the department of human services in 1995 Iowa Acts, chapter 220, section 11, for purposes of costs associated with the development of the X-PERT computer system shall not revert at the close of the fiscal year beginning July 1, 1997, but shall remain available for the

* The word "subparagraph" probably intended

purpose designated, including but not limited to case conversion activities, until the close of the fiscal year beginning July 1, 1998.

Sec. 6. EMERGENCY ASSISTANCE. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For emergency assistance to families with dependent children for homeless prevention programs:

..... $ 10,000

1. The emergency assistance provided for in this section and federal moneys appropriated for this purpose in this Act shall be available beginning October 1 of the fiscal year and shall be provided only if all other publicly funded resources have been exhausted. Specifically, emergency assistance is the program of last resort and shall not supplant assistance provided by the low-income home energy assistance program (LIHEAP), county general relief, and veterans affairs programs. The department shall establish a $500 maximum payment, per family, in a twelve-month period. The emergency assistance includes, but is not limited to, assisting people who face eviction, potential eviction, or foreclosure, utility shutoff or fuel shortage, loss of heating energy supply or equipment, homelessness, utility or rental deposits, or other specified crisis which threatens family or living arrangements. The emergency assistance shall be available to migrant families who would otherwise meet eligibility criteria. The department may contract for the administration and delivery of the program. The program shall be terminated when funds are exhausted.

2. For the fiscal year beginning July 1, 1998, the department shall continue the process for the state to receive refunds of rent deposits for emergency assistance recipients which were paid by persons other than the state. The refunds received by the department under this subsection shall be deposited with the moneys of the appropriation made in this section and used as additional funds for the emergency assistance program. Notwithstanding section 8.33, moneys received by the department under this subsection which remain after the emergency assistance program is terminated and state moneys in the emergency assistance account which remain unobligated or unexpended at the close of the fiscal year shall not revert to the general fund of the state but shall remain available for expenditure when the program resumes operation on October 1 in the succeeding fiscal year.

3. Of the funds appropriated in this section, $10,000 is allocated to the community voice mail program to continue the existing program. The funds shall be made available beginning July 1, 1998.

Sec. 7. MEDICAL ASSISTANCE. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For medical assistance, including reimbursement for abortion services, which shall be available under the medical assistance program only for those abortions which are medically necessary:

..... $ 385,513,305

1. Medically necessary abortions are those performed under any of the following conditions:

a. The attending physician certifies that continuing the pregnancy would endanger the life of the pregnant woman.

b. The attending physician certifies that the fetus is physically deformed, mentally deficient, or afflicted with a congenital illness.

c. The pregnancy is the result of a rape which is reported within 45 days of the incident to a law enforcement agency or public or private health agency which may include a family physician.

d. The pregnancy is the result of incest which is reported within 150 days of the incident to a law enforcement agency or public or private health agency which may include a family physician.

e. Any spontaneous abortion, commonly known as a miscarriage, if not all of the products of conception are expelled.

2. Notwithstanding section 8.39, the department may transfer funds appropriated in this section to a separate account established in the department's case management unit for expenditures required to provide case management services for mental health, mental retardation, and developmental disabilities services under medical assistance which are jointly funded by the state and county, pending final settlement of the expenditures. Funds received by the case management unit in settlement of the expenditures shall be used to replace the transferred funds and are available for the purposes for which the funds were appropriated in this section.

3. a. The county of legal settlement shall be billed for 50 percent of the nonfederal share of the cost of case management provided for adults, day treatment, and partial hospitalization in accordance with sections 249A.26 and 249A.27, and 100 percent of the nonfederal share of the cost of care for adults which is reimbursed under a federally approved home and community-based waiver that would otherwise be approved for provision in an intermediate care facility for persons with mental retardation, provided under the medical assistance program. The state shall have responsibility for the remaining 50 percent of the nonfederal share of the cost of case management provided for adults, day treatment, and partial hospitalization. For persons without a county of legal settlement, the state shall have responsibility for 100 percent of the nonfederal share of the costs of case management provided for adults, day treatment, partial hospitalization, and the home and community-based waiver services. The case management services specified in this subsection shall be billed to a county only if the services are provided outside of a managed care contract.

b. The state shall pay the entire nonfederal share of the costs for case management services provided to persons 17 years of age and younger who are served in a medical assistance home and community-based waiver program for persons with mental retardation.

c. Medical assistance funding for case management services for eligible persons 17 years of age and younger shall also be provided to persons residing in counties with child welfare decategorization projects implemented in accordance with section 232.188, provided these projects have included these persons in their service plan and the decategorization project county is willing to provide the nonfederal share of costs.

d. When paying the necessary and legal expenses of intermediate care facilities for persons with mental retardation (ICFMR), the cost payment requirements of section 222.60 shall be considered fulfilled when payment is made in accordance with the medical assistance payment rates established for ICFMRs by the department and the state or a county of legal settlement is not obligated for any amount in excess of the rates.

4. a. The department shall proceed with a request for proposals for managed behavioral health care, including substance abuse care, without inclusion of rehabilitative treatment and support (RTS) services for medical assistance-eligible children, psychiatric medical institutions for children (PMICs) for mental health, or the preauthorization process of clinical assessment and consultation teams (CACT) for RTS services and the Iowa foundation for medical care for PMICs. In addition, the request for proposals may include coverage of persons with mental illness for whom payment for services is the responsibility of the state, known as "state cases". The state cases coverage shall include all services for persons with mental illness included in the county management plans approved under section 331.439. The financial criteria used to determine eligibility for the state cases coverage shall not be more stringent than the financial criteria used by the county of residence of the person with mental illness. The contractor's denial of payment for services provided to a person with mental illness for whom payment for the services is a state responsibility does not create a payment responsibility for a county. The department shall consult with the chairpersons

and ranking members of the joint appropriations subcommittee on human services in developing the request for proposals and in evaluating the responses. Notwithstanding the provisions of this Act and section 249A.26, requiring counties to pay all or part of the nonfederal share of certain services provided to persons with disabilities under the medical assistance program, the state shall pay 100 percent of the nonfederal share of any services included in the plan implemented pursuant to this subsection.

b. If authorized by the legislative council, the child welfare services work group created by the legislative council in November 1997 shall continue meeting to develop capitation alternatives and consider accountability from a managed system of care, and shall submit recommendations to the general assembly and to the co-chairpersons and ranking members of the joint appropriations subcommittee on human services by January 1, 1999. The department shall provide not more than $50,000 in funding for administrative expenses, ongoing expenses, consultation costs, and other support of the work group.

5. The department shall utilize not more than $60,000 of the funds appropriated in this section to continue the AIDS/HIV health insurance premium payment program as established in 1992 Iowa Acts, Second Extraordinary Session, Chapter 1001, section 409, subsection 6. Of the funds allocated in this subsection, not more than $5,000 may be expended for administrative purposes.

6. Of the funds appropriated to the Iowa department of public health for substance abuse grants, $950,000 for the fiscal year beginning July 1, 1998, shall be transferred to the department of human services for an integrated substance abuse managed care system.

*7. *The department shall aggressively implement the medical assistance home and community-based waiver for persons with physical disabilities as a means to further develop the personal assistance services program under section 225C.46. The waiver shall be limited in application to persons with physical disabilities who reside in a medical institution at the time of applying for assistance. The base number of persons to be served under this waiver at any one time is 35. In addition, a maximum of ten persons with physical disabilities who are at imminent risk of placement in a medical institution shall be approved for waiver services.**

8. The department of human services, in consultation with the Iowa department of public health and the department of education, shall continue the program to utilize the early and periodic screening, diagnosis, and treatment (EPSDT) funding under medical assistance, to the extent possible, to implement the screening component of the EPSDT program through the school system. The department may enter into contracts to utilize maternal and child health centers, the public health nursing program, or school nurses in implementing this provision.

9. The department shall continue the case study for outcome-based performance standards for programs serving persons with mental retardation or other developmental disabilities proposed pursuant to 1994 Iowa Acts, chapter 1170, section 56. The department shall adopt rules applicable to the programs included in the case study, request a waiver of applicable federal requirements, and take other actions deemed necessary by the department to continue the case study.

10. Contingent upon receiving federal approval, the department shall develop and implement a medical assistance home and community-based services waiver to allow children with mental retardation, who would otherwise require ICF/MR care, to be served in out-of-home settings of up to eight beds which meet standards established by the department. Initially the waiver shall be designed to provide 100 service slots.

11. The department may establish up to 30 psychiatric medical institution for children (PMIC) beds at the state mental health institute at Independence.

12. The department shall reinstate the employment earnings disregard eliminated by 1997 Iowa Acts, chapter 41, section 35, only if the disregard must be reinstated for the medical assistance program to assure federal funding under Title XIX or Title XXI of the federal Social Security Act. In reinstating the disregard, the department may simplify policies if the simplification can be accomplished within the existing department budget. The department may adopt emergency rules in order to implement the provisions of this subsec-

* Item veto; see message at end of the Act

tion. If the disregard is reinstated, the department shall submit for consideration during the 1999 legislative session, proposed legislation under section 2.16 for codification of the disregard.

13. Effective July 1, 1998, contingent upon receiving federal approval, the department shall revise the home and community-based services waiver provision which requires that an individual must have previously resided in an intermediate care facility for persons with mental retardation in order to receive supported employment and other services under the waiver. The revision shall allow a person with mental retardation to receive supported employment and other services under the waiver if this option is cost effective as compared to other service options available to that person. The department shall adopt emergency rules to implement the provisions of this subsection.

14. If approved by the federal government, adult residential environments licensed as intermediate or residential care facilities for persons with mental retardation using a campus or village setting approach, in not more than three counties, may convert to a residential program under the provisions of a medical assistance home and community-based services waiver for persons with mental retardation, provided the adult residential environments meet all of the following requirements:

a. The intermediate or residential care facility for persons with mental retardation license is surrendered.

b. The environment's bed capacity is reduced by at least twenty-five percent to a maximum capacity of no more than twelve beds.

c. The environment submits a five-year plan for further bed capacity reduction to the department of human services and the plan is acceptable to the department of human services.

The director of human services may authorize reimbursement of the costs of environments converted in accordance with this subsection from moneys appropriated for state supplementary assistance at a rate which does not exceed the maximum allowed for a residential program under state supplementary assistance requirements. The departments of human services and inspections and appeals shall develop standards and a monitoring process for environments converted under this subsection. If the provisions of this subsection are implemented, the department of human services shall submit amendments to the general assembly in accordance with section 2.16 to codify the provisions.

Sec. 8. HEALTH INSURANCE PREMIUM PAYMENT PROGRAM. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For administration of the health insurance premium payment program, including salaries, support, maintenance, and miscellaneous purposes:

.....	$	392,000
.....	FTEs	17.00

Sec. 9. CHILD HEALTH CARE PROGRAM. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For maintenance of the child health care program as authorized by state law for receipt of federal financial participation under Title XXI of the federal Social Security Act, which creates the state children's health insurance program, including salaries, support benefits, outreach, maintenance, and miscellaneous purposes:

.....	$	7,000,000

The department may transfer funds appropriated in this Act for medical assistance to be used for the purpose of expanding health care coverage to children. **Notwithstanding section 8.33, moneys appropriated in this section of this Act which remain unobligated at the*

* Item veto; see message at end of the Act

*close of the fiscal year shall not revert but shall remain available for allocation in the succeeding fiscal year.** The department shall provide periodic updates of expenditures of funds appropriated under this section to the general assembly. The department, in consultation with the board established for the child health care program, shall develop and utilize an application form, which does not exceed two pages in length, for coordination of the child health care program and the medical assistance program. The department may adopt emergency rules to implement the provisions of this section.

Sec. 10. MEDICAL CONTRACTS. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For medical contracts:

..... $ 7,357,150

1. Notwithstanding 1997 Iowa Acts, chapter 208, section 7, subsection 1, the department shall establish a task force to conduct a review of the prior authorization and prospective drug utilization review systems. The task force shall submit a report, including any recommendations for modifications of these systems, to the general assembly by January 1, 1999. Members of the task force shall include one representative of the department of human services, one representative of the drug utilization review commission, two pharmacists, two physicians, two representatives of academia, and two representatives of the pharmaceutical industry. Prior to submission of the report, the task force shall receive input concerning the recommendations and findings from interested legislators convened by the co-chairpersons of the joint appropriations subcommittee on human services.

2. The department shall not expand the requirement of drug prior authorization without prior approval of the general assembly except to require prior authorization of an equivalent of a prescription drug which is subject to prior authorization as of June 30, 1998.

3. a. Of the funds appropriated in this section, up to $130,000 may be used by the department to fund a pilot project to develop recruitment and retention strategies and to provide additional training and support for nurse aides, employed by nursing facilities, as a means of reducing staff turnover.

b. The department shall contract with an agency or organization whose primary purpose is the improvement of the nurse aide profession, in partnership with community colleges and other professional providers, to provide continuing education, support and empowerment programs, and career opportunities within the field of nurse assisting, to further stabilize the workforce and reduce turnover.

c. The department shall also contract with one or more public institutions of higher education to evaluate the pilot project's effectiveness.

d. The department shall establish an advisory council to direct the project, which shall include representatives of the Iowa caregivers association, the Iowa nurses association, the department of inspections and appeals, the department of elder affairs, the Iowa association of homes and services for the aging, the Iowa health care association, the Iowa council of health care centers, long-term care coordinators appointed by the consortium of community colleges, and other interested parties.

4. The department shall enter into a contract with the university of Iowa college of medicine to conduct a study to determine the benefits to the state of the provision of pharmaceutical services by pharmacists. The study shall be conducted at no cost to the state.

Sec. 11. STATE SUPPLEMENTARY ASSISTANCE. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For state supplementary assistance, funeral assistance, and the medical assistance waiver for persons with mental retardation rent subsidy program:

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* Item veto; see message at end of the Act

..... $ 19,537,200

1. The department shall increase the personal needs allowance for residents of residential care facilities by the same percentage and at the same time as federal supplemental security income and federal social security benefits are increased due to a recognized increase in the cost of living. The department may adopt emergency rules to implement this subsection.

2. a. If during the fiscal year beginning July 1, 1998, the department projects that state supplementary assistance expenditures for a calendar year will not meet the federal pass-along requirement specified in Title XVI of the federal Social Security Act, section 1618, as codified in 42 U.S.C. § 1382g, the department may take actions including but not limited to increasing the personal needs allowance for residential care facility residents and making programmatic adjustments or upward adjustments of the residential care facility or in-home health-related care reimbursement rates prescribed in this Act to ensure that federal requirements are met. The department may adopt emergency rules to implement the provisions of this subsection.

b. If during the fiscal year beginning July 1, 1998, the department projects that state supplementary assistance expenditures will exceed the amount appropriated, the department may transfer funds appropriated in this Act for medical assistance for the purposes of the state supplementary assistance program. However, funds shall only be transferred from the medical assistance appropriation if the funds transferred are projected to be in excess of the funds necessary for the medical assistance program.

3. The department may use up to $75,000 of the funds appropriated in this section for a rent subsidy program for adult persons to whom all of the following apply:

a. Are receiving assistance under a medical assistance home and community-based services waiver.

b. Were discharged from a medical institution in which they have resided or were at risk of institutional placement, not to exceed 100 slots. Within available funding and demonstrated need, the department may make subsidy funds available to HCBS waiver-eligible adults meeting criteria in paragraph "a" and this paragraph at any time on or after July 1, 1995.

c. In lieu of meeting the criteria in paragraph "b", rent subsidy funds may also be provided to persons able to leave a medical institution by use of services provided under an HCBS waiver who turn 18 years of age during the last year of their institutional stay.

The goal of the subsidy program shall be to encourage and assist in enabling persons who currently reside in a medical institution to move to a community living arrangement. An eligible person may receive assistance in meeting their rental expense and, in the initial two months of eligibility, in purchasing necessary household furnishings and supplies. The program shall be implemented so that it does not meet the federal definition of state supplementary assistance and will not impact the federal pass-along requirement specified in Title XVI of the federal Social Security Act, section 1618, as codified in 42 U.S.C. § 1382g.

Sec. 12. CHILD DAY CARE ASSISTANCE. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For protective child day care assistance and state child care assistance:

..... $ 8,740,000

1. Of the funds appropriated in this section, $3,696,286 shall be used for protective child day care assistance.

2. Of the funds appropriated in this section, $4,407,073 shall be used for state child care assistance.

3. Beginning July 1, 1998, the income eligibility requirement for state child care assistance shall be 140 percent of the federal poverty level for those families qualifying for basic child care assistance and 175 percent of the federal poverty level for those families with a

child with special needs. The department may adopt emergency rules to implement the provisions of this subsection.

4. For the purposes of this subsection, the term "poverty level" means the poverty level defined by the poverty income guidelines published by the United States department of health and human services. Based upon the availability of the funding provided in subsection 2 and other funding appropriated for state child care assistance, the department shall establish waiting lists for state child care assistance in descending order of prioritization as follows:

a. Families with an income at or below 100 percent of the federal poverty level whose members are employed at least 28 hours per week, and parents with a family income at or below 100 percent of the federal poverty level who are under the age of 21 and are participating in an educational program leading to a high school diploma or equivalent.

b. Parents with a family income at or below 100 percent of the federal poverty level who are under the age of 21 and are participating, at a satisfactory level, in an approved training program or in an educational program.

c. Families with an income of more than 100 percent but not more than 140 percent of the federal poverty level whose members are employed at least 28 hours per week.

d. Families with an income at or below 175 percent of the federal poverty level whose members are employed at least 28 hours per week with a special needs child as a member of the family.

5. Nothing in this section shall be construed or is intended as, or shall imply, a grant of entitlement for services to persons who are eligible for assistance due to an income level consistent with the requirements of this section. Any state obligation to provide services pursuant to this section is limited to the extent of the funds appropriated in this section.

6. Of the funds appropriated in this section, $636,641 is allocated for the statewide program for child day care resource and referral services under section 237A.26.

7. The department may use any of the funds appropriated in this section as a match to obtain federal funds for use in expanding child day care assistance and related programs. For the purpose of expenditures of state and federal child day care funding, funds shall be considered obligated at the time expenditures are projected or are allocated to the department's regions. Projections shall be based on current and projected caseload growth, current and projected provider rates, staffing requirements for eligibility determination and management of program requirements including data systems management, staffing requirements for administration of the program, contractual and grant obligations and any transfers to other state agencies, and obligations for decategorization or innovation projects.

8. During the 1998-1999 fiscal year, the department shall utilize the moneys deposited in the child day care credit fund created in section 237A.28 for state child care assistance, in addition to the moneys allocated for that purpose in this section.

9. The administrators of the state child care assistance program and the family investment program shall develop a proposal for implementing by April 1, 1999, a single point of access for clients of publicly supported child day care assistance. The provisions included in the single point of access shall include but are not limited to JOBS program child care assistance, the child care disregard under the family investment program, and state child care assistance. The single point of access provisions shall be designed in a manner so as to provide a single application form, a single integrated set of eligibility requirements, and a uniform sliding fee scale for all participants regardless of the basis for eligibility. The proposal shall be submitted on or before January 1, 1999, to the persons designated under this Act to receive reports submitted by the department. The department shall pursue every available option to identify and secure additional federal funding which may be used for child day care. If sufficient federal funding which may be used for child day care is identified and secured in addition to the amount budgeted for this purpose for the fiscal year beginning July 1, 1998, the single point of access program shall be implemented by April 1, 1999. If the amount of additional federal funding identified and secured is also sufficient for the reimbursement provisions for JOBS program child care assistance to be made consistent with

the reimbursement provisions for state child care assistance, the department shall include this reimbursement change as part of the implementation of the single point of access program.

Sec. 13. CHILD SUPPORT RECOVERY. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For child support recovery, including salaries, support, maintenance, and miscellaneous purposes and for not more than the following full-time equivalent positions:

.....	$	9,360,000
.....	FTEs	233.22

1. The director of human services, within the limitations of the moneys appropriated in this section, or moneys transferred from the family investment program account for this purpose, shall establish new positions and add employees to the child support recovery unit if the director determines that both the current and additional employees together can reasonably be expected to maintain or increase net state revenue at or beyond the budgeted level. If the director adds employees, the department shall demonstrate the cost-effectiveness of the current and additional employees by reporting to the joint appropriations subcommittee on human services the ratio of the total amount of administrative costs for child support recoveries to the total amount of the child support recovered.

2. Nonpublic assistance application fees and other user fees received by the child support recovery unit are appropriated and shall be used for the purposes of the child support recovery program. The director of human services may add positions within the limitations of the amount appropriated for salaries and support for the positions. The director shall report any positions added pursuant to this subsection to the chairpersons and ranking members of the joint appropriations subcommittee on human services and the legislative fiscal bureau.

3. The director of human services, in consultation with the department of management and the legislative fiscal committee, is authorized to receive and deposit state child support incentive earnings in the manner specified under applicable federal requirements.

4. The director of human services may establish new positions and add state employees to the child support recovery unit or contract for delivery of services if the director determines the employees are necessary to replace county-funded positions eliminated due to termination, reduction, or nonrenewal of a chapter 28E contract. However, the director must also determine that the resulting increase in the state share of child support recovery incentives exceeds the cost of the positions or contract, the positions or contract are necessary to ensure continued federal funding of the program, or the new positions or contract can reasonably be expected to recover at least twice the amount of money necessary to pay the salaries and support for the new positions or the contract will generate at least 200 percent of the cost of the contract.

5. If initiated by the judicial department, the child support recovery unit shall continue to work with the judicial department to determine the feasibility of implementing a pilot project utilizing a court-appointed referee for judicial determinations on child support matters. The extent and location of any pilot project shall be jointly developed by the judicial department and the child support recovery unit.

6. The department shall expend up to $50,000, including federal financial participation, for the fiscal year beginning July 1, 1998, for a child support public awareness campaign. The department and the office of the attorney general shall cooperate in continuation of the campaign. The public awareness campaign shall emphasize, through a variety of media activities, the importance of maximum involvement of both parents in the lives of their children as well as the importance of payment of child support obligations.

7. The department shall continue the option to provide and supervise a community service pilot project for absent parents who are ordered by the court to perform community service for failure to pay child support pursuant to section 598.23A.

8. Surcharges paid by obligors and received by the unit as a result of the referral of support delinquency by the child support recovery unit to any private collection agency are appropriated to the department and shall be used to pay the costs of any contracts with the collection agencies.

Sec. 14. JUVENILE INSTITUTIONS. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For the operation of the state training school and the Iowa juvenile home, including salaries, support, maintenance, and miscellaneous purposes and for not more than the following full-time equivalent positions:

For the state juvenile institutions:

..... $ 15,397,808

..... FTEs 349.72

1. The following amounts of the funds appropriated and full-time equivalent positions authorized in this section are allocated for the Iowa juvenile home at Toledo:

..... $ 5,990,000

..... FTEs 136.04

2. The following amounts of the funds appropriated and full-time equivalent positions authorized in this section are allocated for the state training school at Eldora:

..... $ 9,407,808

..... FTEs 213.68

3. During the fiscal year beginning July 1, 1998, the population levels at the state juvenile institutions shall not exceed the population guidelines established under 1990 Iowa Acts, chapter 1239, section 21, as adjusted for additional beds developed at the institutions.

4. A portion of the moneys appropriated in this section shall be used by the state training school and by the Iowa juvenile home for grants for adolescent pregnancy prevention activities at the institutions in the fiscal year beginning July 1, 1998.

5. Within the amount appropriated in this section, the department may reallocate funds as necessary to best fulfill the needs of the institutions provided for in the appropriation.

Sec. 15. CHILD AND FAMILY SERVICES. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For child and family services:

..... $ 96,744,904

1. The department may transfer moneys appropriated in this section as necessary to pay the nonfederal costs of services reimbursed under medical assistance or the family investment program which are provided to children who would otherwise receive services paid under the appropriation in this section. The department may transfer funds appropriated in this section to the appropriations in this Act for general administration and for field operations for resources necessary to implement and operate the services funded in this section.

2. a. Of the funds appropriated in this section, up to $30,923,872 is allocated as the statewide expenditure target under section 232.143 for group foster care maintenance and services.

b. (1) If at any time after September 30, 1998, annualization of a region's current expenditures indicates a region is at risk of exceeding its group foster care expenditure target under section 232.143 by more than five percent, the department and juvenile court services shall examine all group foster care placements in that region in order to identify those which might be appropriate for termination. In addition, any aftercare services believed to be needed for the children whose placements may be terminated shall be identified. The department and juvenile court services shall initiate action to set dispositional review hearings for the placements identified. In such a dispositional review hearing, the juvenile court

shall determine whether needed aftercare services are available and whether termination of the placement is in the best interest of the child and the community.

(2) The department shall provide quarterly reports to the judicial department, juvenile court services, the legislative fiscal bureau, and decategorization boards on the number of children placed in group foster care and the amount of expenditure for group foster care by county. The department shall coordinate with the child welfare services work group created in November 1997, by the legislative council and with interested decategorization counties to identify information systems and reports across all services and placements that would support utilization management decisions. The department shall identify the resources needed to develop and implement such a system and its fiscal benefits, and report to the general assembly by February 1, 1999.

c. (1) Of the funds appropriated in this section, not more than $5,998,227 is allocated as the state match funding for psychiatric medical institutions for children.

(2) The department may transfer all or a portion of the funds allocated in this paragraph for psychiatric medical institutions for children (PMICs) to the appropriation in this Act for medical assistance and shall not amend the managed mental health care contract to include PMICs.

d. Of the funds allocated in this subsection, $1,392,457 is allocated as the state match funding for 50 highly structured juvenile program beds. If the number of beds provided for in this paragraph is not utilized, the remaining funds allocated may be used for group foster care.

e. For the fiscal years beginning July 1, 1997, and July 1, 1998, the requirements of section 232.143 applicable to the juvenile court and to representatives of the juvenile court shall be applicable instead to juvenile court services and to representatives of juvenile court services. The representatives appointed by the department of human services and by juvenile court services to establish the plan to contain expenditures for children placed in group foster care ordered by the court within the budget target allocated to the region shall establish the plan in a manner so as to ensure the moneys allocated to the region under section 232.141 shall last the entire fiscal year. Funds for a child placed in group foster care shall be considered encumbered for the duration of the child's projected or actual length of stay, whichever is applicable. The department, in cooperation with the juvenile court services representatives, shall develop and implement utilization management criteria for group foster care placements to be used by the department of human services and juvenile court services staff in developing a dispositional recommendation to the juvenile court. The department shall submit a report on the utilization management criteria to the general assembly on or before January 1, 1999.

f. If the medical assistance waiver request for children with mental retardation in out-of-home settings is approved, the department may transfer all or a portion of the funding allocated in this subsection, which is attributable to group foster care ordered for a child with mental retardation or other developmental disability under section 232.182 or 232.183, to the appropriation in this Act for medical assistance.

3. The department shall perform an evaluation of public and private residential treatment programs, including those programs providing highly structured juvenile program beds, family and group foster care and the state juvenile institutions. The evaluation shall include but is not limited to a review of the curriculum and treatment approaches used by the programs, the recidivism rate of juveniles who have completed the programs, and other selected variables, subject to the availability of this information. A report of the evaluation shall be submitted to the general assembly by January 1, 1999.

4. The department shall establish a goal that not more than 15 percent of the children placed in foster care funded under the federal Social Security Act, Title IV-E, may be placed in foster care for a period of more than 24 months.

5. In accordance with the provisions of section 232.188, the department shall continue the program to decategorize child welfare services in additional counties or clusters of counties.

6. The amount of the appropriation made in this section available for foster care is based upon expansion of the number of children in foster care who are eligible for federal supplemental security income (SSI). The department may use up to $275,000 of those funds to enter into a performance-based contract to secure SSI benefits for children placed in foster care. The contract shall include provisions for training of department of human services and juvenile court staff, completion of applications, tracking of application results, and representation during the appeals process whenever an appeal is necessary to secure SSI benefits. The department may extend the contract for an additional two years. Notwithstanding section 217.30 and section 232.2, subsection 11, and any other provision of law to the contrary, the director or the director's designee on behalf of a child in foster care may release medical, mental health, substance abuse, or any other information necessary only to determine the child's eligibility for SSI benefits, and may sign releases for the information. In the case of a child in the custody of juvenile court services, the state court administrator or administrator's designee acting on behalf of a child in foster care may release medical, mental health, substance abuse, or any other information necessary only to determine the child's eligibility for SSI benefits, and may sign releases for the information. In any release of information made pursuant to this subsection, confidentiality shall be maintained to the maximum extent possible.

7. A portion of the funds appropriated in this section may be used for emergency family assistance to provide other resources required for a family participating in a family preservation or reunification project to stay together or to be reunified.

8. Notwithstanding section 234.35, subsection 1, for the fiscal year beginning July 1, 1998, state funding for shelter care paid pursuant to section 234.35, subsection 1, paragraph "h", shall be limited to $7,553,641. The department shall develop a formula, in consultation with the shelter care committee and the judicial department, to allocate shelter care funds to the department's regions. The department may adopt emergency rules to implement this subsection.

9. Of the funds appropriated in this section, not more than $550,696 may be used to develop and maintain the state's implementation of the national adoption and foster care information system pursuant to the requirements of Pub. L. No. 99-509. The department may transfer funds as necessary from the appropriations in this Act for field operations and general administration to implement this subsection. Moneys allocated in accordance with this subsection shall be considered encumbered for the purposes of section 8.33.

10. Of the funds appropriated in this section, up to $662,955 may be used as determined by the department for any of the following purposes:

a. For general administration of the department to improve staff training efforts.

b. For oversight of termination of parental rights and permanency planning efforts on a statewide basis.

c. For personnel, assigned by the attorney general, to provide additional services relating to termination of parental rights and child in need of assistance cases.

d. For specialized permanency planning field operations staff.

11. The department may adopt administrative rules following consultation with child welfare services providers to implement outcome-based child welfare services pilot projects. The rules may include, but are not limited to, the development of program descriptions, provider licensing and certification standards, reimbursement and payment amounts, contract requirements, assessment and service necessity requirements, eligibility criteria, claims submission procedures, and accountability standards.

12. Of the funds appropriated in this section, up to $123,000 may be used to develop, in cooperation with providers of children and family services, juvenile court, and other interested parties, an outcomes-based approach for family-centered, family preservation, family-community-based support, and wrap-around services to evaluate and improve outcomes for children and families. The department shall submit an outcomes-based budget for these programs and shall submit the budget with other budget documents required pursuant to section 8.23. The department may adopt administrative rules to implement this subsection.

13. The department shall continue to make adoption presubsidy and adoption subsidy payments to adoptive parents at the beginning of the month for the current month.

14. Federal funds received by the state during the fiscal year beginning July 1, 1998, as the result of the expenditure of state funds appropriated during a previous state fiscal year for a service or activity funded under this section, shall be used as additional funding for services provided under this section. Moneys received by the department in accordance with the provisions of this subsection shall remain available for the purposes designated until June 30, 2000.

15. In addition to the report for group foster care placements, the department shall report quarterly to the legislative fiscal bureau concerning the status of each region's funding expenditures compared with allocations in the regional plan for services provided under this section.

16. The department and juvenile court services shall develop criteria for the department regional administrator and chief juvenile court officer to grant exceptions to extend eligibility, within the funds allocated, for intensive tracking and supervision and for supervised community treatment to delinquent youth beyond age 18 who are subject to release from the state training school, a highly structured juvenile program, or group care. The department shall report the number of such exceptions granted and the related expenditures to the joint appropriations subcommittee on human services on or before January 1, 1999.

17. Of the moneys appropriated in this section, not more than $731,238 is allocated to provide clinical assessment services as necessary to continue funding of children's rehabilitation services under medical assistance in accordance with federal law and requirements. The funding allocated is the amount projected to be necessary for providing the clinical assessment services.

18. Notwithstanding 1997 Iowa Acts, chapter 208, section 12, subsection 18, the department may extend the existence of the current clinical assessment and consultation teams until October 31, 1998. The department shall develop and implement a new rehabilitative treatment and supportive services authorization model, including a toll-free telephone number for preauthorization on or before November 1, 1998. The new model shall be developed and implemented in a manner so as to streamline the authorization process, to reduce paperwork and other information requirements to the minimum level necessary for compliance with federal requirements, and to ensure timely response to authorization requests. The department may adopt emergency rules to implement the provisions of this subsection.

19. a. It is the intent of the general assembly that the department of human services work with the child welfare services work group created by the legislative council in November 1997 to pursue initiatives to increase receipt of funding under Title IV-E of the federal Social Security Act. For the fiscal year beginning July 1, 1997, the department may expend moneys, not to exceed $20,000, within the department's budget to contract for consultant services to increase this funding.

b. If additional funding is received under Title IV-E of the federal Social Security Act as a result of administrative activities performed by juvenile court services or community providers, the funding shall be expended as follows:

(1) A portion shall be used by the department to provide technical assistance and to monitor claims submitted by juvenile court services and community providers to ensure that the claims meet federal requirements.

(2) A portion shall be distributed to providers with increased costs incurred from activities to draw the additional funding.

(3) A portion shall be made available to decategorization projects in which additional funding is drawn to be used to pay for activities based on local needs, as determined by the decategorization projects.

c. Any additional funding received under Title IV-E of the federal Social Security Act for field operations or general administration that is not used for field operations or general administration expenditures, shall be transferred for funding of activities under the appropriations in this Act in this section and for court-ordered services provided to juveniles.

Sec. 16. CONNER DECREE. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For providing training in accordance with the consent decree of Conner v. Branstad, No. 4-86-CU-30871(S.D. Iowa, July 14, 1994):

..... $ 46,000

*It is the intent of the general assembly that the admissions requirements of the consent decree shall also be applied to the state university of Iowa hospital-school for children with disabilities. The state board of regents shall submit to the general assembly proposed amendments to chapter 263 to codify the admissions requirements of the consent decree.**

Sec. 17. COMMUNITY-BASED PROGRAMS — ADOLESCENT PREGNANCY PREVENTION. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For community-based programs, on the condition that family planning services are funded, including salaries, support, maintenance, and miscellaneous purposes and for not more than the following full-time equivalent positions:

..... $ 1,008,000
..... FTE 1.00

1. Funds appropriated in this section shall be used to provide adolescent pregnancy prevention grants which comply with the requirements provided in 1997 Iowa Acts, chapter 208, section 14, subsections 1 and 2, and shall emphasize programs which target the middle school level.

2. It is the intent of the general assembly that the department of human services and the Iowa department of public health shall continue to identify existing abstinence education or community-based programs which comply with the requirements established in section 912, subchapter V, of the federal Social Security Act, as codified in 42 U.S.C. § 701 et seq. for the matching of federal funds.

3. Funds appropriated in this section, shall also be used by the department to provide child abuse prevention grants.

Sec. 18. COURT-ORDERED SERVICES PROVIDED TO JUVENILES. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

Payment of the expenses of court-ordered services provided to juveniles which are a charge upon the state pursuant to section 232.141, subsection 4:

..... $ 3,290,000

1. Notwithstanding section 232.141 or any other provision of law, the funds appropriated in this section shall be allocated to the judicial districts as determined by the state court administrator. The state court administrator shall make the determination on the allocations on or before June 15, 1998.

2. a. Each judicial district shall continue the planning group for the court-ordered services for juveniles provided in that district which was established pursuant to 1991 Iowa Acts, chapter 267, section 119. A planning group shall continue to perform its duties as specified in that law. Reimbursement rates for providers of court-ordered evaluation and treatment services paid under section 232.141, subsection 4, shall be negotiated with providers by each judicial district's planning group.

b. Each district planning group shall submit an annual report in January to the state court administrator and the department of human services. The report shall cover the preceding fiscal year and shall include a preliminary report on the current fiscal year. The administrator and the department shall compile these reports and submit the reports to the

* Item veto; see message at end of the Act

chairpersons and ranking members of the joint appropriations subcommittee on human services and the legislative fiscal bureau.

3. The department of human services shall develop policies and procedures to ensure that the funds appropriated in this section are spent only after all other reasonable actions have been taken to utilize other funding sources and community-based services. The policies and procedures shall be designed to achieve the following objectives relating to services provided under chapter 232:

a. Maximize the utilization of funds which may be available from the medical assistance program including usage of the early and periodic screening, diagnosis, and treatment (EPSDT) program.

b. Recover payments from any third-party insurance carrier which is liable for coverage of the services, including health insurance coverage.

c. Pursue development of agreements with regularly utilized out-of-state service providers which are intended to reduce per diem costs paid to those providers.

4. The department of human services, in consultation with the state court administrator and the judicial district planning groups, shall compile a report detailing the expenditure categories for the spending in the judicial districts for court-ordered services for juveniles in fiscal year 1997-1998. The report shall include utilization of medical assistance funding. The report shall be submitted on or before October 15, 1998, to the persons designated by this Act to receive reports.

5. Notwithstanding chapter 232 or any other provision of law, a district or juvenile court in a department of human services district shall not order any service which is a charge upon the state pursuant to section 232.141 if there are insufficient court-ordered services funds available in the district allocation to pay for the service. The chief juvenile court officer shall work with the judicial district planning group to encourage use of the funds appropriated in this section such that there are sufficient funds to pay for all court-related services during the entire year. The eight chief juvenile court officers shall attempt to anticipate potential surpluses and shortfalls in the allocations and shall cooperatively request the state court administrator to transfer funds between the districts' allocations as prudent.

6. Notwithstanding any provision of law to the contrary, a district or juvenile court shall not order a county to pay for any service provided to a juvenile pursuant to an order entered under chapter 232 which is a charge upon the state under section 232.141, subsection 4.

7. Of the funds appropriated in this section, not more than $100,000 may be used by the judicial department for administration of the requirements under this section and for travel associated with court-ordered placements which are a charge upon the state pursuant to section 232.141, subsection 4.

8. Of the funds appropriated in this section, not more than $580,000 may be transferred to the appropriation in this Act for child and family services and used to provide school-based supervision of children adjudicated under chapter 232.

9. Federal funding received by the state during the fiscal year beginning July 1, 1998, as the result of the expenditure of state funds appropriated during a previous state fiscal year for a service or activity funded under this section, shall be used as additional funding for services provided under this section. Moneys received by the department in accordance with the provisions of this subsection shall remain available for the purposes designated until June 30, 2000.

Sec. 19. MENTAL HEALTH INSTITUTES. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For the state mental health institutes, for salaries, support, maintenance, and miscellaneous purposes and for not more than the following full-time equivalent positions:

.....	$	42,559,619
.....	FTEs	863.77

1. The funds appropriated and full-time equivalent positions authorized in this section are allocated as follows:

a. State mental health institute at Cherokee:

.....	$	13,018,054
.....	FTEs	256.62

b. State mental health institute at Clarinda:

.....	$	6,852,309
.....	FTEs	138.59

c. State mental health institute at Independence:

.....	$	17,384,500
.....	FTEs	358.73

(1) The state mental health institute at Independence shall continue the pilot project accounting test of managing revenues and expenditures attributable to the mental health institute in a manner that permits the net state expenditure amount to be determined. The mental health institute shall submit an interim report in January 1999, and a final report in October 1999, to the governor and the joint appropriations subcommittee on human services concerning the pilot project. The report shall identify advantages and disadvantages of utilizing the pilot project approach and any changes in policy or statute identified to improve implementation of the pilot project approach.

(2) The state mental health institute at Independence shall establish the 30 psychiatric medical institution for children (PMIC) beds authorized in section 135H.6, as amended by this Act, in a manner which results in no net state expenditure amount in excess of the amount allocated in this lettered paragraph. Counties are not responsible for the costs of PMIC services established pursuant to this paragraph. Subject to the approval of the department, with the exception of revenues required under section 249A.11 to be deposited in the appropriation in this Act for medical assistance, revenues attributable to the PMIC beds established under this subparagraph for the fiscal year beginning July 1, 1998, and ending June 30, 1999, shall be deposited in the institute's account, including but not limited to any of the following revenues:

(a) The federal share of medical assistance revenue received under chapter 249A.

(b) Moneys received through client participation.

(c) Any other revenues directly attributable to the PMIC beds.

d. State mental health institute at Mount Pleasant:

.....	$	5,304,756
.....	FTEs	109.83

(1) Funding is provided in this paragraph for the mental health institute at Mount Pleasant to implement a dual diagnosis mental health and substance abuse program on a net budgeting basis in which 50 percent of the actual per diem cost is chargeable to the patient's county of legal settlement or as a state case, as appropriate. Subject to the approval of the department, revenues attributable to the dual diagnosis program for the fiscal year beginning July 1, 1998, and ending June 30, 1999, shall be deposited in the institute's account, including but not limited to all of the following revenues:

(a) Moneys received by the state from billings to counties under section 230.20.

(b) Moneys received from billings to the Medicare program.

(c) Moneys received from a managed care contractor providing services under contract with the department or any private third party payer.

(d) Moneys received through client participation.

(e) Any other revenues directly attributable to the dual diagnosis program.

(2) The following additional provisions are applicable in regard to the dual diagnosis program:

(a) A county may split the charges between the county's mental health, mental retardation, and developmental disabilities services fund and the county's budget for substance abuse expenditures.

(b) If an individual is committed to the custody of the department of corrections at the time the individual is referred for dual diagnosis treatment, the department of corrections shall be charged for the costs of treatment.

(c) Prior to an individual's voluntary admission for dual diagnosis treatment, the individual shall have been screened through a county's single entry point process to determine the appropriateness of the treatment.

(d) A county shall not be chargeable for the costs of treatment for an individual enrolled in and authorized by or decertified by a managed behavioral care plan under the medical assistance program.

(3) The department shall work with the Iowa state association of counties in reviewing the reimbursement methodology provided in this lettered paragraph to determine whether modifications in the methodology or implementation of an alternate methodology are appropriate. The department shall report on the review in December 1998 to the persons required by this Act for submission of reports.

2. Within the funds appropriated in this section, the department may reallocate funds as necessary to best fulfill the needs of the institutions provided for in the appropriation.

3. As part of the discharge planning process at the state mental health institutes, the department shall provide assistance in obtaining eligibility for federal supplemental security income (SSI) to those individuals whose care at a state mental health institute is the financial responsibility of the state.

4. For the fiscal year beginning July 1, 1998, in addition to the net budgeting requirements under this section, each state mental health institute shall implement a net budgeting accounting test of managing revenues and expenditures attributable to the mental health institute in a manner that permits the net state expenditure amount to be determined. Each mental health institute shall submit a preliminary report in January 1999, and a status report in October 1999, to the governor and to the persons required to be submitted reports by this Act. The preliminary and status reports shall identify advantages and disadvantages of utilizing the net budgeting approach and any changes in policy or statute recommended to improve implementation of the approach.

Sec. 20. HOSPITAL-SCHOOLS. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For the state hospital-schools, for salaries, support, maintenance, and miscellaneous purposes and for not more than the following full-time equivalent positions:

.....	$	3,962,923
.....	FTEs	1,514.51

1. The funds appropriated and full-time equivalent positions authorized in this section are allocated as follows:

a. State hospital-school at Glenwood:

.....	$	2,399,644
.....	FTEs	852.75

b. State hospital school at Woodward:

.....	$	1,563,279
.....	FTEs	661.76

2. a. The department shall continue the pilot project of operating the hospital-school at Glenwood with a net general fund appropriation and shall implement the project at the state hospital-school at Woodward. The amounts allocated in this paragraph are the net amounts of state moneys projected to be needed for the state hospital-schools. The purposes of the pilot project are to encourage the hospital-schools to operate with increased self-sufficiency, to improve quality and efficiency, and to support collaborative efforts between the hospital-schools and counties and other funders of services available from the hospital-schools. The project shall not be implemented in a manner which results in a cost

increase to the state or cost shifting between the state, the medical assistance program, counties, or other sources of funding for the state hospital-schools. Moneys allocated in subsection 1 may be used throughout the fiscal year in the manner necessary for purposes of cash flow management, and for purposes of cash flow management the hospital-schools may temporarily draw more than the amount allocated, provided the amount allocated is not exceeded at the close of the fiscal year.

b. For purposes of calculating the hospital-schools' August 31, 1999, year-end balance at the close of the 1998-1999 fiscal year, the department shall include county receivables billed but not yet received. However, only receipts received within 90 days of being billed for fiscal year 1998-1999 services shall be included. The state hospital-school at Woodward may draw upon the general fund of the state in an amount equal to the receivables amount which is not received.

c. Subject to the approval of the department, except for revenues under section 249A.11, revenues attributable to the state hospital-schools for the fiscal year beginning July 1, 1998, shall be deposited into each hospital-school's account, including but not limited to all of the following:

(1) Moneys received by the state from billings to counties under section 222.73.

(2) The federal share of medical assistance revenue received under chapter 249A.

(3) Federal Medicare program payments.

(4) Moneys received from client financial participation.

(5) Other revenues generated from current, new, or expanded services which the state hospital-school is authorized to provide.

d. In the 1998-1999 fiscal year of the project, the institution's report shall include a listing detailing the items for which depreciation reimbursement funds would have been utilized if the depreciation reimbursement had been retained by the institution. This listing shall be included with the report submitted pursuant to this subsection.

e. For the purposes of allocating the salary adjustment fund moneys appropriated in another Act, the state hospital-schools shall be considered to be funded entirely with state moneys.

f. Each state hospital-school and the department shall submit a preliminary report in January 1999, and a status report in October 1999, to the governor and the joint appropriations subcommittee on human services concerning the project.

3. Within the funds appropriated in this section, the department may reallocate funds as necessary to best fulfill the needs of the institutions provided for in the appropriation.

4. The department may implement a pilot project to bill for state hospital-school services utilizing a scope of services approach used for private providers of ICFMR services, in a manner which does not shift costs between the medical assistance program, counties, or other sources of funding for the state hospital-schools.

5. The state hospital-schools may expand the time limited assessment and respite services during the fiscal year.

Sec. 21. MENTAL ILLNESS SPECIAL SERVICES. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For mental illness special services:

..... $ 121,220

1. The department and the Iowa finance authority shall develop methods to implement the financing for existing community-based facilities and to implement financing for the development of affordable community-based housing facilities. The department shall assure that clients are referred to the housing as it is developed.

2. The funds appropriated in this section are to provide funds for construction and start-up costs to develop community living arrangements to provide for persons with mental illness

who are homeless. These funds may be used to match federal Stewart B. McKinney Homeless Assistance Act grant funds.

Sec. 22. FAMILY SUPPORT SUBSIDY PROGRAM. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used by the division of children and family services for the purpose designated:

For the family support subsidy program:

..... $ 1,710,000

The department may use up to $200,000 of the moneys appropriated in this section to continue the children-at-home program, of which not more than $20,000 shall be used for administrative costs.

Sec. 23. SPECIAL NEEDS GRANTS. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

To provide special needs grants to families with a family member at home who has a developmental disability or to a person with a developmental disability:

..... $ 53,212

Grants must be used by a family to defray special costs of caring for the family member to prevent out-of-home placement of the family member or to provide for independent living costs. The grants may be administered by a private nonprofit agency which serves people statewide provided that no administrative costs are received by the agency. Regular reports regarding the special needs grants with the family support subsidy program and an annual report concerning the characteristics of the grantees shall be provided to the legislative fiscal bureau.

Sec. 24. MI/MR/DD STATE CASES. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For purchase of local services for persons with mental illness, mental retardation, and developmental disabilities where the client has no established county of legal settlement:

..... $ 8,594,500

1. If a county has a county management plan which is approved by the director of human services pursuant to section 331.439, the services paid for under this section are exempt from the department's purchase of service system requirements. The department shall adopt rules to implement the provisions of this paragraph.

2. Of the moneys appropriated in this section, up to $174,000 is allocated for the costs of the reimbursement increase provided in the reimbursement section of this Act for sheltered work, work activity, supported employment, supported work training, and adult residential services paid by the state under a state purchase of social services contract.

Sec. 25. MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES — COMMUNITY SERVICES FUND. There is appropriated from the general fund of the state to the mental health and developmental disabilities community services fund created in section 225C.7 for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For mental health and developmental disabilities community services in accordance with this Act:

..... $ 17,560,000

1. Of the funds appropriated in this section, $17,530,000 shall be allocated to counties for funding of community-based mental health and developmental disabilities services. The moneys shall be allocated to a county as follows:

a. Fifty percent based upon the county's proportion of the state's population of persons with an annual income which is equal to or less than the poverty guideline established by the federal office of management and budget.

b. Fifty percent based upon the county's proportion of the state's general population.

2. a. A county shall utilize the funding the county receives pursuant to subsection 1 for services provided to persons with a disability, as defined in section 225C.2. However, no more than 50 percent of the funding shall be used for services provided to any one of the service populations.

b. A county shall use at least 50 percent of the funding the county receives under subsection 1 for contemporary services provided to persons with a disability, as described in rules adopted by the department.

3. Of the funds appropriated in this section, $30,000 shall be used to support the Iowa compass program providing computerized information and referral services for Iowans with disabilities and their families.

4. a. Funding appropriated for purposes of the federal social services block grant is allocated for distribution to counties for local purchase of services for persons with mental illness or mental retardation or other developmental disability.

b. The funds allocated in this subsection shall be expended by counties in accordance with the county's approved county management plan. A county without an approved county management plan shall not receive allocated funds until the county's management plan is approved.

c. The funds provided by this subsection shall be allocated to each county as follows:

(1) Fifty percent based upon the county's proportion of the state's population of persons with an annual income which is equal to or less than the poverty guideline established by the federal office of management and budget.

(2) Fifty percent based upon the amount provided to the county for local purchase of services in the preceding fiscal year.

5. A county is eligible for funds under this section if the county qualifies for a state payment as described in section 331.439.

Sec. 26. COUNTY MENTAL HEALTH, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES ALLOWED GROWTH FACTOR ADJUSTMENT. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1999, and ending June 30, 2000, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For distribution to counties of the county mental health, mental retardation, and developmental disabilities allowed growth factor adjustment, in accordance with section 331.438, subsection 2, and section 331.439, subsection 3:

..... $ 18,126,362

For the fiscal year beginning July 1, 1999, the county mental health, mental retardation, and developmental disabilities allowed growth factor adjustment shall be 2.48 percent.

Sec. 27. PERSONAL ASSISTANCE. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For continuation of a pilot project for the personal assistance services program in accordance with this section:

..... $ 364,000

1. The funds appropriated in this section shall be used to continue the pilot project for the personal assistance services program under section 225C.46 in an urban and a rural area. Not more than $36,400 shall be used for administrative costs. The pilot project and any federal home and community-based waiver developed under the medical assistance program shall not be implemented in a manner which would require additional county or state costs for assistance provided to an individual served under the pilot project or the waiver.

2. It is the intent of the general assembly that for any new applicants for personal assistance, priority shall be given to providing assistance to individuals for education, job training, and other forms of employment support. It is also the intent of the general assembly that if other programs become available which provide similar services, current recipients of personal assistance for whom these similar services are appropriate shall be assisted in attaining eligibility for these programs.

3. Notwithstanding section 8.33, any funds remaining unexpended on June 30 of any fiscal year shall not revert to the general fund of the state but shall remain available to provide personal assistance payments in the succeeding fiscal year.

Sec. 28. FIELD OPERATIONS. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For field operations, including salaries, support, maintenance, and miscellaneous purposes and for not more than the following full-time equivalent positions:

..... $ 49,600,000
..... FTEs 2,084.00

If a resignation, retirement, or dismissal reducing the number of full-time equivalent positions responsible for mental health or mental retardation services in a local office of the department causes the county to which the local office is assigned to assume responsibilities previously performed by the department's positions, the department shall reimburse the county for the increase in costs connected with the responsibilities assumed.

Sec. 29. GENERAL ADMINISTRATION. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For general administration, including salaries, support, maintenance, and miscellaneous purposes and for not more than the following full-time equivalent positions:

..... $ 15,271,693
..... FTEs 388.00

1. Of the funds appropriated in this section, $57,000 is allocated for the prevention of disabilities policy council established in section 225B.3.

2. Of the funds appropriated in this section, $129,971 for the fiscal year beginning July 1, 1998, shall be transferred directly to the state university of Iowa for the university-affiliated program for the support of Iowa creative employment options (CEO).

3. If an expenditure reduction or other cost-saving measure is deemed necessary to maintain expenditures within the amount appropriated to the department in this section, the department shall not implement the reduction or other measure in a manner which reduces service funding for disability rehabilitation programs, including but not limited to, statewide supported employment programs or reduces the drawdown of federal funding.

Sec. 30. VOLUNTEERS. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For development and coordination of volunteer services:

..... $ 118,500

Sec. 31. SEXUALLY VIOLENT PREDATORS. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

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* Item veto; see message at end of the Act

For costs associated with the commitment and treatment of sexually violent predators including transfer of an amount, as determined by the department and the office of the attorney general, to the office of the attorney general for associated costs including not more than 2.0 full-time equivalent positions, one of which shall be an attorney, in the department of justice:

..... $ 500,000

Sec. 32. MEDICAL ASSISTANCE, STATE SUPPLEMENTARY ASSISTANCE, AND SOCIAL SERVICE PROVIDERS REIMBURSED UNDER THE DEPARTMENT OF HUMAN SERVICES.

1. a. For the fiscal year beginning July 1, 1998, the rate for skilled nursing facilities shall be increased by 2 percent over the rates in effect on June 30, 1998.

*b. *Beginning January 1, 1999, the rate for pharmacist services shall be increased by two percent over the rate in effect on June 30, 1998. The reimbursement policy for drug product costs shall be in accordance with federal requirements.**

c. For the fiscal year beginning July 1, 1998, reimbursement rates for inpatient and outpatient hospital services shall remain the same as the rates in effect on June 30, 1998. The department shall continue the outpatient hospital reimbursement system based upon ambulatory patient groups implemented pursuant to 1994 Iowa Acts, chapter 1186, section 25, subsection 1, paragraph "f". In addition, the department shall continue the revised medical assistance payment policy implemented pursuant to that paragraph to provide reimbursement for costs of screening and treatment provided in the hospital emergency room if made pursuant to the prospective payment methodology developed by the department for the payment of outpatient services provided under the medical assistance program.

d. Reimbursement rates for rural health clinics, hospices, and acute mental hospitals shall be increased in accordance with increases under the federal Medicare program or as supported by their Medicare audited costs.

e. Reimbursement rates for home health agencies shall be limited to a two percent increase over the rate in effect on June 30, 1998. The department shall, in consultation with provider representatives, study alternative reimbursement methodologies.

f. The basis for establishing the maximum medical assistance reimbursement rate for nursing facilities shall be the 70th percentile of facility costs as calculated from the June 30, 1998, unaudited compilation of cost and statistical data. However, to the extent funds are available within the amount projected for reimbursement of nursing facilities within the appropriation for medical assistance in this Act for the fiscal year beginning July 1, 1998, and within the appropriation for medical assistance as a whole for the fiscal year beginning July 1, 1998, the department shall adjust the maximum medical assistance reimbursement for nursing facilities to the 70th percentile, as calculated on December 31, 1998, unaudited compilation of cost and statistical data and the adjustment shall take effect January 1, 1999.

g. Federally qualified health centers shall be reimbursed at 100 percent of reasonable costs as determined by the department in accordance with federal requirements.

h. Beginning July 1, 1998, the reimbursement for dental services shall be increased by two percent over the rates in effect on June 30, 1998. Beginning January 1, 1999, the reimbursement for dental services shall be increased by an additional two percent over the rates in effect on December 31, 1998.

i. For the fiscal year beginning July 1, 1998, unless otherwise specified in this Act, all noninstitutional medical assistance provider reimbursements shall be increased by 2 percent over the rates in effect on June 30, 1998. In addition, $39,157 of the moneys appropriated in this Act for medical assistance shall be used to increase rates paid to community mental health centers to a level equal to the level paid by other payers.

j. When applying the reimbursement rate increases for pharmacist, physician, chiropractic, and dental services and durable medical equipment under this subsection, the department shall, in consultation with provider representatives, place a priority on primary and preventive care. The department shall, in consultation with provider representatives

* Item veto; see message at end of the Act

review the existing reimbursement methodology including the issues of access, utilization, and sufficiency of the current reimbursement rates. A report of the findings of the review and any recommendations shall be submitted to the general assembly by January 1, 1999.

2. For the fiscal year beginning July 1, 1998, the maximum cost reimbursement rate for residential care facilities reimbursed by the department shall not be less than $23.26 per day for the time period of July 1, 1998, through December 31, 1998, and shall not be less than $23.83 per day for the time period of January 1, 1999, through June 30, 1999. The flat reimbursement rate for facilities electing not to file semiannual cost reports shall not be less than $16.64 per day for the time period of July 1, 1998, through December 31, 1998, and shall not be less than $17.05 per day for the time period of January 1, 1999, through June 30, 1999. For the fiscal year beginning July 1, 1998, the maximum reimbursement rate for providers reimbursed under the in-home health-related care program shall not be less than $447.16 per month for the time period of July 1, 1998, through December 31, 1998, and shall not be less than $458.20 per month for the time period of January 1, 1999, through June 30, 1999.

3. Unless otherwise directed in this section, when the department's reimbursement methodology for any provider reimbursed in accordance with this section includes an inflation factor, this factor shall not exceed the amount by which the consumer price index for all urban consumers increased during the calendar year ending December 31, 1997.

4. Notwithstanding section 234.38, in the fiscal year beginning July 1, 1998, the foster family basic daily maintenance rate and the maximum adoption subsidy rate for children ages 0 through 5 years shall be $13.45, the rate for children ages 6 through 11 years shall be $14.25, the rate for children ages 12 through 15 years shall be $15.96, and the rate for children ages 16 and older shall be $15.96.

5. For the fiscal year beginning July 1, 1998, the maximum reimbursement rates for adoption and independent living services shall be increased by two percent over the rates in effect on June 30, 1998. The maximum reimbursement rates for other social service providers shall be the same as the rates in effect on June 30, 1998. However, the rates may be adjusted under any of the following circumstances:

a. If a new service was added after June 30, 1998, the initial reimbursement rate for the service shall be based upon actual and allowable costs.

b. If a social service provider loses a source of income used to determine the reimbursement rate for the provider, the provider's reimbursement rate may be adjusted to reflect the loss of income, provided that the lost income was used to support actual and allowable costs of a service purchased under a purchase of service contract.

c. The department revises the reimbursement rates as part of the changes in the mental health and developmental disabilities services system initiated pursuant to 1995 Iowa Acts, chapter 206, and associated legislation.

d. For the fiscal year beginning July 1, 1998, the reimbursement rates for sheltered work, work activity, supported employment, supported work training, and adult residential services established by the state under a state purchase of social services contract shall be increased by three percent over the rates in effect on June 30, 1998.

6. Of the moneys appropriated in this Act for child and family services, $1,261,875 is allocated to provide for a reimbursement increase to rehabilitative treatment and support services providers. The department shall distribute the increase as negotiated. However, if a provider previously elected to not negotiate the provider's reimbursement, the department shall allow that provider to negotiate for reimbursement.

7. The group foster care reimbursement rates paid for placement of children out-of-state shall be calculated according to the same rate-setting principles as those used for in-state providers unless the director determines that appropriate care cannot be provided within the state. The payment of the daily rate shall be based on the number of days in the calendar month in which service is provided.

8. For the fiscal year beginning July 1, 1998, the combined service and maintenance components of the reimbursement rate paid to a shelter care provider shall be based on the cost report submitted to the department. The maximum reimbursement rate shall be $78.14

per day. If the department would reimburse the provider at less than the maximum rate but the provider's cost report justifies a rate of at least $78.14, the department shall readjust the provider's reimbursement rate to the maximum reimbursement rate.

9. For the fiscal year beginning July 1, 1998, the department shall calculate reimbursement rates for intermediate care facilities for persons with mental retardation at the 80th percentile.

10. For the fiscal year beginning July 1, 1998, for child day care providers, the department shall set provider reimbursement rates based on the rate reimbursement survey completed in December 1996. The department shall set rates in a manner so as to provide incentives for a nonregistered provider to become registered.

11. For the fiscal year beginning July 1, 1998, the reimbursement rate for psychiatric medical institutions for children (PMICs) shall be increased by 2 percent over the rates in effect on June 30, 1998.

12. If the Iowa empowerment board is established, the board shall develop and implement a plan, in cooperation with maternal child health clinics, school nurses, and other affected providers, to ensure attendance of health care appointments, with an emphasis on attendance of dental appointments, by medical assistance recipients.

13. The department shall review the appropriateness and the level of the reimbursement provided for home infusion therapy and shall determine the number of providers who are being reimbursed below the actual cost of durable medical equipment and supplies under the medical assistance program and shall submit a report of the findings of the review to the general assembly by January 1, 1999.

14. The department may adopt emergency rules to implement the provisions of this section.

Sec. 33. MOTOR VEHICLE LICENSE REINSTATEMENT PENALTY — DEPOSIT AND APPROPRIATION. Notwithstanding the deposit provisions of sections 321.218A and 321A.32A, moneys collected during the fiscal year beginning July 1, 1998, and ending June 30, 1999, by the state department of transportation pursuant to those sections shall be deposited to the credit of the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, and are appropriated as follows:

1. The first $1,000,000 is appropriated and shall be used for the establishment, improvement, operation, and maintenance of county or multicounty juvenile detention homes. Moneys appropriated in this subsection shall be allocated among eligible detention homes, prorated on the basis of an eligible detention home's proportion of the costs of all eligible detention homes in the previous fiscal year. Notwithstanding section 232.142, subsection 3, the financial aid payable by the state under that provision for the fiscal year beginning July 1, 1998, shall be limited to the amount appropriated in this subsection.

2. Moneys in excess of $1,000,000 are appropriated to the judicial districts and allocated as determined by the state court administrator to be used by the judicial districts pursuant to recommendations of the planning group for court-ordered services for juveniles provided in each judicial district which were established pursuant to 1991 Iowa Acts, chapter 267, section 119. Moneys allocated pursuant to this subsection shall be used for the improvement, expansion, construction, and operation of runaway assessment facilities, runaway assessment services, and juvenile delinquency prevention and intervention services.

Sec. 34. FULL-TIME EQUIVALENT POSITIONS. Of the full-time equivalent positions (FTEs) appropriated for in this Act, 19.61 FTEs represent the transition of personnel services contractors to full-time equivalent position status. The merit system provisions of chapter 19A, collective bargaining agreement provisions of chapter 20, and the state and union collective bargaining agreements, as these relate to the filling of positions, shall not govern movement of these 19.61 FTEs into the full-time equivalent position status during the period beginning July 1, 1998, and ending August 31, 1998.

Sec. 35. STATE INSTITUTIONS — CLOSINGS AND REDUCTIONS.

1. If a state institution administered by the department of human services is to be closed or reduced in size, prior to the closing or reduction the department shall initiate and coordinate efforts in cooperation with the Iowa department of economic development to develop new jobs in the area in which the state institution is located. In addition, the department may take other actions to utilize any closed unit or other facilities and services of an institution, including but not limited to assisting public or private organizations in utilizing the services and facilities. The actions may also include assisting an organization with remodeling and lease costs by forgiving future rental or lease payments to the extent necessary for a period not to exceed five years. The department of human services and the department of economic development shall submit a joint report to the chairpersons and ranking members of the joint appropriations subcommittee on human services on or before January 2, 1999, regarding any efforts made pursuant to this subsection.

2. For purposes of this section, "state institution" means a state mental health institute, a state hospital-school, the state training school, and the Iowa juvenile home under the authority of the department of human services listed in section 218.1.

Sec. 36. TRANSFER AUTHORITY. Subject to the provisions of section 8.39, for the fiscal year beginning July 1, 1998, if necessary to meet federal maintenance of effort requirements or to transfer federal temporary assistance for needy families block grant funding to be used for purposes of the federal social services block grant, the department of human services may transfer between any of the appropriations made in this Act and appropriations in law for the federal social services block grant to the department for the following purposes, provided that the combined amount of state and federal temporary assistance for needy families block grant funding for each appropriation remains the same before and after the transfer:

1. For the family investment program.
2. For emergency assistance.
3. For child day care assistance.
4. For child and family services.
5. For field operations.
6. For general administration.
7. MH/MR/DD/BI community services (local purchase).

This section shall not be construed to prohibit existing state transfer authority for other purposes.

Sec. 37. CONFIDENTIALITY. The department of human services, in cooperation with other state agencies, shall develop recommendations to improve the sharing of information, including confidential information, relative to individuals receiving services or assistance from the department or another state agency, to improve coordination of services and assistance. The department shall submit a report of the recommendations to the general assembly on or before December 15, 1998.

Sec. 38. CHILD ABUSE ASSESSMENT IMPLEMENTATION. Notwithstanding the requirements of 1997 Iowa Acts, chapter 35, section 232.71A, Code Supplement 1997, sections 232.71B and 232.71C, Code 1997, and the repeal of section 232.71, Code Supplement 1997, for the period beginning July 1, 1998, and ending September 1, 1998, the department shall continue to respond to a report of child abuse in Polk county in accordance with the provisions of section 232.71, Code Supplement 1997. For this period, in Polk county the department shall continue to apply the rules adopted for responding to a report of child abuse under section 232.71, Code Supplement 1997.

Sec. 39. SUPPORTING FAMILIES OF CHILDREN WITH A DEVELOPMENTAL DISABILITY.

1. The department of human services shall develop a program supporting families of children with mental retardation or other developmental disability. The program shall

provide medical assistance case management for those who are eligible, or case management by the department's field services staff for those who are not eligible for medical assistance. The program shall be designed for administrative simplicity with a minimal amount of paperwork required for program participants and service providers.

2. The program shall be directed to children who are eligible for any of the following:

a. Intermediate care facility for persons with mental retardation services.

b. Medical assistance home and community-based waiver for persons or children with mental retardation services.

c. Voluntary foster care placement under section 232.182 or 232.183.

d. Family support subsidy under section 225C.38.

3. Subject to applicable federal requirements, restrictions in this section, and the amount of state funding appropriated, the department may decategorize and transfer for purposes of the program created pursuant to this section any of the state funding appropriated for a program, service, or placement listed in subsection 2. The decategorized state funding may be used to provide any of the services listed in subsection 2 which will best meet the needs of both the child and the child's family.

4. The department may adopt emergency rules to implement the provisions of this section. The rules adopted by the department for the program shall not require a family or a family member receiving a family support subsidy payment or medical assistance home and community-based waiver services, at the time of the program's implementation, to reapply, lose a waiver slot, or otherwise change eligibility requirements applicable to the family or a family member, except as otherwise provided by law.

5. The program shall be implemented on or before June 30, 1999. The department shall make an initial report concerning the program's implementation during the 1999 legislative session and a final report prior to implementation of the program. The department shall submit proposed legislation for codification of the program in accordance with section 2.16 for consideration by the general assembly during the 2000 legislative session.

*Sec. 40. *JUVENILE DETENTION HOMES. If during the fiscal year beginning July 1, 1998, and ending June 30, 1999, the moneys collected by the state department of transportation pursuant to sections 321.218A and 321A.32A, to be distributed under law for use in the establishment, improvement, operation, and maintenance of county or multicounty juvenile detention homes, are projected to be less than $1,000,000, the department of human services shall transfer, in accordance with the requirements of section 8.39, an amount sufficient to ensure $1,000,000 is actually distributed to such homes during the fiscal year.**

*Sec. 41. *NET STATE BUDGETING REVENUES. Notwithstanding section 8.33, revenues generated by and moneys appropriated to the state hospital-school at Glenwood pursuant to 1997 Iowa Acts, chapter 208, section 17, and the provisions of this Act, which are unexpended or unobligated, shall not revert to any fund at the close of a fiscal year but shall remain available for expenditure by the state hospital-school in the succeeding fiscal year. Notwithstanding section 8.33, revenues generated by and moneys appropriated to the state hospital-school at Woodward pursuant to the provisions of this Act shall not revert to any fund at the close of a fiscal year but shall remain available for expenditure by the state hospital-school in the succeeding fiscal year.**

*Sec. 42. *CONTRACTS — PENALTIES. For the fiscal year beginning July 1, 1998, and ending June 30, 1999, any contract with a value which exceeds $150,000 entered into by the department of human services shall include a provision to assess a penalty for failure to meet performance expectations, noncompliance, or any other breach of contract, in addition to any other remedy under law.**

Sec. 43. FINANCIAL ASSISTANCE SERVICES.

1. For purposes of this section, "financial assistance services" means services or other assistance provided under one or more of the following programs administered by the

* Item veto; see message at end of the Act

department of human services: family investment program, PROMISE JOBS program, medical assistance program, food stamp program, state child care assistance program, refugee cash assistance program, emergency assistance program, and child support recovery program.

2. During the period beginning May 1, 1998, and ending June 30, 1999, the department of human services may conduct a pilot program or pilot programs for provisions of financial assistance services.

3. Any pilot program conducted in accordance with this section shall be designed to meet one or more of the following financial assistance services goals:

a. A reduction in paperwork for applicants and recipients of services, or staff, or both.

b. Streamlining or expediting the eligibility determination process, to decrease the length of time it takes to inform applicants for financial assistance services as to the disposition of their request for the services.

c. Streamlining or expediting the referral process for family investment program applicants and recipients to other financial assistance services such as PROMISE JOBS or child support recovery, so that referrals can be initiated in a more timely manner in order to help move applicants and recipients more quickly to economic self-sufficiency or toward reduced reliance on government assistance.

d. Improved coordination of the management of financial assistance services as applicants for and recipients of the services work toward economic self-sufficiency.

e. Identification of policies, procedures, and practices that could be altered or eliminated without materially affecting the desired results for the family assistance services.

4. Any pilot program conducted in accordance with this section is subject to the following limitations and parameters:

a. Notwithstanding any administrative rule, that is not based in federal law, the department may alter policies, procedures, and practices to waive the administrative rule, that are based in state law, provided that the alterations do not decrease an applicant's or recipient's choice of, or ability to obtain, financial assistance services from the department in comparison with the financial assistance services that would otherwise be available. The department may operate one or more pilot projects under this paragraph, in not more than eight counties.

b. If the department obtains a waiver of federal law or regulation, the department may alter policies, procedures, and practices that are based in federal law, provided that the alterations do not decrease an applicant's or recipient's choice of, or ability to obtain, financial assistance services from the department in comparison with the financial assistance services that would otherwise be available. The department may operate one or more projects under this paragraph, in not more than eight counties.

c. In order to facilitate rapid implementation, except as provided in paragraph "d", any pilot program authorized under this section is exempt from the rulemaking procedures and rulemaking requirements of chapter 17A. However, following development of the pilot program, the department shall provide a list of the laws or rules being waived to the chairpersons and ranking members of the joint appropriations subcommittee on human services, the administrative rules review committee, the administrative rules coordinator, the legislative fiscal bureau, and the legislative service bureau. In implementing a pilot program under this section, the department shall take steps to make applicants and recipients of services aware of their choices, expectations, rights, and responsibilities.

d. The department shall adopt emergency rules establishing a framework for the pilot projects implemented under this section. The rules shall identify the participating counties, the maximum duration of each pilot project, and generally describe the scope and nature of each pilot project. Within this framework, the department retains broad discretion to revise a pilot project without further rulemaking describing the revision.

Sec. 44. SEXUALLY VIOLENT PREDATORS. The department of human services and the department of corrections shall work with the office of the attorney general in jointly

establishing a task force for identifying the population of persons deemed to be sexually violent predators and to develop options appropriate for addressing public safety concerns associated with this population. The task force deliberations shall incorporate the provisions of any initial program created by law for the commitment and treatment of sexually violent predators. The task force may consult with qualified mental health professionals, corrections professionals, prosecutors, and others experienced in the assessment and treatment of this population. The task force shall consider currently available treatment options, the prevalence of subpopulations which present a high risk of reoffending upon release, and the percentage of the existing criminal sex offender population which is not amenable to treatment under currently known methods. The task force shall identify any treatment methods known to have success in treating this population and subpopulations as well as the costs associated with those methods, develop a proposal for state-of-the-art treatment of sexually violent predators, and develop a plan describing possible use of treatment resources together with options for intensive monitoring upon release. The task force report shall be submitted on or before January 1, 1999, to the members of the joint appropriations subcommittees on human services and on the justice system.

Sec. 45. DEPENDENT ADULT ABUSE ASSESSMENT. The department of human services, in consultation with the department of elder affairs and the governor's planning council for development disabilities, shall develop an assessment-based approach to respond to dependent adult abuse reports made pursuant to section 235B.3. The approach shall be developed in the fiscal year beginning July 1, 1998.

Sec. 46. FRAUD AND RECOUPMENT ACTIVITIES. During the fiscal year beginning July 1, 1998, notwithstanding the restrictions in section 239B.11, the department of human services may expend recovered moneys generated through fraud and recoupment activities for additional fraud and recoupment activities performed by the department of human services or the department of inspections and appeals, subject to both of the following conditions:

1. The director of human services or the director of inspections and appeals determines that the investment can reasonably be expected to increase recovery of assistance paid in error, due to fraudulent or nonfraudulent actions, in excess of the amount recovered in the fiscal year beginning July 1, 1997.

2. The amount expended for the additional fraud and recoupment activities shall not exceed the amount of the projected increase in assistance recovered.

Sec. 47. MEDICAL AND SURGICAL TREATMENT OF INDIGENT PERSONS — STUDY. The legislative council is requested to establish a 1998 legislative interim committee to review the medical and surgical treatment of indigent persons in the state through the university of Iowa hospitals and clinics under chapter 255 and 255A. The review should include but is not limited to the programs and services provided and the possibility of providing these programs and services at alternative locations throughout the state.

Sec. 48. HAWK-I TRUST FUND.

1. If House File 2517 is enacted by the Seventy-seventh General Assembly, 1998 Session,* a HAWK-I trust fund is created in the state treasury under the authority of the department of human services, in which all state appropriations shall be deposited and used to carry out the purposes of chapter 514I. Other revenues of the program such as grants, contributions, and participant payments shall not be considered revenue of the state, but rather shall be funds of the program.

2. The trust fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. The moneys in the trust fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in chapter 514I. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the trust fund shall be credited to the trust fund.

* See chapter 1196 herein

DIVISION II — DOMESTIC VIOLENCE OPTION

Sec. 49. DOMESTIC VIOLENCE OPTION. The provisions of this Division relating to domestic violence provide for the state of Iowa's implementation of the domestic violence option under 42 U.S.C. § 602(a)(7).

Sec. 50. Section 239B.2, subsection 6, Code Supplement 1997, is amended to read as follows:

6. COOPERATION WITH CHILD SUPPORT REQUIREMENTS. The department shall provide for prompt notification of the department's child support recovery unit if assistance is provided to a child whose parent is absent from the home. An applicant or participant shall cooperate with the child support recovery unit and the department as provided in 42 U.S.C. § 608(a)(2) unless the applicant or participant qualifies for good cause or other exception as determined by the department in accordance with the best interest of the child, parent, or specified relative, and with standards prescribed by rule. The authorized good cause or other exceptions shall include participation in a family investment agreement safety plan option to address or prevent family or domestic violence and other consideration given to the presence of family or domestic violence. If a specified relative with whom a child is residing fails to comply with these cooperation requirements, a sanction shall be imposed as defined by rule in accordance with state and federal law.

Sec. 51. Section 239B.4, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. The department shall develop and use a screening tool for determining the likely presence of family and domestic violence affecting applicant and participant families. The department shall require the use of the screening tool by trained employees.

Sec. 52. Section 239B.8, subsection 2, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. i. Participation in a safety plan to address or prevent family or domestic violence. The safety plan may include a temporary waiver period from required participation in the JOBS program or other employment-related activities, as appropriate for the situation of the applicant or participant. All applicants and participants shall be informed regarding the existence of this option. Participation in this option shall be subject to review in accordance with administrative rule.

Sec. 53. ELIGIBILITY FOR IMMIGRANTS SUBJECTED TO EXTREME CRUELTY. The department shall include in the temporary assistance for needy families state plan a provision of family investment program eligibility for immigrants who are qualified aliens under the provisions of 8 U.S.C. § 1641(c) regarding immigrants who have been battered or subjected to extreme cruelty. The department shall adopt administrative rules as necessary to implement the provisions of this section.

Sec. 54. APPLICABILITY. The department of human services shall field test the screening tool requirements of section 239B.4, subsection 2A, as enacted by this Division, in both urban and rural areas during the fiscal year beginning July 1, 1998, and shall apply the requirements statewide beginning July 1, 1999.

DIVISION III — FIP LIMITED BENEFIT PLANS

Sec. 55. Section 239B.9, subsection 1, Code Supplement 1997, is amended to read as follows:

1. GENERAL PROVISIONS.

a. If a participant responsible for signing and fulfilling the terms of a family investment agreement, as defined by the director of human services in accordance with section 239B.8,

chooses not to sign or fulfill the terms of the agreement, the participant's family, or the individual participant shall enter into a limited benefit plan. A limited benefit plan shall apply for the period of time specified in this section. The first month of the limited benefit plan is the first month after the month in which timely and adequate notice of the limited benefit plan is given to the participant as defined by the director of human services. A participant who is exempt from the JOBS program but who volunteers for the program is not subject to imposition of a limited benefit plan. The elements of a limited benefit plan shall be specified in the department's rules.

b. For purposes of this lettered paragraph, "significant contact with or action in regard to the JOBS program" means the individual participant communicates to the JOBS program worker the desire to engage in JOBS program activities, signs a new or updated family investment agreement, and takes any other action required by the department in accordance with rules adopted for this purpose. A limited benefit plan applied in error shall not be considered to have been applied. A limited benefit plan is applicable to the individual participant choosing the limited benefit plan and to the individual participant's family members to which the plan is applicable under subsection 2. A limited benefit plan shall either be a first limited benefit plan or a subsequent limited benefit plan. A limited benefit plan shall be applied as follows:

(1) A first limited benefit plan shall provide for continuing ineligibility for assistance until the individual participant completes significant contact with or action in regard to the JOBS program.

(2) A limited benefit plan subsequent to a first limited benefit plan chosen by the same individual participant shall provide for a six-month period of ineligibility beginning with the effective date of the limited benefit plan and continuing indefinitely following the six-month period until the individual participant completes significant contact with or action in regard to the JOBS program.

(3) For a two-parent family in which both parents are responsible for a family investment agreement, a first or subsequent limited benefit plan shall remain applicable until both parents complete significant contact with or action in regard to the JOBS program. A limited benefit plan applied to the same two-parent family shall be a subsequent limited benefit plan.

Sec. 56. Section 239B.9, subsection 2, paragraphs a and b, Code Supplement 1997, are amended to read as follows:

a. PARENT. If the participant responsible for the family investment agreement is a parent or a specified relative, ~~for a first limited benefit plan, the participant's family is eligible for up to three months of reduced assistance based on the needs of the children only~~ the limited benefit plan is applicable to the entire participant family. ~~At the end of the three-month period of reduced assistance, the family becomes ineligible for assistance for a six-month period. For a second or subsequent limited benefit plan chosen by the same participant, a six-month period of ineligibility applies beginning with the effective date of the limited benefit plan.~~ If the family reapplies for assistance after ~~a six-month~~ an ineligibility period, eligibility shall be established in the same manner as for any other new applicant. ~~A limited benefit plan imposed in error shall not be considered a first limited benefit plan.~~

b. NEEDY RELATIVE PAYEE. If the participant choosing a limited benefit plan is a needy relative who acts as payee when the parent is in the home but is unable to act as payee, or is a dependent child's stepparent whose needs are included in the assistance because of incapacity or caregiving, the limited benefit plan shall apply only to the individual participant choosing the plan. ~~The individual participant choosing the limited benefit plan is ineligible for nine months from the effective date of the limited benefit plan. For a second or subsequent limited benefit plan chosen by the same individual participant, a six-month period of ineligibility applies beginning with the effective date of the limited benefit plan.~~

Sec. 57. Section 239B.9, subsection 2, paragraph e, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) If the parent or specified relative responsible for a family investment agreement meets the responsibilities of the family investment agreement but a child who is a mandatory JOBS program participant chooses an individual limited benefit plan, the family is eligible for reduced assistance during the child's limited benefit plan. ~~However, the child, as part of the family, is ineligible for nine months for a first limited benefit plan and six months for a second or subsequent limited benefit plan.~~

Sec. 58. Section 239B.9, subsection 2, paragraph g, Code Supplement 1997, is amended to read as follows:

g. TWO PARENTS. If the participant family includes two parents, a limited benefit plan shall be applied as follows:

(1) If only one parent of a child in the family is responsible for a family investment agreement and that parent chooses the limited benefit plan, the limited benefit plan cannot be ended by the voluntary participation in a family investment agreement by the exempt parent. ~~However, the exempt parent may continue to be included in the participant family's grant during the three-month reduced assistance period by volunteering to participate in the JOBS family investment program-unemployed parent work program. If a second or subsequent limited benefit plan is chosen by either parent, the family becomes ineligible for a six-month period beginning with the effective date of the limited benefit plan.~~ If the parent responsible for the family investment agreement chooses a limited benefit plan, the limited benefit plan applies to the entire family.

(2) If both parents of a child in the family are responsible for a family investment agreement, both parents shall sign the agreement. If either parent chooses the limited benefit plan, the limited benefit plan cannot be ended by the participation of the other parent in a family investment agreement. ~~However, the other parent may continue to be included in the family's grant during the three-month reduced assistance period by participating in the JOBS family investment program-unemployed parent work program. If a second or subsequent limited benefit plan is chosen by either parent, the family becomes ineligible for a six-month period beginning with the effective date of the limited benefit plan.~~

(3) If the parents from a two-parent family in a limited benefit plan separate, the limited benefit plan shall follow only the parent who chose the limited benefit plan and any children in the home of that parent.

Sec. 59. Section 239B.9, subsection 3, paragraph a, Code Supplement 1997, is amended to read as follows:

a. A participant who does not establish an orientation appointment with the JOBS program or who fails to keep or reschedule an orientation appointment shall receive a reminder letter which informs the participant that those who do not attend orientation have elected to choose a limited benefit plan. A participant who chooses not to respond to the reminder letter within ten calendar days from the mailing date shall receive notice establishing the effective date of the limited benefit plan~~, the beginning date of the period of reduced assistance, and the beginning and ending dates of the six-month period of ineligibility~~. If a participant is deemed to have chosen a limited benefit plan, timely and adequate notice provisions, as determined by the director of human services, shall apply.

Sec. 60. Section 239B.9, subsections 4, 5, and 6, Code Supplement 1997, are amended to read as follows:

4. RECONSIDERATION. A participant who chooses a limited benefit plan may reconsider that choice as follows:

a. A participant who chooses a first limited benefit plan ~~rather than sign a family investment agreement shall have the entire three-month period of reduced assistance~~ may reconsider at any time following the effective date of the limited benefit plan ~~to reconsider and begin development of the family investment agreement~~. The participant may contact the department or the appropriate JOBS program office any time ~~during the first three months of the limited benefit plan~~ to begin the reconsideration process. ~~Although family investment~~

~~program assistance shall not begin until the participant signs a family investment agreement during the JOBS program orientation and assessment process, retroactive assistance shall be issued as defined by the director of human services. A limited benefit plan imposed in error shall not be considered a first limited benefit plan.~~

~~b. A participant who signs a family investment agreement but does not carry out the family investment agreement responsibilities shall be deemed to have chosen a limited benefit plan and shall not be allowed to reconsider that choice.~~

~~c.~~ b. A participant who chooses a ~~second or~~ subsequent limited benefit plan ~~shall not be allowed to~~ may reconsider that choice at any time following the required period of ineligibility.

5. WELL-BEING VISIT. If a participant has chosen a subsequent limited benefit plan, a qualified ~~social services~~ professional shall attempt to visit with the participant ~~to inquire into the family's~~ family with a focus upon the children's well-being. The visit shall be performed during or within four weeks of the second month of the start of the subsequent limited benefit plan. The visit shall serve as an extension of the family investment program and the family investment agreement philosophy of supporting families as they move toward self-sufficiency. The department may contract for ~~these services~~ the visit. ~~The visit shall be made in accordance with the following:~~

~~a. For a participant in a first limited benefit plan who has the reconsideration option, a qualified social services professional, as defined by the director of human services, shall inquire into the well-being of the family during month two of the period of reduced assistance. If the participant who is responsible for a family investment agreement indicates a desire to develop a family investment agreement, the qualified social services professional shall assist the participant in establishing an appointment with the appropriate JOBS program office.~~

~~b. For a participant in a first limited benefit plan who does not enter into the family investment agreement process during the three-month reconsideration period, a qualified social services professional shall make another inquiry as to the well-being of the family during month four of the limited benefit plan.~~

~~c. A participant who signs the family investment agreement but does not carry out family investment agreement responsibilities and, consequently, has chosen a first limited benefit plan shall not be allowed to reconsider that choice. However, a social services professional shall inquire as to the well-being of the family during month four of the limited benefit plan.~~

~~d. A participant who has chosen a second or subsequent limited benefit plan shall not be allowed to reconsider that choice. However, a qualified social services professional shall make inquiry into the well-being of the family during month two of the limited benefit plan.~~

6. APPEAL. A participant has the right to appeal the establishment of the limited benefit plan only once, ~~except for a first limited benefit plan two opportunities to appeal shall be available. A participant in a first limited benefit plan has the right to appeal the limited benefit plan at the time the department issues timely and adequate notice establishing the limited benefit plan, or at the time the department issues the subsequent notice that establishes the six-month period of ineligibility. A participant who has chosen a second or subsequent limited benefit plan has the right to appeal only~~ at the time the department issues the timely and adequate notice that establishes the ~~six-month period of ineligibility~~ limited benefit plan. However, if the reason for the appeal is based on an incorrect grant computation, an error in determining the composition of the family, or another worker error, a hearing shall be granted, regardless of the person's limited benefit plan status.

Sec. 61. APPLICABILITY — RULES.

1. The department of human services shall adopt administrative rules to implement the provisions of this division of this Act and the provisions shall apply beginning with the effective date specified in those rules. However, the effective date specified in the administrative rules shall be no earlier than January 1, 1999.

2. If a limited benefit plan was chosen by a participant prior to the effective date of the administrative rules, a limited benefit plan chosen by that participant on or after the effective date shall be considered a subsequent benefit plan.

3. A limited benefit plan in effect on the effective date of the administrative rules shall remain subject to the law and rules applicable to that limited benefit plan at the time the plan was imposed until that limited benefit plan's period has ended.

DIVISION IV — PRIVATE AGENCY CONTRACTS

Sec. 62. PRIVATE AGENCY CONTRACTS. The auditor of state and the director of human services shall jointly develop a process for exempting a private agency awarded a grant, contract, or purchase of service contract through the department of human services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, from the requirement to obtain a certification from the auditor of state pursuant to section 11.36. The process shall apply a monetary threshold, provide for acceptance of existing audits, or utilize other methods to determine the adequacy of a private agency's accounting practices in a manner which is not burdensome to the private agency or the state. The auditor of state and the director of human services shall submit a report of the process developed to the general assembly on or before January 1, 1999.

Sec. 63. Section 217.41, Code 1997, is repealed.

DIVISION V — STATUTORY REVISIONS

Sec. 64. 1997 Iowa Acts, chapter 208, section 2, unnumbered paragraph 3, is amended by striking the unnumbered paragraph.

Sec. 65. 1997 Iowa Acts, chapter 208, section 17, subsection 1, paragraph a, subparagraph (1), is amended to read as follows:

(1) The department shall implement a pilot project of operating the hospital-school with a net general fund appropriation. The amount allocated in this paragraph is the net state appropriation amount projected to be needed for the state hospital-school at Glenwood. Purposes of the pilot project are to encourage the hospital-school to operate with increased self-sufficiency, to improve quality and efficiency, and to support collaborative efforts between the hospital-school and counties and other funders of services available from the hospital-school. The pilot project shall not be implemented in a manner which results in a cost increase to the state or cost shifting between the state, the medical assistance program, counties, or other sources of funding for the state hospital-school. Moneys allocated in this paragraph may be used throughout the fiscal year in the manner necessary for purposes of cash flow management, and for purposes of cash flow management the hospital-school may temporarily draw more than the amount allocated, provided the amount allocated is not exceeded at the close of the fiscal year. For the purposes of calculating the August 31, 1998, fiscal year 1997-1998 ending balance under this subsection, the department shall include county receivables billed but not yet received. However, only receipts received within 90 days of being billed for fiscal year 1997-1998 services shall be included. The state hospital-school at Glenwood may draw upon the general fund of the state in an amount equal to the amount of the receipts not yet received.

Sec. 66. Section 135H.6, subsection 5, Code 1997, is amended to read as follows:

5. The department of human services has submitted written approval of the application based on the department of human services' determination of need. The department of human services shall identify the location and number of children in the state who require the services of a psychiatric medical institution for children. Approval of an application shall be based upon the location of the proposed psychiatric institution relative to the need for services identified by the department of human services and an analysis of the applicant's

ability to provide services and support consistent with requirements under chapter 232, particularly regarding community-based treatment. If the proposed psychiatric institution is not freestanding from a facility licensed under chapter 135B or 135C, approval under this subsection shall not be given unless the department of human services certifies that the proposed psychiatric institution is capable of providing a resident with a living environment similar to the living environment provided by a licensee which is freestanding from a facility licensed under chapter 135B or 135C. Unless a psychiatric institution was accredited to provide psychiatric services by the joint commission on the accreditation of health care organizations under the commission's consolidated standards for residential settings prior to June 1, 1989, the department of human services shall not approve an application for a license under this chapter until the federal health care financing administration has approved a state Title XIX plan amendment to include coverage of services in a psychiatric medical institution for children. In addition, either of the following conditions must be met:

a. The department of human services shall not give approval to an application which would cause the total number of beds licensed under this chapter to exceed three hundred sixty beds, except as provided in paragraph "b" and paragraph "c", with not more than three hundred of the beds licensed under chapter 237 before January 1, 1989, and not more than sixty of the beds licensed under chapter 237 on or after January 1, 1989.

b. The department of human services shall not give approval to an application which would cause the total number of beds licensed under this chapter after June 30, 1990, which specialize in providing substance abuse treatment to children to exceed seventy beds.

c. The department of human services may establish not more than thirty beds licensed under this chapter at the state mental health institute at Independence. The beds shall be exempt from the certificate of need requirement under subsection 4.

Sec. 67. Section 217.12, subsection 3, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. Designation of agreement provisions for tracking and reporting performance measures developed pursuant to subsection 4.

Sec. 68. Section 222.68, Code 1997, is amended to read as follows:

222.68 COSTS PAID IN FIRST INSTANCE.

All necessary and legal expenses for the cost of admission or commitment of a person to a hospital-school or a special unit when the person's legal settlement is found to be in another county of this state shall in the first instance be paid by the county from which the person was admitted or committed. The county of legal settlement shall reimburse the county ~~so paying~~ which pays for all such expenses. Where any county fails to make such reimbursement within ~~sixty~~ forty-five days following submission of a properly itemized bill to the county of legal settlement, a penalty of not greater than one percent per month on and after ~~sixty~~ forty-five days from submission of the bill may be added to the amount due.

Sec. 69. Section 222.75, Code 1997, is amended to read as follows:

222.75 DELINQUENT PAYMENTS — PENALTY.

Should any county fail to pay the bills within ~~sixty~~ forty-five days from the date ~~of~~ the county received the certificate from the superintendent, the director of revenue and finance may charge the delinquent county a penalty of not greater than one percent per month on and after ~~sixty~~ forty-five days from date ~~of~~ the county received the certificate until paid.

Sec. 70. Section 222.78, Code 1997, is amended to read as follows:

222.78 PARENTS AND OTHERS LIABLE FOR SUPPORT.

The father and mother of any ~~person~~ patient admitted or committed to a hospital-school or to a special unit, as either an inpatient or an outpatient, and any person, firm, or corporation bound by contract ~~hereafter~~ made for support of the ~~person shall be and remain~~ patient is liable for the support of the ~~person~~ patient. The ~~person~~ patient and those legally bound for the support of the ~~person~~ patient shall be liable to the county for all sums advanced by the

county to the state under the provisions of sections 222.60 and 222.77. The liability of any person, other than the patient, who is legally bound for the support of ~~any~~ a patient who is under eighteen years of age in a hospital-school or a special unit shall ~~in no instance~~ not exceed the average minimum cost of the care of a normally intelligent~~, nonhandicapped~~ minor without a disability of the same age and sex as the minor patient. The administrator shall establish the scale for this purpose but the scale shall not exceed the standards for personal allowances established by the state division under the family investment program. ~~Provided further that the father or mother of the person shall not be liable for the support of the person after the person attains the age of eighteen years and that the~~ The father or mother shall incur liability only during any period when the father or mother either individually or jointly receive a net income from whatever source, commensurate with that upon which they would be liable to make an income tax payment to this state. The father or mother of a patient shall not be liable for the support of the patient upon the patient attaining eighteen years of age. Nothing in this section shall be construed to prevent a relative or other person from voluntarily paying the full actual cost as established by the administrator for caring for the ~~person~~ patient with mental retardation.

Sec. 71. Section 225C.38, subsection 1, paragraph c, Code 1997, is amended to read as follows:

c. Except as provided in section 225C.41, a family support subsidy for a fiscal year shall be in an amount equivalent to the monthly maximum supplemental security income payment available in Iowa on July 1 of that fiscal year for an adult recipient living in the household of another, as formulated under federal regulations. In addition, the parent or legal guardian of a family member who is in an out-of-home placement at the time of application may receive a one-time lump-sum advance payment of twice the monthly family support subsidy amount for the purpose of meeting the special needs of the family in preparing for in-home care. The parent or legal guardian receiving a family support subsidy may elect to receive a payment amount which is less than the amount determined in accordance with this paragraph.

Sec. 72. Section 225C.48, subsection 5, Code 1997, is amended by striking the subsection.

Sec. 73. Section 229.42, unnumbered paragraph 4, Code Supplement 1997, is amended to read as follows:

Should any county fail to pay these bills within ~~sixty~~ forty-five days from the date ~~of~~ the county received the certificate from superintendent, the director of revenue and finance shall charge the delinquent county the penalty of one percent per month on and after ~~sixty~~ forty-five days from date ~~of~~ the county received the certificate until paid. Such penalties shall be credited to the general fund of the state.

Sec. 74. Section 230.22, Code 1997, is amended to read as follows:

230.22 PENALTY.

Should any county fail to pay the amount billed by a statement submitted pursuant to section 230.20 within ~~sixty~~ forty-five days from the date the statement is ~~certified~~ received by the ~~superintendent~~ county, the director of revenue and finance shall charge the delinquent county the penalty of one percent per month on and after ~~sixty~~ forty-five days from the date the statement is ~~certified~~ received by the county until paid. Provided, however, that the penalty shall not be imposed if the county has notified the director of revenue and finance of error or questionable items in the billing, in which event, the director of revenue and finance ~~may~~ shall suspend the penalty only during the period of negotiation.

Sec. 75. Section 234.12A, if enacted by 1998 Iowa Acts, House File 2468, is amended by adding the following new subsection:

NEW SUBSECTION. 3. For the purposes of this section, "retailer" means a business authorized by the United States department of agriculture to accept food stamp benefits.

Sec. 76. Section 239B.11, subsection 2, Code Supplement 1997, is amended to read as follows:

2. A diversion program subaccount is created within the family investment program account. The subaccount may be used to provide incentives to divert applicants' participation in the family investment program if the applicants ~~would otherwise be eligible~~ meet income eligibility requirements for assistance. Incentives may be provided in the form of payment or services with a focus on helping applicants to obtain or retain employment. The diversion program subaccount may also be used for payments to participants as necessary to cover the expenses of removing barriers to employment.

Sec. 77. Section 249A.3, subsection 1, paragraph g, subparagraph (2), Code Supplement 1997, is amended to read as follows:

(2) Is a child ~~born after September 30, 1983,~~ who has attained six years of age but has not attained nineteen years of age ~~as prescribed by the federal Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 4601~~, whose income is not more than one hundred thirty-three percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

Sec. 78. Section 541A.3, subsection 5, Code 1997, is amended to read as follows:

5. The administrator shall coordinate the filing of claims for savings refunds authorized under subsection 1, between account holders, operating organizations, and the department of revenue and finance. Claims approved by the administrator may be paid by the department of revenue and finance to each account or for an aggregate amount for distribution to the accounts in a particular financial institution, depending on the efficiency for issuing the refunds. Claims shall be initially filed with the administrator on or before a date established by the administrator. Claims approved by the administrator shall be paid from the general fund of the state in the manner specified in section 422.74.

Sec. 79. IMPLEMENTATION — STATE MANDATE. Section 25B.2, subsection 3, shall not apply to the provisions of this Division amending sections 222.68, 222.75, 229.42, and 230.22.

Sec. 80. EMERGENCY RULES. If specifically authorized by a provision of this Act, the department of human services or the mental health and mental retardation commission may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement the provisions and the rules shall become effective immediately upon filing, unless the effective date is delayed by the administrative rules review committee, notwithstanding section 17A.4, subsection 5, and section 17A.8, subsection 9, or a later effective date is specified in the rules. Any rules adopted in accordance with this section shall not take effect before the rules are reviewed by the administrative rules review committee. Any rules adopted in accordance with the provisions of this section shall also be published as notice of intended action as provided in section 17A.4.

Sec. 81. REPORTS. Any reports or information required to be compiled and submitted under this Act shall be submitted to the chairpersons and ranking members of the joint appropriations subcommittee on human services, the legislative fiscal bureau, the legislative service bureau, and to the caucus staffs on or before the dates specified for submission of the reports or information.

Sec. 82. Section 239B.23, Code Supplement 1997, is repealed.

Sec. 83. EFFECTIVE DATE. The following provisions of this Act, being deemed of immediate importance, take effect upon enactment:

1. Section 1, supplementing an appropriation made in 1997 Iowa Acts, chapter 202.
2. Section 5, subsection 7, relating to X-pert computer system funding.

3. Section 7, subsection 4, relating to a request for proposals for managed behavioral health and substance abuse care.
4. Section 7, subsection 12, relating to reinstatement of the employment earnings disregard.
5. Section 15, subsection 2, paragraph "e", relating to requirements of section 232.143, for the 1997-1998 and 1998-1999 fiscal years.
6. Section 15, subsection 18, relating to continuation of clinical assessment and consultation teams.
7. Section 15, subsection 19, paragraph "b", relating to authority to use moneys for support of the child welfare services work group.
8. Section 18, subsection 1, relating to determining allocation of court-ordered services funding.
9. Section 41, relating to net state budgeting at the state hospital-schools.
10. Section 43, relating to financial assistance services.
11. Section 62, relating to private agency contracts.
12. Sections 64 and 65, amending 1997 Iowa Acts, chapter 208.
13. Section 72, striking a provision of Code section 225C.48.

Sec. 84. EFFECTIVE DATE — APPLICABILITY. Section 78 of this Act, amending Code section 541A.3, being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to January 1, 1998.

Approved May 19, 1998, except the items which I hereby disapprove and which are designated as Section 7, subsection 7, in its entirety; that portion of Section 9 which is herein bracketed in ink and initialed by me; Section 10, subsection 2, in its entirety; that portion of Section 16 which is herein bracketed in ink and initialed by me; that portion of Section 28 which is herein bracketed in ink and initialed by me; Section 32, subsection 1, paragraph b, in its entirety; and Sections 40, 41, and 42 in their entirety. My reasons for vetoing these items are delineated in the item veto message pertaining to this Act to the Secretary of State this same date, a copy of which is attached hereto.

TERRY E. BRANSTAD, *Governor*

Dear Mr. Secretary:

I hereby transmit Senate File 2410, an Act relating to appropriations for the Department of Human Services and the prevention of disabilities policy council and including other provisions and appropriations involving human services and health care, and providing effective dates and a retroactive applicability provision.

Senate File 2410 is, therefore, approved on this date with the following exceptions, which I hereby disapprove.

I am unable to approve the item designated as Section 7, subsection 7, in its entirety. This item would implement a home and community based waiver for persons with physical disabilities. Allowing residents in a medical institution access for waiver services without first requiring evidence of the likelihood of long-term care could monopolize limited resources available for the program. I believe we should pursue a waiver for persons with physical disabilities, but direct it towards those with a clear prospect of long term institutionalization. Therefore, I am directing the department to implement a cost-effective waiver for persons with physical disabilities.

I am unable to approve the designated portion of Section 9. This item would allow unspent funds from fiscal year 1999 for the new child health care program to carry forward into fiscal year 2000. It is inappropriate to use one-time funding for on-going expenses.

I am unable to approve the item designated as Section 10, subsection 2, in its entirety. This item would prohibit the expansion of prior authorization for prescription drugs under the Medicaid program without approval of the General Assembly. The recent introduction of the new drug Viagra demonstrates the department's need to move forward quickly with prior authorization in a limited number of instances. The high level of media attention, combined with an absence of clinical criteria for restricting utilization, could create unanticipated cost over-runs in the Medicaid program.

I am unable to approve the designated portion of Section 16. This item appears to extend the application of the terms of the Conners consent decree relating to long term institutional settings to the University of Iowa Hospital School for Children with Disabilities. The University of Iowa Hospitals School for Children with Disabilities is not a long-term residential facility; rather it provides short-term acute care services. It would, therefore, be inappropriate to apply the Conners decree to the University Hospital School.

I am unable to approve the designated portion of Section 28. This item would require the Department of Human Services to reimburse a county when it chooses to offset a reduction in state mental health or mental retardation staff. The department must retain the flexibility to make staffing decisions based upon caseload need.

I am unable to approve the item designated as Section 32, subsection 1, paragraph b, in its entirety. This item would provide a two percent increase for pharmacist services effective January 1, 1999. This item sets precedent in that it applies to pharmacist services rather than dispensing fees, as has been the case in past years. Elsewhere in this bill, Section 10, subsection 4, the General Assembly has directed a study be undertaken to determine the benefits to the state of the provision of pharmaceutical services. It would be inappropriate to explicitly fund pharmacist services until the results of the study are known.

I am unable to approve the item designated as Section 40, in its entirety. This item would require the Department of Human Services to make up from any of its appropriations any shortfall in revenues earmarked for juvenile detention. If the General Assembly believes there may be a shortfall in funding for juvenile detention, it should be addressed in a more straightforward manner through a direct appropriation or an increase in revenue directed to this purpose.

I am unable to approve the item designated as Section 41, in its entirety. This item would allow unspent fiscal year 1999 funds for the Department of Human Services Hospital-Schools to carry forward into fiscal year 2000. It is inappropriate to use one-time funding for on-going expenses.

I am unable to approve the item designated as Section 42, in its entirety. This item would require the department to include penalty provisions for unmet performance expectations in all contracts with a value exceeding $150,000. The language is drafted so broadly that it could potentially be applied to a physician providing services under Medicaid. I will instead direct the department to implement the intent of this section where appropriate.

For the above reasons, I hereby respectfully disapprove these items in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in Senate File 2410 are hereby approved as of this date.

Sincerely,
TERRY E. BRANSTAD, *Governor*

CHAPTER 1219

APPROPRIATIONS — INFRASTRUCTURE AND CAPITAL PROJECTS

S.F. 2381

AN ACT making appropriations from and to the rebuild Iowa infrastructure fund for the fiscal year beginning July 1, 1998, to the division of soil conservation for deposit in the Loess Hills development and conservation fund; department of corrections for renovation of the power plant and improvements to the water system at the Iowa correctional institution for women, for the construction of two additional cellblocks at the Fort Dodge correctional facility, for a prior fiscal year, and for the construction of a 200-bed facility at the Iowa state penitentiary at Fort Madison, and for construction and renovation of community-based correctional facilities; department of cultural affairs for the creation of a historical site preservation grant program; department of economic development for a welcome center at Hamburg, to be deposited in the physical infrastructure assistance fund, and for deposit in the rural enterprise fund to be used for a dry fire hydrant and rural water supply education and demonstration project; department of education for infrastructure improvements to the community colleges, for completion of the training facility and site development phase of the national education center for agricultural safety; department of general services for major renovation needs for state-owned buildings and facilities, for critical and deferred maintenance at Terrace Hill, for relocation of offices and other transition costs associated with the renovation of the Lucas state office building and the old historical building, for renovation of the Lucas state office building, for developing a master plan for the capitol complex, for planning and design of a parking structure located at the northwest corner of the capitol complex, and for capitol interior restoration; department of public defense for maintenance and repair of national guard armories and facilities; department of public safety for construction of a new patrol post in District 1; department of natural resources for the purpose of funding capital projects from marine fuel tax receipts for expenditures for local cost-share grants to be used for capital expenditures to local governmental units for boating accessibility, for the construction of the Elinor Bedell state park and wildlife conservation area, for a recreational grant matching program, creation of a lake rehabilitation pilot program, for the blufflands protection revolving fund, and for the dredging of lakes; department of transportation for capital improvements at all 10 of the commercial air service airports and for an automated weather observation system; for the Iowa state fair foundation for renovation, restoration, and improvement of the cattle barn and horse barn at the state fairgrounds and for county fair infrastructure improvements; judicial department for capital projects at the capitol building; and state board of regents for capital projects at the Iowa school for the deaf and the Iowa braille and sight saving school; making appropriations of the marine fuel tax receipts from the rebuild Iowa infrastructure fund; providing a reversion date to funds appropriated to the department of revenue and finance in the fiscal year beginning July 1, 1997, and ending June 30, 1998; making statutory changes relating to appropriations by establishing the blufflands protection program and revolving fund, by reducing the overall appropriation for the restore outdoors program for the fiscal period beginning July 1, 1997, and ending June 30, 2001, as a result of the governor's item veto, by providing for coordination of vertical infrastructure databases, by eliminating a matching contribution requirement on certain funds appropriated to the department of cultural affairs for the fiscal year beginning July 1, 1997, by extending the allowable time to enter into contracts to provide alternative drainage outlets, by allocating part of the funds derived from the excise tax on the sale of motor fuel used in watercraft from the general fund to the rebuild Iowa infrastructure fund, by reallocating certain funds to design and construct new or replacement buildings at the state training school; and providing effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

CAPITAL PROJECTS
DEPARTMENT OF AGRICULTURE
AND LAND STEWARDSHIP

Section 1. There is appropriated from the rebuild Iowa infrastructure fund, notwithstanding section 8.57, subsection 5, paragraph "c", to the division of soil conservation located in the department of agriculture and land stewardship for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For deposit in the Loess Hills development and conservation fund created in section 161D.2 and shall be used for the purposes specified in section 161D.1:

..... $ 1,200,000

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2000, from the funds appropriated in this section shall revert to the rebuild Iowa infrastructure fund on August 31, 2000.

DEPARTMENT OF CORRECTIONS

Sec. 2. There is appropriated from the rebuild Iowa infrastructure fund to the department of corrections for the fiscal year indicated, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For the fiscal year beginning July 1, 1998, and ending June 30, 1999, for renovation of the power plant and improvements to the water system at the Iowa correctional institution for women:

..... $ 1,400,000

2. For the fiscal year beginning July 1, 1997, and ending June 30, 1998, for the construction of two additional cellblocks at the Fort Dodge correctional facility:

..... $ 10,000,000

It is the intent of the general assembly that the amount appropriated in this subsection shall only be used to fund the design, construction services related to, and construction of the additional cellblocks.

3. For the fiscal year beginning July 1, 1998, and ending June 30, 1999, for construction of a 200-bed facility at the Iowa state penitentiary at Fort Madison:

..... $ 6,500,000

**4. For the construction, renovation, and expansion of community-based correctional facilities:*

..... *$ 1,500,000**

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2001, from the funds appropriated in this section shall revert to the rebuild Iowa infrastructure fund on August 31, 2001.

DEPARTMENT OF CULTURAL AFFAIRS

Sec. 3. There is appropriated from the rebuild Iowa infrastructure fund to the department of cultural affairs for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For the creation of a historical site preservation grant program, to be used as provided in this section for the restoration, preservation, and development of historical sites:

..... $ 2,425,000

1. Of the amount appropriated in this section, not more than $600,000 may be used to fund a state contribution toward the restoration and renovation of the Salisbury house in Des Moines.

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* Item veto; see message at end of the Act

2. Of the amount appropriated in this section, not more than $100,000 may be used to fund the planning phase for the design and construction of an Iowa hall of pride.

3. Of the amount appropriated in this section, not more than $16,000 may be used to fund a state contribution toward the restoration of Iowa monuments located at Shiloh national military park in Tennessee.

4. Of the amount appropriated in this section, not more than $250,000 may be used to fund a state contribution toward the construction of the Fort Des Moines black officers memorial.

The department shall adopt administrative rules pursuant to chapter 17A to administer the disbursement of funds.

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2001, from the funds appropriated in this section shall revert to the rebuild Iowa infrastructure fund on August 31, 2001.

DEPARTMENT OF ECONOMIC DEVELOPMENT

Sec. 4. There is appropriated from the rebuild Iowa infrastructure fund to the department of economic development for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For a welcome center at Hamburg:

..... $ 250,000

2. To be deposited in the physical infrastructure assistance fund created in section 15E.175, notwithstanding section 8.57, subsection 5, paragraph "c":

..... $ 5,000,000

The department shall maximize the funds appropriated in this subsection for vertical infrastructure projects and the department shall report to the general assembly on the amount of funds provided for vertical infrastructure and shall report any indirect vertical infrastructure projects that resulted from this appropriation.

3. For deposit in the rural enterprise fund to be used for the project specified in this subsection, notwithstanding section 8.57, subsection 5, paragraph "c":

..... $ 100,000

The moneys appropriated in this subsection shall be used by the department of economic development for a dry fire hydrant and rural water supply education and demonstration project. The project shall provide both collaborative and technical education to fire departments and provide grants for demonstration installations on a shared basis. The project shall utilize, to the extent possible, resources from the fire service institute at Iowa state university of science and technology, United States department of agriculture rural development, Iowa department of economic development, and rural conservation development areas. The department of economic development shall create a panel to review applications for project grants. The department shall invite each of the following to designate a member for the panel: the Iowa firemen's association and other members of the Iowa joint council of fire service organizations, the fire service institute at Iowa state university of science and technology, the Iowa league of cities, state fire marshal, and the department of economic development. The panel shall review each application and make a recommendation to the department for selection of applications.

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2001, from the funds appropriated in this section shall revert to the rebuild Iowa infrastructure fund on August 31, 2001.

DEPARTMENT OF EDUCATION

Sec. 5. There is appropriated from the rebuild Iowa infrastructure fund, to the department of education for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the

following amount, or so much thereof as is necessary, to be used for the purposes designated:

*1. *For vertical infrastructure improvements to the community colleges to be allocated by the department of education to each community college in the same proportionate share that all state general aid funds are to be distributed to each community college for the 1999 fiscal year:*

..... $ *2,000,000**

2. For the completion of the training facility infrastructure and site development phase of the national education center for agriculture safety, on the campus of the northeast Iowa community college in the City of Peosta:

..... $ 450,000

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2000, from the funds appropriated in this section shall revert to the rebuild Iowa infrastructure fund on August 31, 2000.

DEPARTMENT OF GENERAL SERVICES

Sec. 6. There is appropriated from the rebuild Iowa infrastructure fund to the department of general services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For major renovation needs including health, life, and fire safety, for compliance with the federal Americans With Disabilities Act for state-owned buildings and facilities:

..... $ 8,800,000

Notwithstanding section 8.57, subsection 5, paragraph "c", of the amount appropriated in this subsection, up to $600,000 may be used by the department for maintenance needs for the capitol complex.

Of the amount appropriated in this subsection, up to $1,250,000 may be used by the department for the purchase of property located at the southwest corner of Lyon street and East Tenth street in the city of Des Moines.

2. For critical and deferred maintenance at Terrace Hill:

..... $ 700,000

If there is an unobligated or unencumbered balance in the rebuild Iowa infrastructure fund on June 30, 1999, the remaining balance of the funds up to an additional $700,000 shall be appropriated for the fiscal year beginning July 1, 1998, for funding more critical and deferred maintenance needs at Terrace Hill.

3. For relocation of offices and other transition costs associated with renovation of the Lucas state office building and the old historical building:

..... $ 1,300,000

4. For renovation of the Lucas state office building:

..... $ 4,500,000

5. For developing a master plan for the capitol complex, including planning for the capitol terrace project and design costs for underground parking on the capitol complex:

..... $ 390,000

It is the intent of the general assembly that the department coordinate with the city of Des Moines on construction projects located at the capitol complex and surrounding areas.

6. Planning, design, and construction of a parking structure located at the northwest corner of the capitol complex:

..... $ 5,820,000

7. For capitol interior restoration:

..... $ 1,027,600

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2002, from the funds appropriated in this section, shall revert to the rebuild Iowa infrastructure fund on August 31, 2002.

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* Item veto; see message at end of the Act

IOWA STATE FAIR FOUNDATION

Sec. 7. There is appropriated from the rebuild Iowa infrastructure fund of the state to the Iowa state fair foundation for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For renovation, restoration, and improvement of the cattle barn and horse barn at the state fairgrounds:

..... $ 4,360,000

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2001, from the funds appropriated in this subsection shall revert to the rebuild Iowa infrastructure fund on August 31, 2001.

2. For county fair infrastructure improvements for distribution in accordance with chapter 174 to qualified fairs which belong to the association of Iowa fairs:

..... $ 1,060,000

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 1999, from the funds appropriated in this subsection shall revert to the rebuild Iowa infrastructure fund on August 31, 1999.

JUDICIAL DEPARTMENT

Sec. 8. There is appropriated from the rebuild Iowa infrastructure fund to the judicial department for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For capital projects at the capitol building:

..... $ 250,000

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2000, from the funds appropriated in this section shall revert to the rebuild Iowa infrastructure fund on August 31, 2000.

DEPARTMENT OF NATURAL RESOURCES

Sec. 9. There is appropriated from the marine fuel tax receipts deposited in the rebuild Iowa infrastructure fund to the department of natural resources for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For the purpose of funding capital projects from marine fuel tax receipts for the purposes specified in section 452A.79, and notwithstanding section 8.57, subsection 5, paragraph "c", for expenditures for local cost share grants to be used for capital expenditures to local governmental units for boating accessibility:

..... $ 2,288,689

Of the amount appropriated in this section, up to $200,000 may be used for expenditure purposes for local cost share grants to local governmental units for boating accessibility.

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2000, and shall revert to the rebuild Iowa infrastructure fund on August 31, 2000.

Sec. 10. There is appropriated from the rebuild Iowa infrastructure fund to the department of natural resources for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes indicated:

1. For the construction of the Elinor Bedell state park and wildlife conservation area:

..... $ 430,000

It is the intent of the general assembly to fund the remaining costs to construct the Elinor Bedell state park in the fiscal year beginning July 1, 1999, and ending June 30, 2000, in the amount of $278,000 and in the fiscal year beginning July 1, 2000, and ending June 30, 2001, in the amount of $50,000.

2. For a recreational grant matching program:

..... $ 2,500,000

The department shall adopt administrative rules pursuant to chapter 17A to administer the disbursement of funds. Matching grants are to be awarded only to communities, organizations, and associations for the restoration or construction of recreational complexes or facilities. Each applicant shall be awarded a matching grant of one dollar for every two dollars the applicant has raised. Each grant shall not exceed $100,000 per project.

3. For the blufflands protection program and revolving fund created in section 161A.80, notwithstanding section 8.57, subsection 5, paragraph "c":

..... $ 500,000

4. For the dredging of lakes, including necessary preparation for dredging, in accordance with the department's classification of Iowa lakes restoration report, notwithstanding section 8.57, subsection 5, paragraph "c":

..... $ 2,200,000

Of the amount appropriated in this subsection up to $200,000 shall be used by the department to implement a lake rehabilitation pilot program for state-owned or public lakes in cooperation with local project sponsors. The department shall adopt rules to administer the program to include requirements for the development of diagnostic feasibility lake studies, development of plans for lakes judged suitable for restoration, and provisions for grants to local sponsors by which the department shall match the cost of studies and plans at a rate of one dollar of state appropriated moneys for every three dollars of local project moneys raised.

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2001, from the funds appropriated in this section shall revert to the rebuild Iowa infrastructure fund on August 31, 2001.

DEPARTMENT OF PUBLIC DEFENSE

Sec. 11. There is appropriated from the rebuild Iowa infrastructure fund to the department of public defense for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For maintenance and repair of national guard armories and facilities:

..... $ 680,000

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2000, from the funds appropriated in this section shall revert to the rebuild Iowa infrastructure fund on August 31, 2000.

DEPARTMENT OF PUBLIC SAFETY

Sec. 12. There is appropriated from the rebuild Iowa infrastructure fund to the department of public safety for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

For construction of a new patrol post in District 1:

..... $ 1,700,000

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2001, from the funds appropriated in this section shall revert to the rebuild Iowa infrastructure fund on August 31, 2001.

STATE BOARD OF REGENTS

Sec. 13. There is appropriated from the rebuild Iowa infrastructure fund of the state to the state board of regents for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the projects designated:

For capital projects at the Iowa school for the deaf and the Iowa braille and sight saving school as approved by the state board of regents:

..... $ 335,000

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2001, from the funds appropriated in this section shall revert to the rebuild Iowa infrastructure fund on August 31, 2001.

STATE DEPARTMENT OF TRANSPORTATION

Sec. 14. There is appropriated from the rebuild Iowa infrastructure fund to the state department of transportation for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

1. For an automated weather observation system at the city of Harlan airport:

..... $ 55,000

2. For improvements at all 10 of the commercial air service airports within the state:

..... $ 945,000

One-half of the funds appropriated in this section* shall be allocated equally between each commercial service airport and one-half of the funds shall be allocated based on the percentage enplaned passengers at each commercial service airport bears to the total enplaned passengers in the state during the previous fiscal year. In order for a commercial service airport to receive funding under this section,* the airport shall be required to submit applications for funding of specific projects to the department for approval by the transportation commission. The department shall adopt rules pursuant to chapter 17A to establish application eligibility criteria.

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2001, from the funds appropriated in this section shall revert to the rebuild Iowa infrastructure fund on August 31, 2001.

**Sec. 15. NEW SECTION. 18.24 COORDINATION OF VERTICAL INFRASTRUCTURE DATABASES.*

1. The director shall establish by administrative rule, and as part of a survey conducted regarding the condition of state-owned property, a uniform system for evaluating and rating vertical infrastructure needs in the state so that the vertical infrastructure needs of each state entity and proposed vertical infrastructure projects, including the state board of regents, can be compared. The director shall consult with state entities which already have databases regarding their vertical infrastructure needs and shall seek input from individuals or organizations with expertise in public vertical infrastructure assessment in drafting proposed rules.

*2. As used in this section, "vertical infrastructure" has the same meaning as in section 8.57, subsection 5, paragraph "c".***

Sec. 16. Section 174.15, Code 1997, is amended to read as follows:

174.15 PURCHASE AND MANAGEMENT.

Title to land purchased or received for fairground purposes shall be taken in the name of the county or a society, but the board of supervisors shall place it under the control and management of ~~an incorporated county or district fair~~ a society. The society may act as agent for the county in the erection of buildings, maintenance of grounds and buildings, or improvements constructed on the grounds. Title to new buildings or improvements shall be taken in the name of the county or a society, but the county is not liable for the improvements or expenditures for them.

Sec. 17. NEW SECTION. 161A.80 BLUFFLANDS PROTECTION PROGRAM AND REVOLVING FUND.

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

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* The word "subsection" probably intended

** Item veto; see message at end of the Act

a. For purposes of this section only, "bluffland" means a cliff, headland, or hill with a broad, steep face along the channel or floodplain of the Missouri or Mississippi river and their tributaries.

b. "Conservation organization" means a nonprofit corporation incorporated in Iowa or an entity organized and operated primarily to enhance and protect natural resources in this state.

2. A blufflands protection revolving fund is created in the state treasury. All proceeds shall be divided into two equal accounts. One account shall be used for the purchase of blufflands along the Mississippi river and its tributaries and the other account shall be used for the purchase of blufflands along the Missouri river and its tributaries. The proceeds of the revolving fund are appropriated to make loans to conservation organizations which agree to purchase bluffland properties adjacent to state public lands. The department shall adopt rules pursuant to chapter 17A to administer the disbursement of funds. Notwithstanding section 12C.7, interest or earnings on investments made pursuant to this section or as provided in section 12B.10 shall be credited to the blufflands protection revolving fund. Notwithstanding section 8.33, unobligated or unencumbered funds credited to the blufflands protection revolving fund shall not revert at the close of a fiscal year. However, the maximum balance in the blufflands protection fund shall not exceed two million five hundred thousand dollars. Any funds in excess of two million five hundred thousand dollars shall be credited to the rebuild Iowa infrastructure fund.

a. This section is repealed on July 1, 2005.

b. The principal and interest from any blufflands protection loan outstanding on July 1, 2005, and payable to the blufflands protection revolving fund, shall be paid to the administrative director of the division of soil conservation on or after July 1, 2005, pursuant to the terms of the loan agreement and shall be credited to the rebuild Iowa infrastructure fund.

Sec. 18. Section 452A.79, unnumbered paragraph 2, Code 1997, is amended to read as follows:

~~All moneys~~ Annually, the first four hundred eleven thousand three hundred eleven dollars derived from the excise tax on the sale of motor fuel used in watercraft shall be deposited in the general fund of the state. The moneys in excess of four hundred eleven thousand three hundred eleven dollars shall be deposited in the rebuild Iowa infrastructure fund. Moneys deposited to the general fund and to the rebuild Iowa infrastructure fund under this section and section 452A.84 are subject to the requirements of section 8.60 and are subject to appropriation by the general assembly to the department of natural resources for use in its recreational boating program, which may include but is not limited to:

Sec. 19. Section 461A.3A, subsection 2, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

There is appropriated from the rebuild Iowa infrastructure fund for each fiscal year of the fiscal period beginning July 1, 1997, and ending June 30, 2001, the sum of ~~four~~ three million dollars to the department for use in the restore the outdoors program. Notwithstanding section 8.33, unencumbered or unobligated moneys remaining at the end of a fiscal year shall not revert but shall remain available for expenditure during the following fiscal year for purposes of the restore the outdoors program.

Sec. 20. 1997 Iowa Acts, chapter 215, section 1, subsection 3, unnumbered paragraph 2, is amended by striking the unnumbered paragraph.

Sec. 21. 1997 Iowa Acts, chapter 215, section 2, subsection 8, is amended to read as follows:

8. For the state training school for the design and construction of new or replacement buildings, ~~at the state training school by allocating not more than $1,600,000~~ for design and construction of a living unit, ~~allocating not more than $800,000 for design and~~ for construction of a multipurpose building, ~~and allocating not more than $200,000~~ for the design of a new school building, and for institution utilities infrastructure:

..... $ 2,600,000

Sec. 22. 1997 Iowa Acts, chapter 215, section 4, subsection 4, is amended to read as follows:

4. For the state training school for the design and construction of new or replacement buildings ~~at the state training school by allocating not more than $2,300,000 to complete~~, for construction of the new school building, for institution utilities infrastructure, and ~~allocating not more than $400,000~~ for the design of the new gymnasium building:

..... $ 2,700,000

Sec. 23. 1997 Iowa Acts, chapter 215, section 5, is amended to read as follows:

SEC. 5. There is appropriated from the rebuild Iowa infrastructure fund to the department of general services for the fiscal year beginning July 1, 1999, and ending June 30, 2000, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For construction of a new school and gymnasium building at the state training school:

..... $ 4,000,000

Sec. 24. 1997 Iowa Acts, chapter 215, section 14, is amended to read as follows:

SEC. 14. Notwithstanding section 8.57, subsection 5, paragraph "c", there is appropriated from the rebuild Iowa infrastructure fund to the department of revenue and finance for the fiscal year beginning July 1, 1997, and ending June 30, 1998, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For upgrades to the Iowa financial accounting system, provided that none of the moneys appropriated in this section shall be used for personnel expenses not associated with the installation of the upgrades to the system or for training expenses:

..... $ 1,875,000

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2001, from the funds appropriated in this section shall revert to the rebuild Iowa infrastructure fund on August 31, 2001.

Sec. 25. 1997 Iowa Acts, chapter 215, section 16, unnumbered paragraph 2, is amended to read as follows:

As a condition of receiving the appropriations in this section, the department shall allocate seventy-five percent of the estimated or actual cost of improvements as defined by section 468.3, not to exceed five hundred thousand dollars each fiscal year, for a single drainage improvement project, which will provide alternative drainage outlets to allow for the closing of thirty or more agricultural drainage wells, constructed by a drainage district established under section 468.22 on or after July 1, 1987, and prior to July 1, 1997, for which a construction contract for the project is successfully let prior to March 1, ~~1998~~ 1999.

Sec. 26. The following sections and subsections of this Act, being deemed of immediate importance, take effect upon enactment:

1. Section 2, subsection 2, appropriating funds for the construction of additional cellblocks at the Fort Dodge correctional facility.
2. Section 19, amending section 461A.3A.
3. Section 20, amending 1997 Iowa Acts, chapter 215, section 1, subsection 3, unnumbered paragraph 2.
4. Section 24, amending 1997 Iowa Acts, chapter 215, section 14.

Approved May 19, 1998, except the items which I hereby disapprove and which are designated as that portion of Section 2, subsection 4 which is herein bracketed in ink and initialed by me; Section 5, subsection 1, in its entirety; and Section 15, in its entirety. My reasons for vetoing these items are delineated in the item veto message pertaining to this Act to the Secretary of State this same date, a copy of which is attached hereto.

TERRY E. BRANSTAD, *Governor*

Dear Mr. Secretary:

I hereby transmit Senate File 2381, an Act making appropriations from and to the rebuild Iowa infrastructure fund for the fiscal year beginning July 1, 1998, to the Division of Soil Conservation for deposit in the Loess Hills development and conservation fund; Department of Corrections for renovation of the power plant and improvements to the water system at the Iowa Correctional Institution for Women, for the construction of two additional cellblocks at the Fort Dodge Correctional Facility, for a prior fiscal year, and for the construction of a 200-bed facility at the Iowa State Penitentiary at Fort Madison, and for the construction and renovation of community-based correctional facilities; Department of Cultural Affairs for the creation of a historical site preservation grant program; Department of Economic Development for a welcome center at Hamburg, to be deposited in the physical infrastructure assistance fund, and for deposit in the rural enterprise fund to be used for a dry fire hydrant and rural water supply education and demonstration project; Department of Education for infrastructure improvements to the community colleges, for completion of the training facility and site development phase of the National Education Center for Agricultural Safety; Department of General Services for major renovation needs for state-owned buildings and facilities, for critical and deferred maintenance at Terrace Hill, for relocation of offices and other transition costs associated with the renovation of the Lucas State Office Building and the Old Historical Building, for renovation of the Lucas State Office Building, for developing a master plan for the Capitol Complex, for planning and design of a parking structure located at the northwest corner of the Capitol Complex, and for Capitol interior restoration; Department of Public Defense for maintenance and repair of National Guard armories and facilities; Department of Public Safety for construction of a new patrol post in District 1; Department of Natural Resources for the purpose of funding capital projects from marine fuel tax receipts for expenditures for local cost-share grants to be used for capital expenditures to local governmental units for boating accessibility, for the construction of the Elinor Bedell state park and wildlife conservation area, for a recreational grant matching program, creation of a lake rehabilitation pilot program, for the blufflands protection revolving fund, and for the dredging of lakes; Department of Transportation for capital improvements at all ten of the commercial air service airports and for an automated weather observation system; for the Iowa State Fair foundation for renovation, restoration, and improvement of the cattle barn and horse barn at the State Fairgrounds and for county fair infrastructure improvements; judicial department for capital projects at the Capitol Building; and State Board of Regents for capital projects at the Iowa School for the Deaf and the Iowa Braille and Sight Saving School; making appropriations of the marine fuel tax receipts from the rebuild Iowa infrastructure fund; providing a reversion date to funds appropriated to the Department of Revenue and Finance in the fiscal year beginning July 1, 1997, and ending June 30, 1998; making statutory changes relating to appropriations by establishing the blufflands protection program and revolving fund, by reducing the overall appropriation for the restore outdoors program for the fiscal period beginning July 1, 1997, and ending June 30, 2001, as a result of the Governor's item veto, by providing for coordination of vertical infrastructure databases, by eliminating a matching contribution requirement on certain funds appropriated to the Department of Cultural Affairs for the fiscal year beginning July 1, 1997, by extending the allowable time to enter into contracts to provide alternative drainage outlets, by allocating part of the funds derived from the excise tax on the sale of motor fuel used in watercraft from the general fund to the rebuild Iowa infrastructure fund, by reallocating certain funds to design and construct new or replacement buildings at the state training school; and providing effective dates.

Senate File 2381 is, therefore, approved on this date with the following exceptions, which I hereby disapprove.

I am unable to approve the designated portion of Section 2, subsection 4. This item appropriates $1.5 million for improvements at the facilities of the judicial districts. This item was added late in the legislative session without full benefit of discussion and evaluation.

I am unable to approve the item designated as Section 5, subsection 1, in its entirety. This item appropriates $2.0 million for improvements at the facilities of the community colleges. While I continue to support additional technology funding for community colleges, capital funding should remain a responsibility of the community college district, not the state.

I am unable to approve the item designated as Section 15, in its entirety. This item would require the Department of General Services to establish a system for comparative evaluation and rating of all state vertical infrastructure needs, including the Board of Regents' institutions. I am disappointed the legislature chose not to establish a citizen board as I recommended, and failed to provide adequate staffing and support to allow the state to become more systematic in its approach to prioritizing infrastructure needs. I believe the board and the additional staffing are necessary to developing a comparative evaluation methodology.

For the above reasons, I hereby respectfully disapprove these items in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in Senate File 2381 are hereby approved as of this date.

Sincerely,
TERRY E. BRANSTAD, *Governor*

CHAPTER 1220

APPROPRIATIONS — AGRICULTURE AND NATURAL RESOURCES

S.F. 2295

AN ACT relating to and making appropriations for agriculture and natural resources and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

Section 1. GENERAL APPROPRIATION. There is appropriated from the general fund of the state to the department of agriculture and land stewardship for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. ADMINISTRATIVE DIVISION

a. For salaries, support, maintenance, the support of the state 4-H foundation, support of the statistics bureau, and miscellaneous purposes, and for the salaries and support of not more than the following full-time equivalent positions:

.....	$	1,853,756
.....	FTEs	42.78

(1) Of the amount appropriated and full-time equivalent positions authorized in this paragraph "a", $322,329 and 7.00 FTEs shall be used to support horticulture.

(2) Of the amount appropriated in this paragraph "a", $55,000 shall be allocated to the state 4-H foundation to foster the development of Iowa's youth and to encourage them to study the subject of agriculture.

(3) Of the amount appropriated and full-time equivalent positions authorized in this paragraph "a", $129,167 and 4.00 FTEs shall be allocated to the statistics bureau to provide county-by-county information on land in farms, production by crop, acres by crop, and county prices by crop. This information shall be made available to the department of revenue and finance for use in the productivity formula for valuing and equalizing the values of agricultural land.

(4) Of the amount appropriated in this paragraph "a", $12,000 shall be used by the agricultural statistics bureau for purposes of collecting, summarizing, and publishing marketing information on a monthly basis, regarding finished cattle in cooperation with the Iowa cattlemen's association, including unfinished cattle for market, cattle placed on feed, and cattle on hand under marketing arrangements.

(5) Of the amount appropriated in this paragraph "a", $24,000 shall be used by the domestic marketing bureau through an existing federal and state cooperative agreement to develop accurate, reliable market information regarding segregated early-weaned pigs and alternate feeder pigs marketing systems.

(6) Of the amount appropriated and the number of full-time equivalent positions authorized in this paragraph "a", at least $38,000 shall be used for livestock market news reporting.

(7) Of the full-time equivalent positions authorized in paragraph "a", 1.33 of the FTE positions relate to the transition of personnel services contractors to FTE positions. The merit system provisions of Code chapter 19A and the provisions of the state or union collective bargaining agreements shall not govern movement into these FTE positions until September 1, 1998. This subparagraph shall no longer apply after September 1, 1998.

b. For the operations of the dairy trade practices bureau:

..... $ 69,984

c. For the purpose of performing commercial feed audits:

..... $ 67,807

d. For the purpose of performing fertilizer audits:

..... $ 67,807

2. REGULATORY DIVISION

a. For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 4,057,274
..... FTEs 125.50

(1) Of the amount appropriated in this paragraph "a", $10,000 shall be used by the regulatory division for purposes of inspecting livestock exhibited at the Iowa state fair, with particular attention to the inspection of livestock for club-lamb fungus.

(2) Of the full-time equivalent positions authorized in paragraph "a", 1.00 FTE position relates to the transition of personnel services contractors to FTE positions. The merit system provisions of Code chapter 19A and the provisions of the state or union collective bargaining agreements shall not govern movement into these FTE positions until September 1, 1998. This subparagraph shall no longer apply after September 1, 1998.

b. For the costs of inspection, sampling, analysis, and other expenses necessary for the administration of chapters 192, 194, and 195:

..... $ 670,796

3. LABORATORY DIVISION

a. For salaries, support, maintenance, and miscellaneous purposes, including the administration of the gypsy moth program, and for not more than the following full-time equivalent positions:

..... $ 997,161
..... FTEs 85.10

(1) Of the amount appropriated in this paragraph "a", $110,000 shall be used to administer a program relating to the detection, surveillance, and eradication of the gypsy moth. The department shall allocate and use the appropriation made in this paragraph before moneys other than those appropriated in this paragraph are used to support the program.

(2) Of the amount appropriated and the authorized full-time equivalent positions in this paragraph "a", $136,022 and 2.00 FTEs shall be used to administer a certification program to assure that organic foods sold commercially within the state comply with federal and state regulations relating to organic foods. However, if Senate File 2332* or other legislation

* Chapter 1205 herein

providing for the production, handling, processing, and sale of organic agricultural products as provided in Senate File 2332, is not enacted by the Seventy-seventh General Assembly, 1998 Session, the full-time equivalent positions authorized and the amount appropriated under this subparagraph shall be reduced by 1.00 FTE and $68,011.

b. For the operations of the commercial feed programs:

..... $ 787,906

c. For the operations of the pesticide programs:

..... $ 1,257,056

Of the amount appropriated in this paragraph "c", $200,000 shall be allocated to Iowa state university for purposes of training commercial pesticide applicators.

d. For the operations of the fertilizer programs:

..... $ 671,854

4. SOIL CONSERVATION DIVISION

a. For salaries, support, maintenance, assistance to soil conservation districts, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 6,600,518
..... FTEs 171.28

Of the amount appropriated in this paragraph "a", $418,376 shall be used to reimburse commissioners of soil and water conservation districts for administrative expenses, including but not limited to, travel expenses and technical training. Moneys used for the payment of meeting dues by counties shall be matched on a dollar-for-dollar basis by the soil conservation division.

b. To provide financial incentives for soil conservation practices under chapter 161A:

..... $ 6,500,850

c. The following requirements apply to the moneys appropriated in paragraph "b":

(1) Not more than 5 percent of the moneys appropriated in paragraph "b" may be allocated for cost sharing to abate complaints filed under section 161A.47.

(2) Of the moneys appropriated in paragraph "b", 5 percent shall be allocated for financial incentives to establish practices to protect watersheds above publicly owned lakes of the state from soil erosion and sediment as provided in section 161A.73.

(3) Not more than 30 percent of a district's allocation of moneys as financial incentives may be provided for the purpose of establishing management practices to control soil erosion on land that is row cropped, including but not limited to no-till planting, ridge-till planting, contouring, and contour strip-cropping as provided in section 161A.73.

(4) The state soil conservation committee created in section 161A.4 may allocate moneys to conduct research and demonstration projects to promote conservation tillage and nonpoint source pollution control practices.

(5) The financial incentive payments may be used in combination with department of natural resources moneys.

d. The provisions of section 8.33 shall not apply to the moneys appropriated in paragraph "b". Unencumbered or unobligated moneys remaining on June 30, 2002, from moneys appropriated in paragraph "b" for the fiscal year beginning July 1, 1998, shall revert to the general fund of the state on August 31, 2002.

Sec. 2. FARMERS' MARKET COUPON PROGRAM. There is appropriated from the general fund of the state to the department of agriculture and land stewardship for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, and miscellaneous purposes, to be used by the department to continue and expand the farmers' market coupon program by providing federal special supplemental food program recipients with coupons redeemable at farmers' markets, and for not more than the following full-time equivalent positions:

..... $ 258,995
..... FTEs 1.00

DEPARTMENT OF NATURAL RESOURCES

Sec. 3. GENERAL APPROPRIATION. There is appropriated from the general fund of the state to the department of natural resources for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. ADMINISTRATIVE AND SUPPORT SERVICES

a. For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	2,101,715
.....	FTEs	119.25

b. Of the amount appropriated in paragraph "a", $12,000 shall be allocated to pay dues for membership in the upper Mississippi river basin commission.

c. Of the amount appropriated and the number of full-time equivalent positions authorized in paragraph "a", at least $150,000 and 3.00 FTEs shall be used by administrative and support services to support a compliance and permit assistance team to facilitate cooperation between the department and persons regulated by the department in order to ensure efficient compliance with applicable legal requirements.

d. Of the amount appropriated and the number of full-time equivalent positions authorized in paragraph "a", not less than $34,000 and 1.00 FTE shall be used by administrative and support services to support the inspection and oversight of manure management plans associated with confinement feeding operations regulated by the department.

2. PARKS AND PRESERVES DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	5,993,308
.....	FTEs	195.73

Of the amount appropriated in this subsection 2, at least $50,000 shall be allocated for the replacement of maintenance equipment used by the division.

3. FORESTS AND FORESTRY DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	1,653,846
.....	FTEs	48.71

4. ENERGY AND GEOLOGICAL RESOURCES DIVISION

a. For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	1,854,059
.....	FTEs	54.00

b. Of the amount appropriated and the number of full-time equivalent positions authorized in paragraph "a", not less than $76,000 and 2.00 FTEs shall be used by the energy and geological resources division to review soil and hydrology data for construction permits and manure management plans associated with confinement feeding operations regulated by the department.

5. ENVIRONMENTAL PROTECTION DIVISION

a. For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	3,616,627
.....	FTEs	236.50

b. Of the amount appropriated and the number of full-time equivalent positions authorized in paragraph "a", at least $424,600 and 9.00 FTEs shall be primarily used to support the regulation of animal feeding operations.

c. Of the amount appropriated and the number of full-time equivalent positions authorized in paragraph "a", at least $700,467 and 10.00 FTEs shall be used to support the regula-

tion of wastewater treatment systems, including issuing permits and conducting inspections.

d. Of the amount appropriated and the number of full-time equivalent positions authorized in paragraph "a", at least $270,000 and 6.00 FTEs shall be used to support on-site inspections and the oversight of manure management plans associated with confinement feeding operations regulated by the department.

6. WATER QUALITY PROTECTION FUND

a. For deposit in the administration account of the water quality protection fund established pursuant to section 455B.183A, to carry out the purpose of that account:

..... $ 729,000

(1) Of the number of full-time equivalent positions authorized in subsection 5, paragraph "a", 32.50 FTEs shall be dedicated to carrying out the provisions of chapter 455B relating to the administration, regulation, and enforcement of the federal Safe Drinking Water Act and to support the program to assist water supply systems as provided in section 455B.183B. However, the limitation on full-time equivalent positions provided in subsection 5, paragraph "a", shall not limit the number of additional full-time equivalent positions supported by moneys deposited in the water quality protection fund as provided in section 455B.183A, in order to carry out the provisions of division III of chapter 455B relating to the administration, regulation, and enforcement of the federal Safe Drinking Water Act, and the administration of the program to assist water supply systems pursuant to section 455B.183B.

(2) In providing assistance to water supply systems, the department shall give priority to water supply systems serving a population of seven thousand or less. At least 2.00 FTEs shall be allocated to provide assistance to systems serving a population of seven thousand or less.

b. Of the amount appropriated to the administration account of the water quality protection fund as provided in paragraph "a", $300,000 shall be allocated to Iowa state university of science and technology for purposes of conducting studies regarding groundwater and surface water contamination in this state. The identity of a site selected in conducting testing shall remain confidential and shall not be subject to disclosure under chapter 22. However, the identity of the site shall be provided to the department of natural resources, which shall keep the identity confidential. The findings of the testing shall not be used in a case or proceeding brought against a person based upon a violation of state law. The university shall cooperate with the department of natural resources in designing, implementing, and conducting the studies. The university shall report all results of the studies to the department, the legislative fiscal bureau, and the members of the joint appropriations subcommittee on agriculture and natural resources.

c. Of the amount appropriated to the administration account of the water quality protection fund as provided in paragraph "a", $15,000 shall be allocated to support a grant to local sponsors of the Lewis and Clark rural water system in order to construct a system to provide safe and adequate municipal and rural water supplies for residential, commercial, agricultural, and industrial uses, to preserve wetlands, and to mitigate water conservation efforts.

7. FISH AND WILDLIFE DIVISION

For not more than the following full-time equivalent positions:

..... FTEs 344.18

8. WASTE MANAGEMENT ASSISTANCE DIVISION

For not more than the following full-time equivalent positions:

..... FTEs 17.75

Sec. 4. STATE FISH AND GAME PROTECTION FUND — APPROPRIATION TO THE DIVISION OF FISH AND WILDLIFE.

1. a. There is appropriated from the state fish and game protection fund to the division of fish and wildlife of the department of natural resources for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For administrative support, and for salaries, support, maintenance, equipment, and miscellaneous purposes:

..... $ 23,128,434

b. Of the amount appropriated in paragraph "a", $105,000 may be used for purposes of providing compensation to conservation peace officers employed in a protection occupation who retire, pursuant to section 97B.49.

c. Of the amount appropriated in paragraph "a", $300,000 shall be used by the division for the replacement of worn boats, motors, and trailers used by fish and wildlife water patrol officers.

2. The department shall not expend more moneys from the fish and game protection fund than provided in this section, unless the expenditure derives from contributions made by a private entity, or a grant or moneys received from the federal government, and is approved by the natural resource commission. The department of natural resources shall promptly notify the legislative fiscal bureau and the chairpersons and ranking members of the joint appropriations subcommittee on agriculture and natural resources concerning the commission's approval.

Sec. 5. SNOWMOBILE FEES — TRANSFER FOR ENFORCEMENT PURPOSES. There is transferred on July 1, 1998, from the fees deposited under section 321G.7 to the fish and game protection fund and appropriated to the department of natural resources for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For enforcing snowmobile laws as part of the state snowmobile program administered by the department of natural resources:

..... $ 100,000

Sec. 6. VESSEL FEES — TRANSFER FOR ENFORCEMENT PURPOSES. There is transferred on July 1, 1998, from the fees deposited under section 462A.52 to the fish and game protection fund and appropriated to the natural resource commission for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For the administration and enforcement of navigation laws and water safety:

..... $ 1,630,000

1. Of the amount appropriated in this section and the full-time equivalent positions authorized in this Act for the fish and wildlife division, not more than $100,000 and 1.00 FTE may be used for purposes of controlling and eradicating eurasian milfoil.

2. Of the amount appropriated in this section, not more than $30,000 shall be used by the department to carry out the provisions of 1998 Iowa Acts, Senate File 429, if enacted by the Seventy-seventh General Assembly, 1998 Session.* However, if Senate File 429 is not enacted, the amount appropriated under this section for the administration and enforcement of navigation laws and water safety shall be reduced by $30,000.

3. Notwithstanding section 8.33, moneys transferred and appropriated pursuant to this section which are unencumbered or unobligated on June 30, 1999, shall be transferred on July 1, 1999, to the special conservation fund established by section 462A.52 to be used as provided in that section, and shall not revert as provided in section 8.33.

Sec. 7. MARINE FUEL TAX RECEIPTS — BOATING FACILITIES. There is appropriated from the marine fuel tax receipts deposited in the general fund of the state to the department of natural resources for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For purposes of maintaining and developing boating facilities and access to public waters by the parks and preserves division:

..... $ 411,311

* Senate File 429 not enacted

RESOURCES ENHANCEMENT AND PROTECTION

Sec. 8. GENERAL APPROPRIATION. Notwithstanding the amount of the standing appropriation from the general fund of the state under section 455A.18, subsection 3, there is appropriated from the general fund of the state to the Iowa resources enhancement and protection fund, in lieu of the appropriation made in section 455A.18, for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the sum of $9,000,000, of which all moneys shall be allocated as provided in section 455A.19.

ANIMAL HEALTH AND INDUSTRY

Sec. 9. HORSE AND DOG RACING.

1. There is appropriated from the moneys available under section 99D.13 to the regulatory division of the department of agriculture and land stewardship for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, and miscellaneous purposes for the administration of section 99D.22:

..... $ 250,211

2. Of the amount appropriated and FTE authorized in subsection 1, $42,752 is allocated and 1.00 FTE shall be used for purposes of supporting an additional livestock inspector to inspect horses and dogs involved in racing under chapter 99D.

Sec. 10. PSEUDORABIES ERADICATION PROGRAM.

1. There is appropriated from the general fund of the state to the department of agriculture and land stewardship for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For support of the pseudorabies eradication program:

..... $ 900,500

2. Persons, including organizations interested in swine production in this state and in the promotion of Iowa pork products who contribute support to the program, are encouraged to increase financial support for purposes of ensuring the program's effective continuation.

Sec. 11. PORCINE REPRODUCTIVE AND RESPIRATORY SYNDROME. There is appropriated from the general fund of the state to Iowa state university of science and technology for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For the purpose of supporting research to manage or eradicate porcine reproductive and respiratory syndrome:

..... $ 50,000

1. As a condition of the appropriation made in this section, each dollar from the appropriation expended under this section must be matched by one dollar contributed by a nonstate source.

2. Moneys appropriated in this section shall be expended in accordance with the direction of the livestock health advisory council established pursuant to section 267.2.

Sec. 12. LEGISLATIVE STUDY. The legislative council is requested to establish an interim study committee consisting of members of both political parties from both houses of the general assembly to review and consider the need for improvements in the division of responsibilities regarding on-site inspections of animal feeding operations between the department of natural resources and the department of agriculture and land stewardship. The legislative council is requested to authorize one day for a meeting regarding the issues. The committee shall submit its findings, together with any recommendations, in a report to the general assembly which convenes in January 1999.

RELATED APPROPRIATIONS

Sec. 13. REVENUE ADMINISTERED BY THE IOWA COMPREHENSIVE UNDERGROUND STORAGE TANK FUND BOARD. There is appropriated from the unassigned revenue fund administered by the Iowa comprehensive underground storage tank fund board, to the department of natural resources for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For administration expenses of the underground storage tank section of the department of natural resources:

..... $ 75,000

Sec. 14. PRIVATE WELL TESTING. Notwithstanding section 455E.11, subsection 2, paragraph "b", prior to any appropriation from the agriculture management account of the groundwater protection fund, as provided in section 455E.11, subsection 2, paragraph "b", the following amount is appropriated for use as provided in this section during the fiscal period beginning July 1, 1998, and ending June 30, 1999, as follows:

To Iowa state university for purposes of supporting the Iowa state university cooperative extension service in agriculture and home economics in providing for a program to assist counties in testing private wells and waters of the state for pollution caused by animal production:

..... $ 50,000

Moneys appropriated in this section shall be used to support testing programs administered by counties which may submit an application to the extension service to participate in the state assistance program, as provided by the extension service. The county shall perform testing within a test area. As used in this section, "test area" means an area within a two-mile radius of any structure used to store manure which is part of a confinement feeding operation. Iowa state university of science and technology shall adopt necessary standards, protocols, and criteria for the establishment of baselines for testing by counties. The program shall be administered within each participating county by the county agricultural extension district serving that county in collaboration with the local board of health. The testing may be performed with volunteer assistance. However, all testing shall be performed under the supervision of a county sanitarian. The samples of the testing shall be analyzed by the state hygienic laboratory at the state university of Iowa or an environmental laboratory for drinking water analysis certified by the department of natural resources. The samples shall be evaluated in accordance with standards established by the department of agricultural biosystems engineering within the college of agriculture and the college of engineering at Iowa state university. All moneys appropriated in this section shall only be used for the following purposes:

1. Analyzing test samples by the state hygienic laboratory.
2. Performing tests in counties. However, not more than $50 of the moneys appropriated in this section shall be used to pay for administering testing within any test area, including labor and equipment costs, regardless of the number of tests performed within the test area.

Sec. 15. Of the amount appropriated to Iowa state university for supporting odor control applications for animal feeding operations, as provided in 1997 Iowa Acts, chapter 213, section 12, subsection 1, any amount which is unencumbered or unobligated on June 30, 1998, shall be transferred to the livestock disease research fund established pursuant to section 267.8 for use by the Iowa state university college of veterinary medicine upon recommendation of the livestock health advisory council in a manner consistent with the provisions of chapter 267.

MISCELLANEOUS

Sec. 16. Notwithstanding the provision of section 455B.103A, subsection 4, for the fiscal year beginning July 1, 1998, the department of natural resources may use additional funds

for the staffing of two additional full-time staff members to reduce the department's flood plain permit backlog.

Sec. 17. REDUCTION OF APPROPRIATIONS. This section shall apply to each appointed nonelected position which is supported by moneys appropriated in sections 1 and 3 of this Act. If the amount of moneys to be used for a salary during the fiscal year beginning July 1, 1998, and ending June 30, 1999, is more than the amount actually required to pay that salary for the fiscal year, the amount of the relevant appropriation shall be reduced by the amount equal to the difference. The amount appropriated in section 1, subsection 4, of this Act, to support financial incentives for soil conservation practices under chapter 161A shall be increased by the amount of the difference. However, the amount of the difference shall be allocated in the same manner as other moneys which are reallocated to soil and water conservation districts after the moneys are returned by a district to the soil conservation division.

Sec. 18. COOPERATION BETWEEN DEPARTMENTS. It is the intent of the general assembly that the division of soil conservation of the department of agriculture and land stewardship may provide technical assistance to the department of natural resources regarding the design and engineering of unformed manure storage structures pursuant to chapter 455B. As used in this section an unformed manure storage structure means the same as defined in section 455B.161, as amended by 1998 Iowa Acts, House File 2494.**

Sec. 19. TRANSFER OF MONEYS OR POSITIONS — CHANGES IN TABLES OF ORGANIZATION — NOTIFICATION. In addition to the requirements of section 8.39, in each fiscal quarter, the department of agriculture and land stewardship and the department of natural resources shall notify the chairpersons, vice chairpersons, and ranking members of the joint appropriations subcommittee on agriculture and natural resources for the previous fiscal quarter of any transfer of moneys or full-time equivalent positions made by either department which is not authorized in this Act, or any permanent position added to or deleted from either department's table of organization.

Sec. 20. TRANSFER — AIR QUALITY. For the fiscal year beginning July 1, 1998, and ending June 30, 1999, the department of natural resources may transfer up to $775,000 for the fiscal year from the hazardous substance remedial fund created pursuant to section 455B.423 to support purposes related to carrying out the duties of the commission under section 455B.133, or the director under section 455B.134, or for carrying out the provisions of chapter 455B, division II.

Notwithstanding section 455B.133B, the department may use moneys deposited in the air contaminant source fund created in section 455B.133B during the fiscal year for any purpose related to carrying out the duties of the commission under section 455B.133 or the director under section 455B.134, or for carrying out the provisions of chapter 455B, division II.

Sec. 21. 1997 Iowa Acts, chapter 213, section 21, subsection 3, is amended by striking the subsection.

Sec. 22. Section 455E.11, subsection 2, paragraph b, subparagraph (3), subparagraph subdivision (d), Code 1997, is amended to read as follows:

(d) Thirteen percent of the moneys is appropriated annually to the department of agriculture and land stewardship for financial incentive programs related to agricultural drainage wells and sinkholes, for studies and administrative costs relating to sinkholes and agricultural drainage wells programs. ~~Of the thirteen percent allocated for financial incentive programs, not more than fifty thousand dollars is appropriated for the fiscal year beginning July 1, 1987, and ending June 30, 1988, to the department of natural resources for grants to county conservation boards for the development and implementation of projects regarding alternative practices in the remediation of noxious weeds or other vegetation within high-~~

* Item veto; see message at end of the Act
** See chapter 1209, §12 herein

~~way rights-of-way. Any remaining balance of the appropriation made for the purpose of funding of projects regarding alternative practices in the remediation of noxious weeds or other vegetation within highway rights-of-way for the fiscal year beginning July 1, 1987, and ending June 30, 1988, shall not revert to the account, notwithstanding section 8.33, but shall remain available for the purpose of funding the projects during the fiscal period beginning July 1, 1988, and ending June 30, 1990.~~ Of the moneys allocated for financial incentive programs, the department may reimburse landowners for engineering costs associated with voluntarily closing agricultural drainage wells. The financial incentives allocated for voluntary closing of agricultural drainage wells shall be provided on a cost-share basis which shall not exceed fifty percent of the estimated cost or fifty percent of the actual cost, whichever is less. Engineering costs do not include construction costs, including costs associated with earth moving.

Sec. 23. EFFECTIVE DATES.

1. 1997 Iowa Acts, chapter 213, section 21, subsection 3, as amended by this Act, takes effect on January 1, 1999.

2. Section 15 of this Act takes effect upon enactment.

Approved May 19, 1998, except the item which I hereby disapprove and which is designated as Section 17, in its entirety. My reasons for vetoing this item are delineated in the item veto message pertaining to this Act to the Secretary of State this same date, a copy of which is attached hereto.

TERRY E. BRANSTAD, *Governor*

Dear Mr. Secretary:

I hereby transmit Senate File 2295, an Act relating to and making appropriations for agriculture and natural resources and providing an effective date.

Senate File 2295 is, therefore, approved on this date with the following exception, which I hereby disapprove.

I am unable to approve the item designated as Section 17, in its entirety. This item redirects salary savings from the turnover of appointed non-elected positions to other purposes. Such a practice is administratively cumbersome and would result in one-time savings being used to finance ongoing expenses.

For the above reason, I hereby respectfully disapprove this item in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in Senate File 2295 are hereby approved as of this date.

Sincerely,
TERRY E. BRANSTAD, *Governor*

CHAPTER 1221

APPROPRIATIONS — HEALTH AND HUMAN RIGHTS

S.F. 2280

AN ACT relating to and making appropriations to the department for the blind, the Iowa state civil rights commission, the department of elder affairs, the Iowa department of public health, the department of human rights, the governor's alliance on substance abuse, and the commission of veterans affairs, and providing effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. DEPARTMENT FOR THE BLIND. There is appropriated from the general fund of the state to the department for the blind for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	1,579,592
.....	FTEs	97.50

Of the full-time equivalent positions appropriated for in this section, 2.50 FTEs relate to the transition of personnel services contractors to FTEs. The merit system provisions of chapter 19A and the provisions of the state or union collective bargaining agreements shall not govern movement into these FTE positions until September 1, 1998. This provision relating to the transition of personnel services contractors shall apply to the period beginning July 1, 1998, and ending September 1, 1998.

Sec. 2. CIVIL RIGHTS COMMISSION. There is appropriated from the general fund of the state to the Iowa state civil rights commission for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	1,154,368
.....	FTEs	38.50

Two of the FTEs appropriated for in this section relate to the transition of personnel services contractors to FTEs. The merit system provisions of chapter 19A and the provisions of the state or union collective bargaining agreements shall not govern movement into these FTE positions until September 1, 1998. This provision relating to the transition of personnel services contractors shall apply to the period beginning July 1, 1998, and ending September 1, 1998.

If the anticipated amount of federal funding from the federal equal employment opportunity commission and the federal department of housing and urban development exceeds $645,000 during the fiscal year beginning July 1, 1998, the Iowa state civil rights commission may exceed the staffing level authorized in this section to hire additional staff to process or to support the processing of employment and housing complaints during that fiscal year.

Sec. 3. DEPARTMENT OF ELDER AFFAIRS. There is appropriated from the general fund of the state to the department of elder affairs for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	543,284
.....	FTEs	28.00

2. For aging programs and services:

..... $ 4,215,598

a. All funds appropriated in this subsection shall be received and disbursed by the director of elder affairs for aging programs and services. These funds shall not be used by the department for administrative purposes, and not more than $151,654 shall be used for area agencies on aging administrative purposes, and shall be used for citizens of Iowa over 60 years of age for case management for the frail elderly, mental health outreach, Alzheimer's support, retired senior volunteer program, care review committee coordination, employment, adult day care, respite care, chore services, telephone reassurance, information and assistance, and home repair services, including the winterizing of homes, and for the construction of entrance ramps which make residences accessible to the physically handicapped.

b. Funds appropriated in this subsection may be used to supplement federal funds under federal regulations. To receive funds appropriated in this subsection, a local area agency on aging shall match the funds with moneys from other sources according to rules adopted by the department. Funds appropriated in this subsection may be used for elderly services not specifically enumerated in this subsection only if approved by an area agency on aging for provision of the service within the area.

c. It is the intent of the general assembly that the Iowa chapters of the Alzheimer's association and the case management program for frail elders shall collaborate and cooperate fully to assist families in maintaining family members with Alzheimer's disease in the community for the longest period of time possible.

d. The department shall maintain policies and procedures regarding Alzheimer's support and the retired senior volunteer program.

3. The department may grant an exception for a limited period of time, determined by the department to be reasonable, to allow for compliance by persons regulated by the department or applicants for assisted living certification with any part of chapter 104A relative to buildings in existence on July 1, 1998. The determination of the period of time allowed for compliance shall be commensurate with the anticipated magnitude of expenditure, disruption of services, and the degree of hazard presented. The department shall also be authorized to modify the accessibility requirements otherwise applicable to such applicants for buildings in existence on July 1, 1998, if the department determines that compliance with the requirements would be unreasonable, but only if it is determined that noncompliance with the requirements would not present an unreasonable degree of danger.

Sec. 4. GOVERNOR'S ALLIANCE ON SUBSTANCE ABUSE. There is appropriated from the general fund of the state to the governor's alliance on substance abuse for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 414,888
..... FTEs 10.00

2. For the Iowa substance abuse clearinghouse in Cedar Rapids for staff, materials, and operating expenses:

..... $ 32,894

Sec. 5. DEPARTMENT OF PUBLIC HEALTH. There is appropriated from the general fund of the state to the Iowa department of public health for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. a. PLANNING AND ADMINISTRATION DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 1,948,346
..... FTEs 53.50

(1) Of the funds appropriated in this lettered paragraph, $738,185 shall be used for the chronic renal disease program. The types of assistance available to eligible recipients under the program may include insurance premiums, travel reimbursement, and prescription and nonprescription drugs. The program expenditures shall not exceed this allocation. If projected expenditures will exceed the allocation, the department shall establish by administrative rule a mechanism to reduce financial assistance under the renal disease program in order to keep expenditures within the amounts allocated.

(2) Hospitals shall not collect fees for birth certificates in excess of the amounts as set out in the administrative rules of the Iowa department of public health.

(3) Of the funds appropriated in this lettered paragraph, $118,055 shall be used to provide regulatory oversight of accountable health plans.

(4) Of the funds appropriated in this lettered paragraph, $46,658 shall be used for the purchase, verification, updating, and storage of health data information.

(5) The department shall compile, correlate, and disseminate data from health care providers, the state medical assistance program, third-party payors, associations, and other appropriate sources in furtherance of the purpose and intent of this appropriation.

(6) The department shall request and receive information from other state agencies similar to that required of third-party payors for the purpose of dissemination of health data. The department may enter into agreements for studies on health-related questions and provide or make data available to health care providers, health care subscribers, third-party payors, and the general public. The department may purchase data for the purpose of dissemination of health data information. The department shall assure the confidentiality of the data collected from other state agencies, hospitals, and third-party payors under chapter 22. The compilation of data information prepared for release or dissemination from the data collected shall be a public record. The department shall adopt administrative rules to address a contracting process, define confidential information, set fees to be charged for data, and prescribe the forms upon which the information is to be made available.

b. PROFESSIONAL LICENSURE

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 1,108,819
..... FTEs 16.00

The director of public health, when estimating expenditure requirements for the boards funded under this paragraph, shall base the budget on 85 percent of the average annual fees generated for the previous two fiscal years. The department shall confer with the boards funded under this paragraph in estimating the boards' annual fee generation and administrative costs. When the department develops each board's annual budget, a board's budget shall not exceed 85 percent of fees collected, based on the average of the previous two fiscal years. The department may expend funds in addition to amounts budgeted, if those additional expenditures are directly the result of a scope of practice review committee or unanticipated litigation costs arising from the discharge of the board's regulatory duties. Before the department expends or encumbers funds for a scope of practice review committee or an amount in excess of the funds budgeted for a board, the director of the department of management shall approve the expenditure or encumbrance. The amounts necessary to fund the unanticipated litigation in the fiscal year beginning July 1, 1998, shall not exceed 5 percent of the average annual fees generated by the boards for the previous two fiscal years.

c. EMERGENCY MEDICAL SYSTEMS

For salaries, support, maintenance, and emergency medical services training of emergency medical services (EMS) personnel at the state, county, and local levels, and for not more than the following full-time equivalent positions:

..... $ 1,039,914
..... FTEs 14.00

If a person in the course of responding to an emergency renders aid to an injured person and becomes exposed to bodily fluids of the injured person, that emergency responder shall be entitled to hepatitis testing and immunization in accordance with the latest available medical technology to determine if infection with hepatitis has occurred. The person shall be entitled to reimbursement from the EMS funds available under this lettered paragraph only if the reimbursement is not available through any employer or third-party payor.

2. HEALTH PROTECTION DIVISION

a. For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	2,354,751
.....	FTEs	77.00

b. Of the funds appropriated in this subsection, $75,000 shall be used for chlamydia testing.

c. Of the funds appropriated in this subsection, $39,547 shall be used for the lead abatement program.

d. Of the funds appropriated in this subsection, $100,000 shall be allocated to and used by local boards of health to ensure that core public health functions are maintained and to support essential services in their communities.

e. The state university of Iowa hospitals and clinics shall not receive indirect costs from the funds appropriated in this subsection.

f. The division may retain fees collected from the certification of lead inspectors and lead abaters pursuant to section 135.105A to support the certification program.

g. The department shall establish a task force to evaluate current infectious disease laws in the state and the extent to which they provide, or fail to provide, a framework and foundation for promoting public health. The task force shall conduct an evaluation of the effectiveness of the infectious disease laws, with the goal of making recommendations for a comprehensive communicable disease statute intended to improve local and state department of public health responsiveness to needs for infectious disease prevention, treatment, and education.

The task force shall be organized and administered by the Iowa department of public health, and shall be comprised of representatives from the department, directors or representatives of county health departments or boards, faculty members at the state university of Iowa and the university of osteopathic medicine and surgery who instruct or conduct research in the area of infectious disease and public health, physicians specializing in the identification and treatment of infectious disease, members of the general public, and additional members as determined to be appropriate by the department. Four members of the general assembly, one each from the majority and minority parties, respectively, of each house of the general assembly, shall be designated by the division to serve as nonvoting ex officio members. The ex officio members shall receive per diem and expenses pursuant to section 2.12. Based on the recommendations of the task force, the department shall submit a report for the proposed contents of a comprehensive communicable disease statute to the governor and general assembly by January 1, 2000.

h. The director of public health shall designate, as a state poison center, any medical center in the state which is operating a poison center on or before July 1, 1998. The state poison center shall provide poison information, telephone management advice and consultation, conduct hazard surveillance to achieve hazard elimination, and provide professional and public education in poison prevention, diagnosis, and treatment, and shall provide any other services or functions necessary to be classified as a certified poison center. The director shall provide the necessary documentation of the state poison center designation to the poison center for certification by the American association of poison control centers or other certifying organization.

3. SUBSTANCE ABUSE AND HEALTH PROMOTION DIVISION

a. For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 693,489
..... FTEs 40.80

(1) The division shall continue to coordinate with substance abuse treatment and prevention providers regardless of funding source to assure the delivery of substance abuse treatment and prevention programs.

(2) The commission on substance abuse, in conjunction with the division, shall continue to coordinate the delivery of substance abuse services involving prevention, social and medical detoxification, and other treatment by medical and nonmedical providers to uninsured and court-ordered substance abuse patients in all counties of the state.

(3) The division shall establish an interagency work group to conduct an evaluation of the effectiveness of all existing federal and state funded substance abuse treatment and prevention programs in the state. Evaluation issues and components to be examined by the interagency work group shall include, but are not limited to, access to treatment; identification of all state and federal funds spent on treatment and prevention programs, including insurance plan components and employee assistance programs; substance abuse relapse rates; the reasons for different outcomes in different programs; costs of service delivery; the relationship of outcomes to cost offsets such as a decline in arrest rates and hospitalizations; review of managed care approaches and exemplary programs in other states; and the profiling of clients by the types of substances abused.

The interagency work group shall be comprised of representatives from the department of human services, the department of public health, the department of corrections, the governor's alliance on substance abuse, the state department of personnel, and the judicial department.

The department shall submit a report containing the recommendations of the interagency work group to the governor and the general assembly by January 1, 2000.

b. Of the funds appropriated in this subsection, $15,000 is allocated to support the surveillance and reporting of disabilities suffered by persons engaged in agriculture resulting from diseases or injuries, including identifying the amount and severity of agriculture-related injuries and diseases in the state, identifying causal factors associated with agriculture-related injuries and diseases, and evaluating the effectiveness of intervention programs designed to reduce injuries and diseases. The department shall cooperate with the department of agriculture and land stewardship, Iowa state university of science and technology, and the college of medicine at the state university of Iowa in accomplishing these duties.

c. For program grants:

..... $ 8,390,159

(1) Of the funds appropriated in this lettered paragraph, $193,500 shall be used for the provision of aftercare services for persons completing substance abuse treatment.

(2) Of the funds appropriated in this lettered paragraph, $950,000 shall be used by the Iowa department of public health to continue the integrated substance abuse managed care system.

4. FAMILY AND COMMUNITY HEALTH DIVISION

a. For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 3,538,535
..... FTEs 70.50

(1) Of the funds appropriated in this lettered paragraph, at least $587,865 shall be allocated by the division for the birth defects and genetics counseling program and of these funds, $279,402 is allocated for regional genetic counseling services contracted from the state university of Iowa hospitals and clinics under the control of the state board of regents. The birth defects and genetic counseling service shall apply a sliding fee scale to determine the amount a person receiving the services is required to pay for the services. These fees shall be considered repayment receipts and used for the program.

(2) Of the funds appropriated in this lettered paragraph, the following amounts shall be allocated to the state university of Iowa hospitals and clinics under the control of the state

board of regents for the following programs under the Iowa specialized child health care services:

(a) Mobile and regional child health specialty clinics:

..... $ 392,931

The regional clinic located in Sioux City shall maintain a social worker component to assist the families of children participating in the clinic program.

Of the funds allocated in this subparagraph subdivision, $97,937 shall be used for a specialized medical home care program providing care planning and coordination of community support services for children who require technical medical care in the home.

(b) Muscular dystrophy and related genetic disease programs:

..... $ 115,613

(c) Statewide perinatal program:

..... $ 61,693

The department, in consultation with the advisory committee for perinatal guidelines, shall develop and maintain the statewide perinatal program based on the recommendations of the American academy of pediatrics and the American college of obstetricians and gynecologists contained in the most recent edition of the "Guides for Perinatal Care", and shall adopt rules in accordance with chapter 17A to implement those recommendations. Hospitals within the state shall determine whether to participate in the statewide perinatal program, and select the hospital's level of participation in the program. A hospital having determined to participate in the program shall comply with the guidelines appropriate to the level of participation selected by the hospital.

(3) Of the funds appropriated in this lettered paragraph, $1,105,461 shall be used for maternal and child health services.

(4) Of the funds appropriated in this lettered paragraph, $165,391 shall be allocated for the office of rural health to provide technical assistance to rural areas in the area of health care delivery.

(5) Of the funds appropriated in this lettered paragraph, $182,028 shall be used to develop, implement, and maintain rural health provider recruitment and retention efforts.

(6) The state university of Iowa hospitals and clinics shall not receive indirect costs from the funds allocated in this lettered paragraph.

(7) If during the fiscal year, the federal government incorporates the special supplemental nutrition program for women, infants, and children into a block grant, the department of human services, Iowa department of public health, or any other state agency which administers the block grant shall require a competitive bid process for infant formula purchased by or for families under the block grant.

(8) The Iowa department of public health shall administer the statewide maternal and child health program, conduct mobile and regional child health specialty clinics, and conduct other activities to improve the health of low-income women and children and to promote the welfare of children with actual or potential handicapping conditions and chronic illnesses in accordance with the requirements of Title V of the federal Social Security Act.

(9) The department shall continue efforts to realize the "Healthy Iowans 2000" goal of promoting prevention and health promotion to improve the qualify* of life of Iowans and to hold down health care costs.

(10) Of the funds appropriated in this lettered paragraph and allocated by the department to the Iowa child death review team established in section 135.43, $5,000 shall be used to establish a domestic abuse death review team. The membership, authority, and operation of the domestic abuse death review team shall be patterned after the child death review team, with modifications specific to domestic abuse to be established by the department by rule. The department shall coordinate administrative costs between the child death review team and the domestic abuse death review team, and shall submit prefiled legislation in accordance with section 2.16 in advance of the convening of the 1999 Session of the general assembly for codifying the domestic abuse death review team provisions.

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* The word "quality" probably intended

b. Sudden infant death syndrome autopsies:

For reimbursing counties for expenses resulting from autopsies of suspected victims of sudden infant death syndrome required under section 331.802, subsection 3, paragraph "j":

..... $ 9,675

c. For grants to the counties for public health nursing, home care aide/chore, and senior health programs:

..... $ 11,683,924

The local board of health and local board of supervisors shall jointly determine which one shall be a contractor for these funds in a single contract beginning July 1, 1998. For those counties participating in a multi-county project, each local board of health and local board of supervisors of participating counties shall jointly agree upon the county that will serve as the contractor with the department. The department shall adopt administrative rules defining program direction, a formula used for distributing money, and program evaluation requirements for the three programs. The rules shall contain provisions encouraging local entities receiving moneys appropriated in this paragraph to collaborate and fully cooperate in providing health services, and shall be consistent with the requirements specified in 1997 Iowa Acts, chapter 203, section 5, subsection 4, paragraph "c". The funds appropriated in this lettered paragraph are allocated as follows:

(1) For the public health nursing program:

..... $ 2,511,871

(2) For the home care aide/chore program:

..... $ 8,586,716

Of the funds appropriated for the home care aide/chore program, no more than $500,000 shall be used for court-ordered services for children.

(3) For the senior health program:

..... $ 585,337

(4) Notwithstanding the program allocations made in subparagraphs (1), (2), and (3), a county may continue or submit to the department a new plan for an alternate allocation of funding which provides for assuring the delivery of existing services and the essential public health services based on an assessment of community needs, and targeted populations to be served under the alternate plan. The department shall adopt rules to administer these programs. The department may establish or continue demonstration projects which provide for an alternate allocation of funds based upon the proposed plan to provide essential public health services as determined by the community health assessment and targeted populations to be served.

d. For the physician care for children program:

..... $ 411,187

The physician services shall be subject to managed care and selective contracting provisions and shall be used to provide for the medical treatment of children and shall include coverage of diagnostic procedures, prescription drugs, and physician-ordered treatments necessary to treat an acute condition. Services provided under this lettered paragraph shall be reimbursed according to medical assistance reimbursement rates established as of July 1, 1998.

e. For primary and preventive health care for children:

..... $ 75,000

Funds appropriated in this lettered paragraph shall be used for the public purpose of providing a renewable grant, following a request for proposals, to a statewide charitable organization within the meaning of section 501(c)(3) of the Internal Revenue Code which was organized prior to April 1, 1989, and has as one of its purposes the sponsorship or support for programs designed to improve the quality, awareness, and availability of health care for the young, to serve as the funding mechanism for the provision of primary health care and preventive services to children in the state who are uninsured and who are not eligible under any public plan of health insurance, provided all of the following conditions are met:

(1) The organization shall provide a match of four dollars in advance of each state dollar provided.

(2) The organization coordinates services with new or existing public programs and services provided by or funded by appropriate state agencies in an effort to avoid inappropriate duplication of services and ensure access to care to the extent as is reasonably possible. The organization shall work with the Iowa department of public health, family and community health division, to ensure duplication is minimized.

(3) The organization's governing board includes in its membership representatives from the executive and legislative branches of state government.

(4) Grant funds are available as needed to provide services and shall not be used for administrative costs of the department or the grantee.

f. For the healthy opportunities for parents to experience success-healthy families Iowa (HOPES-HFI) program under section 135.106:

..... $ 952,000

(1) Of the funds appropriated in this lettered paragraph, not more than $165,000 shall be used to continue the existing infant mortality and morbidity prevention pilot projects in Polk, Scott, and Woodbury counties with no more than 15 percent being used for administrative expenses.

(2) Of the funds appropriated in this lettered paragraph, not more than $25,000 shall be used to continue supporting multidisciplinary research into the cause of individual infant deaths in the state and shall be used solely for research purposes.

(3) Of the funds appropriated in this lettered paragraph, not more than $140,000 shall be used to continue existing mid-level practitioners demonstration projects in Black Hawk, Polk, and Scott counties. The funds shall be issued in three equal grant amounts and shall be used to promote the use of mid-level practitioners, which includes obstetrical-gynecological nurse practitioners and family nurse practitioners focusing on maternal and child health, to improve access to prenatal care and obstetrical services.

(4) The remaining funds appropriated in this lettered paragraph shall be used for the HOPES-HFI program. Any new funds or funds in excess of that necessary to continue existing programs shall be used by the department to expand the program to counties with greatest need and the capacity to deliver the services. Any funds contracted to agencies under subparagraphs (1), (2), and (3) which are projected to be unused at the close of the fiscal year shall be reallocated to the HOPES-HFI program.

g. For primary care provider recruitment and retention endeavors:

..... $ 235,000

h. For the prospective minor parents decision-making assistance program under chapter 135L, and for not more than the following full-time equivalent positions:

..... $ 33,134

5. STATE BOARD OF DENTAL EXAMINERS

For salaries, support, maintenance, miscellaneous purposes, and not more than the following full-time equivalent positions:

..... $ 297,504
..... FTEs 4.00

6. STATE BOARD OF MEDICAL EXAMINERS

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 1,222,782
..... FTEs 19.00

7. STATE BOARD OF NURSING EXAMINERS

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 1,048,825
..... FTEs 18.00

8. STATE BOARD OF PHARMACY EXAMINERS

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 752,697
..... FTEs 12.00

9. The state board of medical examiners, the state board of pharmacy examiners, the state board of dental examiners, and the state board of nursing examiners shall prepare estimates of projected receipts to be generated by the licensing, certification, and examination fees of each board as well as a projection of the fairly apportioned administrative costs and rental expenses attributable to each board. Each board shall annually review and adjust its schedule of fees so that, as nearly as possible, projected receipts equal projected costs.

10. The state board of medical examiners, the state board of pharmacy examiners, the state board of dental examiners, and the state board of nursing examiners shall retain their individual executive officers, but are strongly encouraged to share administrative, clerical, and investigative staffs to the greatest extent possible.

11. A local health care provider or nonprofit health care organization seeking grant moneys administered by the Iowa department of public health shall provide documentation that the provider or organization has coordinated its services with other local entities providing similar services.

12. The department shall maintain the administrative rules which were adopted in accordance with chapter 17A to implement the scope of practice pilot project and shall maintain the pilot project in accordance with 1997 Iowa Acts, chapter 203, section 6.

13. The department shall establish a scope of practice review committee for the purpose of reviewing existing oversight of the nurse aide workforce to determine the adequacy of nurse aide education and competency testing.

14. One and one-half of the FTEs appropriated for in this section to the division of planning and administration, and one of the FTEs appropriated for in this section to the divisions of health protection, substance abuse and health promotion, and family and community health, respectively, relate to the transition of personnel services contractors to FTEs. The merit system provisions of chapter 19A and the provisions of the state or union collective bargaining agreements shall not govern movement into these FTE positions until September 1, 1998. This provision relating to the transition of personnel services contractors shall apply to the period beginning July 1, 1998, and ending September 1, 1998.

15. a. The department shall apply for available federal funds for sexual abstinence education programs in accordance with the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 912.

b. It is the intent of the general assembly to comply with the United States Congress' intent to assist welfare recipients to terminate dependency upon government benefits by promoting marriage, reducing the incidence of out-of-wedlock pregnancies, and encouraging abstinence from sexual activities outside of marriage with a focus upon those persons who are most likely to bear children out-of-wedlock.

c. Any sexual abstinence education program awarded moneys under the grant program shall meet the definition of abstinence education in the federal law. Grantees shall be evaluated based upon the extent to which the abstinence program successfully communicates the goals set forth in the federal law.

16. The department shall conduct a comprehensive evaluation of the gambling treatment program provisions under section 99D.7, subsection 21, and additions to and distributions from the gambling treatment fund pursuant to section 99E.10, subsection 1, paragraph "a". The evaluation shall provide information and analysis concerning the number of referrals to the program, assessments of the success rates regarding outpatient and follow-up treatment, rehabilitation, and residential treatment programs for persons affected by problem gambling, and the extent to which information and referral services, and education and preventive services, have been determined to be effective in preventing the development of

problem gambling behavior or in reaching individuals in need of treatment. The evaluation shall also provide an analysis of funding levels and contain recommendations with regard to future funding of the program and additional treatment interventions.

Sec. 6. DEPARTMENT OF HUMAN RIGHTS. There is appropriated from the general fund of the state to the department of human rights for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. CENTRAL ADMINISTRATION DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 222,159
..... FTEs 6.60

2. DEAF SERVICES DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 318,957
..... FTEs 7.00

The fees collected by the division for provision of interpretation services by the division to obligated agencies shall be disbursed pursuant to the provisions of section 8.32, and shall be dedicated and used by the division for continued and expanded interpretation services.

3. PERSONS WITH DISABILITIES DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 109,876
..... FTEs 2.00

4. LATINO AFFAIRS DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 150,089
..... FTEs 3.00

5. STATUS OF WOMEN DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 335,804
..... FTEs 3.00

a. Of the funds appropriated in this subsection, at least $125,775 shall be spent for the displaced homemaker program.

b. Of the funds appropriated in this subsection, at least $42,570 shall be spent for domestic violence and sexual assault-related grants.

6. STATUS OF AFRICAN-AMERICANS DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 116,543
..... FTEs 2.00

7. CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 397,633
..... FTEs 8.56

a. The criminal and juvenile justice planning advisory council and the juvenile justice advisory council shall coordinate their efforts in carrying out their respective duties relative to juvenile justice.

b. Of the funds appropriated in this subsection, at least $36,300 shall be spent for expenses relating to the administration of federal funds for juvenile assistance. It is the intent

of the general assembly that the department of human rights employ sufficient staff to meet the federal funding match requirements established by the federal office for juvenile justice delinquency prevention. The governor's advisory council on juvenile justice shall determine the staffing level necessary to carry out federal and state mandates for juvenile justice.

8. COMMUNITY GRANT FUND

For the community grant fund established in section 232.190 for the fiscal year beginning July 1, 1998, and ending June 30, 1999, to be used for the purposes of the community grant fund and for not more than the following full-time equivalent positions:

..... $ 1,600,494
..... FTEs 2.32

9. SHARED STAFF. Except for the persons with disabilities division which shall be administered by the director of the department of human rights, the divisions of the department of human rights shall retain their individual administrators, but shall share staff to the greatest extent possible.

Sec. 7. COMMISSION OF VETERANS AFFAIRS. There is appropriated from the general fund of the state to the commission of veterans affairs for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. COMMISSION OF VETERANS AFFAIRS ADMINISTRATION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 269,657
..... FTEs 5.00

The commission of veterans affairs may use the gifts accepted by the chairperson of the commission of veterans affairs, or designee, and other resources available to the commission for use at its Camp Dodge office. The commission shall report annually to the governor and the general assembly on monetary gifts received by the commission for the Camp Dodge office.

2. WAR ORPHANS

For the war orphans educational aid fund established pursuant to chapter 35:

..... $ 6,000

3. IOWA VETERANS HOME

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 41,912,604
..... FTEs 803.64

Of the full-time equivalent positions appropriated for in subsection 1, 1.82 FTEs relate to the transition of personnel services contractors to FTEs. The merit system provisions of chapter 19A and the provisions of the state or union collective bargaining agreements shall not govern movement into these FTE positions until September 1, 1998. This provision relating to the transition of personnel services contractors shall apply to the period beginning July 1, 1998, and ending September 1, 1998.

a. The Iowa veterans home may use the gifts accepted by the chairperson of the commission of veterans affairs and other resources available to the commission for use at the Iowa veterans home.

b. If medical assistance revenues are expanded at the Iowa veterans home, and this expansion results in medical assistance reimbursements which exceed the amount budgeted for that purpose in the fiscal year beginning July 1, 1998, and ending June 30, 1999, the Iowa veterans home may expend the excess amounts to exceed the number of full-time equivalent positions authorized for the purpose of meeting related certification requirements or to provide additional beds. The expenditure of additional funds received, as outlined in this paragraph, is subject to the approval by the department of management.

*c. *Any Iowa veterans home successor contractor shall not consider employees of a state institution or facility to be new employees for purposes of employee wages, health insurance, or retirement benefits.**

d. The chairpersons and ranking members of the joint appropriations subcommittee on health and human rights shall be notified by January 15 of any calendar year during which a request for proposals is anticipated to be issued regarding any Iowa veterans home contract involving employment, for purposes of providing legislative review and oversight.

Sec. 8. GAMBLING TREATMENT FUND ALLOCATIONS.

1. The moneys remaining unobligated or unexpended in the gambling treatment fund created in section 99E.10, subsection 1, paragraph "a", Code Supplement 1997, at the end of the fiscal year beginning July 1, 1997, and ending June 30, 1998, are appropriated to the Iowa department of public health for the fiscal year beginning July 1, 1998, and ending June 30, 1999, to be allocated as follows:

a. For transfer to the department of public safety to combat methamphetamine use:

..... $ 236,000

The funds transferred in this lettered paragraph shall be utilized by the division of narcotics enforcement of the department of public safety for undercover purchases of methamphetamine by law enforcement agency and drug task force personnel.

b. For transfer to the governor's alliance on substance abuse for the establishment of an education program designed to increase the availability of information relating to methamphetamine abuse in Iowa schools and throughout the media:

..... $ 83,000

The funds transferred in this lettered paragraph shall be used to assist in targeting an anti-methamphetamine message specifically to Iowa teenagers through the school system and through public service media advertisements. The education program shall be coordinated by the drug enforcement and abuse prevention coordinator in consultation with the Iowa drug abuse prevention and education advisory council established in section 80E.2.

2. **a. There is appropriated from receipts in excess of $1,900,000 deposited into the gambling treatment fund pursuant to section 99E.10, subsection 1, paragraph "a", to the Iowa department of public health, for the fiscal year beginning July 1, 1998, and ending June 30, 1999, an amount sufficient for funding of the allocation made in subsection 3.**

b. For the fiscal year beginning July 1, 1998, and ending June 30, 1999, an amount of the tax revenue received pursuant to section 99D.15, subsections 1, 3, and 4 equal to three-tenths of one percent of the gross sum wagered by the pari-mutuel method shall be deposited into the gambling treatment fund in addition to the other revenue deposited under law.

c. The amount appropriated pursuant to paragraph "a" shall be based on the most recent projections for gross lottery revenue, excursion boat and racetrack wagering revenue, and tax revenue derived from pari-mutuel wagering, for the fiscal year beginning July 1, 1998, and ending June 30, 1999. If the amount appropriated based on the projection is insufficient for full funding of the allocations, the allocations shall be prorated proportionately.*

**3. The moneys appropriated in subsection 2 shall be allocated as follows:*

a. For the public health nursing program:

..... *$ 200,000*

The funds appropriated in this paragraph shall be utilized by the Iowa department of public health to establish a competitive grant program to increase the availability of public health nurses throughout the state, and shall be in addition to funding allocated pursuant to existing contracts entered into between the department and the local boards of health and boards of supervisors. One-half of the funds appropriated shall be awarded to county applicants with a county population of less than 25,000, and the remaining one-half shall be awarded to county applicants with a county population of 25,000 or more.

A county may submit an application to the department for a grant to expand the county's existing public health nursing program by October 1, 1998, on application forms to be

* Item veto; see message at end of the Act

developed by the department. Grant award criteria shall include the extent to which existing allocations to the county have successfully been utilized to maintain and expand the public health nursing program for elderly and low-income persons, the proportion of elderly and low-income persons living in the county in relation to the total number of elderly and low-income persons living in the state, and proposals submitted by the county for expanding existing services and programs to meet the particular needs of the elderly and low-income persons residing within the county. A county receiving a grant award may utilize the grant moneys to expand existing subcontracts with a nonprofit nurses' association, or an independent nonprofit agency, or for new programs and services as proposed in the grant application.

The department shall submit a report to the general assembly by January 1, 2000, regarding the effectiveness of the competitive grant program in expanding public health nursing care, and containing recommendations regarding future utilization or expansion of the program.

b. For the provision of emergency medical services and training of emergency medical services personnel:

..... *$ 78,000*

c. For transfer to the Iowa law enforcement academy to be used for the drug abuse resistance education program:

..... *$ 70,000*

d. For transfer to the department of public safety for costs associated with the training by the department of public safety of state and local law enforcement personnel concerning the recognition of and response to persons with Alzheimer's disease:

..... *$ 70,000*

e. For use by local boards of health to ensure that core public health functions are maintained and to support essential services in their communities:

..... *$ 150,000*

f. For transfer to the department of elder affairs to be used for the recruitment, retention, recognition, and training of care review committee volunteers:

..... *$ 130,000*

The department of elder affairs shall develop outcome measurements regarding use of the funds transferred in this lettered paragraph, and shall conduct a study of issues including, but not limited to, how the funds were utilized, liability for area agencies on aging, and access to nursing home records. The department shall submit a report of the results of the study to the general assembly by January 1, 2000.

g. For transfer to the department of public safety to combat methamphetamine use:

..... *$ 200,000*

*The funds transferred in this lettered paragraph shall be utilized by the department of public safety to enhance existing programs or to initiate new efforts designed to prevent and combat methamphetamine use. The department shall submit a report of the expenditures made and a status report on anti-methamphetamine efforts to the general assembly by January 1, 2000.**

3. Notwithstanding section 8.33, the moneys appropriated in subsection 1 and allocated in subsection 2 that remain unencumbered and unobligated on June 30, 1999, shall not revert to any fund but shall remain available for expenditure for the purposes designated during the fiscal year beginning July 1, 1999.

4. The legislative fiscal committee shall conduct a review of the operation of the gambling treatment fund, including additions to and allocations from the fund, and submit a report to the general assembly by January 1, 1999.

Sec. 9. VITAL RECORDS. The vital records modernization project as enacted in 1993 Iowa Acts, chapter 55, section 1, as amended by 1994 Iowa Acts, chapter 1068, section 8, and as amended by 1997 Iowa Acts, chapter 203, section 9, shall be extended until June 30, 1999, and the increased fees to be collected pursuant to that project shall continue to be collected until June 30, 1999.

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* Item veto; see message at end of the Act

Sec. 10. Section 99E.10, subsection 1, paragraph a, Code Supplement 1997, is amended to read as follows:

a. An amount equal to three-tenths of one percent of the gross lottery revenue shall be deposited in a gambling treatment fund in the office of the treasurer of state. The director of the Iowa department of public health shall administer the fund and shall provide that receipts are allocated on a monthly basis to fund administrative costs and to provide programs which may include, but are not limited to, outpatient and follow-up treatment for persons affected by problem gambling, rehabilitation and residential treatment programs, information and referral services, ~~and~~ education and preventive services, and financial management services.

Sec. 11. Section 99F.11, subsection 3, Code 1997, is amended to read as follows:

3. Three-tenths of one percent of the adjusted gross receipts shall be deposited in the ~~gamblers assistance~~ gambling treatment fund specified in section 99E.10, subsection 1, paragraph "a".

Sec. 12. Section 135.11, subsection 15, Code Supplement 1997, is amended to read as follows:

15. Administer the statewide public health nursing, ~~and~~ homemaker-home health aide, and senior health programs by approving grants of state funds to the local boards of health and the county boards of supervisors and by providing guidelines for the approval of the grants and allocation of the state funds. Program direction, evaluation requirements, and formula allocation procedures for each of the programs shall be established by the department by rule, consistent with 1997 Iowa Acts, chapter 203, section 5.

Sec. 13. Section 232.190, Code 1997, is amended to read as follows:

232.190 COMMUNITY GRANT FUND ~~— FUTURE REPEAL~~.

1. A community grant fund is established in the state treasury under the control of the division of criminal and juvenile justice planning of the department of human rights for the purposes of awarding grants under this section. The criminal and juvenile justice planning advisory council and the juvenile justice advisory council shall assist the division in administering grants awarded under this section. The ~~department~~ departments of education, human services, public health, and public safety, and the governor's alliance on substance abuse shall advise the division on ~~programs which meet the~~ grant application and selection criteria ~~established for grant recipients~~ and performance measures for the programs. Not more than five percent of the moneys appropriated to the fund shall be used for administrative purposes.

2. A city, county, or entity organized under chapter 28E may apply to the ~~department~~ division for a grant on a matching basis to fund juvenile crime prevention programs. The match may ~~come from funds provided to the city, county, or entity organized under chapter 28E~~ be obtained from private sources, other state programs, or federal programs. ~~A city, county, or entity organized under chapter 28E applying for a grant under this section is encouraged to seek matching funds from, but not limited to, the Iowa finance authority, the governor's alliance on substance abuse, and under the state and federal community reinvestment Acts. Applications shall state specific outcomes sought to be obtained under a program funded by a grant under this section.~~ The division shall adopt rules establishing required matching fund levels that progressively increase as applicants receive a second or subsequent year of consecutive funding through the community grant fund. The division shall not accept an application for a fourth or subsequent consecutive year of funding. However, cities, counties, or entities organized under chapter 28E receiving grants prior to July 1, 1998, may apply and receive funding for an additional two consecutive years beyond June 30, 1998.

3. ~~Programs awarded~~ Applications for moneys from the community grant fund shall ~~involve~~ define the geographical boundaries of the site chosen to benefit from the funds from this program and shall demonstrate a collaborative effort by all ~~children and family support~~

relevant local government and school officials and service ~~providers to provide services and~~ agencies with authority, responsibilities, or other interests within the chosen site. Proposed plans set forth in the applications shall reflect a community-wide consensus in how to remediate community problems ~~and may include programs dealing with truancy which involve school district and community partnerships, and programs involving judicial district community based corrections programs~~ related to juvenile crime and shall describe how the funds from this program will be used in a manner consistent with the human investment strategy of the state as developed pursuant to section 8A.1. Services provided under ~~the programs~~ a grant through this program shall be comprehensive and utilize flexible delivery systems. The ~~department of human services~~ division shall establish a point system for determining eligibility for grants from the fund based upon the nature and breadth of the proposed community juvenile crime prevention ~~programs~~ plans and the extent to which ~~a community has sought to obtain additional public and private funding sources for all or parts of the community's program~~ the proposals include viable plans to sustain the funding and local governance of the proposed juvenile crime prevention services and activities following the proposed grant period.

4. The division shall provide potential applicants for grant moneys with information describing performance measures for this program and shall establish a monitoring system for this program that requires participating cities, counties, and entities organized under chapter 28E to report information with which to measure program performance. The division shall solicit input from cities, counties, and service-providing agencies on the establishment of program performance measures and the structure of the program monitoring system. Applications for grant moneys shall state specific results sought to be obtained by any service or activity funded by a grant under this section and shall describe how their desired results are related to the program's performance measures.

~~4.~~ 5. This section is repealed effective June 30, ~~1998~~ 2000. The division of criminal and juvenile justice planning ~~and the department of human services~~ shall submit ~~a~~ an annual report to the general assembly by January 15~~, 1998,~~ regarding the program's performance measures and the effectiveness of the ~~programs~~ services and activities funded under this section ~~in meeting the objectives contained in subsection 3~~.

Sec. 14. EFFECTIVE DATES.

1. Section 9 of this Act, relating to the vital records modernization project, being deemed of immediate importance, takes effect upon enactment.

2. Section 13 of this Act, amending section 232.190, takes effect June 30, 1998.

Approved May 19, 1998, except the items which I hereby disapprove and which are designated as Section 7, subsection 3, lettered paragraph c, in its entirety; Section 8, subsection 2(a), in its entirety; Section 8, subsection 2(c), in its entirety; and Section 8, the first subsection 3, in its entirety. My reasons for vetoing these items are delineated in the item veto message pertaining to this Act to the Secretary of State this same date, a copy of which is attached hereto.

TERRY E. BRANSTAD, *Governor*

Dear Mr. Secretary:

I hereby transmit Senate File 2280, an Act relating to and making appropriations to the Department for the Blind, the Iowa State Civil Rights Commission, the Department of Elder Affairs, the Iowa Department of Public Health, the Department of Human Rights, the Governor's Alliance on Substance Abuse, and the Commission of Veterans Affairs, and providing effective dates.

Senate File 2280 is, therefore, approved on this date with the following exceptions, which I hereby disapprove.

I am unable to approve Section 7, subsection 3, lettered paragraph c, in its entirety, which relates to successor contractors at the Iowa Veterans Home. While apparently intended to apply to employees of contractors at the Iowa Veterans Home, the language applies only to current state employees and not to the employees of contractors. Therefore, the purpose of this section is not achieved.

I am unable to approve Section 8, subsections 2 (a) and 2 (c), and the first subsection 3, in their entirety. These items collectively relate to diverting money away from the Gamblers Treatment Fund and spending the diverted money for non-related purposes. The Gamblers Treatment Fund, then called the Gamblers Assistance Fund, was created by the same statute that permitted gambling in the State of Iowa. Since that time, the Fund has been the only source of state money used to combat the ill effects of gambling for Iowa citizens. The programs identified to receive these diverted funds have merit. However, the problems associated with gambling, including bankruptcies, broken homes, embezzlement and suicide, have become more prevalent and the need for gamblers' treatment grows more pressing all the time. Therefore, I will not set a precedent that impairs its annual funding.

For the above reasons, I hereby respectfully disapprove these items in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in Senate File 2280 are hereby approved as of this date.

Sincerely,
TERRY E. BRANSTAD, *Governor*

CHAPTER 1222

APPROPRIATIONS — JUSTICE SYSTEM

H.F. 2539

AN ACT relating to and making appropriations to the justice system and providing effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. DEPARTMENT OF JUSTICE. There is appropriated from the general fund of the state to the department of justice for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For the general office of attorney general for salaries, support, maintenance, miscellaneous purposes including odometer fraud enforcement, and for not more than the following full-time equivalent positions:

.....	$	7,524,661
.....	FTEs	186.50

Of the full-time equivalent positions (FTEs) appropriated for in this subsection, 4.00 FTEs represent the transition of personnel services contractors to full-time equivalent position status. The merit system provisions of chapter 19A, collective bargaining agreement provisions of chapter 20, and the state and union collective bargaining agreements, as these relate to the filling of positions, shall not govern movement of these 4.00 FTEs into the full-time equivalent position status during the period beginning July 1, 1998, and ending August 31, 1998.

2. For the prosecuting attorney training program for salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 285,895
..... FTEs 6.00

3. In addition to the funds appropriated in subsection 1, there is appropriated from the general fund of the state to the department of justice for the fiscal year beginning July 1, 1998, and ending June 30, 1999, an amount not exceeding $200,000 to be used for the enforcement of the Iowa competition law. The funds appropriated in this subsection are contingent upon receipt by the general fund of the state of an amount at least equal to the expenditure amount from either damages awarded to the state or a political subdivision of the state by a civil judgment under chapter 553, if the judgment authorizes the use of the award for enforcement purposes or costs or attorneys fees awarded the state in state or federal antitrust actions. However, if the amounts received as a result of these judgments are in excess of $200,000, the excess amounts shall not be appropriated to the department of justice pursuant to this subsection.

4. In addition to the funds appropriated in subsection 1, there is appropriated from the general fund of the state to the department of justice for the fiscal year beginning July 1, 1998, and ending June 30, 1999, an amount not exceeding $150,000 to be used for public education relating to consumer fraud and for enforcement of section 714.16, and an amount not exceeding $75,000 for investigation, prosecution, and consumer education relating to consumer and criminal fraud against older Iowans. The funds appropriated in this subsection are contingent upon receipt by the general fund of the state of an amount at least equal to the expenditure amount from damages awarded to the state or a political subdivision of the state by a civil consumer fraud judgment or settlement, if the judgment or settlement authorizes the use of the award for public education on consumer fraud. However, if the funds received as a result of these judgments and settlements are in excess of $225,000, the excess funds shall not be appropriated to the department of justice pursuant to this subsection.

5. For victim assistance grants:

..... $ 1,759,806

a. The funds appropriated in this subsection shall be used to provide grants to care providers providing services to crime victims of domestic abuse or to crime victims of rape and sexual assault.

b. Notwithstanding section 8.33 or 8.39, any balance remaining from the appropriation in this subsection at the close of the fiscal year shall not revert to the general fund of the state but shall be available for expenditure during the subsequent fiscal year for the same purpose, and shall not be transferred to any other program.

6. For the GASA prosecuting attorney program and for not more than the following full-time equivalent positions:

..... $ 128,302
..... FTEs 2.00

7. The balance of the victim compensation fund established in section 912.14 may be used to provide salary and support of not more than 17.00 FTEs and to provide maintenance for the victim compensation functions of the department of justice. Of the full-time equivalent positions (FTEs) appropriated for in this subsection, 1.75 FTEs represent the transition of personnel services contractors to full-time equivalent position status. The merit system provisions of chapter 19A, collective bargaining agreement provisions of chapter 20, and the state and union collective bargaining agreements, as these relate to the filling of positions, shall not govern movement of these 1.75 FTEs into the full-time equivalent position status during the period beginning July 1, 1998, and ending August 31, 1998.

8. The department of justice shall submit monthly financial statements to the legislative fiscal bureau and the department of management containing all appropriated accounts in the same manner as provided in the monthly financial status reports and personal services usage reports of the department of revenue and finance. The monthly financial statements

shall include comparisons of the moneys and percentage spent of budgeted to actual revenues and expenditures on a cumulative basis for full-time equivalent positions and available moneys.

9. a. The department of justice, in submitting budget estimates for the fiscal year commencing July 1, 1999, pursuant to section 8.23, shall include a report of funding from sources other than amounts appropriated directly from the general fund of the state to the department of justice or to the office of consumer advocate. These funding sources shall include, but are not limited to, reimbursements from other state agencies, commissions, boards, or similar entities, and reimbursements from special funds or internal accounts within the department of justice. The department of justice shall report actual reimbursements for the fiscal year commencing July 1, 1997, and actual and expected reimbursements for the fiscal year commencing July 1, 1998.

b. The department of justice shall include the report required under paragraph "a", as well as information regarding any revisions occurring as a result of reimbursements actually received or expected at a later date, in a report to the co-chairpersons and ranking members of the joint appropriations subcommittee on the justice system and the legislative fiscal bureau. The department of justice shall submit the report on or before January 15, 1999.

10. For legal services for persons in poverty grants as provided in section 13.34:

..... $ 600,000

As a condition for accepting a grant funded pursuant to this subsection, an organization receiving a grant shall submit a report to the general assembly by January 1, 1999, concerning the use of any grants received during the previous fiscal year and efforts made by the organization to find alternative sources of revenue to replace any reductions in federal funding for the organization.

Sec. 2. DEPARTMENT OF JUSTICE — ENVIRONMENTAL CRIMES INVESTIGATION AND PROSECUTION — FUNDING. There is appropriated from the environmental crime fund of the department of justice, consisting of court-ordered fines and penalties awarded to the department arising out of the prosecution of environmental crimes, to the department of justice for the fiscal year beginning July 1, 1998, and ending June 30, 1999, an amount not exceeding $20,000 to be used by the department, at the discretion of the attorney general, for the investigation and prosecution of environmental crimes, including the reimbursement of expenses incurred by county, municipal, and other local governmental agencies cooperating with the department in the investigation and prosecution of environmental crimes.

The funds appropriated in this section are contingent upon receipt by the environmental crime fund of the department of justice of an amount at least equal to the appropriations made in this section and received from contributions, court-ordered restitution as part of judgments in criminal cases, and consent decrees entered into as part of civil or regulatory enforcement actions. However, if the funds received during the fiscal year are in excess of $20,000, the excess funds shall be deposited in the general fund of the state.

Notwithstanding section 8.33, moneys appropriated in this section which remain unexpended or unobligated at the close of the fiscal year shall not revert to the environmental crime fund but shall remain available for expenditure for the designated purpose in the succeeding fiscal year.

Sec. 3. OFFICE OF CONSUMER ADVOCATE. There is appropriated from the general fund of the state to the office of consumer advocate of the department of justice for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 2,525,978
..... FTEs 32.00

Sec. 4. DEPARTMENT OF CORRECTIONS — FACILITIES. There is appropriated from the general fund of the state to the department of corrections for the fiscal year beginning

July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For the operation of adult correctional institutions, to be allocated as follows:

a. For the operation of the Fort Madison correctional facility, including salaries, support, maintenance, employment of correctional officers, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	28,009,043
.....	FTEs	502.00

b. For the operation of the Anamosa correctional facility, including salaries, support, maintenance, employment of correctional officers and a part-time chaplain to provide religious counseling to inmates of a minority race, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	22,525,866
.....	FTEs	394.25

Moneys are provided within this appropriation for two full-time substance abuse counselors for the Luster Heights facility, for the purpose of certification of a substance abuse program at that facility.

Of the full-time equivalent positions (FTEs) appropriated for in this paragraph, 1.50 FTEs represent the transition of personnel services contractors to full-time equivalent position status. The merit system provisions of chapter 19A, collective bargaining agreement provisions of chapter 20, and the state and union collective bargaining agreements, as these relate to the filling of positions, shall not govern movement of these 1.50 FTEs into the full-time equivalent position status during the period beginning July 1, 1998, and ending August 31, 1998.

c. For the operation of the Oakdale correctional facility, including salaries, support, maintenance, employment of correctional officers, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	18,654,062
.....	FTEs	338.80

Of the full-time equivalent positions (FTEs) appropriated for in this paragraph, 1.50 FTEs represent the transition of personnel services contractors to full-time equivalent position status. The merit system provisions of chapter 19A, collective bargaining agreement provisions of chapter 20, and the state and union collective bargaining agreements, as these relate to the filling of positions, shall not govern movement of these 1.50 FTEs into the full-time equivalent position status during the period beginning July 1, 1998, and ending August 31, 1998.

d. For the operation of the Newton correctional facility, including salaries, support, maintenance, employment of correctional officers, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	20,599,916
.....	FTEs	380.58

Of the full-time equivalent positions (FTEs) appropriated for in this paragraph, 4.83 FTEs represent the transition of personnel services contractors to full-time equivalent position status. The merit system provisions of chapter 19A, collective bargaining agreement provisions of chapter 20, and the state and union collective bargaining agreements, as these relate to the filling of positions, shall not govern movement of these 4.83 FTEs into the full-time equivalent position status during the period beginning July 1, 1998, and ending August 31, 1998.

e. For the operation of the Mt. Pleasant correctional facility, including salaries, support, maintenance, employment of correctional officers and a full-time chaplain to provide religious counseling at the Oakdale and Mt. Pleasant correctional facilities, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	18,098,880
.....	FTEs	344.99

Of the full-time equivalent positions (FTEs) appropriated for in this paragraph, 1.67 FTEs represent the transition of personnel services contractors to full-time equivalent position status. The merit system provisions of chapter 19A, collective bargaining agreement provisions of chapter 20, and the state and union collective bargaining agreements, as these relate to the filling of positions, shall not govern movement of these 1.67 FTEs into the full-time equivalent position status during the period beginning July 1, 1998, and ending August 31, 1998.

f. For the operation of the Rockwell City correctional facility, including salaries, support, maintenance, employment of correctional officers, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 6,268,795
..... FTEs 117.00

g. For the operation of the Clarinda correctional facility, including salaries, support, maintenance, employment of correctional officers, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 16,545,960
..... FTEs 286.90

Of the full-time equivalent positions (FTEs) appropriated for in this paragraph, 17.90 FTEs represent the transition of personnel services contractors to full-time equivalent position status. The merit system provisions of chapter 19A, collective bargaining agreement provisions of chapter 20, and the state and union collective bargaining agreements, as these relate to the filling of positions, shall not govern movement of these 17.90 FTEs into the full-time equivalent position status during the period beginning July 1, 1998, and ending August 31, 1998.

Moneys received by the department of corrections as reimbursement for services provided to the Clarinda youth corporation are appropriated to the department and shall be used for the purpose of operating the Clarinda correctional facility.

h. For the operation of the Mitchellville correctional facility, including salaries, support, maintenance, employment of correctional officers, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 7,712,391
..... FTEs 151.25

Of the full-time equivalent positions (FTEs) appropriated for in this paragraph, 1.25 FTEs represent the transition of personnel services contractors to full-time equivalent position status. The merit system provisions of chapter 19A, collective bargaining agreement provisions of chapter 20, and the state and union collective bargaining agreements, as these relate to the filling of positions, shall not govern movement of these 1.25 FTEs into the full-time equivalent position status during the period beginning July 1, 1998, and ending August 31, 1998.

i. For the operation of the Fort Dodge correctional facility, including salaries, support, maintenance, employment of correctional officers, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 14,920,795
..... FTEs 287.00

2. a. If the inmate tort claim fund for inmate claims of less than $100 is exhausted during the fiscal year, sufficient funds shall be transferred from the institutional budgets to pay approved tort claims for the balance of the fiscal year. The warden or superintendent of each institution or correctional facility shall designate an employee to receive, investigate, and recommend whether to pay any properly filed inmate tort claim for less than the above amount. The designee's recommendation shall be approved or denied by the warden or superintendent and forwarded to the department of corrections for final approval and payment. The amounts appropriated to this fund pursuant to 1987 Iowa Acts, chapter 234, section 304, subsection 2, are not subject to reversion under section 8.33.

b. Tort claims denied at the institution shall be forwarded to the state appeal board for

their consideration as if originally filed with that body. This procedure shall be used in lieu of chapter 669 for inmate tort claims of less than $100.

*3. *It is the intent of the general assembly that the department of corrections shall timely fill correctional positions authorized for correctional facilities pursuant to this section.**

Sec. 5. DEPARTMENT OF CORRECTIONS — ADMINISTRATION. There is appropriated from the general fund of the state to the department of corrections for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For general administration, including salaries, support, maintenance, employment of an education director and clerk to administer a centralized education program for the correctional system, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	2,132,722
.....	FTEs	37.18

The department shall monitor the use of the classification model by the judicial district departments of correctional services and has the authority to override a district department's decision regarding classification of community-based clients. The department shall notify a district department of the reasons for the override.

It is the intent of the general assembly that as a condition of receiving the appropriation provided in this subsection, the department of corrections shall not enter into a new contract, unless the contract is a renewal of an existing contract, for the expenditure of moneys in excess of $100,000 during the fiscal year beginning July 1, 1998, for the privatization of services performed by the department using state employees as of July 1, 1998, or for the privatization of new services by the department, without prior consultation with any applicable state employee organization affected by the proposed new contract and prior notification of the co-chairpersons and ranking members of the joint appropriations subcommittee on the justice system.

It is the intent of the general assembly that as a condition of receiving the appropriation provided in this subsection, the department of corrections shall not enter into a lease or contractual agreement pursuant to section 904.809 with a private corporation for the use of building space for the purpose of providing inmate employment without notifying, at least twenty-one calendar days prior to the execution of the lease or contractual agreement, the chairpersons and ranking members of the general assembly's joint appropriations subcommittee on the justice system of the name of the person entering into the lease or contract, and the terms of the lease or contract.

The department of general services shall, notwithstanding any provisions of law or rule to the contrary, permit the department of corrections the opportunity to acquire, at no cost, computers that would otherwise be disposed of by the department of general services. The department of corrections shall use computers acquired under this paragraph to provide educational training and programs for inmates.

It is the intent of the general assembly that each lease negotiated by the department of corrections with a private corporation for the purpose of providing private industry employment of inmates in a correctional institution shall prohibit the private corporation from utilizing inmate labor for partisan political purposes for any person seeking election to public office in this state and that a violation of this requirement shall result in a termination of the lease agreement.

It is the intent of the general assembly that as a condition of receiving the appropriation provided in this subsection, the department of corrections shall not enter into a lease or contractual agreement pursuant to section 904.809 with a private corporation for the use of building space for the purpose of providing inmate employment without providing that the terms of the lease or contract establish safeguards to restrict, to the greatest extent feasible, access by inmates working for the private corporation to personal identifying information of citizens.

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* Item veto; see message at end of the Act

It is the intent of the general assembly that as a condition of receiving the appropriation provided in this subsection, the department of corrections shall not enter into any agreement with a private for-profit agency or corporation for the purpose of transferring inmates under the custody of the department to a jail or correctional facility or institution in this state which is established, maintained, or operated by a private for-profit agency or corporation without prior approval by the general assembly.

2. For reimbursement of counties for temporary confinement of work release and parole violators, as provided in sections 901.7, 904.908, and 906.17 and for offenders confined pursuant to section 904.513:

..... $ 524,038

3. For federal prison reimbursement, reimbursements for out-of-state placements, and miscellaneous contracts:

..... $ 341,334

The department of corrections shall use funds appropriated in this subsection to continue to contract for the services of a Muslim imam.

4. For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions at the correctional training center at Mt. Pleasant:

..... $ 471,689
..... FTEs 8.16

5. For hormonal treatment for sex offenders:

..... $ 500,000

6. For annual payment relating to the financial arrangement for the construction of expansion in prison capacity as provided in 1990 Iowa Acts, chapter 1257, section 24:

..... $ 3,185,265

7. For educational programs for inmates at state penal institutions:

..... $ 2,950,600

It is the intent of the general assembly that moneys appropriated in this subsection shall be used solely for the purpose indicated and that the moneys shall not be transferred for any other purpose. In addition, it is the intent of the general assembly that the department shall consult with the community colleges in the areas in which the institutions are located to utilize moneys appropriated in this subsection to fund the high school completion, high school equivalency diploma, adult literacy, and adult basic education programs in a manner so as to maintain these programs at the institutions.

To maximize the funding for educational programs, the department shall establish guidelines and procedures to prioritize the availability of educational and vocational training for inmates based upon the goal of facilitating an inmate's successful release from the correctional institution.

Notwithstanding section 8.33, moneys appropriated in this subsection which remain unobligated or unexpended at the close of the fiscal year shall not revert to the general fund of the state but shall remain available to be used only for the purposes designated in this subsection in the succeeding fiscal year.

8. For educational programs for inmates at the Mitchellville correctional facility:

..... $ 12,000

It is the intent of the general assembly that moneys appropriated in this subsection shall be in addition to any moneys that would be allocated to the Mitchellville correctional facility for educational programs pursuant to the formula established by the department of corrections for distribution of moneys appropriated in subsection 7.

9. The department of corrections shall submit a report to the general assembly on January 1, 1999, concerning progress made in implementing the requirements of section 904.701, concerning hard labor by inmates.

10. The department of corrections shall study and consider the implementation of a computer database to provide inmate case management and offender profiling to better identify, track, and assist inmates of the correctional institutions.

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* Item veto; see message at end of the Act

11. It is the intent of the general assembly that the department of corrections connect all of its correctional facilities to the Iowa communications network (ICN).

12. Except as otherwise provided in subsection 13, it is the intent of the general assembly that the department of corrections shall continue to operate the correctional farms under the control of the department at the same or greater level of participation and involvement as existed as of January 1, 1998, and shall further attempt to provide meaningful job opportunities at the farms for inmates.

13. It is the intent of the general assembly that the department of corrections cease all cattle operations on land at the Glenwood state hospital-school by July 1, 1998, and that the department of corrections shall be prohibited from entering into any lease or other contractual agreement with any person concerning the use of the land specifically used for cattle operations once cattle operations on that land have ceased pursuant to this subsection.

14. It is the intent of the general assembly that each correctional facility under the control of the department of corrections with at least one hundred acres of agricultural land shall establish an agribusiness advisory council to provide technical advice and assistance to the correctional facility concerning agricultural-related work activities for inmates at the correctional facility if such activities occur at the facility. The agribusiness advisory council shall consist of three persons involved in agriculture who reside in the county in which the correctional facility is located and who shall be selected by the county agricultural extension council of the county agricultural extension district in that county. Each agribusiness advisory council may submit a report concerning the activities of the council, to include any proposals or recommendations of the council, to the department of corrections and the department of corrections shall compile any reports received during the previous calendar year and submit a report based on any reports received to the general assembly by January 8, 1999.

15. The department of corrections shall submit a report to the general assembly by January 1, 1999, concerning moneys deposited in, and expended from, each inmate telephone rebate fund established by a correctional institution pursuant to section 904.508A, during the fiscal year beginning July 1, 1997. In addition, each correctional institution that has established an inmate telephone rebate fund shall submit a report to the legislative fiscal bureau on a quarterly basis, commencing July 1, 1998, concerning the moneys deposited in the fund and expended from the fund during the previous calendar quarter.

16. The department of corrections shall submit a report to the general assembly by January 1, 1999, concerning moneys recouped from inmate earnings for the reimbursement of operational expenses of the applicable facility during the fiscal year beginning July 1, 1997, for each correctional institution and judicial district department of correctional services. In addition, each correctional institution and judicial district department of correctional services shall submit a report to each member of the joint appropriations subcommittee on the justice system and the legislative fiscal bureau on a monthly basis, commencing July 1, 1998, concerning moneys recouped from inmate earnings for the reimbursement of operational expenses for each correctional institution and district department during the previous calendar month.

Sec. 6. JUDICIAL DISTRICT DEPARTMENTS OF CORRECTIONAL SERVICES.

1. There is appropriated from the general fund of the state to the department of corrections for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be allocated as follows:

a. For the first judicial district department of correctional services, including the treatment and supervision of probation and parole violators who have been released from the department of corrections violator program, the following amount, or so much thereof as is necessary:

..... $ 7,576,323

(1) The district department shall continue the intensive supervision program established within the district in 1988 Iowa Acts, chapter 1271, section 6, subsection 1, paragraph "a", and the sex offender treatment program established within the district in 1989 Iowa Acts, chapter 316, section 8, subsection 1, paragraph "a".

(2) The district department, in cooperation with the chief judge of the judicial district, shall continue the implementation of a plan to divert low-risk offenders to the least restrictive sanction available.

b. For the second judicial district department of correctional services, including the treatment and supervision of probation and parole violators who have been released from the department of corrections violator program, the following amount, or so much thereof as is necessary:

..... $ 6,021,136

(1) The district department shall continue the sex offender treatment program established within the district in 1988 Iowa Acts, chapter 1271, section 6, subsection 1, paragraph "b".

(2) The district department, in cooperation with the chief judge of the judicial district, shall continue the implementation of a plan to divert low-risk offenders to the least restrictive sanction available.

c. For the third judicial district department of correctional services, including the treatment and supervision of probation and parole violators who have been released from the department of corrections violator program, the following amount, or so much thereof as is necessary:

..... $ 3,659,888

(1) The district department shall continue the sex offender treatment program established within the district in 1988 Iowa Acts, chapter 1271, section 6, subsection 1, paragraph "c", and the intensive supervision program established within the district in 1990 Iowa Acts, chapter 1268, section 6, subsection 3, paragraph "d".

(2) The district department, in cooperation with the chief judge of the judicial district, shall continue the implementation of a plan to divert low-risk offenders to the least restrictive sanction available.

d. For the fourth judicial district department of correctional services, including the treatment and supervision of probation and parole violators who have been released from the department of corrections violator program, the following amount, or so much thereof as is necessary:

..... $ 2,756,478

(1) The district department shall continue the sex offender treatment program established within the district in 1988 Iowa Acts, chapter 1271, section 6, subsection 1, paragraph "d".

(2) The district department, in cooperation with the chief judge of the judicial district, shall continue the implementation of a plan to divert low-risk offenders to the least restrictive sanction available.

e. For the fifth judicial district department of correctional services, including the treatment and supervision of probation and parole violators who have been released from the department of corrections violator program, the following amount, or so much thereof as is necessary:

..... $ 10,723,496

(1) The district department shall continue the intensive supervision program established within the district in 1988 Iowa Acts, chapter 1271, section 6, subsection 1, paragraph "e", and shall continue to provide for the rental of electronic monitoring equipment.

(2) The district department, in cooperation with the chief judge of the judicial district, shall continue the implementation of a plan to divert low-risk offenders to the least restrictive sanction available.

f. For the sixth judicial district department of correctional services, including the treatment and supervision of probation and parole violators who have been released from the

department of corrections violator program, the following amount, or so much thereof as is necessary:

..... $ 7,784,320

(1) The district department shall continue the intensive supervision program established within the district in 1988 Iowa Acts, chapter 1271, section 6, subsection 1, paragraph "f", and the sex offender treatment program established within the district in 1989 Iowa Acts, chapter 316, section 8, subsection 1, paragraph "f".

(2) The district department, in cooperation with the chief judge of the judicial district, shall continue the implementation of a plan to divert low-risk offenders to the least restrictive sanction available.

(3) The district department shall continue the implementation of a plan providing for the expanded use of intermediate criminal sanctions, as provided in 1993 Iowa Acts, chapter 171, section 6, subsection 1, paragraph "f", subparagraph (3).

g. For the seventh judicial district department of correctional services, including the treatment and supervision of probation and parole violators who have been released from the department of corrections violator program, the following amount, or so much thereof as is necessary:

..... $ 4,777,764

(1) The district department shall continue the intensive supervision program established within the district in 1988 Iowa Acts, chapter 1271, section 6, subsection 1, paragraph "g", and shall continue the sex offender treatment program established within the district in 1989 Iowa Acts, chapter 316, section 8, subsection 1, paragraph "g".

(2) The district department shall continue the job development program established within the district in 1990 Iowa Acts, chapter 1268, section 6, subsection 7, paragraph "e".

(3) The district department, in cooperation with the chief judge of the judicial district, shall continue the implementation of a plan to divert low-risk offenders to the least restrictive sanction available.

h. For the eighth judicial district department of correctional services, including the treatment and supervision of probation and parole violators who have been released from the department of corrections violator program, the following amount, or so much thereof as is necessary:

..... $ 4,485,253

(1) The district department shall continue the intensive supervision program established within the district in 1988 Iowa Acts, chapter 1271, section 6, subsection 1, paragraph "h", and shall continue the sex offender treatment program established within the district in 1989 Iowa Acts, chapter 316, section 8, subsection 1, paragraph "h".

(2) The district department, in cooperation with the chief judge of the judicial district, shall continue the implementation of a plan to divert low-risk offenders to the least restrictive sanction available.

i. For the department of corrections for the assistance and support of each judicial district department of correctional services, the following amount, or so much thereof as is necessary:

..... $ 83,576

2. The department of corrections shall continue to contract with a judicial district department of correctional services to provide for the rental of electronic monitoring equipment which shall be available statewide.

3. Each judicial district department of correctional services and the department of corrections shall continue the treatment alternatives to street crime programs established in 1989 Iowa Acts, chapter 225, section 9.

4. The governor's alliance on substance abuse shall consider federal grants made to the department of corrections for the benefit of each of the eight judicial district departments of correctional services as local government grants, as defined pursuant to federal regulations.

5. Each judicial district department of correctional services shall provide a report concerning the treatment and supervision of probation and parole violators who have been

released from the department of corrections violator program, to the co-chairpersons and ranking members of the joint appropriations subcommittee on the justice system and the legislative fiscal bureau, on or before January 15, 1999.

6. In addition to the requirements of section 8.39, the department of corrections shall not make an intradepartmental transfer of moneys appropriated to the department, unless notice of the intradepartmental transfer is given prior to its effective date to the legislative fiscal bureau. The notice shall include information on the department's rationale for making the transfer and details concerning the work load and performance measures upon which the transfers are based.

7. Each judicial district department of correctional services shall submit a report to the general assembly by January 8, 1999, concerning what action, if any, the district department has taken in order to implement, or not implement, an intermediate criminal sanctions program as provided by section 901B.1. If the district department has implemented such a program, the report shall include information as to the effectiveness of the program.

Sec. 7. CORRECTIONAL INSTITUTIONS — VOCATIONAL TRAINING.

1. The state prison industries board and the department of corrections shall continue the implementation of a plan to enhance vocational training opportunities within the correctional institutions listed in section 904.102, as provided in 1993 Iowa Acts, chapter 171, section 12. The plan shall provide for increased vocational training opportunities within the correctional institutions, including the possibility of approving community college credit for inmates working in prison industries. The department of corrections shall provide a report concerning the implementation of the plan to the co-chairpersons and ranking members of the joint appropriations subcommittee on the justice system and the legislative fiscal bureau, on or before January 15, 1999.

2. It is the intent of the general assembly that each correctional facility make all reasonable efforts to maintain vocational education programs for inmates and to identify available funding sources to continue these programs. The department of corrections shall submit a report to the general assembly by January 1, 1999, concerning the efforts made by each correctional facility in maintaining vocational education programs for inmates.

**Sec. 8. APPROPRIATIONS TO THE DEPARTMENT OF CORRECTIONS — MONEYS ENCUMBERED — PRIORITIES.*

1. Notwithstanding any other provision of law to the contrary, moneys appropriated to the department of corrections pursuant to 1997 Iowa Acts, chapter 205, sections 4, 5, and 6, shall be considered encumbered pursuant to section 8.33, and shall not revert to the general fund of the state following the close of the fiscal year commencing July 1, 1997. As used in this section, unless the context otherwise requires, "encumbered funds" means the moneys appropriated to the department of corrections pursuant to 1997 Iowa Acts, chapter 205, sections 4, 5, and 6, which would otherwise revert to the general fund of the state following the close of the fiscal year in which the moneys were appropriated, but for the prohibition contained in this section.

2. The department of corrections shall use encumbered funds in the fiscal year commencing July 1, 1998, to fund up to an additional 50.00 FTEs for the employment of correctional officers in the correctional institutions specified in section 904.102, and to purchase surveillance cameras and other necessary surveillance or safety equipment for use in correctional institutions. The full-time equivalent positions authorized in this section for the employment of correctional officers and the funding provided for the purchase of equipment are in addition to any full-time equivalent positions authorized or equipment funded in section 4 of this Act, providing appropriations for department of corrections facilities. The department of corrections shall use its discretion in distributing the additional correctional officers and equipment throughout the correctional facilities. The department of corrections shall file a report with the department of management concerning correctional officer positions filled and critically needed safety equipment purchased from encumbered funds provided under this section. If

* Item veto; see message at end of the Act

*the department is able to fund an additional 50.00 FTEs for the employment of correctional officers pursuant to this section and to purchase all critically needed safety equipment, any remaining funds shall be unencumbered and shall revert to the general fund of the state at the close of the fiscal year commencing July 1, 1998.**

Sec. 9. STATE AGENCY PURCHASES FROM PRISON INDUSTRIES.

1. As used in this section, unless the context otherwise requires, "state agency" means the government of the state of Iowa, including but not limited to all executive departments, agencies, boards, bureaus, and commissions, the judicial department, the general assembly and all legislative agencies, institutions within the purview of the state board of regents, and any corporation whose primary function is to act as an instrumentality of the state.

2. State agencies are hereby encouraged to purchase products from Iowa state industries, as defined in section 904.802, when purchases are required and the products are available from Iowa state industries.

3. State agencies shall submit to the legislative fiscal bureau by January 15, 1999, a report of the dollar value of products and services purchased from Iowa state industries by the state agency during the fiscal year beginning July 1, 1997, and ending June 30, 1998.

Sec. 10. STATE PUBLIC DEFENDER. There is appropriated from the general fund of the state to the office of the state public defender of the department of inspections and appeals for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, for the purposes designated:

..... $ 33,673,008

The funds appropriated and full-time equivalent positions authorized in this section are allocated as follows:

1. For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 12,760,719

..... FTEs 199.00

2. For the fees of court-appointed attorneys for indigent adults and juveniles, in accordance with section 232.141 and chapter 815:

..... $ 20,912,289

Sec. 11. JUDICIAL DEPARTMENT. There is appropriated from the general fund of the state to the judicial department for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For salaries of supreme court justices, appellate court judges, district court judges, district associate judges, judicial magistrates and staff, state court administrator, clerk of the supreme court, district court administrators, clerks of the district court, juvenile court officers, board of law examiners and board of examiners of shorthand reporters and judicial qualifications commission, receipt and disbursement of child support payments, reimbursement of the auditor of state for expenses incurred in completing audits of the offices of the clerks of the district court during the fiscal year beginning July 1, 1998, and maintenance, equipment, and miscellaneous purposes:

..... $ 101,068,908

a. The judicial department, except for purposes of internal processing, shall use the current state budget system, the state payroll system, and the Iowa finance and accounting system in administration of programs and payments for services, and shall not duplicate the state payroll, accounting, and budgeting systems.

b. The judicial department shall submit monthly financial statements to the legislative fiscal bureau and the department of management containing all appropriated accounts in the same manner as provided in the monthly financial status reports and personal services usage reports of the department of revenue and finance. The monthly financial statements

* Item veto; see message at end of the Act

shall include a comparison of the dollars and percentage spent of budgeted versus actual revenues and expenditures on a cumulative basis for full-time equivalent positions and dollars.

c. Of the funds appropriated in this subsection, not more than $1,897,728 may be transferred into the revolving fund established pursuant to section 602.1302, subsection 3, to be used for the payment of jury and witness fees and mileage.

d. The judicial department shall focus efforts upon the collection of delinquent fines, penalties, court costs, fees, surcharges, or similar amounts.

e. It is the intent of the general assembly that the offices of the clerks of the district court operate in all ninety-nine counties and be accessible to the public as much as is reasonably possible in order to address the relative needs of the citizens of each county.

f. In addition to the requirements for transfers under section 8.39, the judicial department shall not change the appropriations from the amounts appropriated to the department in this Act, unless notice of the revisions is given prior to their effective date to the legislative fiscal bureau. The notice shall include information on the department's rationale for making the changes and details concerning the work load and performance measures upon which the changes are based.

g. The judicial department shall provide a report semiannually to the co-chairpersons and ranking members of the joint appropriations subcommittee on the justice system and to the legislative fiscal bureau specifying the amounts of fines, surcharges, and court costs collected using the Iowa court information system. The report shall demonstrate and specify how the Iowa court information system is used to improve the collection process.

h. The judicial department shall provide a report to the general assembly by January 1, 1999, concerning the amounts received and expended from the enhanced court collections fund created in section 602.1304 and the court technology and modernization fund created in section 602.8108, subsection 4, during the fiscal year beginning July 1, 1997, and ending June 30, 1998, and the plans for expenditures from each fund during the fiscal year beginning July 1, 1998, and ending June 30, 1999.

2. For the juvenile victim restitution program:

..... $ 183,471

Sec. 12. ENHANCED COURT COLLECTIONS FUND. Notwithstanding section 602.1304, subsection 2, for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the maximum deposit amount for the enhanced court collections fund shall be $6,000,000. For succeeding fiscal years, the maximum deposit amount shall be determined in accordance with section 602.1304, subsection 2, and the maximum deposit amount shall not be increased due to the increase made in this section.

Sec. 13. JUDICIAL RETIREMENT FUND. There is appropriated from the general fund of the state to the judicial retirement fund for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For the state's contribution to the judicial retirement fund established in section 602.9104, in the amount of 23.7 percent of the basic salaries of the judges covered under chapter 602, article 9:

..... $ 3,944,059

Sec. 14. INDIGENT DEFENSE COSTS. The supreme court shall submit a written report for the preceding fiscal year no later than January 1, 1999, indicating the amounts collected pursuant to section 815.9A, relating to recovery of indigent defense costs. The report shall include the total amount collected by all courts, as well as the amounts collected by each judicial district. The supreme court shall also submit a written report quarterly indicating the number of criminal and juvenile filings which occur in each judicial district for purposes of estimating indigent defense costs. A copy of each report shall be provided to the public defender, the department of management, and the legislative fiscal bureau. The judicial department shall continue to assist in the development of an automated data system for use

in the sharing of information utilizing the generic program interface for legislative and executive branch uses.

Sec. 15. AUTOMATED DATA SYSTEM. The department of corrections, judicial district departments of correctional services, board of parole, and the judicial department shall continue to develop an automated data system for use in the sharing of information between the department of corrections, judicial district departments of correctional services, board of parole, and the judicial department. The information to be shared shall concern any individual who may, as the result of an arrest or infraction of any law, be subject to the jurisdiction of the department of corrections, judicial district departments of correctional services, or board of parole. The department of corrections, in consultation and cooperation with the judicial district departments of correctional services, the board of parole, and the judicial department, shall provide a report concerning the development of the automated data system to the co-chairpersons and ranking members of the joint appropriations subcommittee on the justice system and the legislative fiscal bureau, on or before January 15, 1999.

Sec. 16. IOWA LAW ENFORCEMENT ACADEMY. There is appropriated from the general fund of the state to the Iowa law enforcement academy for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For salaries, support, maintenance, miscellaneous purposes, including jailer training and technical assistance, and for not more than the following full-time equivalent positions:

.....	$	1,191,922
.....	FTEs	27.05

It is the intent of the general assembly that the Iowa law enforcement academy may provide training of state and local law enforcement personnel concerning the recognition of and response to persons with Alzheimer's disease.

If Senate File 530 is enacted into law by the Seventy-seventh General Assembly, 1998 Session,* then the full-time equivalent positions authorized in this subsection shall be increased by 1.50 FTEs.

2. For salaries, support, maintenance, and miscellaneous purposes to provide statewide coordination of the drug abuse resistance education (D.A.R.E.) program:

.....	$	80,000

3. The Iowa law enforcement academy may annually select at least five automobiles of the department of public safety, division of the Iowa state patrol, prior to turning over the automobiles to the state vehicle dispatcher to be disposed of by public auction and the Iowa law enforcement academy may exchange any automobile owned by the academy for each automobile selected if the selected automobile is used in training law enforcement officers at the academy. However, any automobile exchanged by the academy shall be substituted for the selected vehicle of the department of public safety and sold by public auction with the receipts being deposited in the depreciation fund to the credit of the department of public safety, division of the Iowa state patrol.

Sec. 17. BOARD OF PAROLE. There is appropriated from the general fund of the state to the board of parole for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, including maintenance of an automated docket and the board's automated risk assessment model, employment of two statistical research analysts to assist with the application of the risk assessment model in the parole decision-making process, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	978,551
.....	FTEs	18.00

* See chapter 1101 herein

A portion of the funds appropriated in this section shall be used to continue a pilot program for probation violations in the sixth judicial district department of correctional services. Data shall be maintained to evaluate the pilot program.

Sec. 18. DEPARTMENT OF PUBLIC DEFENSE. There is appropriated from the general fund of the state to the department of public defense for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. MILITARY DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	4,446,396
.....	FTEs	231.76

Of the full-time equivalent positions (FTEs) appropriated for in this subsection, 4.50 FTEs represent the transition of personnel services contractors to full-time equivalent position status. The merit system provisions of chapter 19A, collective bargaining agreement provisions of chapter 20, and the state and union collective bargaining agreements, as these relate to the filling of positions, shall not govern movement of these 4.50 FTEs into the full-time equivalent position status during the period beginning July 1, 1998, and ending August 31, 1998.

If there is a surplus in the general fund of the state for the fiscal year ending June 30, 1999, within 60 days after the close of the fiscal year, the military division may incur up to an additional $500,000 in expenditures from the surplus prior to transfer of the surplus pursuant to section 8.57.

2. EMERGENCY MANAGEMENT DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	609,678
.....	FTEs	25.25

Of the full-time equivalent positions (FTEs) appropriated for in this subsection, 10.00 FTEs represent the transition of personnel services contractors to full-time equivalent position status. The merit system provisions of chapter 19A, collective bargaining agreement provisions of chapter 20, and the state and union collective bargaining agreements, as these relate to the filling of positions, shall not govern movement of these 10.00 FTEs into the full-time equivalent position status during the period beginning July 1, 1998, and ending August 31, 1998.

If Senate File 530 is enacted into law by the Seventy-seventh General Assembly, 1998 Session,* then the full-time equivalent positions authorized in this subsection shall be increased by 2.00 FTEs.

In the event that the state and local assistance program under the federal emergency management agency requires additional matching state funds for participation by the state, the department of management shall transfer to the department of public defense, emergency management division, in accordance with section 8.39, sufficient funds to meet the additional matching funds requirement.

Sec. 19. DEPARTMENT OF PUBLIC SAFETY. There is appropriated from the general fund of the state to the department of public safety for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For the department's administrative functions, including the criminal justice information system, and for not more than the following full-time equivalent positions:

.....	$	2,391,481
.....	FTEs	38.80

* See chapter 1101 herein

2. For the division of criminal investigation and bureau of identification including the state's contribution to the peace officers' retirement, accident, and disability system provided in chapter 97A in the amount of 17 percent of the salaries for which the funds are appropriated, to meet federal fund matching requirements, and for not more than the following full-time equivalent positions:

..... $ 11,519,456
..... FTEs 219.00

Riverboat enforcement costs shall be billed in accordance with section 99F.10, subsection 4. The costs shall be not more than the department's estimated expenditures, including salary adjustment, for riverboat enforcement for the fiscal year.

The department of public safety, with the approval of the department of management, may employ no more than two special agents and four gaming enforcement officers for each additional riverboat regulated after July 1, 1998, and one special agent for each racing facility which becomes operational during the fiscal year which begins July 1, 1998. One additional gaming enforcement officer, up to a total of four per boat, may be employed for each riverboat that has extended operations to 24 hours and has not previously operated with a 24-hour schedule. Positions authorized in this paragraph are in addition to the full-time equivalent positions authorized in this subsection.

3. a. For the division of narcotics enforcement, including the state's contribution to the peace officers' retirement, accident, and disability system provided in chapter 97A in the amount of 17 percent of the salaries for which the funds are appropriated, to meet federal fund matching requirements, and for not more than the following full-time equivalent positions:

..... $ 2,790,316
..... FTEs 46.00

b. For the division of narcotics enforcement for undercover purchases:

..... $ 139,202

4. For the state fire marshal's office, including the state's contribution to the peace officers' retirement, accident, and disability system provided in chapter 97A in the amount of 17 percent of the salaries for which the funds are appropriated, and for not more than the following full-time equivalent positions:

..... $ 1,569,459
..... FTEs 31.80

5. For the capitol security division, including the state's contribution to the peace officers' retirement, accident, and disability system provided in chapter 97A in the amount of 17 percent of the salaries for which the funds are appropriated and for not more than the following full-time equivalent positions:

..... $ 1,297,452
..... FTEs 27.00

6. For costs associated with the maintenance of the automated fingerprint information system (AFIS):

..... $ 244,930

7. An employee of the department of public safety who retires after July 1, 1998, but prior to June 30, 1999, is eligible for payment of life or health insurance premiums as provided for in the collective bargaining agreement covering the public safety bargaining unit at the time of retirement if that employee previously served in a position which would have been covered by the agreement. The employee shall be given credit for the service in that prior position as though it were covered by that agreement. The provisions of this subsection shall not operate to reduce any retirement benefits an employee may have earned under other collective bargaining agreements or retirement programs.

8. For costs associated with the training and equipment needs of volunteer fire fighters and for not more than the following full-time equivalent positions:

..... $ 709,405
..... FTEs 0.50

Of the full-time equivalent positions (FTEs) appropriated for in this subsection, .50 FTEs represent the transition of personnel services contractors to full-time equivalent position status. The merit system provisions of chapter 19A, collective bargaining agreement provisions of chapter 20, and the state and union collective bargaining agreements, as these relate to the filling of positions, shall not govern movement of these .50 FTEs into the full-time equivalent position status during the period beginning July 1, 1998, and ending August 31, 1998.

Notwithstanding section 8.33, moneys appropriated in this subsection which remain unobligated or unexpended at the close of the fiscal year shall not revert to the general fund of the state but shall remain available only for the purpose designated in this subsection in the succeeding fiscal year.

9. For the state medical examiner and for not more than the following full-time equivalent positions:

.....	$	354,703
.....	FTEs	4.00

Any fees collected by the department of public safety for autopsies performed by the office of the state medical examiner shall be deposited in the general fund of the state.

Sec. 20. HIGHWAY SAFETY PATROL FUND. There is appropriated from the highway safety patrol fund created in section 80.41 to the division of the Iowa state patrol of the department of public safety, for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For salaries, support, maintenance, workers' compensation costs, and miscellaneous purposes, including the state's contribution to the peace officers' retirement, accident, and disability system provided in chapter 97A in the amount of 17 percent of the salaries for which the funds are appropriated, and for not more than the following full-time equivalent positions:

.....	$	36,207,514
.....	FTEs	574.25

Of the full-time equivalent positions (FTEs) appropriated for in this subsection, 6.25 FTEs represent the transition of personnel services contractors to full-time equivalent position status. The merit system provisions of chapter 19A, collective bargaining agreement provisions of chapter 20, and the state and union collective bargaining agreements, as these relate to the filling of positions, shall not govern movement of these 6.25 FTEs into the full-time equivalent position status during the period beginning July 1, 1998, and ending August 31, 1998.

It is the intent of the general assembly that, of the funds appropriated in this subsection, the division shall expend the amount necessary to provide the state match for the additional state troopers hired through the federal community-oriented policing services program and authorized pursuant to 1996 Iowa Acts, chapter 1216, section 22. It is the intent of the general assembly that once federal moneys for this program end, the division shall present proposals to the governor and the general assembly for continued funding of the state troopers described in this paragraph and for consideration of reducing the number of state troopers through attrition, by the same number as the number of troopers added through the federal program.

2. The division of the Iowa state patrol may expend an amount proportional to the costs that are reimbursable from the highway safety patrol fund created in section 80.41. Spending for these costs may occur from any unappropriated funds in the state treasury upon a finding by the department of management that all of the amounts requested and approved are reimbursable from the highway safety patrol fund. Upon payment to the highway safety patrol fund, the division of the Iowa state patrol shall credit the payments necessary to reimburse the state treasury.

3. For payment to the department of personnel for expenses incurred in administering the merit system on behalf of the division of the Iowa state patrol:
..... $ 22,098

Sec. 21. Section 89.4, Code 1997, is amended by adding the following new subsection:
NEW SUBSECTION. 4. Jacketed direct or indirect fired vessels built and installed in accordance with the American Society of Mechanical Engineers Code, section VIII, division 1, appendix 19, shall not be considered boilers or power boilers for purposes of this chapter and shall not be required to meet the American Society of Mechanical Engineers standard for controls and safety devices for automatically fired boilers. However, jacketed direct or indirect fired vessels as described in this subsection shall be subject to inspection under section 89.3 as pressure vessels.

*Sec. 22. *1997 Iowa Acts, chapter 205, section 4, subsection 1, paragraph i, is amended to read as follows:*

i. For the operation of the Fort Dodge correctional facility, including salaries, support, maintenance, employment of correctional officers, miscellaneous purposes, and for not more than the following full-time equivalent positions:
..... *$ 9,540,122*
..... *FTEs 149.00*
*Notwithstanding section 8.33, moneys appropriated in this lettered paragraph which remain unobligated or unexpended at the close of the fiscal year shall not revert to the general fund of the state but shall remain available to the department of corrections to be used for the reimbursement of operational expenses of correctional facilities in which revenues recouped from inmate earnings by a correctional facility are insufficient to fully provide for the operational expenses of the facility in the succeeding fiscal year.**

Sec. 23. 1997 Iowa Acts, chapter 205, section 22, is amended to read as follows:
SEC. 22. DEPARTMENT OF CORRECTIONS — FACILITY REMODELING FUND. Notwithstanding sections 8.33, 8.39, and 602.8108A, the department of corrections shall direct the treasurer of state to transfer on June 30, 1997, $1,600,000 of the unused balance of funds in the Iowa prison infrastructure fund created in section 602.8108A, to a facility remodeling fund created in the state treasury and under the control of the department of corrections. Moneys in the facility remodeling fund shall be used by the department solely for the purpose of remodeling a structure in the fifth judicial district department of correctional services for use as a residential facility.
Notwithstanding section 8.33, moneys transferred and appropriated in this subsection which remain unobligated or unexpended at the close of the fiscal year shall not revert to the fund from which the moneys were transferred but shall remain available only for the purpose designated in this section in the succeeding fiscal year.

Sec. 24. COURT OF APPEALS — LOCATION. Notwithstanding the provisions of section 602.5104, the court of appeals may, commencing with the effective date of this section and ending on June 30, 1999, meet at a location other than the seat of state government and hold court sessions at a location other than the courtroom of the supreme court at the statehouse.

Sec. 25. DEPARTMENT OF CORRECTIONS — PRISON INFRASTRUCTURE FUND. Notwithstanding sections 8.33, 8.39, and 602.8108A, the department of corrections shall direct the treasurer of state to transfer on June 30, 1998, $1,000,000 of the unused balance of moneys in the Iowa prison infrastructure fund created in section 602.8108A, to the department of corrections to be used for the purposes designated:
1. For use as matching funding for federal violent offender incarceration/truth in sentencing funds to construct a 200-bed facility at Mitchellville:
..... $ 600,000

* Item veto; see message at end of the Act

2. For renovation of the power plant and improvements to the water system at the Iowa correctional institution for women:
..... $ 100,000
3. For the installation of perimeter fencing at the Mt. Pleasant correctional facility:
..... $ 300,000

Sec. 26. SENTENCING STUDY — EXTENSION. The legislative council is requested to extend through the 1998 interim the authorization for the criminal sentencing interim study committee established by the legislative council in 1997 so that the interim committee can continue to review the sentencing reform efforts in other states and consider whether any of those reforms should be implemented in Iowa.

Sec. 27. PRIVATE INDUSTRY EMPLOYMENT OF INMATES STUDY. The legislative council is requested to establish an interim study committee concerning private industry employment of inmates under the custody of the department of corrections. The interim study shall include examination of the costs associated with permitting private industry to lease building space from the department of corrections for the employment of inmates, the economic impact of private industry employment, including the recoupment of inmate earnings, on the department of corrections, the benefits of private industry employment for inmates, and the effect of permitting private industry employment of inmates on private sector industry and employment.

Sec. 28. EFFECTIVE DATES.
1. Section 1, subsections 3 and 4, of this Act, relating to Iowa competition law or antitrust actions and to civil consumer fraud actions, being deemed of immediate importance, take effect upon enactment.
2. Section 8 of this Act, relating to the encumbrance of certain moneys appropriated to the department of corrections for the fiscal year commencing July 1, 1997, being deemed of immediate importance, takes effect upon enactment.
3. Section 21 of this Act, amending section 89.4, being deemed of immediate importance, takes effect upon enactment.
4. Section 22 of this Act, concerning reversion of money from the Fort Dodge correctional facility, being deemed of immediate importance, takes effect upon enactment.
5. Section 23 of this Act, concerning the facility remodeling fund, being deemed of immediate importance, takes effect upon enactment.
6. Section 24 of this Act, concerning the Iowa court of appeals, being deemed of immediate importance, takes effect upon enactment.
7. Section 25 of this Act, concerning the prison infrastructure fund, being deemed of immediate importance, takes effect upon enactment.

Approved May 21, 1998, except the items which I hereby disapprove and which are designated as Section 4, subsection 3, in its entirety; those portions of Section 5 which are herein bracketed in ink and initialed by me; Section 8 in its entirety; and Section 22 in its entirety. My reasons for vetoing these items are delineated in the item veto message pertaining to this Act to the Secretary of State this same date, a copy of which is attached hereto.

TERRY E. BRANSTAD, *Governor*

Dear Mr. Secretary:

I hereby transmit House File 2539, an Act relating to and making appropriations to the justice system and providing effective dates.

House File 2539 is, therefore, approved on this date with the following exceptions, which I hereby disapprove.

I am unable to approve the item designated as Section 4, subsection 3, in its entirety. This item requires the Department of Corrections to timely fill all correctional positions. This language fails to account for the difficult circumstances that necessitate flexibility for the department in managing its operations.

I am unable to approve the first designated portion of Section 5. This item would require twenty-one calendar days notice to the appropriations subcommittee before the Department of Corrections can enter into a contract with a private corporation for the purposes of providing employment to inmates under the department's jurisdiction. Contracting for such purposes is more appropriately an executive branch responsibility.

I am unable to approve the second designated portion of Section 5. This item would preclude the Department of Corrections from entering into a contract with a private sector entity to operate a facility that houses inmates. The department is currently studying this issue and it would be inappropriate to impose such a restriction until the outcome of the study has been determined.

I am unable to approve the item designated as Section 8, in its entirety. This item would allow all unspent 1998 appropriations for the Department of Corrections to carry forward and be spent in fiscal year 1999. It is inappropriate to use one-time funding for ongoing expenses.

I am unable to approve the item designated as Section 22, in its entirety. This item would allow all unspent 1998 appropriations for the Fort Dodge prison to carry forward and be spent in fiscal year 1999. It is inappropriate to use one-time funding for ongoing expenses.

For the above reasons, I hereby respectfully disapprove these items in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in House File 2539 are hereby approved as of this date.

Sincerely,
TERRY E. BRANSTAD, *Governor*

CHAPTER 1223

SUPPLEMENTAL AND OTHER APPROPRIATIONS
AND MISCELLANEOUS PROVISIONS

H.F. 2395

AN ACT relating to public expenditure and regulatory matters and making supplemental and other appropriations for the fiscal year beginning July 1, 1997, and subsequent fiscal years, and providing effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I

Section 1. DEPARTMENT OF GENERAL SERVICES. There is appropriated from the general fund of the state to the department of general services for the fiscal year beginning July 1, 1997, and ending June 30, 1998, to supplement the appropriations made in 1997 Iowa Acts, chapter 211, section 6, subsection 5, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For utility costs:

..... $ 60,000

Sec. 2. 1997 Iowa Acts, chapter 215, section 2, subsections 6 and 7, are amended to read as follows:

6. For the installation of storm drainage, grading, new asphalt, new lighting, ~~and striping of capitol complex parking lots 4 and 5 in accordance with capitol complex renovation plans, provided that not more than $450,000 shall be used for lot 4 and not more than $105,000 shall be used for lot 5, and provided that existing capitol complex construction plans do not conflict with the parking lot improvements:~~

..... $ ~~555,000~~

~~7.~~ ~~For~~ filling cracks, resurfacing, new handicapped parking signs which comply with the provisions of chapter 321L, as amended by 1997 Iowa Acts, House File 688,* and striping capitol complex parking lots 13, 4, 5, and 15 in accordance with capitol complex renovation plans, ~~provided that not more than $100,750 shall be used for lot 13 and not more than $75,000 shall be used for lot 15, and~~ provided that existing capitol complex construction plans do not conflict with the parking lot improvements:

..... $ ~~175,750~~
730,750

Sec. 3. DEPARTMENT OF CORRECTIONS. There is appropriated from the rebuild Iowa infrastructure fund to the department of corrections for the fiscal year beginning July 1, 1997, and ending June 30, 1998, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For construction of buildings to provide work space for prisoners:

..... $ 2,200,000

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2000, from the funds appropriated in this section shall revert to the rebuild Iowa infrastructure fund.

Sec. 4. DEPARTMENT OF EDUCATION — SUBSIDIZATION FUND. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 1997, and ending June 30, 1998, to supplement the appropriations made in 1997 Iowa Acts, chapter 210, section 2, subsection 2, paragraph "a", the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For the subsidization of video rates:

..... $ 720,000

Sec. 5. DEPARTMENT OF EDUCATION. There is appropriated from the general fund of the state to the public broadcasting division of the department of education for the fiscal year beginning July 1, 1997, and ending June 30, 1998, to supplement the appropriations made in 1997 Iowa Acts, chapter 212, section 7, subsection 7, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For a study of the digital television conversion:

..... $ 150,000

Notwithstanding section 8.33, any unobligated or unencumbered funds remaining at the end of the fiscal year shall not revert to the general fund of the state but shall be available for expenditure during the following fiscal year for the purpose designated in this section.

Sec. 6. DEPARTMENT OF NATURAL RESOURCES. There is appropriated from the general fund of the state to the department of natural resources for the fiscal year beginning July 1, 1997, and ending June 30, 1998, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For the value of sick leave pay that needs to be paid out due to retirement of personnel in the parks and preserves division:

..... $ 350,000

Sec. 7. DEPARTMENT OF NATURAL RESOURCES. There is appropriated from the state fish and game protection fund created in section 456A.17 to the department of natural

* See 1997 Iowa Acts, chapter 70

resources for the fiscal year beginning July 1, 1997, and ending June 30, 1998, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For the value of sick leave pay that needs to be paid out due to retirement of personnel in the fish and wildlife division:

..... $ 245,000

Sec. 8. JUDICIAL DEPARTMENT. There is appropriated from the rebuild Iowa infrastructure fund to the judicial department for the fiscal year beginning July 1, 1997, and ending June 30, 1998, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For design and development of a new judicial building:

..... $ 1,700,000

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2000, from the funds appropriated in this section shall revert to the rebuild Iowa infrastructure fund on August 31, 2000.

Sec. 9. ENHANCED COURT COLLECTIONS FUND. Notwithstanding section 602.1304, subsection 2, for the fiscal year beginning July 1, 1997, and ending June 30, 1998, the maximum deposit amount for the enhanced court collections fund shall be $6,000,000. For succeeding fiscal years, the maximum deposit amount shall be determined in accordance with section 602.1304, subsection 2, and the maximum deposit amount shall not be increased due to the increase made in this section.

Sec. 10. 1997 Iowa Acts, chapter 215, section 11, is amended to read as follows:

SEC. 11. There is appropriated from the marine fuel tax receipts deposited in the general fund of the state to the department of natural resources for the fiscal year beginning July 1, 1997, and ending June 30, 1998, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For the purpose of funding capital projects funded from marine fuel tax receipts for the purposes specified in section 452A.79:

..... $ 1,800,000

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, ~~1998~~ 1999, from the funds appropriated in this section, shall revert to the general fund of the state on August 31, ~~1998~~ 1999.

Sec. 11. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION II

Sec. 12. EXCESS LOTTERY REVENUES FISCAL YEAR 1994-1995. Of the lottery revenues received during the fiscal year beginning July 1, 1994, which remain in the lottery fund following the transfers made pursuant to 1995 Iowa Acts, chapter 220, section 16, 1996 Iowa Acts, chapter 1219, section 14, and 1997 Iowa Acts, chapter 209, section 10, the following amounts are appropriated or so much thereof as is necessary, for the fiscal year beginning July 1, 1997, and ending June 30, 1998, to be used for the purposes designated:

1. To the department of general services, division of information and technology services, for development and other start-up costs to establish a single contact repository implementing the provisions of this Act requiring the establishment of a single contact repository and first-year operational costs of the repository:

..... $ 125,000

2. To the department of human services for a grant to a county with a population between 168,000 and 175,000 for implementation of the county's runaway assessment and treatment plan under section 232.195:

..... $ 125,000

The grant shall be administered by the county's board of supervisors in consultation with the local runaway and treatment task force.

3. To the department of personnel for support of 2.00 FTEs in program administration and development for the deferred compensation program in addition to other authorized full-time equivalent positions in fiscal year 1998-1999:

..... $ 125,000

*4. *To the department of agriculture and land stewardship for the state-federal laboratory for operation and testing:*

..... $ *109,000**

Any lottery revenues remaining in the lottery fund at the end of the fiscal year beginning July 1, 1997, as a result of not being appropriated or as a result of a veto of any appropriation made in this section shall be transferred to the general fund of the state. Notwithstanding section 8.33, moneys appropriated in this section which remain unobligated or unexpended for the purpose designated shall not revert at the end of the fiscal year beginning July 1, 1997, but shall remain available for the purpose designated in the succeeding fiscal year. Moneys which revert at the end of the succeeding fiscal year shall be transferred to the general fund of the state.

Sec. 13. BUILDING INSPECTION.

1. The appropriation made in 1998 Iowa Acts, House File 2498, if enacted, to the department of inspections and appeals, health facilities division,** is reduced by $90,000. The requirement in that appropriation for the health facilities division to use $90,000 to pay the salary, support, and miscellaneous expenses of a building inspector position is void and the provisions of subsection 2 are substituted in lieu of that requirement.

2. Notwithstanding section 8.33 and the reversionary provisions of 1997 Iowa Acts, chapter 209, section 10, unnumbered paragraph 2, of the moneys appropriated in 1997 Iowa Acts, chapter 209, section 10, subsection 5, which remain unobligated or unexpended at the close of the fiscal year beginning July 1, 1997, $90,000, or so much thereof as is available, shall not revert but shall be transferred to the department of inspections and appeals, health facilities division. The transferred moneys shall be used in the succeeding fiscal year to contract for the performance of building inspections. Moneys transferred pursuant to this section which revert at the end of the fiscal year beginning July 1, 1998, shall be transferred to the general fund of the state.

Sec. 14. FISCAL YEAR 1998-1999 LOTTERY TRANSFER. Notwithstanding the requirement in section 99E.10, subsection 1, to transfer lottery revenue remaining after expenses are deducted, notwithstanding the requirement under section 99E.20, subsection 2, for the commissioner to certify and transfer a portion of the lottery fund to the CLEAN fund, and notwithstanding the appropriations and allocations in section 99E.34, all lottery revenues received during the fiscal year beginning July 1, 1998, and ending June 30, 1999, after deductions as provided in section 99E.10, subsection 1, and as appropriated under any Act of the Seventy-seventh General Assembly, 1998 Session, shall not be transferred to and deposited into the CLEAN fund but shall be transferred and credited to the general fund of the state.

Sec. 15. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION III

Sec. 16. Section 15.241, subsection 1, unnumbered paragraph 4, as enacted by 1998 Iowa Acts, House File 2435,*** section 1, is amended to read as follows:

Payments of interest, recaptures of awards, and repayments of moneys loaned under this program shall be deposited into the strategic investment fund. Receipts from loans or grants

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* Item veto; see message at end of the Act

** See chapter 1217, §8 herein

*** Chapter 1045 herein

under the business development initiative for entrepreneurs with disabilities ~~program~~ may be maintained in a separate account within the fund.

Sec. 17. Section 15E.195, Code Supplement 1997, is amended to read as follows:

15E.195 ENTERPRISE ZONE COMMISSION.

1. A county which designates an enterprise zone pursuant to section 15E.194, subsection 1, and in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone designated pursuant to section 15E.194, subsection 1, to receive incentives or assistance as provided in section 15E.196. The enterprise zone commission shall also review applications from qualified housing businesses requesting to receive incentives or assistance as provided in section 15E.193A. The commission shall consist of nine members. Five of these members shall consist of one representative of the board of supervisors, one member with economic development expertise chosen by the department of economic development, one representative of the county zoning board, one member of the local community college board of directors, and one representative of the local workforce development center. These five members shall select the remaining four members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining four members shall be a representative of that ~~zone~~ community. ~~However, if the enterprise zone qualifies under the city criteria, one of the four members shall be a representative of an international labor organization and if an enterprise zone is located in any city, a representative, chosen by the city council, of each such city may be a member of the commission.~~ A county shall have only one enterprise zone commission to review applications for incentives and assistance for businesses located within or requesting to locate within a certified enterprise zone designated pursuant to section 15E.194, subsection 1.

2. The commission may adopt more stringent requirements, including requirements related to compensation and benefits, for a business to be eligible for incentives or assistance than provided in ~~section~~ sections 15E.193 and 15E.193A. The commission may develop as an additional requirement that preference in hiring be given to individuals who live within the enterprise zone. The commission shall work with the local workforce development center to determine the labor availability in the area. The commission shall examine and evaluate building codes and zoning in the enterprise zone and make recommendations to the appropriate governing body in an effort to promote more affordable housing development.

3. If the enterprise zone commission determines that a business qualifies ~~for inclusion in an enterprise zone~~ and is eligible to receive incentives or assistance as provided in either section 15E.193A or section 15E.196, the commission shall submit an application for incentives or assistance to the department of economic development. The department may approve, defer, or deny the application.

4. In making its decision, the commission or department shall consider the impact of the eligible business on other businesses in competition with it and compare the compensation package of businesses in competition with the business being considered for incentives or assistance. The commission or department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for incentives or assistance. The commission or department shall also make a good faith effort to determine the probability that the proposed incentives or assistance will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking incentives or assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

However, if the commission or department finds that an eligible business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the

eligible business shall not qualify for incentives or assistance under section 15E.193A or section 15E.196, unless the commission or department finds that the violations did not seriously affect public health or safety or the environment, or if it did that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether an eligible business is eligible for incentives or assistance under section 15E.193A or section 15E.196, the commission or department shall be exempt from chapter 17A. If requested by the commission or department, the business shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the commission or department in assessing the nature of any violation.

5. A business that is approved to receive incentives or assistance shall, for the length of its designation as an enterprise zone business, certify annually to the county or city, as applicable, and the department of economic development its compliance with the requirements of either section 15E.193 or section 15E.193A.

Sec. 18. Section 69.2, subsection 7, Code 1997, is amended to read as follows:

7. The board of supervisors declares a vacancy in an elected county office upon finding that the county officer has been physically absent from the county for sixty consecutive days except in the case of a medical emergency; temporary active military duty; or temporary service with another government service, agency, or department.

Sec. 19. Section 97B.49B, subsection 3, paragraph b, subparagraph (6), if enacted in 1998 Iowa Acts, House File 2496,* section 36, is amended to read as follows:

(6) For the fiscal year commencing July 1, 1994, and each succeeding fiscal year through the fiscal year ending June 30, 1998, each judicial district department of correctional services shall pay to the department of personnel from funds appropriated to that judicial district department of correctional services, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees ~~covered under subsection 1, paragraph "d", subparagraph (7)~~ of a judicial district department of correctional services who are employed as a probation officer III or a parole officer III.

Sec. 20. Section 135C.33, subsection 5, if enacted by 1998 Iowa Acts, House File 2275,** is amended by adding the following new paragraphs:

NEW PARAGRAPH. d. An employee of an elder group home certified under chapter 231B, if the employee provides direct services to consumers.

NEW PARAGRAPH. e. An employee of an assisted living facility certified or voluntarily accredited under chapter 231C, if the employee provides direct services to consumers.

Sec. 21. Section 135C.33, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 6. The department of inspections and appeals, in conjunction with other departments and agencies of state government involved with criminal history and abuse registry information, shall establish a single contact repository for facilities and other providers to have electronic access to data to perform background checks for purposes of employment, as required of the facilities and other providers under this section.

Sec. 22. Section 200.14, subsection 1A, as enacted by 1998 Iowa Acts, Senate File 2082,*** section 1, is amended to read as follows:

1A. Anhydrous ammonia equipment shall be installed and maintained in a safe operating condition and in conformity with rules adopted by the secretary. A person shall not intentionally tamper with anhydrous ammonia equipment. Tampering occurs when a person who is not authorized by the owner of anhydrous ammonia equipment uses the equipment in violation of a provision of this chapter, including a rule adopted by the secretary. A person~~,~~ shall not in any manner or for any purpose sell, fill, refill, deliver, permit to be

* Chapter 1183 herein
** Chapter 1141, §2 herein
*** Chapter 1004 herein

delivered, or use an anhydrous ammonia container or receptacle, including for the storage of any gas or compound, unless the person owns the container or receptacle or is authorized to do so by the owner. A person shall not possess or transport anhydrous ammonia in a container or receptacle which is not authorized by the secretary to hold anhydrous ammonia.

Sec. 23. Section 260A.1, subsection 2, Code Supplement 1997, is amended to read as follows:

2. Moneys appropriated in subsection 1 shall be allocated by the department of education to each community college ~~in the proportion that the allocation to that community college in 1996 Iowa Acts, chapter 1215, section 6, subsection 15, bears to the total appropriation made in 1996 Iowa Acts, chapter 1215, section 6, subsection 15, to all community colleges~~ on the basis of each community college's share of overall community college student enrollment. The overall enrollment and each community college district's share of the overall enrollment shall be determined utilizing refined enrollment reporting methods approved by the department of education using data from the most recently concluded fiscal year. The department of education shall determine enrollment share percentages for each community college district for purposes of allocating the moneys.

Sec. 24. Section 279.51, subsection 1, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, ~~1997~~ 1998, and each succeeding fiscal year, the sum of fifteen million ~~one~~ three hundred ~~seventy~~ sixty thousand dollars.

Sec. 25. Section 279.51, subsection 1, paragraph b, Code Supplement 1997, is amended to read as follows:

b. For the fiscal year beginning July 1, ~~1997~~ 1998, and for each succeeding fiscal year, eight million ~~three~~ five hundred ~~twenty~~ ten thousand dollars of the funds appropriated shall be allocated to the child development coordinating council established in chapter 256A for the purposes set out in subsection 2 of this section and section 256A.3.

Sec. 26. Section 321.453, Code 1997, as amended by 1998 Iowa Acts, Senate File 2081,* section 1, is amended to read as follows:

321.453 EXCEPTIONS.

The provisions of this chapter governing size, weight, and load, and the permit requirements of chapter 321E do not apply to fire apparatus, ~~to~~ road maintenance equipment owned by or under lease to any state or local authority, implements of husbandry temporarily moved upon a highway, implements of husbandry moved from farm site to farm site or between the retail seller and a farm purchaser, implements of husbandry moved between any site and the site of an agricultural exposition or a fair administered pursuant to chapter 173 or 174, indivisible implements of husbandry temporarily moved between the place of manufacture and a retail seller or a farm purchaser, implements of husbandry received and moved by a retail seller of implements of husbandry in exchange for a purchased implement, or implements of husbandry moved for repairs, except on any part of the interstate highway system. A vehicle, carrying an implement of husbandry, which is exempted from the permit requirements under this section shall be equipped with an amber flashing light under section 321.423, shall be equipped with warning flags on that portion of the vehicle which protrudes into oncoming traffic, and shall only operate from thirty minutes prior to sunrise to thirty minutes following sunset. The one hundred-mile distance restriction contained in the definition of implement of husbandry in section 321.1 does not apply to this section.

Sec. 27. If the amendment to section 421.40, unnumbered paragraph 3, Code 1997, contained in 1998 Iowa Acts, House File 2530, is enacted,** that amendment shall prevail

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* Chapter 1003 herein

** House File 2530 not enacted

over the amendment to section 421.40, unnumbered paragraph 3, Code 1997, contained in 1998 Iowa Acts, Senate File 518,*[1] section 39.

Sec. 28. 1998 Iowa Acts, House File 2290, section 7, if enacted,*[2] is amended to read as follows:

SEC. 7. EFFECTIVE DATE. Section 6 of this Act, being deemed of immediate importance, takes effect upon enactment. Section 5 of this Act takes effect December 15, 1998, and applies to nonresident deer hunting licenses for calendar years beginning on or after January 1, 1999.

Sec. 29. Section 483A.8, subsection 3, Code 1997, as amended by 1998 Iowa Acts, Senate File 187,*[3] section 10, is amended to read as follows:

3. A nonresident hunting deer is required to have a nonresident deer license and must pay the wildlife habitat fee. The commission shall annually limit to ~~six~~ seven thousand five hundred licenses the number of nonresidents allowed to have deer hunting licenses. The number of nonresident deer hunting licenses shall be determined as provided in section 481A.38. The commission shall allocate the nonresident deer hunting licenses issued among the zones based on the populations of deer. However, a nonresident applicant may request one or more hunting zones, in order of preference, in which the applicant wishes to hunt. If the request cannot be fulfilled, the applicable fees shall be returned to the applicant. A nonresident applying for a deer hunting license must exhibit proof of having successfully completed a hunter safety and ethics education program as provided in section 483A.27 or its equivalent as determined by the department before the license is issued.

Sec. 30. 1998 Iowa Acts, Senate File 187, section 27, if enacted,*[3] is amended to read as follows:

SEC. 27. EFFECTIVE AND APPLICABILITY DATES. This Act takes effect December 15, 1998, and applies to licenses and fees for hunting, fishing, fur harvesting, and related wildlife and game activities for ~~the~~ calendar ~~year~~ years beginning on or after January 1, 1999.

Sec. 31. Section 692A.13, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 9. The department shall provide information for purposes of the single contact repository established pursuant to section 135C.33, in accordance with rules adopted by the department.

Sec. 32. 1998 Iowa Acts, Senate File 2406, section 13, if enacted,*[4] is amended to read as follows:

SEC. 13. IOWA EMPOWERMENT BOARD. The Iowa empowerment board shall adopt rules, arrange for technical assistance, provide guidance, and take other actions needed to assist the designation of community empowerment areas and creation of community empowerment boards and to enable the community empowerment area boards to submit school ready children grant plans in a timely manner for the initial grants to be awarded and grant moneys to be paid. For the initial grants, plans shall be submitted by September 1, 1998, or by ~~January 1, 1999~~ December 1, 1998, in accordance with criteria established by the board. The Iowa board shall submit to the governor and the general assembly a proposed funding formula for distribution of school ready children grant moneys as necessary for statewide implementation of the grant program for the fiscal year beginning July 1, 1999, and subsequent fiscal years.

Sec. 33. 1998 Iowa Acts, Senate File 2410, section 83, subsection 7, if enacted,*[5] is amended to read as follows:

7. Section 15, subsection 19, paragraph ~~"b"~~ "a", relating to authority to use moneys for support of the child welfare services work group.

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*[1] Chapter 1164 herein
*[2] Chapter 1203 herein
*[3] Chapter 1199 herein
*[4] Chapter 1206 herein
*[5] Chapter 1218 herein

Sec. 34. Section 514I.7, subsection 2, paragraph e, if enacted by 1998 Iowa Acts, House File 2517,*[1] section 9, is amended to read as follows:

e. Is not currently covered under or was not covered within the prior six months under a group health plan as defined in 42 U.S.C. § ~~300Ggg-91(a)(1)~~ 300gg-91(a)(1) or other health benefit plan, unless the coverage was involuntarily lost or unless dropping the coverage is allowed by rule of the board.

Sec. 35. 1998 Iowa Acts, House File 2162,*[2] sections 34 and 42, are repealed.

Sec. 36. 1998 Iowa Acts, House File 2538,*[3] section 2, amending section 15E.195, is repealed.

Sec. 37. 1998 Iowa Acts, House File 2164,*[4] section 11, amending section 15E.195, subsection 1, is repealed.

Sec. 38. EFFECTIVE DATE. The following provisions of this division of this Act, being deemed of immediate importance, take effect upon enactment:

1. Section 18, amending section 69.2.
2. Section 22, amending section 200.14.
3. Section 32, amending 1998 Iowa Acts, Senate File 2406,*[5] section 13.
4. Section 33, amending 1998 Iowa Acts, Senate File 2410,*[6] section 83, subsection 7.
5. Section 34, amending section 514I.7, if enacted by 1998 Iowa Acts, House File 2517,*[1] section 9.

DIVISION IV

Sec. 39. NEW SECTION. 327H.20A RAILROAD REVOLVING LOAN FUND.

A railroad revolving loan fund is established in the office of the treasurer of state under the control of the department. Moneys in this fund shall be expended for loans to provide assistance for the restoration, conservation, improvement, and construction of railroad main lines, branch lines, switching yards, sidings, rail connections, intermodal yards, highway grade separations, and other railroad-related improvements. The department shall administer a program for the granting and administration of loans under this section. The department may enter into agreements with railroad corporations, the United States government, cities, counties, and other persons for carrying out the purposes of this section. Moneys received as loan repayments shall be credited to the railroad revolving loan fund. Notwithstanding section 8.33, moneys in the railroad revolving loan fund shall not revert to the general fund of the state but shall remain available indefinitely for expenditure under this section.

Sec. 40. RAILROAD REVOLVING FUND. There is appropriated from the general fund of the state to the state department of transportation for the fiscal year beginning July 1, 1998, and ending June 30, 1999, for deposit in the railroad revolving loan fund established in section 327H.20A, an amount equal to the amount of loan repayments made under section 327H.18 and chapter 327I that exceed one million one hundred ninety thousand dollars during fiscal year 1998-1999.

Approved May 21, 1998, except the item which I hereby disapprove and which is designated as that portion of Section 12, subsection 4, which is herein bracketed in ink and initialed by me. My reasons for vetoing this item are delineated in the item veto message pertaining to this Act to the Secretary of State this same date, a copy of which is attached hereto.

TERRY E. BRANSTAD, *Governor*

*[1] Chapter 1196 herein
*[2] Chapter 1100 herein
*[3] Chapter 1179 herein
*[4] Chapter 1175 herein
*[5] Chapter 1206 herein
*[6] Chapter 1218 herein

Dear Mr. Secretary:

I hereby transmit House File 2395, an Act relating to public expenditure and regulatory matters and making supplemental and other appropriations for the fiscal year beginning July 1, 1997, and subsequent fiscal years, and providing effective dates.

House File 2395 is, therefore, approved on this date with the following exception, which I hereby disapprove.

I am unable to approve the designated portion of Section 12, subsection 4. This item would appropriate unspent fiscal year 1995 lottery funds for operating and testing costs of the state-federal animal health laboratory. It is inappropriate to use one-time funding for ongoing operational expenses.

For the above reason, I hereby respectfully disapprove this item in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in House File 2395 are hereby approved as of this date.

Sincerely,
TERRY E. BRANSTAD, *Governor*

CHAPTER 1224

APPROPRIATIONS — STATE GOVERNMENT TECHNOLOGY AND OPERATIONS

S.F. 2418

AN ACT relating to state government technology and operations, by making and relating to appropriations to the Iowa communications network for the connection and support of certain Part III users, making appropriations to various entities for other technology-related purposes, providing for the procurement of information technology, establishing the IowAccess system, providing for the use of the network, making miscellaneous related changes, and providing effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

ICN APPROPRIATIONS

Section 1. TREASURER OF STATE. There is appropriated from the general fund of the state to the treasurer of state for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For debt service:

..... $ 12,782,000

Funds appropriated in this section shall be deposited in a separate fund established in the office of the treasurer of state, to be used solely for debt service for the Iowa communications network. The Iowa telecommunications and technology commission shall certify to the treasurer of state when a debt service payment is due, and upon receipt of the certification the treasurer shall make the payment. The commission shall pay any additional amount due from funds deposited in the Iowa communications network fund.

Sec. 2. PART III NETWORK COSTS — SUBSIDIZATION FUND.

1. There is appropriated from the general fund of the state to the Iowa telecommunications and technology commission for the fiscal year beginning July 1, 1998, and ending

June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated in this subsection:

a. For the subsidization of operations of the network as a result of charging authorized users video rates which generate less revenue than necessary to cover associated costs of the network, and consistent with chapter 8D:

..... $ 3,735,000

b. For the transfer of 2.00 FTEs from the public broadcasting division of the department of education to the Iowa telecommunications and technology commission:

..... $ 35,134

2. Funds appropriated in subsection 1 shall be deposited in an Iowa communications network operations account established as a separate account in the office of the treasurer of state. Funds deposited in this account shall be under the control of and used by the Iowa telecommunications and technology commission for the operational costs associated with the network.

3. Notwithstanding section 8.33 or 8.39, any balance remaining from the appropriation in this section shall not revert to the general fund of the state but shall remain in the Iowa communications network operations account and be available for expenditure during the subsequent fiscal year for the same purpose, and shall not be transferred to any other program.

4. Notwithstanding any contrary provisions, all receipts collected for sales and services provided by the network shall be deposited in the Iowa communications network operations account.

*5. *a. Except as provided in paragraph "b", the commission shall not expend funds from the Iowa communications network operations account in excess of $32,000,000 for the fiscal year beginning on July 1, 1998, and ending June 30, 1999.*

b. (1) Notwithstanding paragraph "a", if an amount up to $4,000,000 is deposited pursuant to section 6 of this Act into the Iowa communications network operations account in excess of the $32,000,000 limitation, the commission shall expend such funds for the replacement of optical components of the network as provided in section 6, subsection 3, paragraph "m", of this Act.

(2) Notwithstanding paragraph "a", if any amount is deposited into the Iowa communications network operations account, or appropriated to the Iowa telecommunications and technology commission or to the network, pursuant to any other Act enacted by the general assembly during the 1998 regular session, the commission may expend such funds only for the purpose designated in such Act.

(3) Notwithstanding paragraph "a", if any amount is deposited into the Iowa communications network operations account from a federal grant or other federal source for a specific purpose, the commission may expend such funds only for the purpose designated for such funds.

*(4) Notwithstanding paragraph "a", amounts expended by the commission for the purchase of equipment on behalf of other state agencies or departments which are reimbursed by such state agency or department shall not be included in the total for purposes of the expenditure limit established in paragraph "a". The commission shall file a report electronically within 15 days of the end of each calendar quarter which shall include amounts expended during such calendar quarter by the commission as identified in this subparagraph. The report shall include information relating to each state agency or department for which such equipment was purchased, the equipment purchased, the cost of such equipment, and the amount received from the state agency or department as reimbursement for such purchases. The reports shall be filed electronically with the legislative fiscal bureau, with the initial report filed on or before October 30, 1998, for the calendar quarter beginning July 1, 1998.**

6. The staff of the Iowa telecommunications and technology commission shall establish budget units and accounts using the state budget system and the Iowa finance and accounting system as determined jointly by the department of management and the legislative fiscal bureau.

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* Item veto; see message at end of the Act

Sec. 3. LEGISLATIVE COUNCIL. There is appropriated from the general fund of the state to the legislative council for use by the legislative oversight committee for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

..... $ 75,000

The legislative oversight committee shall use funds appropriated in this section to retain a consultant to study and review potential options related to the disposition of the Iowa communications network, and potential options related to a change in the management structure of the network, including but not limited to, the privatization of all or a portion of the management functions of the network. For purposes of this study, the consultant shall assume that such disposition or change in management structure shall not occur until such time as the build-out of Part III is complete. The consultant shall provide a written final report to the general assembly no later than January 11, 1999. The co-chairpersons of the committee are authorized to appoint an advisory committee composed of members as deemed appropriate by the co-chairpersons to assist the consultant as appropriate. The study authorized in this section shall also include, but not be limited to, a determination as to the appropriate number of Iowa communications network classrooms which should be established per capita.

Sec. 4. PUBLIC BROADCASTING. There is appropriated from the general fund of the state to the public broadcasting division of the department of education for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated in subsections 1 and 2 and for the following full-time equivalent positions:

..... $ 2,312,853
..... FTEs 9.00

1. Of the amount appropriated, $454,661 shall be expended by the public broadcasting division of the department of education to provide support for functions related to the network, including but not limited to the following functions: scheduling for video classrooms; development of distance learning applications; development of a central information source on the Internet relating to educational uses of the network; second-line technical support for network sites; testing and initializing sites onto the network; and coordinating the work of the education telecommunications council.

2. Of the amount appropriated, $1,858,192 shall be allocated by the public broadcasting division of the department of education to the regional telecommunications councils established in section 8D.5. The regional telecommunications councils shall use the funds to provide technical assistance for network classrooms, planning and troubleshooting for local area networks, scheduling of video sites, and other related support activities.

Sec. 5. DEPARTMENT OF GENERAL SERVICES. There is appropriated from the general fund of the state to the division of information technology services of the department of general services for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For the purpose of providing information technology services to state agencies and for the following full-time equivalent positions:

..... $ 4,660,013
..... FTEs 158.00

One of the full-time equivalent positions appropriated for in this section relates to the transition of personnel services contractors to full-time equivalent positions. The merit system provisions of chapter 19A and the provisions of the collective bargaining agreements entered into between the state and the respective union or bargaining unit shall not govern movement into this full-time equivalent position until September 1, 1998.

*Sec. 6. *DIVISION OF INFORMATION TECHNOLOGY SERVICES HEAD — SENATE CONFIRMATION. Notwithstanding any contrary provision, the individual appointed by the*

* Item veto; see message at end of the Act

*director of the department of general services as the head of the division of information technology services in the department shall be subject to senate confirmation.**

Sec. 7. REVERSION TECHNOLOGY INITIATIVES ACCOUNT.

1. A reversion technology initiatives account is established in the office of the treasurer of state under the control of the division of information technology services of the department of general services and for the purpose of supporting various technology programs as provided in this section.

Notwithstanding the distribution formula contained in section 8.62 for an operational appropriation which remains unexpended or unencumbered for the fiscal year beginning July 1, 1997, 75 percent of the unexpended or unencumbered moneys subject to section 8.62 are appropriated to the reversion technology initiatives account. The remaining 25 percent of such moneys shall remain with the entity to which the operational appropriation was made. Notwithstanding section 8.33, for an appropriation other than an operational appropriation as provided in section 8.62 which remains unencumbered for the fiscal year beginning July 1, 1997, 100 percent of the unexpended or unencumbered moneys are appropriated to the reversion technology initiatives account.

2. Moneys in the reversion technology initiatives account are allocated, to the extent available, in the descending priority order for use during the fiscal year beginning July 1, 1998, and ending June 30, 1999, as follows:

a. To the department of human services for a welfare reform systems development:
..... $ 1,000,000

b. To the department of human services for a child support recovery systems development:
..... $ 1,131,976

c. To the department of workforce development for an integrated information system:
..... $ 2,513,000

d. To the department of education for a teacher examiners records imaging system:
..... $ 475,000

e. To the department of corrections for ICN connections at Newton and Fort Dodge:
..... $ 600,000

f. To Iowa public television to begin the digital television broadcasting conversion:
..... $ 2,000,000

Notwithstanding section 8.33, moneys allocated to Iowa public television in this paragraph which remain unobligated or unexpended at the close of the fiscal year shall not revert to the general fund of the state but shall remain available for the purpose designated in this paragraph in the succeeding fiscal year.

g. To the department of economic development for a sustaining first stop business/licensing center pilot project:
..... $ 100,000

h. To the department of education for an electronic data exchange:
..... $ 500,000

If the funds available for this allocation are insufficient, there is appropriated from the school improvement and technology fund to the department of education $230,000 to continue pilot projects.

i. To the department of revenue and finance for a sustaining tax and wage reporting system (STAWRS):
..... $ 125,000

j. To the department of revenue and finance for a remittance processing system:
..... $ 1,500,000

k. To the department of revenue and finance for telefiling of tax returns:
..... $ 150,000

l. To the state board of regents for technology improvement:
..... $ 450,000

* Item veto; see message at end of the Act

m. To the Iowa communications network operations account for use by the Iowa telecommunications and technology commission only for the replacement of optical components of the network which become unusable and which are necessary for the continued operation and use of the network:

..... $ 4,000,000

The commission, prior to obligating any funds under this paragraph, shall submit the proposed expenditure to the legislative oversight committee of the legislative council for review and approval. The commission, in submitting such proposal, shall also make a recommendation as to whether such replacement optical components should be purchased, leased, or procured in some other manner, in an effort to minimize the cost to the state.

n. To the department of workforce development for a sustaining community resource directory pilot project:

..... $ 178,000

o. To the department of human rights for the division of criminal and juvenile justice for a justice data analysis/warehouse project:

..... $ 175,000

p. To the department of inspections and appeals for the office of public defender for an indigent defense claims processing redesign project:

..... $ 75,000

q. To the department of human services for an institutional central area network:

..... $ 1,181,400

r. To the department of general services for a purchasing system:

..... $ 2,500,000

s. To the department of public defense for a preventive maintenance system:

..... $ 50,000

t. To the department of public health for a telephone verification system:

..... $ 400,000

u. To the department of human services for a family and children's services (FACS) and statewide tracking of abuse reports (STAR) system upgrades:

..... $ 265,750

3. Effective July 1, 1999, the division of information technology in the department of general services shall not deposit any additional moneys into the reversion technology initiatives account, unless reauthorized to do so by the general assembly during the 1999 regular session. Funds allocated to a project pursuant to this section which are encumbered prior to July 1, 1999, may be spent for the specified purpose as provided in this Act. Funds which are allocated but unencumbered as of July 1, 1999, shall revert to the general fund.

4. The department of management, in cooperation with the information technology services division of the department of general services, shall develop a standard budget request form for technology or business reengineering projects. A department requesting funding for projects which will cost more than $100,000 shall use the request form. The form shall require consistent reporting criteria including, but not limited to, project description, project goals, project performance measures, return on investment, cost, time frame, funding sources, and customer base.

Sec. 8. YEAR 2000 REPORTING.

1. Every department, institution under the control of the board of regents, and office of a statewide elected official, other than the governor, shall report monthly on forms as provided by the year 2000 program office on the progress of such department, regents institution, or office in implementing century date change programming. Such reports shall be submitted to the legislative oversight committee, the legislative fiscal bureau, and the year 2000 program office.

2. The judicial department shall report monthly on forms as provided by the year 2000 program office on the progress of the department in implementing century date change programming. Such report shall be submitted to the legislative oversight committee.

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* Item veto; see message at end of the Act

3. The computer support bureau shall report monthly on forms as provided by the year 2000 program office on the progress of the bureau in implementing century date change programming. Such report shall be submitted to the legislative oversight committee.

Sec. 9. YEAR 2000 PROGRESS AUDIT. The legislative council shall initiate a progress audit concerning the implementation of century date change programming. The legislative council shall retain a person knowledgeable in the area of century date change programming to conduct the progress audit and such person shall not be associated with or performing any tasks under the direction of the department of management, the year 2000 program office, or any other state agency. The person retained to conduct the progress audit shall provide a written report to the legislative council on or before November 1, 1998, including the results of the audit and any information as deemed necessary by the legislative council.

Sec. 10. PROHIBITION ON PRIVATIZATION OF IOWACCESS. Notwithstanding any contrary provision, the IowAccess system for providing electronic access to government records, if enacted by the Seventy-seventh General Assembly, 1998 Regular Session, shall not be privatized, if at all, prior to February 1, 1999, and shall remain under the direction and control of the appropriate state agency, as provided in such enactment.

*Sec. 11. NEW SECTION. 18.181 IOWACCESS ADVISORY COUNCIL.

1. An IowAccess advisory council is created within the division of information technology services of the department. At a minimum, the advisory council shall be composed of all of the following:

a. A person appointed by the legislative council, who may be a member or a staff member of the general assembly, designated to represent the general assembly.

b. The chief justice of the supreme court or the chief justice's designee to represent the judicial branch.

c. The director of the department of management or the director's designee.

d. The auditor of state or the auditor's designee.

e. (1) Seven individuals to be appointed as follows:

(a) Three members appointed by the governor.

(b) Two members appointed by the majority leader of the senate in consultation with the minority leader of the senate.

(c) Two members appointed by the speaker of the house of representatives in consultation with the majority and minority leaders of the house of representatives.

(2) Members appointed pursuant to subparagraph (1) shall include the following:

(a) One member representing financial institutions who shall be actively engaged in finance and banking.

(b) One person representing insurers who shall be actively engaged in the insurance industry.

(c) One person representing attorneys who shall be actively engaged in the profession of law.

(d) One person representing media interests.

(e) One person representing cities who shall be actively engaged in the administration of a city.

(f) One person representing counties who shall be actively engaged in the administration of a county.

(g) One person with technical expertise who shall provide guidance and advice on the status of technology and anticipated technological developments.

(3) A person appointed pursuant to this paragraph shall not directly or indirectly have a conflict of interest.

f. Other heads of agencies or elected officials or their designees as well as other representatives of the public, business, and industry as determined by the director of the division of information technology services.

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* Item veto; see message at end of the Act

2. Persons appointed by the director of the division of information technology services shall be selected from a list of candidates nominated by interested organizations consulted by the director.

3. Appointed members shall serve three-year terms beginning and ending as provided in section 69.19. An appointed member is eligible for reappointment to one additional three-year term. A vacancy on the board shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

*4. The advisory council shall meet not less than four times annually, and may meet more frequently at the call of the chairperson or upon written request of six or more members to the chairperson. The chairperson shall call a meeting of the council at least once every three months. The advisory council shall annually select a chairperson from among its members.**

**Sec. 12. NEW SECTION. 18.182 POWERS AND DUTIES OF THE IOWACCESS ADVISORY COUNCIL.*

The director of the division of information technology services shall seek the advice of the advisory council regarding all of the following:

1. Developing a process for reviewing and establishing priorities for implementation of electronic access to government records.

2. Establishing priorities for implementing electronic access to government records.

3. Establishing priorities for implementing electronic transactions involving government agencies and members of the public.

4. Budgeting, funding, and operating expenses related to developing, implementing, and maintaining electronic access to government records.

5. Reviewing, inspecting, and evaluating the technology and financial audits as required in section 18.185, for the purpose of recommending program improvements, efficiencies, and priorities to the division of information technology services.

6. Reviewing the basis of all charges and fees to the public for accessing government records electronically to ensure that the charges do not exceed the reasonable cost of providing a public record as provided in section 22.3A.

7. Reviewing requests for proposals, proposals, and contracts which involve the management and operation of the IowAccess network by a private entity.

*8. Monitoring privacy and confidentiality of public records which are accessed electronically.**

Sec. 13. NEW SECTION. 18.183 POWERS AND RESPONSIBILITIES VESTED IN INDIVIDUAL GOVERNMENT AGENCIES.

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

2. The division of information technology services shall not have authority to determine whether an individual government agency should automate records of which the individual government agency is the lawful custodian. However, the division may encourage governmental agencies to implement electronic access to government records as provided in section 18.182.

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

4. A person who contracts with a government agency to provide access or disseminate public records by electronic or other means shall pay the same fee which would be charged to the public under chapter 22 for any public record that is in any manner utilized by the person in a venture that is not part of the contract with the government agency.

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* Item veto; see message at end of the Act

Sec. 14. NEW SECTION. 18.184 FINANCIAL TRANSACTIONS.

1. The division of information technology services shall collect moneys paid to participating governmental entities from persons who complete an electronic financial transaction with the governmental entity by accessing the IowAccess network. The moneys may include all of the following:

a. Fees required to obtain an electronic public record as provided in section 22.3A.

b. Fees required to process an application or file a document, including but not limited to fees required to obtain a license issued by a licensing authority.

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

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

3. The division of information technology services shall serve as the agent of the governmental entity in collecting moneys for receipt by governmental entities. The moneys shall be transferred to governmental entities directly or to the treasurer of state for disbursement to governmental entities as required by the treasurer of state in cooperation with the auditor of state.

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

Sec. 15. NEW SECTION. 18.185 AUDITS REQUIRED.

A technology audit of the electronic transmission system by which government records are transmitted electronically to the public shall be conducted not less than once annually for the purpose of determining that government records and other electronic data are not misappropriated or misused by the division of information technology services or a contractor of the division. A financial audit shall be conducted not less than once annually to determine the financial condition of the division of information technology services and to make other relevant inquiries.

Sec. 16. NEW SECTION. 18.186 CREDIT CARDS ACCEPTED.

In addition to other forms of payment, credit cards may be accepted in payment for any fees, including but not limited to interest, penalties, subscriptions, registrations, purchases, applications, licenses, permits, or other filings transmitted or transactions conducted electronically. The fees to be charged shall not exceed those permitted by statute, except that the discount charged by the credit card issuer may be included in determining the fee to be charged for records transmitted or transactions conducted electronically.

Sec. 17. Section 22.2, subsection 1, Code 1997, is amended to read as follows:

1. Every person shall have the right to examine and copy a public ~~records~~ record and to publish or otherwise disseminate a public ~~records~~ record or the information contained ~~therein~~ in a public record. Unless otherwise provided for by law, the right to examine a public record shall include the right to examine a public record without charge while the public record is in the physical possession of the custodian of the public record. The right to copy a public ~~records~~ record shall include the right to make photographs or photographic copies while the ~~records are~~ public record is in the possession of the custodian of the ~~records~~ public record. All rights under this section are in addition to the right to obtain a certified ~~copies~~ copy of ~~records~~ a public record under section 622.46.

Sec. 18. Section 22.3A, subsection 2, paragraph a, Code 1997, is amended to read as follows:

a. If access to the data processing software is provided to a person solely for the purpose of accessing a public record, the amount shall be not more than that required to recover direct publication costs, including but not limited to editing, compilation, and media production costs, incurred by the government body in developing the data processing software, and preparing the data processing software for transfer to the person. The amount shall be in addition to any other fee required to be paid under this chapter for the examination and copying of a public record. If a person requests the reproduction of a public record stored in an electronic format that does not require formatting, editing, or compiling to reproduce the public record, the charge for providing the reproduced public record shall not exceed the reasonable cost of reproducing and transmitting that public record. The government body shall, if requested, provide documentation which explains and justifies the amount charged. This paragraph shall not apply to any publication for which a price has been established pursuant to another section, including section 7A.22.

Sec. 19. FUNDING FOR IOWACCESS. Notwithstanding section 321A.3, subsection 1, for the fiscal year beginning July 1, 1998, in an amount not to exceed four hundred thousand dollars, up to one dollar of each five dollar transaction shall be transferred to the division of information technology services of the department of general services for the purposes of developing, implementing, maintaining, and expanding electronic access to government records in accordance with the requirements as set forth in chapter 18, division VII. For fiscal years beginning on or after July 1, 1999, funding for the purposes of developing, implementing, maintaining, and expanding electronic access to government records in accordance with the requirements as set forth in chapter 18, division VII, shall be provided through the general assembly's appropriation process and the department of general services shall include a line item request for such funding in the department's annual budget request.

Notwithstanding section 8.33, unobligated and unencumbered funds remaining at the end of a fiscal year shall not revert to the general fund of the state, but rather shall remain to be used in subsequent fiscal years for the purposes authorized in chapter 18, division VII.

*Sec. 20. *IOWACCESS INTENT. It is the intent of the general assembly that the IowAccess advisory council, established in this Act, review the performance of a vendor acting as a network manager at intervals not to exceed five years.**

Sec. 21. IOWACCESS CODIFICATION. The Code editor shall codify the amendments to chapter 18 in this Act as division VII of chapter 18.

Sec. 22. 1997 Iowa Acts, chapter 209, section 2, subsections 1 and 2, are amended to read as follows:

1. For state acquisition in accordance with the competitive bidding requirements of this section and as a condition of the appropriation made in this subsection of new devices, equipment, or systems that are date or time sensitive, and information technology hardware and software which already includes the century date change programming and which achieves additional purposes in replacing state hardware, ~~and~~ software, and devices, equipment, or systems that are date or time sensitive for which the century date change programming or other related corrective action is required:

..... $ 2,000,000

Moneys appropriated in this subsection shall be used for the purpose designated and notwithstanding section 8.39 are not subject to transfer or use for any other purpose, except that moneys remaining after the purchase of such hardware and software may be used for the purposes designated in subsection 2.

2. For the costs of century date change programming or other related corrective action in existing state devices, equipment, or systems and information technology software that are

* Item veto; see message at end of the Act

date or time sensitive to the century date change when state acquisition of new information technology hardware, ~~and~~ software, and devices, equipment, or systems that are date or time sensitive which already includes the century date change programming and which achieves additional purposes to incorporate the century date change, is not cost effective, provided the programming or other related corrective action is acquired in accordance with the competitive bidding requirements of this section and as a condition of the appropriation made in this subsection:

..... $ 3,000,000

Moneys appropriated in this subsection shall be used for the purpose designated and notwithstanding section 8.39 are not subject to transfer or use except for the purposes of additional acquisitions under subsection 1.

The department shall not enter into a contract or any other obligation for the purpose of addressing the need for century date programming or other corrective action related to devices, equipment, or systems that are date or time sensitive to the century date change which would require the need for funding in excess of the amount appropriated in this section. The department shall utilize, to the greatest extent possible, students and other knowledgeable persons connected with Iowa's colleges and universities in developing or acquiring hardware, software, and programming funded under this section. Otherwise, any acquisition for the purposes described in this section is subject to competitive bidding requirements in rule adopted under law and in accordance with the requirements of this section. In order to maintain maximum open and free competition among bidders, an eligible bidder shall have been organized or doing business prior to January 1, 1997. In addition, an eligible bidder shall not have a relationship with the state for assessment of bids or for preparation of a request for proposals under this section. A bidder with an actual or organizational conflict of interest shall be disqualified. A bidder shall be considered to have a conflict of interest if the organization, or a parent, subsidiary, or affiliated organization, of which the bidder is a shareholder, partner, limited partner, or member, has a conflict of interest. A bidder shall provide assurances of compliance with the requirements of this paragraph at the time of submitting a bid or proposal for any acquisition ~~for the purposes~~ of information technology hardware, software, or programming described in this section.

Notwithstanding section 8.33, moneys appropriated in this section which remain unexpended or unencumbered at the close of the fiscal year shall not revert to the general fund of the state but shall remain available to be used for the purposes designated until the close of the fiscal year beginning July 1, 1999.

Sec. 23. 1997 Iowa Acts, chapter 210, section 2, subsection 1, paragraph b, is amended to read as follows:

b. There is appropriated from the rebuild Iowa infrastructure fund created in section 8.57, subsection 5, to the Iowa communications network fund under the control of the Iowa telecommunications and technology commission for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For the connection of Part III authorized users as determined by the commission and communicated to the general assembly:

..... $ ~~17,704,000~~
18,904,000

Notwithstanding section 8.33, moneys appropriated in this section which remain unobligated or unexpended at the close of the fiscal year shall not revert to the general fund of the state but shall remain available for the fiscal year beginning July 1, 1999, and ending June 30, 2000, for the purpose of completing the connections of Part III authorized users as approved by the general assembly, whether or not such users were part of the Part III contracts executed in 1995. However, the commission shall only add a new site which was not part of the 1995 contract relating to Part III connections upon the withdrawal of a site included under such contract.

Notwithstanding any contrary provision, the commission shall not permit any new connections to the network after June 30, 1999, except for a connection where the construction associated with such connection has commenced on or before June 30, 1999.

The commission is authorized for no more than 100 full-time equivalent positions.

Fifteen of the full-time equivalent positions appropriated for in this section relate to the transition of personnel services contractors to full-time equivalent positions. The merit system provisions of chapter 19A and the provisions of the collective bargaining agreements entered into between the state and the respective union or bargaining unit shall not govern movement into these full-time equivalent positions until September 1, 1998.

Sec. 24. 1997 Iowa Acts, chapter 210, section 2, subsection 1, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. The Iowa telecommunications and technology commission is authorized to use Part III funding to convert any leased analog circuit to a leased DS-3 circuit for a Part III site when the existing contract vendor agrees to upgrade the service.

Sec. 25. 1997 Iowa Acts, chapter 210, section 10, subsection 1, unnumbered paragraph 1, is amended to read as follows:

The department of general services shall establish a reversion incentive program fund for purposes of supporting the implementation of century date change programming and other corrective action related to devices, equipment, or systems that are date or time sensitive to the century date change, and shall be funded as follows:

Sec. 26. 1997 Iowa Acts, chapter 210, section 10, subsection 1, paragraph e, is amended to read as follows:

e. An agency expending moneys from the fund for implementing century date change programming and other corrective action related to devices, equipment, or systems that are date or time sensitive to the century date change and which receives moneys from another source, including but not limited to the United States government, for the same purpose shall deposit an amount equal to the amount received from the other source into the general fund of the state up to the amount expended from the fund.

Sec. 27. 1997 Iowa Acts, chapter 210, section 10, subsection 1, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. Notwithstanding other provisions of this section, the year 2000 program office, from funds appropriated to the reversion incentive program fund provided in this section, shall conduct an initial year 2000 compliance assessment of each office of a statewide elected official other than the office of the governor and the lieutenant governor.

Sec. 28. 1997 Iowa Acts, chapter 210, section 10, subsection 2, unnumbered paragraph 1, is amended to read as follows:

The department shall not enter into a contract or any other obligation for the purpose of addressing the need for century date programming or other corrective action related to devices, equipment, or systems that are date or time sensitive to the century date change which would require the need for funding in excess of the amount appropriated in this section. The department shall utilize, to the greatest extent possible, students and other knowledgeable persons connected with Iowa's colleges and universities in developing or acquiring hardware, software, and programming funded under this section. Otherwise, any acquisition for the purposes described in this section is subject to competitive bidding requirements in rule adopted under law and in accordance with the requirements of this section. In order to maintain maximum open and free competition among bidders, an eligible bidder shall have been organized or doing business prior to January 1, 1997. In addition, an eligible bidder shall not have a relationship with the state for assessment of bids or for preparation of a request for proposals under this section. A bidder with an actual or organizational conflict of interest shall be disqualified. A bidder shall be considered to

* Item veto; see message at end of the Act

have a conflict of interest if the organization, or a parent, subsidiary, or affiliated organization, of which the bidder is a shareholder, partner, limited partner, or member, has a conflict of interest. A bidder shall provide assurances of compliance with the requirements of this paragraph at the time of submitting a bid or proposal for any acquisition ~~for the purposes~~ of information technology hardware, software, or programming described in this section.

Sec. 29. EFFECTIVE DATE. Sections 7, 8, 22, 23, 24, 25, 26, 27, and 28, and this section of this Act, being deemed of immediate importance, take effect upon enactment.

Approved May 21, 1998, except the items which I hereby disapprove and which are designated as Section 2, subsections 5 and 6, in their entirety; Section 6, in its entirety; that portion of Section 7, subsection 2(m), which is herein bracketed in ink and initialed by me; Section 7, subsection 3, in its entirety; Sections 9, 10, 11, and 12, in their entirety; Section 20, in its entirety; and that portion of Section 23 which is herein bracketed in ink and initialed by me. My reasons for vetoing these items are delineated in the item veto message pertaining to this Act to the Secretary of State this same date, a copy of which is attached hereto.

TERRY E. BRANSTAD, *Governor*

Dear Mr. Secretary:

I hereby transmit Senate File 2418, an Act relating to state government technology and operations, by making and relating to appropriations to the Iowa Communications Network for the connection and support of certain Part III users, making appropriations to various entities for other technology-related purposes, providing for the procurement of information technology, establishing the IowAccess system, providing for the use of the network, making miscellaneous related changes, and providing effective dates.

Senate File 2418 is, therefore, approved on this date with the following exceptions, which I hereby disapprove.

I am unable to approve the item designated as Section 2, subsection 5, in its entirety. This item relates to an overall level of expenditure by the Iowa Communications Network (ICN) of $32 million for fiscal year 1999. This $32 million represented the ICN's best estimate of total demand for services for fiscal year 1999 at the time the budget request was initially formulated. However, the total level of demand cannot be predicted with precision, and therefore designating this expenditure level could adversely affect the ICN's ability to serve the needs of authorized users.

I am unable to approve the item designated as Section 2, subsection 6, in its entirety. This item directs the ICN to establish budget units and accounts as directed jointly by the Department of Management and the Legislative Fiscal Bureau. The ICN will work with the Bureau and the Department to provide financial information needed for decision making and oversight. However, final determination should be an executive branch prerogative.

I am unable to approve the item designated as Section 6, in its entirety. This item would subject the head of the Division of Information Technology Services to Senate confirmation. When the General Assembly acts to create a statutory office of information technology services, as I have recommended, it would be appropriate for the director to be subject to Senate confirmation.

I am unable to approve the designated portion of Section 7, subsection 2m. This item relates to the submission by the ICN of any proposed expenditure of the $4,000,000 appropriation for optics replacement to the legislative council for review and approval. This action is an unwarranted intrusion on executive branch responsibilities.

I am unable to approve the item designated as Section 7, subsection 3, in its entirety. This item would close out the Reversion Technology Initiatives Account on June 30, 1999. The future of the Technology Initiatives Account is a decision that should be made as a part of the budgeting process during the 1999 legislative session.

I am unable to approve the item designated as Section 9, in its entirety. This item would have the legislative council initiate a progress audit concerning the implementation of century date change programming. The Year 2000 Project Office already has a contract with an outside entity to audit the state's progress in implementing century date programming, and an additional audit is unnecessary.

I am unable to approve the item designated as Section 10, in its entirety. This item relates to the privatization of the IowAccess system for providing electronic access to government records. The meaning of the term "privatization" is unclear, however there is no question the state must retain the flexibility to contract for services when it lacks a core competency and it is cost-effective to do so. Under a contracting arrangement, the activities of the contractor remain under the direction and control of the state agency.

I am unable to approve the items designated as Sections 11, 12 and 20, in their entirety. These sections create an IowAccess advisory committee and spell out its duties and responsibilities. I strongly support the creation of an advisory committee with these duties and responsibilities. However, I cannot accept such a committee when a majority of its appointed members are appointments made by the General Assembly. Instead, through Executive Order Number 66, I am directing the Director of Information Technology Services to appoint an advisory committee with membership, duties and responsibilities, similar to what is contained in this legislation.

I am unable to approve the designated portion of Section 23. This item prohibits the ICN from making any new connections to the network after June 30, 1999, unless construction has commenced before that date. This language goes beyond video connections and may preclude the ICN from providing even the most basic service to its authorized users.

For the above reasons, I hereby respectfully disapprove these items in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in Senate File 2418 are hereby approved as of this date.

Sincerely,
TERRY E. BRANSTAD, *Governor*

CHAPTER 1225

APPROPRIATIONS — ECONOMIC DEVELOPMENT

S.F. 2296

AN ACT appropriating funds to the department of economic development, certain board of regents institutions, the department of workforce development, the public employment relations board, making related statutory changes, and providing an effective date provision.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. DEPARTMENT OF ECONOMIC DEVELOPMENT. There is appropriated from the general fund of the state and other designated funds to the department of economic

development for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. ADMINISTRATIVE SERVICES DIVISION

a. General administration

For salaries, support, maintenance, miscellaneous purposes, and for providing that a business receiving moneys from the department for the purpose of job creation shall make available ten percent of the new jobs created for promise jobs program participants who are qualified for the jobs created and for not more than the following full-time equivalent positions:

..... $ 1,494,231
..... FTEs 25.75

One of the full-time equivalent positions authorized in this lettered paragraph relates to the transition of personnel services contractors to full-time equivalent positions. The merit system provisions of chapter 19A and the provisions of the state and union collective bargaining agreements shall not govern movement into these full-time equivalent positions until September 1, 1998. These provisions relating to the transition of personnel services contractors to full-time equivalent positions, chapter 19A, and collective bargaining agreements are void after September 1, 1998.

b. Film office

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 253,632
..... FTEs 2.00

2. BUSINESS DEVELOPMENT DIVISION

a. Business development operations

For salaries, support, maintenance, miscellaneous purposes, for not more than the following full-time equivalent positions, for allocating $495,000 to support activities in conjunction with the Iowa manufacturing technology center, $150,000 to the graphic arts center, and for a strategic marketing effort for workforce development:

..... $ 3,940,232
..... FTEs 22.75

Four of the full-time equivalent positions authorized in this lettered paragraph relate to the transition of personnel services contractors to full-time equivalent positions. The merit system provisions of chapter 19A and the provisions of the state and union collective bargaining agreements shall not govern movement into these full-time equivalent positions until September 1, 1998. These provisions relating to the transition of personnel services contractors to full-time equivalent positions, chapter 19A, and collective bargaining agreements are void after September 1, 1998.

b. Small business programs

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions for the small business program, the small business advisory council, and targeted small business program:

..... $ 450,622
..... FTEs 5.00

c. Federal procurement office

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 103,967
..... FTEs 3.00

Notwithstanding section 8.33, moneys remaining unencumbered or unobligated on June 30, 1999, shall not revert and shall be available for expenditure during the fiscal year beginning July 1, 1999, for the same purposes.

d. Strategic investment fund

For deposit in the strategic investment fund for salaries, support, for not more than the following full-time equivalent positions:

..... $ 6,803,513
..... FTEs 12.50

Two of the full-time equivalent positions authorized in this lettered paragraph relate to the transition of personnel services contractors to full-time equivalent positions. The merit system provisions of chapter 19A and the provisions of the state and union collective bargaining agreements shall not govern movement into these full-time equivalent positions until September 1, 1998. These provisions relating to the transition of personnel services contractors to full-time equivalent positions, chapter 19A, and collective bargaining agreements are void after September 1, 1998.

The department may allocate from the strategic investment fund up to $600,000 for the entrepreneurial ventures assistance program. The department shall seek the advice, consultation, and cooperation of the entrepreneurial centers and the major benefactor of the centers in the implementation of the entrepreneurial ventures assistance program.

The department may allocate from the strategic investment fund up to $100,000 for the microbusiness rural enterprise assistance program under section 15.114.

The department shall provide an annual report on the progress made by the department in making the community economic betterment program a self-sustaining, revolving loan program.

e. Insurance economic development

There is appropriated from moneys collected by the division of insurance in excess of the anticipated gross revenues under section 505.7, subsection 3, to the department for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, for insurance economic development and international insurance economic development:

..... $ 200,000

f. Value-added agriculture

There is appropriated from the moneys available to support value-added agricultural products and processes, four percent, or so much thereof as is necessary, of the total moneys available to support value-added agricultural products and processes pursuant to section 423.24 each quarter for administration of the value-added agricultural products and processes financial assistance program as provided in section 15E.111, including salaries, support, maintenance, miscellaneous purposes, and for not more than 2.00 FTEs.

The department shall collaborate with the university of northern Iowa on a strategic initiative to develop ag-based industrial lubrication technology and to create projects to deploy the technology in commercial applications. Notwithstanding the requirements of section 15E.111 and the administrative rules for value-added agricultural products and processes, the department shall allocate $150,000 for this initiative.

3. COMMUNITY DEVELOPMENT DIVISION

a. Community assistance

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions for administration of the community economic preparedness program, the Iowa community betterment program, and the city development board:

..... $ 654,547
..... FTEs 8.50

b. Main street/rural main street program

For salaries and support for not more than the following full-time equivalent positions:

..... $ 425,219
..... FTEs 3.00

Notwithstanding section 8.33, moneys committed to grantees under contract from the general fund of the state that remain unexpended on June 30, 1999, shall not revert to any fund but shall be available for expenditure for purposes of the contract during the fiscal year beginning July 1, 1999.

c. Community development program

For salaries, support, maintenance, miscellaneous purposes, for not more than the following full-time equivalent positions, for rural resource coordination, rural community leadership, rural innovations grant program, and the rural enterprise fund:

..... $ 827,215
..... FTEs 7.50

Three of the full-time equivalent positions authorized in this lettered paragraph relate to the transition of personnel services contractors to full-time equivalent positions. The merit system provisions of chapter 19A and the provisions of the state and union collective bargaining agreements shall not govern movement into these full-time equivalent positions until September 1, 1998. These provisions relating to the transition of personnel services contractors to full-time equivalent positions, chapter 19A, and collective bargaining agreements are void after September 1, 1998.

There is appropriated from the rural community 2000 program revolving fund established in section 15.287 to provide to Iowa's councils of governments funds for planning and technical assistance to local governments:

..... $ 150,000

There is appropriated from the rural community 2000 program revolving fund established in section 15.287 to the rural development program for the purposes of the program including the rural enterprise fund and collaborative skills development training:

..... $ 484,343

Notwithstanding section 8.33, moneys committed to grantees under contract from the general fund of the state or through transfers from the Iowa community development loan fund or from the rural community 2000 program revolving fund that remain unexpended on June 30, 1999, shall not revert but shall be available for expenditure for purposes of the contract during the fiscal year beginning July 1, 1999.

d. Community development block grant and HOME

For administration and related federal housing and urban development grant administration for salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 418,737
..... FTEs 21.75

Three of the full-time equivalent positions authorized in this lettered paragraph relate to the transition of personnel services contractors to full-time equivalent positions. The merit system provisions of chapter 19A and the provisions of the state and union collective bargaining agreements shall not govern movement into these full-time equivalent positions until September 1, 1998. These provisions relating to the transition of personnel services contractors to full-time equivalent positions, chapter 19A, and collective bargaining agreements are void after September 1, 1998.

e. Housing development fund

For providing technical assistance to communities of all sizes and local financial institutions to help meet local housing needs and to provide and transfer matching funds for the HOME program:

..... $ 1,300,000

Notwithstanding section 8.33, moneys committed to grantees under contract from the housing development fund and moneys transferred for matching funds for the HOME program that remain unexpended or unobligated on June 30, 1999, shall not revert to any fund but shall be available for obligation and expenditure for purposes of those programs during the fiscal year beginning July 1, 1999.

f. Shelter assistance program

For the purposes of the shelter assistance fund:

..... $ 400,000

4. INTERNATIONAL DIVISION

a. International trade operations

For salaries, support, maintenance, miscellaneous purposes, for support of foreign representation and trade offices, and for not more than the following full-time equivalent positions:

..... $ 2,010,073
..... FTEs 10.00

From among the full-time equivalent positions authorized by this lettered paragraph, one position shall concentrate on the export sale of grain, one on the export sale of livestock, and one on the export sale of value-added agricultural products.

The department shall file a report every six months with the general assembly in a manner consistent with section 7A.11 and with the chairpersons and ranking members of the joint appropriations subcommittee on economic development which gives an update of all activities regarding trade promotion in the Chinese market.

b. Export trade assistance program

For export trade activities, including a program to encourage and increase participation in trade shows and trade missions by providing financial assistance to businesses for a percentage of their costs of participating in trade shows and trade missions, by providing for the lease/sublease of showcase space in existing world trade centers, by providing temporary office space for foreign buyers, international prospects, and potential reverse investors, and by providing other promotional and assistance activities, including salaries and support:

..... $ 425,000

Notwithstanding section 8.33, moneys appropriated by this lettered paragraph which remain unobligated or unexpended on June 30, 1999, shall not revert to the general fund of the state but shall be transferred to and deposited in the strategic investment fund created in section 15.313.

c. Agricultural product advisory council

For support, maintenance, and miscellaneous purposes:

..... $ 1,300

d. For transfer to the partner state program which the department may use to contract with private groups or organizations which are the most appropriate to administer this program and the groups and organizations participating in the program shall, to the fullest extent possible, provide the funds to match the appropriation made in this paragraph of the funds transferred:

..... $ 125,000

5. TOURISM DIVISION

Tourism operations/advertising

For salaries, support, maintenance, miscellaneous purposes, for not more than the following full-time equivalent positions:

..... $ 5,038,912
..... FTEs 18.52

**The department may expend up to $130,000 to provide assistance to private welcome centers in the state. The department shall not provide assistance of more than $10,000 to any one private welcome center. A private welcome center seeking assistance shall submit a competitive application to the department and may be eligible for receiving assistance if the private welcome center complies with all of the following criteria:*

a. The private welcome center is at risk of a projected operating deficit.

b. The private welcome center complies with operational standards and requirements determined by the department.

*c. The private welcome center submits a financial plan for self-sufficiency to the department.**

The department shall conduct a study of the public and private welcome center system in the state. The department shall make recommendations to the general assembly for the

* Item veto; see message at end of the Act

future operation of the system including recommendations concerning funding for private welcome center operations and quality standards for public and private welcome centers.

The department shall not use the moneys appropriated in this subsection, unless the department develops public-private partnerships with Iowa businesses in the tourism industry, Iowa tour groups, Iowa tourism organizations, and political subdivisions in this state to assist in the development of advertising efforts. The department shall, to the fullest extent possible, develop cooperative efforts for advertising with contributions from other sources.

Sec. 2. COMMUNITY DEVELOPMENT LOAN FUND. Notwithstanding section 15E.120, subsections 5, 6, and 7, and section 15.287, there is appropriated from the Iowa community development loan fund all the moneys available during the fiscal year beginning July 1, 1998, and ending June 30, 1999, to the department of economic development for the community development program to be used by the department for the purposes of the program.

Sec. 3. JOB TRAINING FUND. Notwithstanding section 15.251, subsection 2, there is appropriated from the job training fund to the department of economic development for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For administration of chapter 260E, including salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	210,000
.....	FTEs	2.50

Appropriations to the department of economic development for administration of chapter 260E and the department of workforce development for the target alliance program shall be funded on a proportional basis if receipts to the job training fund are insufficient to fund both appropriations in their entirety.

Sec. 4. WORKFORCE DEVELOPMENT FUND. There is appropriated from the workforce development fund account created in section 15.342A, to the workforce development fund created in section 15.343, for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, for the purposes of the workforce development fund:

.....	$	6,850,000

Sec. 5. Of all funds appropriated to or receipts credited to the job training fund created in section 260F.6, subsection 1, up to $175,000 for the fiscal year beginning July 1, 1998, and ending June 30, 1999, and not more than 1.50 FTEs may be used for the administration of the Iowa jobs training Act.

Sec. 6. IOWA STATE UNIVERSITY. There is appropriated from the general fund of the state to the Iowa state university of science and technology for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For funding and maintaining in their current locations the existing small business development centers, and for not more than the following full-time equivalent positions:

.....	$	1,235,880
.....	FTEs	5.80

2. For the Iowa state university of science and technology research park, including salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	376,500
.....	FTEs	4.31

3. For funding the institute for physical research and technology, provided that $318,358 shall be allocated to the industrial incentive program in accordance with the intent of the general assembly, and for not more than the following full-time equivalent positions:

.....	$	4,379,458
.....	FTEs	46.42

It is the intent of the general assembly that the incentive program focus on Iowa industrial sectors and seek contributions and in-kind donations from businesses, industrial foundations, and trade associations and that moneys for the institute for physical research and technology industrial incentive program shall only be allocated for projects which are matched by private sector moneys for directed contract research or for nondirected research. The match required of small businesses as defined in section 15.102, subsection 4, for directed contract research or for nondirected research shall be $1 for each $3 of state funds. The match required for other businesses for directed contract research or for nondirected research shall be $1 for each $1 of state funds. The match required of industrial foundations or trade associations shall be $1 for each $1 of state funds.

Iowa state university of science and technology shall report annually to the joint appropriations subcommittee on economic development and legislative fiscal bureau the total amounts of private contributions, the proportion of contributions from small businesses and other businesses, and the proportion for directed contract research and nondirected research of benefit to Iowa businesses and industrial sectors.

Notwithstanding section 8.33, moneys appropriated for the fiscal year which remain unobligated and unexpended at the end of the fiscal year shall not revert but shall be available for expenditure the following fiscal year.

Sec. 7. UNIVERSITY OF IOWA. There is appropriated from the general fund of the state to the state university of Iowa for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For the university of Iowa research park, including salaries, support, maintenance, equipment, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	331,007
.....	FTEs	4.35

2. For funding the advanced drug development program at the Oakdale research park and for not more than the following full-time equivalent positions:

.....	$	262,199
.....	FTEs	2.85

The board of regents shall submit a report on the progress of regents institutions in meeting the strategic plan for technology transfer and economic development to the chairpersons of the joint appropriations subcommittee on economic development, the joint appropriations subcommittee on education, the majority leader and minority leader of the senate, the majority and minority leaders of the house of representatives, the secretary of the senate, the chief clerk of the house of representatives, and the legislative fiscal bureau by December 1, 1998.

Sec. 8. UNIVERSITY OF NORTHERN IOWA. There is appropriated from the general fund of the state to the university of northern Iowa for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For the metal casting institute, including salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	166,349
.....	FTEs	2.75

2. For the institute of decision making, including salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	688,308
.....	FTEs	8.00

Sec. 9. DEPARTMENT OF WORKFORCE DEVELOPMENT. There is appropriated from the general fund of the state, to the department of workforce development for the fiscal year

beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, for the purposes designated:

1. DIVISION OF LABOR SERVICES

For the division of labor services, including salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	2,902,693
.....	FTEs	93.00

From the contractor registration fees, the division of labor services shall reimburse the department of inspections and appeals for all costs associated with hearings under chapter 91C, relating to contractor registration.

2. DIVISION OF INDUSTRIAL SERVICES

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	2,390,927
.....	FTEs	34.00

The division of industrial services shall continue charging a $65 filing fee for workers' compensation cases. The filing fee shall be paid by the petitioner of a claim. However, the fee can be taxed as a cost and paid by the losing party, except in cases where it would impose an undue hardship or be unjust under the circumstances.

3. For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent position for the workforce development state and regional boards:

.....	$	106,929
.....	FTE	1.00

4. For salaries, support, maintenance, miscellaneous purposes for collection of labor market information, and for not more than the following full-time equivalent position:

.....	$	65,354
.....	FTE	1.00

5. WORKFORCE DEVELOPMENT AREA

For salaries, support, maintenance, and miscellaneous purposes for the development and maintenance of a workforce sufficient in size and skill to meet the occupational demands of each workforce development area, and for workforce development programs, including those provided for in sections 84A.7, 84A.8, and 84A.9. Each region shall be required to provide an equal amount of matching funds from local sources:

.....	$	1,480,022
.....	FTEs	4.20

The department shall expend $923,180 on youth workforce programs. Youth conservation corps program moneys shall be allocated among the regions which have developed a youth conservation corps program.

Notwithstanding section 8.33, moneys committed to grantees under contract that remain unexpended on June 30, 1999, shall not revert to any fund but shall be available for expenditure for purposes of the contract during the fiscal year beginning July 1, 1999.

6. LABOR MANAGEMENT COORDINATOR

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent position:

.....	$	66,851
.....	FTE	0.50

The Iowa workforce development board shall be responsible for the functions previously conducted by the state labor management cooperation council. The board, the department of workforce development, and the labor management coordinator shall cooperate to improve communications and facilitate dialogue between labor, management, and government on workforce development problems facing the state, to form in-plant labor management committees, and to provide technical assistance to establish effective labor management policies in the state.

7. WELFARE-TO-WORK MATCHING FUNDS

For matching funds for welfare-to-work grants authorized through the United States department of labor to provide additional services for the hardest to employ recipients of family investment program benefits:

..... $ 888,633

Notwithstanding section 8.33, moneys appropriated in this subsection which remain unexpended or unobligated on June 30, 1999, shall not revert to the general fund of the state but shall remain available for expenditure for the same purpose during the fiscal year beginning July 1, 1999.

Sec. 10. JOB TRAINING FUND. Notwithstanding section 15.251, subsection 2, there is appropriated from the job training fund to the department of workforce development for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For the target alliance program:

..... $ 30,000

Sec. 11. ADMINISTRATIVE CONTRIBUTION SURCHARGE FUND. There is appropriated from the administrative contribution surcharge fund of the state to the department of workforce development for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, for the purposes designated:

Notwithstanding section 96.7, subsection 12, paragraph "c", for salaries, support, maintenance, conducting labor availability surveys, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 7,100,000
..... FTEs 125.42

Sec. 12. EMPLOYMENT SECURITY CONTINGENCY FUND. There is appropriated from the special employment security contingency fund to the department of workforce development for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amounts, or so much thereof as is necessary, for the purposes designated:

1. DIVISION OF LABOR SERVICES

For salaries, support, maintenance, and miscellaneous purposes:

..... $ 296,000

2. DIVISION OF INDUSTRIAL SERVICES

For salaries, support, maintenance, and miscellaneous purposes:

..... $ 175,000

Any additional penalty and interest revenue may be used to accomplish the mission of the department.

Sec. 13. PUBLIC EMPLOYMENT RELATIONS BOARD. There is appropriated from the general fund of the state to the public employment relations board for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, for the purposes designated:

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 857,844
..... FTEs 12.80

Sec. 14. WORKFORCE RECRUITMENT INITIATIVE.

1. FINDINGS. The general assembly finds that growing levels of employment coupled with historically low levels of unemployment are evidence of increasing scarcity of skilled workers. Limited access to a skilled workforce is preventing Iowa companies from increasing employment and production, and is a barrier to sustained and stable economic growth.

Further, the general assembly finds that in order to increase the size of the workforce, a partnership of private sector employers, communities and public sector organizations should

be formed to develop and implement a workforce recruitment initiative. The initiative is intended to include strategies for recruiting new workers that will meet the workforce needs of Iowa employers who are unable to fill high quality jobs.

2. ESTABLISHMENT. The general assembly finds an immediate need for the establishment of a workforce recruitment initiative with projects intended to retain and recruit new skilled and unskilled employees to fill the needs of both communities and businesses. The department of economic development and the department of workforce development shall enter into a cooperative memorandum of understanding to accomplish purposes of this initiative. The memorandum shall include, but not be limited to, provisions for the sharing and utilization of job matching databases and technology to accomplish the purposes of the initiative and for an allocation out of moneys appropriated to the department of economic development for purposes of the workforce recruitment initiative for payment of employee salaries related to the workforce recruitment initiative.

3. STATE AGENCY COOPERATION. The department of economic development and the department of workforce development shall seek and obtain the cooperation of any state agency and local economic development organization actively involved in workforce development initiatives which could provide employee recruitment and marketing assistance to accomplish the workforce recruitment initiative.

4. FTEs. For purposes of the workforce recruitment initiative, the department of workforce development shall increase the number of full-time equivalent positions authorized for the department during the fiscal year beginning July 1, 1998, by 2.00 FTEs through moneys authorized for expenditure in this Act and allocated pursuant to the cooperative memorandum of understanding entered into with the department of economic development as provided in section 2.

5. APPROPRIATION. There is appropriated from the general fund of the state to the department of economic development for the fiscal year beginning July 1, 1998, and ending June 30, 1999, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For workforce recruitment initiative purposes including technical support and maintenance of databases and an internet web site, for a joint proposal of the department of economic development and the department of workforce development relating to the workforce recruitment initiative which shall include provisions for private sector contributions, and including salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	300,000
.....	FTEs	3.00

Notwithstanding section 8.33, moneys appropriated in this subsection which remain unexpended or unobligated on June 30, 1999, shall not revert to the general fund of the state but shall remain available for expenditure in the fiscal year beginning July 1, 1999, for the purposes designated.

6. STRATEGIC INVESTMENT FUND ALLOCATION. There is allocated from the strategic investment fund to the department of economic development for the fiscal year beginning July 1, 1998, and ending June 30, 1999, $150,000 to be used for the purchase of equipment, software, laptop computers, and other necessary technological equipment.

7. BUSINESS DEVELOPMENT DIVISION. The business development division of the department of economic development may expend from moneys appropriated to the department and allocated to the business development division, for business development operations, up to $400,000 for increasing the labor availability and recruitment efforts in the state in all occupational areas and as deemed necessary.

Sec. 15. NEW SECTION. 15.361 TITLE.

This part shall be known and may be cited as the "Certified School to Career Program".

Sec. 16. NEW SECTION. 15.362 DEFINITIONS.

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

1. "Certified school to career program" or "certified program" means a sequenced and articulated secondary and postsecondary program registered as an apprenticeship program under 29 C.F.R. subtit. A, pt. 29, which is conducted pursuant to an agreement as provided in section 15.364 or a program approved by the state board of education, in conjunction with the department of economic development, as meeting the standards enumerated in section 15.363, that integrates a secondary school curriculum with private sector job training which places students in job internships, and which is designed to continue into postsecondary education and that will result in teaching new skills and adding value to the wage-earning potential of participants and increase their long-term employability in the state and which is conducted pursuant to an agreement as provided in section 15.364.

2. "Participant" means an individual between the ages of sixteen and twenty-four who is enrolled in a public or private secondary or postsecondary school and who initiated participation in a certified school to career program as part of secondary school education.

3. "Payroll expenditures" means the base wages actually paid by an employer to a participant plus the amount held in trust to be applied toward the participant's postsecondary education.

4. "Sponsor" means any person, association, committee, or organization operating a school to career program and in whose name the program is or will be registered or approved.

Sec. 17. NEW SECTION. 15.363 CERTIFICATION STANDARDS.

The state board of education, in consultation with the department of economic development, shall adopt rules pursuant to chapter 17A to guide the board and department in determining whether a potential school to career program should be approved.

A school to career program which is approved by the state board of education in conjunction with the department of economic development shall comply with all of the following standards:

1. The program is conducted pursuant to an organized, written plan embodying the terms and conditions of employment, job training, classroom instruction, and supervision of one or more participants, subscribed to by a sponsor who has undertaken to carry out the school to career program.

2. The program complies with all state and federal laws pertaining to the workplace.

3. The employer agrees to assign an employee to serve as a mentor for a participant. The mentor's occupation shall be in the same career pathway as the career interests of the participant.

4. The program involves an eligible postsecondary institution as defined in section 261C.3.

5. Other standards adopted by rule by the state board of education after consultation with the department of economic development.

Sec. 18. NEW SECTION. 15.364 CERTIFIED PROGRAM AGREEMENT.

The certified program shall be conducted pursuant to a signed written agreement between each participant and the employer which contains at least the following provisions:

1. The names and signatures of the participant and the sponsor or employer and the signature of a parent or guardian if the participant is a minor.

2. A description of the career field in which the participant is to be trained, and the beginning date and duration of the training.

3. The employer's agreement to provide paid employment, at a base wage, for the participant during the summer months after the participant's junior and senior years in high school and after the participant's first year of postsecondary education.

4. The participant and employer shall agree upon set minimum academic standards which must be maintained through the participant's secondary and postsecondary education.

5. This base wage paid to the participant shall not be less than the minimum wage prescribed by Iowa law or the federal Fair Labor Standards Act, whichever is applicable.

6. That in addition to the base wage paid to the participant, the employer shall pay an additional sum to be held in trust to be applied toward the participant's postsecondary education required for completion of the certified program. The additional amount must be not less than an amount determined by the department of economic development to be sufficient to provide payment of tuition expenses toward completion of not more than two academic years of the required postsecondary education component of the certified program at an Iowa community college or an Iowa public or private college or university. This amount shall be held in trust for the benefit of the participant pursuant to rules adopted by the department of economic development. Payment into an ERISA-approved fund for the benefit of the participant shall satisfy this requirement. The specific fund shall be specified in the agreement.

7. The participant's agreement to work for the employer for at least two years following the completion of the participant's postsecondary education required by the certified program. However, the agreement may provide for additional education and work commitments beyond the two years.

8. If the participant does not complete the two-year employment obligation, the participant's agreement to repay to the employer the amount paid by the employer toward the participant's postsecondary education expenses pursuant to subsection 6.

9. a. That if a participant does not complete the certified program contemplated by the agreement after entering a postsecondary education program, any unexpended funds being held in trust for the participant's postsecondary education shall be paid back to the employer. In addition the participant must repay to the employer amounts paid from the trust which were expended on the participant's behalf for postsecondary education.

b. That if a participant does not complete the certified program contemplated by the agreement prior to entering a postsecondary education program, one-half of the moneys being held in trust for the participant's postsecondary education shall be paid to a postsecondary education institution as defined in section 261C.3 of the participant's choice to pay tuition or expenses of the participant. The other one-half of the trust moneys shall be paid back to the employer. Any moneys to be transferred for the benefit of the participant which are not transferred within five years for purposes of education at the designated postsecondary institution, shall be paid back to the employer.

Sec. 19. NEW SECTION. 15.365 PAYROLL EXPENDITURE REFUND.

1. An employer who employs a participant in a certified school to career program may claim a refund of twenty percent of the employer's payroll expenditures for each participant in the certified program. The refund is limited to the first four hundred hours of payroll expenditures per participant for each calendar year the participant is in the certified program, not to exceed three years per participant.

2. To receive a refund under subsection 1 for a calendar year, the employer shall file the claim by July 1 of the following calendar year. The claim shall be filed on forms provided by the department of economic development and the employer shall provide such information regarding the employer's participation in a certified school to career program as the department may require. Forms should be designed such that claims for refunds for more than one participant may be made on a single form.

3. For each fiscal year of the fiscal period beginning July 1, 1999, and ending June 30, 2004, there is appropriated up to five hundred thousand dollars annually from the general fund of the state to the department of economic development to pay refunds under this section. If the amount appropriated in a fiscal year is insufficient to pay all refund claims for the calendar year in full, each claimant shall receive a proportion of the claimant's refund claim equal to the ratio of the amount appropriated to the total amount of refund claims. Any unpaid portion of a claim shall not be paid from a subsequent fiscal year appropriation.

4. The department of economic development shall consult with the department of revenue and finance for purposes of this section. The department of economic development shall adopt rules as deemed necessary to carry out the purposes of the certified school to career program.

Sec. 20. NEW SECTION. 15.366 CUSTOMER TRACKING SYSTEM.

All participants and sponsors participating in a certified school to career program shall be included in the customer tracking system implemented by the department of workforce development pursuant to section 84A.5.

Sec. 21. NEW SECTION. 15.367 REPEAL.

This part of chapter 15 is repealed June 30, 2004. However, any contracts in existence on June 30, 2004, shall continue to be valid and each party to such contract is obligated to perform as required under such contract. However, no employer is entitled to any payroll expenditure refund for payroll expenditures incurred after December 31, 2002.

Sec. 22. NEW SECTION. 15A.8 LOANS PAYABLE FROM NEW JOBS CREDIT FROM WITHHOLDING.

1. As an additional means to provide moneys for the payment of the costs of a new jobs training project or multiple projects under chapter 260E and this chapter, a community college may make an advance or loan, including an interfund transfer or a loan from moneys on hand and legally available, to be paid from the same sources and secured in the same manner as certificates described in sections 15A.7 and 260E.6.

2. Revenues from a job training agreement received prior to the completion by a business of its repayment obligation for a project and not pledged to certificates, loans, or advances, and not necessary for the payment of principal and interest maturing on such certificates, loans, or advances, may be applied by the community college to the reduction of any other outstanding certificates, loans, or advances.

Sec. 23. Section 15E.83, Code 1997, is amended to read as follows:

15E.83 SEED CAPITAL CORPORATION.

1. The Iowa seed capital corporation shall be incorporated under chapter 504A. ~~The purpose of the corporation shall be to provide seed capital to start-up and emerging growth companies in Iowa that are bringing new products and processes to the marketplace, and it shall be the goal of the corporation to financially support the establishment and growth of start-up and emerging growth companies that can contribute to the economic diversity of the state and provide general and specific economic benefits to the state. The corporation shall only provide seed capital or financial assistance to Iowa businesses. The corporation shall not be regarded as a state agency, except for purposes of chapters 17A and 69, and a member of the board is not considered a state employee, except for purposes of chapter 669. An individual employed by the corporation is a state employee for purposes of the Iowa public employees' retirement system, state health and dental plans, and other state employee benefit plans and chapter 669. Chapters 8, 18, 19A, and 20 and other provisions of law that relate to requirements or restrictions dealing with state personnel or state funds do not apply to the corporation and any employees of the board or corporation except to the extent provided in this division. Chapters 21 and 22 shall apply to activities of the corporation and to employees of the board or corporation except to the extent provided in this division.~~

2. The corporation shall be governed by a board of ~~seven~~ directors ~~who shall serve a term of four years. Of the seven directors, four shall be persons experienced in business finance and employed at a bank or other financial institution, be a certified public accountant, be an attorney, or be a licensed stockbroker. Each director shall serve at the pleasure of the governor and shall be appointed by the governor, subject to confirmation by the senate pursuant to section 2.32. A director is eligible for reappointment. A vacancy on the board of directors shall be filled in the same manner as an original appointment.~~

~~3. The board of directors shall annually elect one member as chairperson and one member as secretary. The board may elect other officers of the corporation as necessary. Members shall be reimbursed for necessary expenses incurred in the performance of duties from funds appropriated to the corporation.~~

~~4~~ 3. Each director of the corporation shall take an oath of office and the record of each oath shall be filed in the office of the secretary of state.

~~5~~ 4. The corporation shall receive information and cooperate with other agencies of the state and the political subdivisions of the state.

Sec. 24. Section 15E.85, Code 1997, is amended to read as follows:

15E.85 BOARD OF DIRECTORS.

The powers of the corporation are vested in and shall be exercised by the board of directors. ~~Four members of the board constitute a quorum and an affirmative vote of at least four of the members present at a meeting is necessary before an action may be taken by the board.~~ An action taken by the board shall be authorized by resolution at a regular or special meeting and takes effect immediately unless the resolution specifies otherwise. Notice of a meeting shall be given orally or in writing not less than forty-eight hours prior to the meeting.

Sec. 25. Section 15E.87, Code 1997, is amended to read as follows:

15E.87 CORPORATE PURPOSE — POWERS.

The purpose of the corporation is to stimulate and encourage the development of new products within Iowa by the infusion of financial aid for invention and innovation in situations in which financial aid would not otherwise be reasonably available from commercial sources. For this purpose the corporation has the following powers:

1. To have perpetual succession as a corporate body and to adopt bylaws, policies, and procedures for the regulation of its affairs and conduct of its business consistent with the purposes of this division.

~~2. To enter into venture agreements with persons doing business in Iowa upon conditions and terms which are consistent with the purposes of this division for the advancement of financial aid to the persons. The financial aid advanced shall be for the development of specific products, procedures, and techniques which are to be developed and produced in this state. The corporation shall condition the agreements upon contractual assurances that the benefits of increasing or maintaining employment and tax revenues shall remain in Iowa.~~

~~3. To receive and accept aid or contributions from a source of money, property, labor, or other things of value to be used to carry out the purposes of this division including gifts or grants from a department or agency of the United States or any state.~~

~~4. To issue notes and bonds as provided under this division.~~

~~5~~ 2. To hold patents, copyrights, trademarks, or other evidences of protection or exclusivity issued under the laws of this state or the United States to any products.

~~6~~ 3. To employ assistants, agents, and other employees and to engage consultants, attorneys, and appraisers as necessary or desirable to carry out the purposes of the corporation.

~~7~~ 4. To make and enter into contracts and agreements necessary or incidental to its performance of the duties and the powers granted to the corporation.

~~8~~ 5. To sue and be sued, plead, and adopt a seal.

~~9~~ 6. With the approval of the treasurer of state, to invest funds which are not needed for immediate use or disbursement, including funds held in reserve, in obligations issued or guaranteed by the state or the United States.

~~10~~ 7. To procure insurance against a loss in connection with its property and other assets.

~~11~~ 8. To the extent permitted under a corporation contract with other persons, to consent to a termination, modification, forgiveness, or other change in the terms of a contractual right, payment, royalty, contract, or agreement.

~~12~~ 9. To take necessary action to render bonds issued under this division more marketable.

Sec. 26. Section 422.16A, Code Supplement 1997, is amended to read as follows:

422.16A JOB TRAINING WITHHOLDING — CERTIFICATION AND TRANSFER.

Upon the completion by a business of its repayment obligation for a training project funded under chapter 260E, including a job training project funded under ~~chapter 260E and~~ section 15A.8 or repaid in whole or in part by the supplemental new jobs credit from withholding under section 15A.7 or section 15.331, the sponsoring community college shall report to the department of economic development the amount of withholding paid by the business to the community college during the final twelve months of withholding payments. The department of economic development shall notify the department of revenue and finance of that amount. The department shall credit to the workforce development fund account established in section 15.342A twenty-five percent of that amount each quarter for a period of ten years. If the amount of withholding from the business or employer is insufficient, the department shall prorate the quarterly amount credited to the workforce development fund account. The maximum amount from all employers which shall be transferred to the workforce development fund account in any year is ten million dollars.

Sec. 27. LIQUIDATION OF THE IOWA SEED CAPITAL CORPORATION. Notwithstanding sections 15E.81 through 15E.94, sections 15E.181 through 15E.184, and 1997 Iowa Acts, chapter 143, sections 5 and 6, it is the intent of the general assembly that the Iowa seed capital corporation shall be liquidated or sold in an orderly manner. On May 31, 1998, the terms of the board members of the Iowa seed capital corporation shall terminate, the Iowa seed capital corporation shall be renamed the ISCC liquidation corporation, and a three-person board shall be constituted to complete the orderly liquidation or sale of the assets of the ISCC liquidation corporation. The ISCC liquidation corporation board shall consist of the commissioner of insurance or the commissioner's designee, the superintendent of banking or the superintendent's designee, and the treasurer of state or the treasurer's designee. The members of the ISCC liquidation corporation board and any staff providing assistance to the board shall not be liable for their acts or omissions in connection with the liquidation or sale of the corporation. The ISCC liquidation corporation board shall close the corporation offices at 200 East Grand, Des Moines, Iowa, by June 30, 1998, terminate the officers and staff of the corporation by June 30, 1998, and shall not hire a new permanent or temporary staff to operate this corporation.

The staff of the treasurer of state shall provide administrative support to the ISCC liquidation corporation board and the corporation shall reimburse the treasurer of state for the reasonable costs of providing administrative support. The attorney general shall be consulted and shall provide legal support throughout the liquidation and sale process and the corporation shall reimburse the attorney general for the reasonable costs of providing any such consultation and legal support.

The ISCC liquidation corporation board's goals in supervising the liquidation or sale of the corporation are to maximize the net revenue to the state and minimize the impact to the companies involved. The board shall not make any new investments during the liquidation period, except for those necessary to protect and maintain its current holdings.

The ISCC liquidation corporation board is authorized to contract for the services, including brokers, other financial advisors or consultants, or legal advisors, necessary to complete the orderly liquidation or sale of the ISCC liquidation corporation.

The ISCC liquidation corporation board may determine the potential administrative, legal, and contractual service costs for the liquidation or sale of the corporation and may maintain a prudent reserve fund from liquid assets of the corporation for such purposes. Upon the unanimous vote of the ISCC liquidation corporation board the remainder of the liquid assets shall be transferred to the strategic investment fund established in section 15.313.

Following the complete liquidation and dissolution of the corporation or the sale of the corporation, all remaining moneys shall be transferred to the strategic investment fund. Upon transfer of the remaining moneys to the strategic investment fund, the ISCC liquidation corporation board shall be dissolved.

Sec. 28. SHELTER ASSISTANCE FUND. In providing moneys from the shelter assistance fund to homeless shelter programs, the department of economic development shall explore the potential of allocating moneys to homeless shelter programs based in part on their ability to move their clients toward self-sufficiency.

Sec. 29. The department of economic development and the department of workforce development shall within the budget proposals for the fiscal year beginning July 1, 2000, detail the number of FTEs and contract employees included in the budget proposal. During the budget process for the fiscal year beginning July 1, 2000, the joint economic development appropriation subcommittee shall examine contract employees in relationship to the budgets of the department of economic development and the department of workforce development.

Sec. 30. The department of economic development shall submit a report to the general assembly as provided in section 7A.11 by January 1, 1999, which includes all of the following:

1. A survey of all business, industry, and agriculture-related international trade activities in this state. The survey shall include the types of businesses and the products involved in international trade and the estimated costs and revenues resulting from such trade.
2. A list of specific targets and targeted opportunities for business, industry, and agriculture related to international trade activities in this state. These targets shall include the types of businesses and the products that are currently involved in international trade, as well as the types of businesses and the products that could potentially become involved in international trade in the future.

Sec. 31. BUDGET PROPOSALS. The department of economic development and the department of workforce development shall submit all budget proposals in the traditional format as well as in the budgeting for results format for the fiscal year beginning July 1, 1999.

Sec. 32. By December 31 of each year, the ISCC liquidation corporation shall submit an annual report to the chairpersons and the ranking members of the joint appropriations subcommittee on economic development. The report shall include an update on the financial condition of the corporation relating to the status of any moneys, assets, or contracts currently being held by the corporation or transferred by the corporation during the prior year.

Sec. 33. NEW SECTION. 16.5A NONPROFIT CORPORATIONS.

Any nonprofit corporation created by or in association with the Iowa finance authority since January 1, 1989, shall file a report by January 15 of each year with the chairpersons and ranking members of the appropriate appropriations subcommittees of the general assembly. Any nonprofit corporation created by or in association with the authority since January 1, 1989, shall adopt a written conflict of interests policy.

Sec. 34. NEW SECTION. 16.5B HOUSING CORPORATION BOARD.

The board of directors of the Iowa housing corporation shall consist of seven voting members serving staggered three-year terms. One member of the board of directors shall be a representative of the home builders association of Iowa and one member of the board of directors shall be a representative of the Iowa bankers association.

Sec. 35. FEDERAL GRANTS. All federal grants to and the federal receipts of agencies appropriated funds under this Act, not otherwise appropriated, are appropriated for the purposes set forth in the federal grants or receipts unless otherwise provided by the general assembly.

Sec. 36. The Iowa finance authority and the Iowa housing corporation shall consider restrictions on any per diem provided to a member of the board of directors serving both the

* Item veto; see message at end of the Act

authority and the Iowa housing corporation on occasions when meetings of both entities are held on the same day and in the same city or metropolitan area.

Sec. 37. Notwithstanding section 96.9, subsection 4, paragraph "a", moneys credited to the state by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act shall be appropriated to the department of workforce development and shall be used by the department for the administration of the unemployment compensation program only. This appropriation shall not apply to any fiscal year after June 30, 2001.

Sec. 38. Notwithstanding any full-time equivalent position limitations in this Act to the contrary, the department of economic development may add 3.00 FTEs for the commission on volunteer services and 1.00 FTE for the housing assistance program. Two of the full-time equivalent positions added under this section for the commission on volunteer services relate to the transition of personnel services contractors to full-time equivalent positions. The merit system provisions of chapter 19A and the provisions of the state and union collective bargaining agreements shall not govern movement into these full-time positions until September 1, 1998. The provisions relating to the transition of personnel services contractors to full-time equivalent positions, chapter 19A, and collective bargaining agreements are void after September 1, 1998.

Sec. 39. Section 15E.86, Code 1997, is repealed.

Sec. 40. EFFECTIVE DATE. Sections 14, 15, 16, 17, 18, 19, 20, 21, and 27 of this Act, being deemed of immediate importance, take effect upon enactment.

Approved May 22, 1998, except the items which I hereby disapprove and which are designated as that portion of Section 1, subsection 5, which is herein bracketed in ink and initialed by me; and Section 31, in its entirety. My reasons for vetoing these items are delineated in the item veto message pertaining to this Act to the Secretary of State this same date, a copy of which is attached hereto.

TERRY E. BRANSTAD, *Governor*

Dear Mr. Secretary:

I hereby transmit Senate File 2296, an Act appropriating funds to the Department of Economic Development, certain Board of Regents institutions, the Department of Workforce Development, the Public Employment Relations Board, making related statutory changes, and providing an effective date provision.

Senate File 2296 is, therefore, approved on this date with the following exceptions, which I hereby disapprove.

I am unable to approve the designated portion of Section 1, subsection 5, unnumbered paragraph 1. The state has assisted 16 local communities to support tourism development in their areas by providing financial assistance to build welcome center facilities. These public/private partnerships were designed to assist local communities with the one-time costs of establishing a center. This item would put the state in a position of providing ongoing support for the day to day activities of privately operated welcome centers. Such action, without the authority to implement changes that would lead to self-sufficiency, is short sighted. I am supporting the study of the public and private welcome center system in the state as required in this section because I strongly support the development of the tourism industry in the State of Iowa. I am hopeful that recommendations from this study will strengthen the state welcome center system and provide the direction necessary to put all privately owned welcome centers on the course to self-sufficiency.

I am unable to approve the item designated as Section 31, in its entirety. Requiring departments to submit budget requests in multiple formats is costly and time consuming. Chapter 8 of the Code of Iowa establishes the framework for construction of the budget document that is submitted to the legislature.

For the above reasons, I hereby respectfully disapprove these items in accordance with Amendment IV of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in Senate File 2296 are hereby approved as of this date.

Sincerely,
TERRY E. BRANSTAD, *Governor*

CHAPTER 1226

HIGHEST ELEVATION IN STATE

H.J.R. 2004

A JOINT RESOLUTION designating by name an official highest elevation in the State of Iowa.

WHEREAS, the elevation located in Osceola County, commonly referred to as Ocheyedan Mound, and previously regarded as the unofficial highest elevation in the state has been determined not to be the highest elevation in the state; and

WHEREAS, supplemental vertical control surveys conducted by the United States Department of the Interior have determined that the actual highest elevation in the state is 1,670 feet above sea level, and is located in Osceola County approximately five miles north of the town of Sibley in Section 29, Township 100 North, Range 41 West, Fifth Principal Meridian, Iowa, as designated by the Public Land Survey System; and

WHEREAS, the State of Iowa is regarded as one of only four states in the nation which has not designated by name an official highest elevation in the state according to the publication, "Highpoints of the United States, A Guide to the Fifty State Summits", by Don W. Holmes; and

WHEREAS, the State of Iowa has traditionally been referred to as the Hawkeye State, predating any similar designation applied by the University of Iowa to certain athletic teams; and

WHEREAS, the designation by name of an official highest elevation in the state would be of educational value to the schoolchildren and citizens of the State of Iowa, create additional tourism potential, be of historical significance, promote consistency with officially designated state symbols, provide a readily understandable alternate designation to the Public Land Survey System description, and constitute a source of state pride; NOW THEREFORE,

Be It Enacted by the General Assembly of the State of Iowa:

The site located in Osceola County in Section 29, Township 100 North, Range 41 West, is recognized and shall be designated the official highest elevation in the State of Iowa.

The official highest elevation in the State of Iowa shall hereafter be designated and referred to as Hawkeye Point.

Any official state publications referencing the highest elevation in the state, or describing other state symbols or features, are encouraged to refer to the highest elevation by the official name of Hawkeye Point.

Approved March 23, 1998

CHAPTER 1227

STATE PUBLIC DEFENDER — FORT DODGE OFFICE

H.J.R. 2003

A JOINT RESOLUTION to approve the request by the state public defender to establish the Fort Dodge satellite public defender office as a separate local public defender office.

WHEREAS, Iowa Code section 13B.8, subsection 1, paragraph "d", provides that before establishing or abolishing a local public defender office, the state public defender is to provide a written report detailing the reasons for the action to the General Assembly and obtain the approval of the General Assembly; and

WHEREAS, the state public defender has submitted such a report and request relating to the establishment of a separate local public defender office in Fort Dodge; and

WHEREAS, the current Fort Dodge public defender office is a satellite office of the office of state public defender and has previously been a satellite office of the Nevada public defender office and of the Mason City public defender office; and

WHEREAS, the current Fort Dodge office is located too far from either Nevada or Mason City to provide effective supervision, resulting in the operation of the office without the benefit of a designated local supervisor; and

WHEREAS, the cost of the conversion of the satellite office to a separate local public defender office is the difference in the salaries of a Public Defender II lead-worker and a Defender Supervisor I and sufficient funds exist in the budget to cover this difference; NOW THEREFORE,

Be It Enacted by the General Assembly of the State of Iowa:

That the state public defender's request to establish the Fort Dodge satellite public defender office as a separate local public defender office is approved.

Approved April 6, 1998

CHAPTER 1228

PROPOSED CONSTITUTIONAL AMENDMENTS — STATE EXPENDITURES AND TAXES

S.J.R. 2004

First Time Passed

A JOINT RESOLUTION proposing amendments to the Constitution of the State of Iowa relating to the state budget by limiting state general fund expenditures and restricting certain state tax revenue changes.

Be It Resolved by the General Assembly of the State of Iowa:

The Constitution of the State of Iowa is amended by adding the following new section to new Article XIII:

ARTICLE XIII.
EXPENDITURE LIMITATION.

GENERAL FUND EXPENDITURE LIMITATION. Section 1.

1. For the purposes of this section:

a. "Adjusted revenue estimate" means the most recent revenue estimate determined before January 1, or a later and lesser revenue estimate determined before adjournment of the regular session of the General Assembly, for the general fund for the following fiscal year as determined by a revenue estimating conference which shall be established by the General Assembly by law, adjusted by subtracting estimated refunds payable from that estimated revenue and adding any available surplus in accordance with subsection 5.

b. "General fund" means the principal operating fund of the state which shall be established by the General Assembly by law.

c. "New revenues" means moneys which are received by the state due to increased tax rates or fees or newly created taxes or fees over and above those moneys which are received due to state taxes or fees which are in effect as of January 1 following the most recent state revenue estimating conference. "New revenues" also includes moneys received by the general fund due to new transfers over and above those moneys received by the general fund due to transfers which are in effect as of January 1 following the most recent state revenue estimating conference. The state revenue estimating conference shall determine the eligibility of transfers to the general fund which are to be considered as new revenue in determining the state general fund expenditure limitation.

2. A state general fund expenditure limitation is created and calculated in subsection 3, for each fiscal year beginning on or after July 1 following the effective date of this section.

3. Except as otherwise provided in this section, the state general fund expenditure limitation for a fiscal year shall be ninety-nine percent of the adjusted revenue estimate.

4. The state general fund expenditure limitation shall be used by the Governor in the preparation of the budget and by the General Assembly in the budget process. If a new revenue source is proposed, the budget revenue projection used for that new revenue source for the period beginning on the effective date of the new revenue source and ending in the fiscal year in which the source is included in the adjusted revenue estimate shall be ninety-five percent of the amount remaining after subtracting estimated refunds payable from the projected revenue from that source. If a new revenue source is established and implemented, the original state general fund expenditure limitation amount provided for in subsection 3 shall be readjusted to include ninety-five percent of the estimated revenue from that source.

5. Any surplus existing at the end of a fiscal year which exceeds ten percent of the adjusted revenue estimate of that fiscal year shall be included in the adjusted revenue estimate for the following fiscal year. Any surplus equal to ten percent or less of the adjusted revenue estimate of the fiscal year may be included in the adjusted revenue estimate for the following fiscal year if approved in a bill receiving the affirmative votes of at least three-fifths of the whole membership of each house of the General Assembly. For purposes of this section, "surplus" means the cumulative excess of revenues and other financing sources over expenditures and other financing uses for the general fund at the end of a fiscal year.

6. The scope of the expenditure limitation under subsection 3 shall not include federal funds, donations, constitutionally dedicated moneys, and moneys in expenditures from a state retirement system.

7. The Governor shall submit and the General Assembly shall pass a budget which does not exceed the state general fund expenditure limitation.

8. The Governor shall not submit and the General Assembly shall not pass a budget which in order to balance assumes reversion of any part of the total of the appropriations included in the budget.

9. The state shall use consistent standards, in accordance with generally accepted accounting principles, for all state budgeting and accounting purposes.

10. The General Assembly shall enact laws to implement this section.

Sec. 2. The following amendment to the Constitution of the State of Iowa is proposed:

The Constitution of the State of Iowa is amended by adding the following new sections to new Article XIII:

ARTICLE XIII.
THREE-FIFTHS MAJORITY FOR TAX LAW CHANGES.

THREE-FIFTHS MAJORITY TO INCREASE TAXES. Section 1. A bill containing provisions enacting, amending, or repealing the state income tax or enacting, amending, or repealing the state sales and use taxes, in which the aggregate fiscal impact of those provisions relating to those taxes results in a net increase in state tax revenues, as determined by the General Assembly, shall require the affirmative votes of at least three-fifths of the whole membership of each house of the General Assembly for passage. This section does not apply to income tax or sales and use taxes imposed at the option of a local government.

THREE-FIFTHS MAJORITY TO ENACT NEW STATE TAX. Sec. 2. A bill that establishes a new state tax to be imposed by the state shall require the affirmative votes of at least three-fifths of the whole membership of each house of the General Assembly for passage.

ENFORCEMENT OF THREE-FIFTHS MAJORITY REQUIREMENT. Sec. 3. A lawsuit challenging the proper enactment of a bill pursuant to section 1 or 2 shall be filed no later than one year following the enactment. Failure to file such a lawsuit within the one-year time limit shall negate the three-fifths majority requirement as it applies to the bill.

Each bill to which section 1 or 2 applies shall include a separate provision describing the requirements for enactment prescribed by section 1 or 2.

IMPLEMENTATION. Sec. 4. The General Assembly shall enact laws to implement sections 1 through 3.

Sec. 3. The foregoing proposed amendments to the Constitution of the State of Iowa are referred to the General Assembly to be chosen at the next general election for members of the General Assembly and the Secretary of State is directed to cause them to be published for three consecutive months previous to the date of that election as provided by law.

CHAPTER 1229

PROPOSED CONSTITUTIONAL AMENDMENT — QUALIFICATIONS OF ELECTORS

S.J.R. 9

First Time Passed

A JOINT RESOLUTION proposing an amendment to the Constitution of the State of Iowa relating to the qualifications of electors.

Be It Resolved by the General Assembly of the State of Iowa:

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

Section 5 of Article II of the Constitution of the State of Iowa is repealed and the following adopted in lieu thereof:

DISQUALIFIED PERSONS. Sec. 5. A person adjudged mentally incompetent or convicted of any felony shall not be entitled to the privilege of an elector.

Sec. 2. The foregoing amendment to the Constitution of the State of Iowa is referred to the General Assembly to be chosen at the next general election for members of the General Assembly, and the Secretary of State is directed to cause the same to be published for three consecutive months previous to the date of that election as provided by law.

ANALYSIS OF TABLES

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2262	1140	2454	1121	2545	1213
2269	1195	2456	1047	2546	1180
2271	1119	2465	1061	2550	1163
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