State of Iowa

2004

ACTS AND JOINT RESOLUTIONS

(Session Laws)

Enacted at the

2004 REGULAR SESSION

and the

2004 FIRST EXTRAORDINARY SESSION

of the

Eighteenth General Assembly

of the

State of Iowa

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

REGULAR SESSION BEGUN ON THE TWELFTH DAY OF JANUARY
AND ENDED ON THE TWENTIETH DAY OF APRIL, A.D. 2004

FIRST EXTRAORDINARY SESSION HELD ON THE
SEVENTH DAY OF SEPTEMBER, A.D. 2004

Published under the authority of Iowa Code section 2B.10
by the
Legislative Services Agency
GENERAL ASSEMBLY OF IOWA
Des Moines

PREFACE

CERTIFICATION

We, Dennis C. Prouty, Director, Legislative Services Agency, Richard L. Johnson, Legal Services Division Director, Leslie E. W. Hickey, Iowa Code Editor, and Joanne R. Page, Deputy 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 2004 Regular Session and the 2004 First Extraordinary Session of the Eightieth 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 2005 IOWA CODE IS PUBLISHED. Changes will be shown in the Tables of Disposition of Acts in the 2005 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 and bold italics within an Act indicate material that the Governor has item vetoed. Item vetoed text is also indicated by asterisks at the beginning and ending of the vetoed material. Superscript numbers indicate explanatory footnotes.

Effective and enactment dates. The Acts of the 2004 Regular Session took effect on July 1, 2004, unless otherwise provided. The Acts of the 2004 First Extraordinary Session generally took effect upon enactment and were applicable at a specified time if so provided. [Otherwise extraordinary session bills take effect ninety days after adjournment.] 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(6) states that a notation of the filing of the estimate must be included in the Iowa Acts with the text of the bill or resolution. A dagger is placed at the beginning of the enacting clause and a footnote included for each enrolled Act or Resolution which requires the mandate.

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 Legislative Services Agency, State Capitol, Ground Floor, Des Moines, Iowa 50319. Telephone (515) 281-3568

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GOVERNOR

THOMAS J. VILSACK	Henry
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Carrie Mulvihill, Governor's Scheduler	Polk

LIEUTENANT GOVERNOR

SALLY J. PEDERSON	Polk
Dawn Wilson, Senior Advisor to Lieutenant Governor	Polk
Judy Jones, Lieutenant Governor's Scheduler	Polk

SECRETARY OF STATE

CHESTER J. CULVER	Polk
Joni Klaassen, Deputy of Administration	Polk
Steve Mandernach, Deputy of Business Services	Polk
Barb Huey, Deputy of Elections and Voter Registration	Polk

AUDITOR OF STATE

DAVID A. VAUDT	Polk
Warren G. Jenkins, Chief Deputy Auditor of State	Polk
Judith A. Vander Linden, Deputy, Administration Division	Polk
Tamera S. Kusian, Deputy, Performance Investigation Division	Polk
Andrew E. Nielsen, Deputy, Financial Audit Division	Polk

TREASURER OF STATE

MICHAEL L. FITZGERALD	Polk
Stefanie G. Devin, Deputy Treasurer	Polk
Karen Sinclair, Deputy Treasurer	Polk
Steve Larson, Deputy Treasurer	Polk

SECRETARY OF AGRICULTURE

PATTY JUDGE	Monroe
Brent Halling, Deputy Secretary	Dallas
Mary Jane Olney, Director, Market Development and Administrative Services Division	Polk
Ronald Rowland, Director, Consumer Protection and Animal Health Division	Polk
William Ehm, Director, Soil Conservation Division	Union
John Whipple, Director, Plant Management and Technology Division	Warren

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THOMAS J. MILLER	Polk
Tam Ormiston, Deputy Attorney General	Polk
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Julie Pottorff, Deputy Attorney General	Polk
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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

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Name and Residence	Occupation	Senatorial District	Former Legislative Service
Angelo, Jeff ..... Creston	Media Consultant	48th—Adams, Clarke, ... Decatur, Montgomery, Ringgold, Taylor, ... *Union*	77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
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Name and Residence	Occupation	Senatorial District	Former Legislative Service
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McKinley, Paul ..... Chariton	Businessman	36th—Jasper, *Lucas*, ... Mahaska, Marion, ... Monroe	79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Miller, David ..... Fairfield	Attorney/Farmer	45th—*Jefferson*, Johnson, Van Buren, Wapello, Washington	78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X

[1] Resigned January 14, 2004

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Quirmbach, Herman C. Ames	Associate Professor .... Economics—Iowa .... State University	23rd—Boone, *Story*	80(1st), 80(1st)X
Ragan, Amanda ..... Mason City	Executive Director ..... Community Kitchen of North Iowa/ ..... Executive Director ... Meals on Wheels	7th—*Cerro Gordo*, ... Floyd, Howard, ... Mitchell	79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
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Shull, Doug ..... Indianola	Retired/Community .... Service	37th—Dallas, Madison, *Warren*	68, 69, 69X, 69XX, 80(1st), 80(1st)X
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Stewart, Roger ..... Preston	Banker/Farmer	13th—Clinton, Dubuque, *Jackson*	80(1st), 80(1st)X
Tinsman, Maggie ..... Davenport	Social Worker/Legislator	41st—*Scott*	73, 74, 74X, 74XX, 75, 76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Veenstra, Ken ..... Orange City	Retired Insurance Agent	2nd—Lyon, Plymouth, .. *Sioux*	76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
[2]Ward, Pat ..... West Des Moines	Business/Government .. Relations	30th—*Polk*	None

[2] Elected in Special Election February 3, 2004

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Warnstadt, Steve ..... Sioux City	Legislator/National ..... Guard	1st—*Woodbury*	76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Wieck, Ron ..... Sioux City	Insurance Agent	27th—Cherokee, ... Plymouth, *Woodbury*	80(1st), 80(1st)X
Zieman, Mark ..... Postville	Farmer/Trucking Owner	8th—*Allamakee*, ... Chickasaw, Howard, Winneshiek	79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X

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De Boef, Betty R. ..... What Cheer	Farmer/Small Business Owner	76th—Iowa, *Keokuk*, ... Poweshiek, Tama	79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
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Elgin, Jeffrey C. ..... Cedar Rapids	Business Owner/Investor	37th—*Linn*	79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
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Frevert, Marcella R. .... Emmetsburg	Legislator	7th—Emmet, Kossuth, .. *Palo Alto*	77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Gaskill, Mary ..... Ottumwa	Retired County Auditor	93rd—*Wapello*	80(1st), 80(1st)X
Gipp, Chuck ..... Decorah	Farmer/Majority ..... Leader	16th—Allamakee, ... *Winneshiek*	74, 74X, 74XX, 75, 76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Granzow, Polly A. ..... Eldora	Farmer	44th—*Hardin,* Marshall	80(1st), 80(1st)X
Greimann, Jane L. ..... Ames	Retired Public School .. Educator	45th—*Story*	78(2nd), 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Greiner, Sandra H. ..... Keota	Farmer	89th—Jefferson, ... Johnson, *Washington*	75, 76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Hahn, James F. ..... Muscatine	Property Management	80th—*Muscatine*	74, 74X, 74XX, 75, 76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Hanson, Dell ..... Vinton	Self-Employed ..... Implement Dealer	39th—*Benton,* Iowa	80(1st), 80(1st)X
Heaton, Dave ..... Mount Pleasant	Restaurant Owner	91st—*Henry*, Lee	76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Heddens, Lisa K. ..... Ames	.....	46th—Boone, *Story*	80(1st), 80(1st)X
Hoffman, Clarence C. ... Charter Oak	Insurance	55th—*Crawford*, Ida, ... Monona, Woodbury	78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Hogg, Robert M. ..... Cedar Rapids	Attorney	38th—*Linn*	80(1st), 80(1st)X
Horbach, Lance J. ..... Tama	Insurance Industry	40th—Grundy, *Tama*	78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Hunter, Bruce ..... Des Moines	Customer Service ..... Manager	62nd—*Polk*	80(1st), 80(1st)X

Name and Residence	Occupation	Representative District	Former Legislative Service
Huseman, Daniel Adair Aurelia	Farmer	53rd—*Cherokee*, Plymouth, Woodbury	76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Huser, Geri D. Altoona		42nd—Jasper, *Polk*	77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Hutter, Joseph I. Bettendorf	Retired Police Officer	82nd—*Scott*	80(1st), 80(1st)X
Jacobs, Elizabeth (Libby) S. West Des Moines	Community Relations Director	60th—*Polk*	76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
[1]Jacoby, David (Dave) Coralville	Program Director	30th—*Johnson*	None
Jenkins, G. Willard Waterloo	Engineer	20th—*Black Hawk*	77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Jochum, Pam Dubuque	Instructor—Northeast Iowa Community College	27th—*Dubuque*	75, 76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Jones, Gerald D. Silver City	Property Management	98th—*Mills*, Pottawattamie	79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Klemme, Ralph F. Le Mars	Farmer	3rd—*Plymouth*, Sioux	75, 76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Kramer, Kent A. Johnston	Financial Planner	69th—*Polk*	80(1st), 80(1st)X
Kuhn, Mark A. Charles City	Farmer	14th—Cerro Gordo, *Floyd*, Mitchell	78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Kurtenbach, James M. Nevada	Associate Professor	10th—Hamilton, *Story*	80(1st), 80(1st)X
Lalk, David Westgate	Farmer/Retired John Deere Employee	18th—Black Hawk, Bremer, *Fayette*	80(1st), 80(1st)X
Lensing, Vicki Iowa City	Funeral Home Owner	78th—*Johnson*	79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Lukan, Steven F. New Vienna	Tire Technician	32nd—Delaware, *Dubuque*	80(1st), 80(1st)X

[1] Elected in Special Election August 26, 2003; Representative Richard E. Myers resigned July 1, 2003

Name and Residence	Occupation	Representative District	Former Legislative Service
Lykam, Jim ..... Davenport	Small Business Owner	85th—*Scott*	73, 80(1st), 80(1st)X
Maddox, Gene ..... Clive	Lawyer	59th—*Polk*	75, 76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Manternach, Gene A. ... Cascade	Livestock and Grain .... Farmer	31st—Dubuque, *Jones* ...	79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Mascher, Mary ..... Iowa City	Teacher	77th—*Johnson*	76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
McCarthy, Kevin M. .... Des Moines	Attorney	67th—*Polk*	80(1st), 80(1st)X
Mertz, Dolores M. ..... Ottosen	.....	8th—Humboldt, *Kossuth*, Pocahontas, Webster	73, 74, 74X, 74XX, 75, 76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Miller, Helen ..... Fort Dodge	Attorney/Arts Educator	49th—*Webster*	80(1st), 80(1st)X
Murphy, Pat ..... Dubuque	Minority Leader	28th—*Dubuque*	73(2nd), 74, 74X, 74XX, 75, 76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Oldson, Jo ..... Des Moines	Attorney	61st—*Polk*	80(1st), 80(1st)X
Olson, Donovan ..... Boone	Distance Education .... Program Coordinator —Iowa State ..... University	48th—*Boone*, Dallas	80(1st), 80(1st)X
Olson, Steven N. ..... Grand Mound	Farmer/Seedstock ..... Director, Iowa ..... Cattlemen's ..... Association	83rd—*Clinton*, Scott	80(1st), 80(1st)X
Osterhaus, Robert J. .... Maquoketa	Pharmacist	25th—Clinton, Dubuque, *Jackson*	76(2nd), 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Paulsen, Kraig ..... Hiawatha	.....	35th—*Linn*	80(1st), 80(1st)X
Petersen, Janet ..... Des Moines	Communications ..... Consultant	64th—*Polk*	79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Quirk, Brian J. ..... New Hampton	Electrical Contractor ...	15th—*Chickasaw*, ... Howard, Winneshiek	79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X

Name and Residence	Occupation	Representative District	Former Legislative Service
Raecker, J. Scott ..... Urbandale	Executive Director— ... Institute for Character Development	63rd—*Polk*	78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Rants, Christopher C. .. Sioux City	Speaker of the House ..	54th—*Woodbury*	75, 76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Rasmussen, Daniel J. ... Independence	Land Improvement ..... Contractor	23rd—Black Hawk, ... *Buchanan*	80(1st), 80(1st)X
Rayhons, Henry V. ..... Garner	Farmer	11th—*Hancock*, ... Winnebago, Worth	77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Reasoner, Michael J. .... Creston	Business Owner	95th—Clarke, Decatur, *Union*	80(1st), 80(1st)X
Roberts, Rod ..... Carroll	Church Development ..	51st—*Carroll*, Crawford, Sac	79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Sands, Thomas R. ..... Columbus Junction	Real Estate Appraiser/ .. Banker/Farm Owner	87th—Des Moines, ... *Louisa*, Muscatine	80(1st), 80(1st)X
Schickel, Bill ..... Mason City	Radio Station General .. Manager	13th—*Cerro Gordo*	80(1st), 80(1st)X
[2]Shomshor, Paul ..... Council Bluffs	Certified Public ..... Accountant	100th—*Pottawattamie* ..	None
Shoultz, Don ..... Waterloo	Retired Public School .. Teacher	21st—*Black Hawk*	70, 71, 72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Smith, Mark ..... Marshalltown	Licensed Independent .. Social Worker	43rd—*Marshall*	79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Stevens, Greg ..... Milford	Teacher	6th—Clay, *Dickinson*	78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Struyk, Douglas L. ..... Council Bluffs	Small Business Owner/ Attorney	99th—*Pottawattamie* ...	80(1st), 80(1st)X
Swaim, Kurt ..... Bloomfield	Attorney	94th—Appanoose, *Davis*, Wayne	80(1st), 80(1st)X
Taylor, Dick ..... Cedar Rapids	Electrician/Project ..... Manager	33rd—*Linn*	78(2nd), 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X

[2] Elected in Special Election August 5, 2003; Representative Brad Hansen resigned June 19, 2003

Name and Residence	Occupation	Representative District	Former Legislative Service
Taylor, Todd ..... Cedar Rapids	Union Representative ..	34th—*Linn*	76(2nd), 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Thomas, Roger ..... Elkader	Farmer/Paramedic	24th—*Clayton*, ... Delaware, Fayette	77, 78, 80(1st), 80(1st)X
Tjepkes, David A. ..... Gowrie	Retired State Trooper ..	50th—Calhoun, Greene, *Webster*	80(1st), 80(1st)X
Tymeson, Jodi S. ..... Winterset	National Guard Brigadier General/Licensed .... Teacher	73rd—Dallas, *Madison*, Warren	79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Upmeyer, Linda L. ..... Garner	Nurse Practitioner	12th—Cerro Gordo, ... Franklin, *Hancock*	80(1st), 80(1st)X
Van Engelenhoven, ... James L. ..... Pella	Farmer	71st—Jasper, *Marion*	78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Van Fossen, ... James (Jim) R. ..... Davenport	Retired Police Captain	84th—*Scott*	80(1st), 80(1st)X
Van Fossen, Jamie ..... Davenport	Economic Development Analyst— ..... MidAmerican Energy	81st—*Scott*	76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Watts, Ralph C. ..... Adel	Engineer/Business ..... Management Retired	47th—Boone, *Dallas*	80(1st), 80(1st)X
Wendt, Roger F. ..... Sioux City	Retired School ..... Administrator	2nd—*Woodbury*	80(1st), 80(1st)X
Whitaker, John R. ..... Hillsboro	Family Farmer	90th—Jefferson, ... *Van Buren*, Wapello	80(1st), 80(1st)X
Whitead, Wesley Edward Sioux City	.....	1st—*Woodbury*	77, 78, 80(1st), 80(1st)X
Wilderdyke, Paul A. .... Woodbine	Community Relations ..	56th—*Harrison*, Monona, Pottawattamie	79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Winckler, Cindy Lou .... Davenport	Instructional Facilitator—Davenport Schools	86th—*Scott*	79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X
Wise, Philip ..... Keokuk	Consultant/Legislator/ .. Retired Educator	92nd—*Lee*	72, 72X, 72XX, 73, 74, 74X, 74XX, 75, 76, 77, 78, 79(1st), 79(1st)X, 79(1st)XX, 79(2nd), 79(2nd)X, 79(2nd)XX, 80(1st), 80(1st)X

JUDICIAL DEPARTMENT

JUSTICES OF THE SUPREME COURT

(Justices listed according to seniority)

Name	Office Address	Term Ending
Louis A. Lavorato, C.J.	Des Moines	December 31, 2004
Jerry L. Larson	Harlan	December 31, 2004
James H. Carter	Cedar Rapids	December 31, 2008
Marsha K. Ternus	Des Moines	December 31, 2010
Mark S. Cady	Fort Dodge	December 31, 2008
Michael J. Streit	Des Moines	December 31, 2010
David S. Wiggins	Des Moines	December 31, 2004

JUDGES OF THE COURT OF APPEALS

(Judges listed according to seniority)

Rosemary Shaw Sackett, C.J.	Spencer	December 31, 2008
Terry L. Huitink	Ireton	December 31, 2008
Gayle Nelson Vogel	Knoxville	December 31, 2004
Robert E. Mahan	Ames	December 31, 2004
Van D. Zimmer	Vinton	December 31, 2006
John C. Miller	Burlington	December 31, 2006
Daryl L. Hecht	Sioux City	December 31, 2006
Anu Vaitheswaran	Des Moines	December 31, 2006
Larry J. Eisenhauer	Des Moines	December 31, 2008

CONGRESSIONAL DELEGATION AND DISTRICT OFFICES

UNITED STATES SENATORS

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Suite 370
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(319) 365-4504

1606 Brady Street
Suite 323
Davenport, Iowa 52803
(563) 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
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Senator Charles Grassley (R)
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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

131 West 3rd Street, Suite 180
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307 Federal Building
8 South 6th Street
Council Bluffs, Iowa 51501
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UNITED STATES REPRESENTATIVES

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CONDITION OF STATE TREASURY

June 30, 2003

	Balance July 1, 2002	Total Receipts and Transfers	Total Available	Total Disbursements and Transfers	Balance June 30, 2003
General Fund	$ 309,502,981	$ 9,068,076,068	$ 9,377,579,049	$ 9,006,478,997	$ 371,100,052
Special Revenue Fund	1,255,974,483	2,490,281,071	3,746,255,554	2,764,226,290	982,029,264
Capitol Projects Fund	33,278,799	23,145,692	56,424,491	55,832,268	592,223
Debt Service Fund	9,757,771	374,085	10,131,856	127,325	10,004,531
Enterprise Fund	23,577,268	397,581,227	421,158,495	394,274,057	26,884,438
Internal Service Fund	46,229,912	286,785,028	333,014,940	277,690,790	55,324,150
Expendable Trust Fund	25,250,541	491,655,022	516,905,563	492,281,856	24,623,707
Nonexpendable Trust Fund	8,257,888	48,789	8,306,677	0	8,306,677
Pension Fund	14,740,039,054	540,772,641	15,280,811,695	824,797,047	14,456,014,648
Trust and Agency Fund	166,359,442	3,666,525,394	3,832,884,836	3,678,941,937	153,942,899
Totals	$16,618,228,139	$16,965,245,017	$33,583,473,156	$17,494,650,567	$ 16,088,822,589

Balance July 1, 2002	$16,618,228,139
Receipts and Transfers	16,965,245,017
Total Available	33,583,473,156
Disbursements and Transfers	17,494,650,567
Balance June 30, 2003	$16,088,822,589

DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE ACCOUNTING ENTERPRISE

April 19, 2004

ANALYSIS BY CHAPTERS

2004 REGULAR SESSION

For Conversion Tables of Senate and House Files and Joint Resolutions to chapters of the 2004 Acts, Regular Session, see page 820

2004 FIRST EXTRAORDINARY SESSION

For Conversion Table of Senate and House Files to chapters of the 2004 Acts, First Extraordinary Session, see page 1152

2004 Regular Session

of the

Eightieth General Assembly

of the

State of Iowa

CHAPTER 1001

PROPERTY REHABILITATION PROJECTS —
CERTIFICATION OF COMPLETION PROCEDURES — TAX CREDITS

H.F. 401

AN ACT relating to the procedures for certificates of completion of property rehabilitation projects for which tax credits may be available.

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

Section 1. Section 404A.4, subsection 4, Code 2003, is amended to read as follows:[1]

4. The total amount of tax credits that may be approved for a fiscal year under this chapter shall not exceed two million four hundred thousand dollars. ~~Tax credit certificates shall be issued on the basis of the earliest awarding~~ The department of cultural affairs shall establish by rule the procedures for the application, review, selection, and awarding of certifications of completion ~~as provided in subsection 1~~. The departments of economic development, cultural affairs and revenue and finance shall each adopt rules to jointly administer this subsection and shall provide by rule for the method to be used to determine for which fiscal year the tax credits are ~~approved~~ available.

Approved March 3, 2004

[1] See chapter 1175, §395 herein

CHAPTER 1002

APPOINTMENT OF COUNTY ATTORNEY — RESIDENCY REQUIREMENT

H.F. 2180

AN ACT relating to filling the office of county attorney by appointment.

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

Section 1. Section 69.14A, subsection 2, paragraph a, unnumbered paragraph 1, Code 2003, is amended to read as follows:

By appointment by the board of supervisors. The appointment shall be for the period until the next pending election as defined in section 69.12, and shall be made within forty days after the vacancy occurs. If the board of supervisors chooses to proceed under this paragraph, the board shall publish notice in the manner prescribed by section 331.305 stating that the board intends to fill the vacancy by appointment but that the electors of the county have the right to file a petition requiring that the vacancy be filled by special election. The board may publish notice in advance if an elected official submits a resignation to take effect at a future date. The board may make an appointment to fill the vacancy after the notice is published or after the vacancy occurs, whichever is later. A person appointed to an office under this subsection, except for a county attorney, shall have actually resided in the county which the appointee represents sixty days prior to appointment. A person appointed to the office of county attorney shall be a resident of the county at the time of appointment.

Approved March 3, 2004

CHAPTER 1003

ECONOMIC DEVELOPMENT INCENTIVES — NEW JOBS AND INCOME, NEW CAPITAL INVESTMENT, AND ENTERPRISE ZONE PROGRAMS

S.F. 2290

AN ACT relating to economic development incentives under the new jobs and income program, the new capital investment program, and the enterprise zone program and providing an effective date.

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

Section 1. Section 15.330, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

If the business or group of businesses has not met more than ninety percent of the job creation requirement in section 15.329, subsection 1, paragraph "f", it shall pay a percentage of the ~~incentive~~ incentives received ~~under section 15.334, or if the business or group of businesses does not receive the incentive under section 15.334, then under section 15.333~~ as follows:

Sec. 2. Section 15.331A, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

The eligible business or a supporting business shall be entitled to a refund of the taxes paid under chapters 422 and 423 for gas, electricity, water, or sewer utility services, goods, wares,

or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area of the eligible business or a supporting business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded. However, an eligible business shall be entitled to a refund for taxes attributable to racks, shelving, and conveyor equipment to be used in a warehouse or distribution center subject to section 15.331C.

Sec. 3. NEW SECTION. 15.331C CORPORATE TAX CREDIT — FOR CERTAIN SALES TAXES PAID BY DEVELOPER.

1. An eligible business or a supporting business may claim a corporate tax credit in an amount equal to the taxes paid by a third-party developer under chapters 422 and 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility with the economic development area of the eligible business or supporting business. Taxes attributable to intangible property and furniture and furnishings shall not be included, but taxes attributable to racks, shelving, and conveyor equipment to be used in a warehouse or distribution center shall be included. 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. An eligible business may elect to receive a refund of all or a portion of an unused tax credit.

2. A third-party developer shall state under oath, on forms provided by the department of economic development, the amount of taxes paid as described in subsection 1 and shall submit such forms to the department. The taxes paid shall be itemized to allow identification of the taxes attributable to racks, shelving, and conveyor equipment to be used in a warehouse or distribution center. After receiving the form from the third-party developer, the department shall issue a tax credit certificate to the eligible business or supporting business equal to the taxes paid by a third-party developer under chapters 422 and 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility. The department shall also issue a tax credit certificate to the eligible business or supporting business equal to the taxes paid and attributable to racks, shelving, and conveyor equipment to be used in a warehouse or distribution center. The aggregate combined total amount of tax refunds under section 15.331A for taxes attributable to racks, shelving, and conveyor equipment to be used in a warehouse or distribution center and of tax credit certificates issued by the department for the taxes paid and attributable to racks, shelving, and conveyor equipment to be used in a warehouse or distribution center shall not exceed five hundred thousand dollars in a fiscal year. If an applicant for a tax credit certificate does not receive a certificate for the taxes paid and attributable to racks, shelving, and conveyor equipment to be used in a warehouse or distribution center, the application shall be considered in succeeding fiscal years. The eligible business or supporting business shall not claim a tax credit under this section unless a tax credit certificate issued by the department of economic development is attached to the taxpayer's tax return for the tax year for which the tax credit is claimed. A tax credit certificate shall contain the eligible business's or supporting business's name, address, tax identification number, the amount of the tax credit, and other information required by the department of revenue.

Sec. 4. Section 15.333, subsection 1, Code Supplement 2003, is amended to read as follows:

1. An eligible business may claim a corporate tax credit up to a maximum of ten percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business under the program. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. Subject to prior approval by the department of economic development in consultation with the department of revenue, an eligible business whose project primarily

involves the production of value-added agricultural products may elect to receive a refund of all or a portion of an unused tax credit. For purposes of this section, an eligible business includes a cooperative described in section 521 of the Internal Revenue Code which is not required to file an Iowa corporate income tax return. The refund may be used against a tax liability imposed under chapter 422, division II, III, or V. If the business is a partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

1A. 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~~ any of the following:

a. 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.

b. The annual base rent paid to a third-party developer by an eligible business for a period not to exceed ten years, provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land and the third-party developer's costs to build or renovate the building for the eligible business. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of ten years.

Sec. 5. Section 15.333A, subsection 1, Code 2003, is amended to read as follows:

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.~~

For purposes of this section, the purchase price of real property and any buildings and structures located on the real property is considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which an insurance premium tax credit was claimed under this section, the insurance premium tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

a. One hundred percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within one year after being placed in service.

b. Eighty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within two years after being placed in service.

c. Sixty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within three years after being placed in service.

d. Forty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within four years after being placed in service.

e. Twenty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within five years after being placed in service.

1A. 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 any of the following:

a. 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.

b. The annual base rent paid to a third-party developer by an eligible business for a period not to exceed ten years, provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land and the third-party developer's costs to build or renovate the building for the eligible business. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of ten years.

Sec. 6. Section 15.385, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. Corporate tax credit for certain sales taxes paid by a developer, as provided in section 15.331C.

Sec. 7. Section 15.385, subsection 3, paragraph b, Code Supplement 2003, is amended to read as follows:

b. For purposes of this subsection, "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, the purchase price of real property and any buildings and structures located on the real property, and the cost of improvements made to real property which is used in the operation of the eligible business. "New investment directly related to new jobs created by the location or expansion of an eligible business under the program" also means the annual base rent paid to a third-party developer by an eligible business for a period not to exceed ten years, provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land and the third-party developer's costs to build or renovate the building for the eligible business. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. If, however, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this section, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

(1) One hundred percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within five full years after being placed in service.

Sec. 8. Section 15.385, subsection 4, paragraph b, Code Supplement 2003, is amended to read as follows:

b. For purposes of this subsection, "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, the purchase price of real property and any buildings and structures located on the real property, and the cost of improvements made to real property which is used in the operation of the eligible business. "New investment directly related to new jobs created by the location or expansion of an eligible business under the program" also means the annual base rent paid to a third-party developer by an eligible business for a period not to exceed ten years, provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land and the third-party developer's costs to build or renovate the building for the eligible business. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. If, however, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this section, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

(1) One hundred percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within five full years after being placed in service.

Sec. 9. Section 15E.195, Code 2003, 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.193B. ~~The enterprise zone commission shall also review applications from qualified development businesses requesting to receive incentives or assistance as provided in section 15E.193C.~~ The commission shall consist of nine members. Five of these members shall consist of one representative of the board of supervisors, one member with economic development expertise chosen by the department of economic development, one representative of the county zoning board, one member of the local community college board of directors, and one representative of the local workforce development center. These five members shall select the remaining four members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining four members shall be a representative of that community. A county shall have only one enterprise zone commission to review applications for incentives and assistance for businesses located within or requesting to locate within a certified enterprise zone designated pursuant to section 15E.194, subsection 1.

2. A city with a population of twenty-four thousand or more which designates an enterprise zone pursuant to section 15E.194, subsection 2, and in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone to receive incentives or assistance as provided in section 15E.196. The enterprise zone commission shall review applications from qualified housing businesses requesting to receive incentives or assistance as

provided in section 15E.193B. ~~The enterprise zone commission shall also review applications from qualified development businesses requesting to receive incentives or assistance as provided in section 15E.193C.~~ The commission shall consist of nine members. Six of these members shall consist of one representative of an international labor organization, one member with economic development expertise chosen by the department of economic development, one representative of the city council, one member of the local community college board of directors, one member of the city planning and zoning commission, and one representative of the local workforce development center. These six members shall select the remaining three members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining three members shall be a representative of that community. If a city contiguous to the city designating the enterprise zone is included in an enterprise zone, a representative of the contiguous city, chosen by the city council, shall be a member of the commission. A city in which an eligible enterprise zone is certified shall have only one enterprise zone commission. If a city has established an enterprise zone commission prior to July 1, 1998, the city may petition to the department of economic development to change the structure of the existing commission.

3. The commission may adopt more stringent requirements, including requirements related to compensation and benefits, for a business to be eligible for incentives or assistance than provided in sections 15E.193~~,~~ and 15E.193B~~, and 15E.193C~~. The commission may develop as an additional requirement that preference in hiring be given to individuals who live within the enterprise zone. The commission shall work with the local workforce development center to determine the labor availability in the area. The commission shall examine and evaluate building codes and zoning in the enterprise zone and make recommendations to the appropriate governing body in an effort to promote more affordable housing development.

4. If the enterprise zone commission determines that a business qualifies and is eligible to receive incentives or assistance as provided in section 15E.193B~~, 15E.193C,~~ or 15E.196, the commission shall submit an application for incentives or assistance to the department of economic development. The department may approve, defer, or deny the application.

5. In making its decision, the commission or department shall consider the impact of the eligible business on other businesses in competition with it and compare the compensation package of businesses in competition with the business being considered for incentives or assistance. The commission or department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for incentives or assistance. The commission or department shall also make a good faith effort to determine the probability that the proposed incentives or assistance will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking incentives or assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

However, if the commission or department finds that an eligible business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the eligible business shall not qualify for incentives or assistance under section 15E.193B~~, 15E.193C,~~ or 15E.196, unless the commission or department finds that the violations did not seriously affect public health or safety or the environment, or if it did that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether an eligible business is eligible for incentives or assistance under section 15E.193B~~, 15E.193C,~~ or 15E.196, the commission or department shall be exempt from chapter 17A. If requested by the commission or department, the business shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings, and any other information which would assist the commission or department in assessing the nature of any violation.

6. A business that is approved to receive incentives or assistance shall, for the length of its designation as an enterprise zone business, certify annually to the county or city, as applicable,

and the department of economic development its compliance with the requirements of section 15E.193~~,~~ or 15E.193B~~, or 15E.193C~~.

Sec. 10. Section 15E.196, subsection 7, Code Supplement 2003, is amended by striking the subsection.

Sec. 11. Section 15E.193C, Code Supplement 2003, is repealed.

Sec. 12. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved March 17, 2004

CHAPTER 1004

CHILD ENDANGERMENT — DEATH OF A CHILD OR MINOR

S.F. 2166

AN ACT relating to child endangerment offenses resulting in the death of a child or minor and providing a penalty.

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

Section 1. Section 726.6, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 3A. A person who commits child endangerment resulting in the death of a child or minor is guilty of a class "B" felony. Notwithstanding section 902.9, subsection 2, a person convicted of a violation of this subsection shall be confined for no more than fifty years.

Approved March 18, 2004

CHAPTER 1005

REAL ESTATE COMMISSION ENFORCEMENT AUTHORITY

S.F. 2189

AN ACT conferring additional enforcement authority on the real estate commission, and providing penalties.

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

Section 1. Section 543B.34, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The real estate commission may upon its own motion and shall upon the verified complaint

in writing of any person, if the complaint together with evidence, documentary or otherwise, presented in connection with the complaint makes out a prima facie case, request commission staff or any other duly authorized representative or designee to investigate the actions of any real estate broker, real estate salesperson, or other person who assumes to act in either capacity within this state, and may suspend or revoke a license issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee or other person assuming to act in the capacity of a real estate broker or real estate salesperson, except for those actions exempt pursuant to section 543B.7, is found to be guilty of any of the following:

Sec. 2. Section 543B.34, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If an investigation pursuant to this section reveals that an unlicensed person has assumed to act in the capacity of a real estate broker or real estate salesperson, the commission may issue a cease and desist order, and may impose a civil penalty of up to the greater of ten thousand dollars or ten percent of the real estate sale price.

Sec. 3. NEW SECTION. 543B.49 INJUNCTIVE RELIEF.

1. In addition to the penalty and complaint provisions of sections 543B.43, 543B.44, and 543B.48, an injunction may be granted through an action in district court to prohibit a person from engaging in an activity which violates the provisions of section 543B.1. The action for injunctive relief may be brought by an affected person. For the purposes of this section, "affected person" means any person directly impacted by the actions of a person suspected of violating the provisions of section 543B.1, including but not limited to the commission created in section 543B.8, a person who has utilized the services of a person suspected of violating the provisions of section 543B.1, or a private association composed primarily of members practicing a profession for which licensure is required pursuant to this chapter.

2. If successful in obtaining injunctive relief, the affected person shall be entitled to actual costs and attorney fees, unless the person suspected of violating a provision of section 543B.1 prevails in any application for permanent injunctive relief. For the purposes of this section, "actual costs" means those costs other than attorney fees which were actually incurred in connection with the action, including but not limited to court and witness fees, investigative expenses, travel expenses, legal research expenses, and other related fees and expenses.

Approved March 18, 2004

CHAPTER 1006

PUBLIC UTILITIES — PROCEEDINGS FOR TEMPORARY OR ADJUSTED RATES, CHARGES, SCHEDULES, OR REGULATIONS

S.F. 2240

AN ACT relating to temporary rate authority and rules of the Iowa utilities board regarding rate regulation proceedings.

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

Section 1. Section 476.6, subsection 10, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

A public utility may choose to place in effect temporary rates, charges, schedules, or regula-

tions without board review ten days after the filing under this section. If the utility chooses to place such rates, charges, schedules, or regulations in effect without board review, the utility shall file with the board a bond or other corporate undertaking approved by the board conditioned upon the refund in a manner prescribed by the board of amounts collected in excess of the amounts which would have been collected under rates, charges, schedules, or regulations finally approved by the board. At the conclusion of the proceeding if the board determines that the temporary rates, charges, schedules, or regulations placed in effect under this paragraph were not based on previously established regulatory principles, the board shall consider ordering refunds based upon the overpayments made by each individual customer class, rate zone, or customer group.

If the board finds that an extension of the ten-month period is necessary to permit the accumulation of necessary data with respect to the operation of a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity and that is proposed to be included in the rate base for the first time, the board may extend the ten-month period up to a maximum extension of six months, but only with respect to that portion of the suspended rates, charges, schedules, or regulations that are necessarily connected with the inclusion of the generating facility in the rate base. If a utility is proposing to include in its rate base for the first time a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity, the filing date of new or changed rates, charges, schedules, or regulations shall, for purposes of computing the ~~ninety-day and ten-month~~ time limitations stated above, be the date as determined by the board that the new plant went into service, but only with respect to that portion of the suspended rates, charges, schedules, or regulations that are necessarily connected with the inclusion of the generating facility in the rate base.

Sec. 2. Section 476.33, subsection 4, Code Supplement 2003, is amended to read as follows:

4. The board shall adopt rules that require the board, in rate regulatory proceedings under sections 476.3 and 476.6, to consider the use of the most current test period possible in determining reasonable and just rates, subject only to the availability of existing and verifiable data respecting costs and revenues, and in addition to consider verifiable data that exists ~~as of the date of commencement of the proceedings~~ within nine months after the conclusion of the test year, respecting known and measurable changes in costs not associated with a different level of revenue, and known and measurable revenues not associated with a different level of costs, that are to occur at any time within twelve months after the date of commencement of the proceedings. Parties proposing adjustments that are not verifiable at the commencement of the proceedings shall include projected data related to the adjustments in their initial substantive filing with the board. For purposes of this subsection, a proceeding commences under section 476.6 upon the filing date of new or changed rates, charges, schedules or regulations. This subsection does not limit the authority of the board to consider other evidence in proceedings under sections 476.3 and 476.6.

Approved March 18, 2004

CHAPTER 1007

MOTOR VEHICLE OWNERSHIP TRANSFERS —
DAMAGE DISCLOSURE REQUIREMENTS

S.F. 2253

AN ACT relating to disclosure requirements for the transfer of ownership of a motor vehicle and providing penalties.

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

Section 1. Section 321.69, subsections 1, 2, 3, 4, 7, 8, and 9, Code Supplement 2003, are amended to read as follows:

1. A certificate of title shall not be issued for a motor vehicle unless a damage disclosure statement has been made by the transferor of the vehicle and is furnished with the application for certificate of title. A damage disclosure statement ~~must~~ shall be provided by the transferor to the transferee in a transfer of ownership of a motor vehicle. The new certificate of title and registration receipt shall state on the face ~~of the title the total cumulative dollar amount of damage reported by owners prior to the owner listed on the front of the title~~ whether a prior owner had disclosed that the vehicle was damaged to the extent that it was a wrecked or salvage vehicle as defined in section 321.52, subsection 4, paragraph "d".

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, rebuilt, or flood vehicle in this or any other state prior to the transferor's ownership of the vehicle and, if not, whether the transferor knows if the vehicle was damaged to the extent that it was a wrecked or salvage vehicle as defined in section 321.52, subsection 4, paragraph "d", during or 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 six 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 six thousand dollars or more are required to be disclosed by this section. If the vehicle has incurred damage of six 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 or if the transferee acquired the vehicle by operation of law as provided in section 321.47, 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, or flood title had ever existed for the vehicle and, if not, whether the vehicle ~~had incurred prior damage of six thousand dollars or more per incident,~~ was damaged to the extent that it was a wrecked or salvage vehicle as defined in section 321.52,

subsection 4, paragraph "d", during or prior to the transferor's ownership of the vehicle 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 six thousand dollars or more per incident~~ was damaged to the extent that it was a wrecked or salvage vehicle as defined in section 321.52, subsection 4, paragraph "d", 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.

4. A lessee who has executed a lease as defined in section 321F.1 shall provide a damage disclosure statement to the lessor at the termination of the lease. The damage disclosure statement shall be made on a separate disclosure document and shall state ~~the total dollar amount of all damage to the vehicle which occurred during the term of the lease~~ whether the vehicle was damaged during the term of the lease to the extent that it was a wrecked or salvage vehicle as defined in section 321.52, subsection 4, paragraph "d". The lessee's damage disclosure statement shall not be submitted with the application for title, but the lessor shall retain the lessee's damage disclosure statement for five years following the date of the statement.

7. The damage disclosure statements shall be made on the back of the certificate of title if the title is available to the transferor at the time of sale. If the title is not available at the time of sale or if the face of the transferor's Iowa title contains no indication that the vehicle was previously salvaged or titled as ~~salvaged or~~ a salvage, rebuilt, or flood vehicle and the transferor knows or reasonably should know that the vehicle was previously salvaged or titled as ~~salvaged or~~ a salvage, rebuilt, or flood vehicle in another state, the transferor shall make the disclosure on a separate disclosure document. The damage disclosure statement forms shall be as approved by the department. The treasurer shall not accept a damage disclosure statement and issue a title unless the back of the title or separate disclosure document has been fully completed and signed and dated by the transferee and the transferor, if applicable. If a separate damage disclosure document from a prior owner is required to be furnished with the application for title, the transferor ~~must~~ shall provide a copy of the separate damage disclosure document to the transferee at or before the time of sale.

In addition to the information required in subsection 2, a separate disclosure document shall state whether the vehicle's certificate of title indicates the existence of damage prior to the period of the transferor's ownership of the vehicle~~, and the amount of that damage if the transferor knows or reasonably should know of the prior damage,~~ and whether the vehicle was titled as a salvage, rebuilt, or flood vehicle during the period of the transferor's ownership of the vehicle.

8. A person, authorized vehicle recycler licensed under chapter 321H, or motor vehicle dealer licensed under chapter 322 shall not be liable to a subsequent owner, driver, or passenger of a vehicle because a prior owner or lessee gave a false or inaccurate damage disclosure statement or failed to disclose that the vehicle had previously been damaged and repaired or had been titled on a salvage, ~~or~~ rebuilt, or flood certificate of title unless the person, recycler, or dealer knew or reasonably should have known that the prior owner or lessee gave a false or inaccurate damage disclosure statement or failed to disclose that the vehicle had been damaged and repaired or had been titled on a salvage, ~~or~~ rebuilt, or flood certificate of title.

9. Except for ~~subsection 10~~ subsections 10 and 11, this section does not apply to motor trucks and truck tractors with a gross vehicle weight rating of sixteen thousand pounds or more, vehicles more than ~~nine~~ seven model years old, motorcycles, motorized bicycles, and special mobile equipment. This section does apply to motor homes. The requirement in subsection 1 that the new certificate of title and registration receipt shall state on the face of the title ~~the total cumulative dollar amount of damage~~ whether a prior owner had disclosed that the vehicle was damaged to the extent that it was a wrecked or salvage vehicle as defined in section 321.52, subsection 4, paragraph "d", does not apply to a vehicle with a certificate of title bearing a designation that the vehicle was previously titled on a salvage certificate of title pursuant to section 321.52, subsection 4, paragraph "b", or to a vehicle with a certificate of title bearing a "REBUILT" or "SALVAGE" designation pursuant to section 321.24, subsection 4 or 5. Except for ~~subsection 10~~ subsections 10 and 11, this section does not apply to new motor

vehicles with a true mileage, as defined in section 321.71, of one thousand miles or less, unless such vehicle has incurred damage as defined in subsection 2.

Approved March 18, 2004

CHAPTER 1008

LIQUOR CONTROL VIOLATIONS —
ADMINISTRATIVE SANCTIONS
AGAINST LICENSEES OR PERMITTEES

S.F. 2261

AN ACT providing penalties for specified liquor control violations involving a retail liquor control license, wine permit, or beer permit.

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

Section 1. Section 123.50, subsection 3, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

3. If any licensee, wine permittee, beer permittee, or employee of a licensee or permittee is convicted or found in violation of section 123.49, subsection 2, paragraph "h", the administrator or local authority shall, in addition to criminal penalties fixed for violations by this section, assess a civil penalty as follows:

a. A first violation shall subject the licensee or permittee to a civil penalty in the amount of five hundred dollars. Failure to pay the civil penalty as ordered under section 123.39 shall result in automatic suspension of the license or permit for a period of fourteen days.

b. A second violation within two years shall subject the licensee or permittee to a thirty-day suspension and a civil penalty in the amount of one thousand five hundred dollars.

c. A third violation within three years shall subject the licensee or permittee to a sixty-day suspension and a civil penalty in the amount of one thousand five hundred dollars.

d. A fourth violation within three years shall result in revocation of the license or permit.

e. For purposes of this subsection:

(1) The date of any violation shall be used in determining the period between violations.

(2) Suspension shall be limited to the specific license or permit for the premises found in violation.

(3) Notwithstanding section 123.40, revocation shall be limited to the specific license or permit found in violation and shall not disqualify a licensee or permittee from holding a license or permit at a separate location.

Approved March 18, 2004

CHAPTER 1009

LOTTERY AUTHORITY BUDGET INFORMATION
— REPORTS TO LEGISLATURE

H.F. 2133

AN ACT requiring the lottery authority to submit budget information to the legislature.

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

Section 1. Section 99G.40, subsection 4, Code Supplement 2003, is amended to read as follows:

4. For informational purposes only, the chief executive officer shall submit to the department of management by October 1 of each year a proposed operating budget for the authority for the succeeding fiscal year. This budget proposal shall also be accompanied by an estimate of the net proceeds to be deposited into the general fund during the succeeding fiscal year. This budget shall be on forms prescribed by the department of management. A copy of the information required to be submitted to the department of management pursuant to this subsection shall be submitted to the legislative government oversight committees and the legislative services agency by October 1 of each year.

Approved March 18, 2004

CHAPTER 1010

TERMINATION OF PARENTAL RIGHTS — ABANDONMENT OF CHILD

H.F. 2176

AN ACT relating to abandonment of a child as grounds for termination of parental rights.

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

Section 1. Section 600A.8, subsection 3, Code 2003, is amended by striking the subsection.

Sec. 2. Section 600A.8, subsection 4, Code 2003, is amended to read as follows:

~~4.~~ 3. ~~If the termination of parental rights relates to a putative father and the putative father~~ The parent has abandoned the child. For the purposes of this subsection, a ~~putative father~~ parent is deemed to have abandoned a child as follows:

a. (1) If the child is less than six months of age when the termination hearing is held, a ~~putative father~~ parent is deemed to have abandoned the child unless the ~~putative father~~ parent does all of the following:

(a) Demonstrates a willingness to assume custody of the child rather than merely objecting to the termination of parental rights.

(b) Takes prompt action to establish a parental relationship with the child.

(c) Demonstrates, through actions, a commitment to the child.

(2) In determining whether the requirements of this paragraph are met, the court may consider all of the following:

(a) The fitness and ability of the ~~putative father~~ parent in personally assuming custody of the child, including a personal and financial commitment which is timely demonstrated.

(b) Whether efforts made by the ~~putative father~~ parent in personally assuming custody of the child are substantial enough to evince a settled purpose to personally assume all parental duties.

(c) ~~Whether~~ With regard to a putative father, whether the putative father publicly acknowledged paternity or held himself out to be the father of the child during the six continuing months immediately prior to the termination proceeding.

(d) ~~Whether~~ With regard to a putative father, whether the putative father paid a fair and reasonable sum, in accordance with the putative father's means, for medical, hospital, and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child, or whether the putative father demonstrated emotional support as evidenced by the putative father's conduct toward the mother.

(e) Any measures taken by the ~~putative father~~ parent to establish legal responsibility for the child.

(f) Any other factors evincing a commitment to the child.

b. If the child is six months of age or older when the termination hearing is held, a ~~putative father~~ parent is deemed to have abandoned the child unless the ~~putative father~~ parent maintains substantial and continuous or repeated contact with the child as demonstrated by contribution toward support of the child of a reasonable amount, according to the ~~putative father's~~ parent's means, and as demonstrated by any of the following:

(1) Visiting the child at least monthly when physically and financially able to do so and when not prevented from doing so by the person having lawful custody of the child.

(2) Regular communication with the child or with the person having the care or custody of the child, when physically and financially unable to visit the child or when prevented from visiting the child by the person having lawful custody of the child.

(3) Openly living with the child for a period of six months within the one-year period immediately preceding the termination of parental rights hearing and during that period openly holding himself or herself out to be the ~~father~~ parent of the child.

c. The subjective intent of the ~~putative father~~ parent, whether expressed or otherwise, unsupported by evidence of acts specified in paragraph "a" or "b" manifesting such intent, does not preclude a determination that the ~~putative father~~ parent has abandoned the child. In making a determination, the court shall not require a showing of diligent efforts by any person to encourage the ~~putative father~~ parent to perform the acts specified in paragraph "a" or "b". In making a determination regarding a putative father, the court may consider the conduct of the putative father toward the child's mother during the pregnancy. Demonstration of a commitment to the child is not met by the putative father marrying the mother of the child after adoption of the child.

Approved March 18, 2004

CHAPTER 1011

ELECTRONIC GIFT CARDS — FEES FOR DELAYED REDEMPTION

H.F. 2306

AN ACT relating to fees charged for delayed redemption of electronic gift cards.

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

Section 1. Section 556.9, subsection 2, Code Supplement 2003, is amended to read as follows:

2. An issuer of a gift certificate shall not deduct from the face value of the gift certificate any charge imposed due to the failure of the owner of the gift certificate to present the gift certificate in a timely manner, unless a valid and enforceable written contract exists between the issuer and the owner of the gift certificate pursuant to which the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them. For purposes of this subsection, "gift certificate" means a merchandise certificate or electronic gift card conspicuously designated as a gift certificate or electronic gift card, and generally purchased by a buyer for use by a person other than the buyer.

Approved March 18, 2004

CHAPTER 1012

FIRST RESPONDER VACCINATION PROGRAM

H.F. 2343

AN ACT providing for the establishment of a vaccination program for first responders, and providing an immediate effective date.

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

Section 1. NEW SECTION. 135.146 FIRST RESPONDER VACCINATION PROGRAM.

1. In the event that federal funding is received for administering vaccinations for first responders, the department shall offer a vaccination program for first responders who may be exposed to infectious diseases when deployed to disaster locations. For purposes of this section, "first responder" means state and local law enforcement personnel, fire department personnel, and emergency medical personnel who will be deployed to sites of bioterrorism attacks, terrorist attacks, catastrophic or natural disasters, and other disasters. The vaccinations shall include, but not be limited to, vaccinations for hepatitis B, diphtheria-tetanus,[1] influenza, and other vaccinations when recommended by the United States public health service and in accordance with federal emergency management agency policy. Immune globulin will be made available when necessary.

2. Participation in the vaccination program shall be voluntary, except for first responders who are classified as having occupational exposure to blood-borne pathogens as defined by the occupational safety and health administration standard contained in 29 C.F.R. § 1910.1030. First responders who are so classified shall be required to receive the vaccinations as described in subsection 1. A first responder shall be exempt from this requirement, however, when a written statement from a licensed physician is presented indicating that a

[1] The phrase "diphtheria, tetanus" probably intended

vaccine is medically contraindicated for that person or the first responder signs a written statement that the administration of a vaccination conflicts with religious tenets.

3. The department shall establish first responder notification procedures regarding the existence of the program by rule, and shall develop, and distribute to first responders, educational materials on methods of preventing exposure to infectious diseases. In administering the program, the department may contract with county and local health departments, not-for-profit home health care agencies, hospitals, physicians, and military unit clinics.

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

Approved March 18, 2004

CHAPTER 1013

MOTOR VEHICLE REGULATIONS AND
STATE TRANSPORTATION DEPARTMENT DUTIES AND ACTIVITIES

S.F. 2070

AN ACT relating to duties and activities of the state department of transportation, including the registration and titling of motor vehicles, regulation of electric personal assistive mobility devices, and issuance of commercial driver's licenses, and providing effective dates.

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

Section 1. Section 321.1, subsection 20B, Code Supplement 2003, is amended to read as follows:

20B. "Electric personal assistive mobility device" means a self-balancing, nontandem two-wheeled device powered by an electric propulsion system that averages seven hundred fifty watts~~, has two nontandem wheels,~~ and is designed to transport one person, with a maximum speed on a paved level surface of less than twenty miles per hour. The maximum speed shall be calculated based on operation of the device by a person who weighs one hundred seventy pounds when the device is powered solely by the electric propulsion system. For purposes of this chapter, "electric personal assistive mobility device" does not include an assistive device as defined in section 216E.1.

Sec. 2. Section 321.15, Code 2003, is amended to read as follows:

321.15 PUBLICATION OF LAW.

The department shall issue, in pamphlet or electronic form, such parts of this chapter ~~in pamphlet form,~~ together with such rules, instructions, and explanatory matter as may seem advisable. ~~Copies of such pamphlet~~ Such information shall be ~~given as wide distribution~~ distributed as determined by the department ~~shall determine~~ and ~~a supply~~ shall be furnished to each county treasurer.

Sec. 3. Section 321.20, Code Supplement 2003, is amended to read as follows:

321.20 APPLICATION FOR REGISTRATION AND CERTIFICATE OF TITLE.

Except as provided in this chapter, an owner of a vehicle subject to registration shall make application to the county treasurer~~,~~ of the county of the owner's residence, or if a nonresident,

to the county treasurer of the county where the primary users of the vehicle are located, or if a lessor of the vehicle pursuant to chapter 321F which vehicle has a gross vehicle weight of less than ten thousand pounds, to the county treasurer of the county of the lessee's residence, for the registration and issuance of a certificate of title for the vehicle upon the appropriate form furnished by the department. However, upon the transfer of ownership, the owner of a vehicle subject to the proportional registration provisions of chapter 326 shall make application for registration and issuance of a certificate of title to either the department or the appropriate county treasurer. The application shall be accompanied by a fee of ten dollars, and shall bear the owner's signature ~~written with pen and ink~~. A nonresident owner of two or more vehicles subject to registration may make application for registration and issuance of a certificate of title for all vehicles subject to registration to the county treasurer of the county where the primary user of any of the vehicles is located. The owner of a mobile home or ~~of a~~ manufactured home shall make application for a certificate of title under this section. The application shall contain:

1. The full legal name; social security number or~~, if the owner does not have a social security number but has a passport, the passport number;~~ Iowa driver's license number~~, whether the license was issued by this state, another state, another country, or is an international driver's license~~ or Iowa nonoperator's identification card number; date of birth; bona fide residence; and mailing address of the owner and of the lessee if the vehicle is being leased. If the owner or lessee is a firm, association, or corporation, the application shall contain the bona fide business address and federal employer identification number of the owner or lessee. Up to three owners' names may be listed on the application. Information relating to the lessee of a vehicle shall not be required on an application for registration and a certificate of title for a vehicle with a gross vehicle weight rating of ten thousand pounds or more.

2. A description of the vehicle including, insofar as the specified data may exist with respect to a given vehicle, the make, model, type of body, the number of cylinders, the type of motor fuel used, the ~~serial number of the vehicle, manufacturer's~~ vehicle identification number~~, the engine~~ or other assigned number~~, of the vehicle~~ and whether new or used and~~,~~ if a new vehicle~~,~~ the date of sale by the manufacturer or dealer to the person intending to operate ~~such~~ the vehicle. If the vehicle is a new low-speed vehicle, the manufacturer's or importer's certificate required to accompany the application under subsection 4 shall certify that the vehicle was manufactured in compliance with the national highway ~~and~~ traffic safety administration standards for low-speed vehicles in 49 C.F.R. § 571.500.

3. Such further information as may reasonably be required by the department.

4. A statement of the applicant's title and of all liens or encumbrances upon ~~said~~ the vehicle and the names and bona fide addresses of all persons having any interest ~~therein~~ in the vehicle and the nature of every such interest. When ~~such~~ the application refers to a new vehicle, it shall be accompanied by a manufacturer's or importer's certificate duly assigned as provided in section 321.45.

5. The amount of tax to be paid under section 423.7.

6. If the vehicle is owned by a nonresident but is subject to issuance of an Iowa certificate of title or registration, the application shall also contain the full legal name~~; social security number, or, if the primary user does not have a social security number but has a passport, the passport number;~~, Iowa driver's license number~~, whether the license was issued by this state, another state, another country, or is an international driver's license;~~ or Iowa nonoperator's identification card number, date of birth~~;~~, bona fide residence~~;~~, and mailing address of the primary user of the vehicle. If the primary user is a firm, association, or corporation, the application shall contain the bona fide business address and federal employer identification number of the primary user. The primary user's name and address shall not be printed on the registration receipt or the certificate of title.

Notwithstanding contrary provisions of this chapter or chapter 326 regarding titling and registration by means other than electronic means, the department may develop and implement a program to ~~test the feasibility of~~ allow for electronic applications, titling, registering, and electronic funds transfer for vehicles ~~traveling in interstate commerce~~ subject to registration

in order to improve the efficiency and timeliness of the processes and to reduce costs for all parties involved.

The department shall adopt rules on the method for providing signatures for applications made by electronic means.

Sec. 4. Section 321.20A, subsection 1, Code 2003, is amended to read as follows:

1. Notwithstanding other provisions of this chapter, the owner of a commercial vehicle subject to the proportional registration provisions of chapter 326 may make application to the department or the appropriate county treasurer for a certificate of title. The application for certificate of title shall be made within thirty days of purchase or transfer and shall be accompanied by a ten dollar title fee and the appropriate use tax. The department or the county treasurer shall deliver the certificate of title to the owner if there is no security interest ~~or encumbrance appears on the certificate or to the person holding the first security interest or encumbrance shown on the certificate of title~~. If there is a security interest, the title, when issued, shall be delivered to the first secured party. Delivery may be made using electronic means.

Sec. 5. Section 321.24, subsections 3, 7, 8, and 11, Code Supplement 2003, are amended to read as follows:

3. The certificate of title shall contain upon its face the identical information required upon the face of the registration receipt. In addition, the certificate of title shall contain a statement of the owner's title, the title number assigned to the owner or owners of the vehicle, the amount of tax paid pursuant to section 423.7, the name and address of the previous owner, and a statement of all security interests and encumbrances as shown in the application, upon the vehicle described, including the nature of the security interest, date of ~~notation~~ perfection, and name and address of the secured party.

7. The certificate shall ~~bear the seal~~ contain the name of the county treasurer or of the department~~,~~ and, if the certificate of title is printed, the signature of the county treasurer, the deputy county treasurer, or the department director or deputy designee. The certificate of title shall contain upon the reverse side a form for assignment of title or interest and warranty by the owner, for reassignments by a dealer licensed in this state or in another state if the state in which the dealer is licensed permits Iowa licensed dealers to similarly reassign certificates of title. ~~Attached to the certificate of title shall be an application for a new certificate of title by the transferee as provided in this chapter.~~ However, titles for mobile homes or manufactured homes shall not be reassigned by licensed dealers. ~~All certificates of title shall be typewritten or printed by other mechanical means.~~ Notwithstanding section 321.1, subsection 17, as used in this paragraph "dealer" means every person engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered under this chapter.

8. The original certificate of title shall be delivered to the owner if there is no security interest ~~or encumbrance appears on the certificate~~. Otherwise the certificate of title shall be delivered by the county treasurer or the department to the person holding the first security interest ~~or encumbrance as shown in the certificate~~. Delivery may be made using electronic means.

11. If the county treasurer or department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, or a junking certificate has been issued for the vehicle but a certificate of title will not be reissued under section 321.52, subsection 3, and the vehicle qualifies as an antique vehicle under section 321.115, subsection 1, the county treasurer or department may register the vehicle but shall, as a condition of issuing a certificate of title and registration receipt, require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, and either accompanied by the deposit of cash with the department or also executed by a person authorized to conduct a surety business in this state. The bond shall be in an amount equal to one and one-half times the current value of the vehicle as determined by the department and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against

any expense, loss, or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of three years or prior thereto if the vehicle is no longer registered in this state and the currently valid certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond. The department may authorize issuance of a certificate of title as provided in this subsection for a vehicle with an unreleased security interest upon presentation of satisfactory evidence that the security interest has been extinguished and the holder of the security interest cannot be located to release the security interest as provided in section 321.50.

Sec. 6. Section 321.31, subsection 2, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

Each county treasurer's office shall maintain a county records system for vehicle registration and certificate of title documents. The records system shall consist of information from the certificate of title, including the ~~notation~~ date of perfection and cancellation of security interests, and information from the registration receipt. The information shall be maintained in a manner approved by the department.

Sec. 7. Section 321.34, subsection 11, paragraph d, Code Supplement 2003, is amended to read as follows:

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration ~~receipt and~~ plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special natural resources fee for letter number designated plates is ten dollars which shall be paid in addition to the regular annual registration fee. The annual fee for personalized natural resources plates is five dollars which shall be paid in addition to the annual special natural resources fee and the regular annual registration fee. The annual special natural resources fee shall be credited as provided under paragraph "c".

Sec. 8. Section 321.34, subsection 11A, paragraph d, Code Supplement 2003, is amended to read as follows:

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration ~~receipt and~~ plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special love our kids fee for letter number designated plates is ten dollars, which shall be paid in addition to the regular annual registration fee. The annual fee for personalized love our kids plates is five dollars, which shall be paid in addition to the annual special love our kids fee and the regular annual registration fee. The annual love our kids fee shall be credited as provided under paragraph "c".

Sec. 9. Section 321.34, subsection 11B, paragraph d, Code Supplement 2003, is amended to read as follows:

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration ~~receipt and~~ plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special motorcycle rider education fee for letter number designated plates is ten dollars, which shall be paid in addition to the regular annual registration fee. The annual fee for personalized motorcycle rider education plates is five dollars, which shall be paid in addition to the annual special motorcycle rider education fee and the regular annual registration fee. The annual motorcycle rider education fee shall be credited as provided under paragraph "c".

Sec. 10. Section 321.34, subsection 23, paragraph d, Code Supplement 2003, is amended to read as follows:

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration ~~receipt and~~ plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special breast cancer awareness fee for letter number designated plates is ten dollars, which shall be paid in addition to the regular annual registration fee. The annual special fee for personalized breast cancer awareness plates is five dollars, which shall be paid in addition to the annual special breast cancer awareness fee and the regular annual registration fee. The annual special breast cancer awareness fee shall be credited and transferred as provided under paragraph "c".

Sec. 11. Section 321.42, subsection 2, paragraph b, Code 2003, is amended to read as follows:

b. After five days, the department or county treasurer shall issue a replacement copy ~~to~~ using the ~~applicant at the~~ applicant's most recent bona fide address~~,~~; however, the five-day waiting period does not apply to an applicant who has surrendered the original certificate of title to the department or county treasurer. The replacement copy shall be clearly marked "replacement" and shall include ~~notation of~~ security interests and liens ~~or encumbrances~~. When a replacement copy has been issued, the previous certificate is void. The department or county treasurer is not authorized to refund fees collected for a replacement title under this section or section 321.52A.

Sec. 12. Section 321.45, subsection 2, paragraph a, Code Supplement 2003, is amended to read as follows:

a. The perfection of a lien or security interest ~~by notation on the certificate of title~~ as provided in section 321.50, or

Sec. 13. Section 321.46, subsection 1, Code 2003, is amended to read as follows:

1. The transferee shall, within thirty calendar days after purchase or transfer, apply for and obtain from the county treasurer of the person's residence~~,~~ or, if a nonresident, the county treasurer of the county where the primary users of the vehicle are located or the county where all other vehicles owned by the nonresident are registered, a new registration and a new certificate of title for the vehicle except as provided in section 321.25, 321.48, or 322G.12. The transferee shall present with the application the certificate of title endorsed and assigned by the previous owner and shall indicate the name of the county in which the vehicle was last registered and the registration expiration date. ~~Unless the transferee is a manufacturer obtaining a new certificate of title pursuant to section 322G.12, the transferee shall be required to list a driver's license number.~~

Sec. 14. Section 321.46, subsection 3, paragraph f, Code 2003, is amended by striking the paragraph.

Sec. 15. Section 321.50, subsections 1 through 4, Code Supplement 2003, are amended to read as follows:

1. A security interest in a vehicle subject to registration under the laws of this state or a mobile home or manufactured home, except trailers whose empty weight is two thousand pounds or less, and except new or used vehicles held by a dealer or manufacturer as inventory for sale, is perfected by the delivery to the county treasurer of the county where the certificate of title was issued or, in the case of a new certificate, to the county treasurer where the certificate will be issued, of an application for certificate of title which lists the security interest, or an application for notation of security interest signed by the owner~~,~~ or by one owner of a vehicle owned jointly by more than one person, or signed through electronic means as determined by the department, or a certificate of title from another jurisdiction which shows the security interest,

and payment of a fee of five dollars for each security interest shown. The department shall require the federal employer identification number of a secured party who is a firm, association, or corporation or, if a natural person, the social security number. Upon delivery of the application and payment of the fee, the county treasurer shall note the date of delivery on the application. If the delivery is by electronic means and the time is electronically recorded on the application along with the date, the time shall be included with the date on all subsequent documents and records where the date of perfection is required under this chapter. The date of delivery shall be the date of perfection of the security interest in the vehicle, regardless of the date the security interest is noted on the certificate of title. Up to three security interests may be perfected against a vehicle and shown on an Iowa certificate of title. If the owner or secured party is in possession of the certificate of title, it must also be delivered at this time ~~in order to perfect the security interest~~. If a vehicle is subject to a security interest when brought into this state, the validity of the security interest and the date of perfection is determined by section 554.9303. Delivery as provided in this subsection ~~is an indication~~ constitutes perfection of a security interest on a certificate of title for purposes of this chapter and chapter 554.

2. Upon receipt of the application and the required fee, if the certificate of title was not delivered to the county treasurer along with the application, the county treasurer shall notify the holder of the certificate of title to deliver to the county treasurer, within five days from the receipt of notice, the certificate of title to permit notation of the security interest. If the holder of the certificate of title ~~shall fail~~ fails to deliver it within ~~the said~~ five days, the holder shall be liable to anyone harmed by the holder's failure.

3. Upon receipt of the application, the certificate of title, if any, and the required fee, the county treasurer shall note ~~such~~ the security interest~~,~~ and the date ~~thereof,~~ of perfection of the security interest on the certificate ~~over the signature of such officer or deputy and the seal of office~~ of title. The county treasurer shall also note ~~such~~ the security interest and the date ~~thereof~~ of perfection of the security interest in the county records system. Upon receipt of a certificate of title issued by a foreign jurisdiction, on which a security interest has been noted, the county treasurer shall note the security interest and the date the security interest was noted on the foreign certificate of title, if available, or if not, the date of issuance of the foreign certificate of title, on the face of the new certificate of title. The county treasurer shall also note the security interest and the date that was noted on the certificate of title in the county records system. The county treasurer shall then ~~mail~~ deliver the certificate of title to the first secured party as shown thereon.

3A. Notwithstanding any provision of this section to the contrary, if a security interest has been delivered by electronic means, the county treasurer or department shall not print a certificate of title until all security interests have been released, but shall provide the first security interest holder with an electronic record of the certificate of title. When a vehicle is subject to an electronic lien, the certificate of title for the vehicle shall be considered to be physically held by the lienholder for purposes of compliance with odometer disclosure requirements under section 321.71.

4. a. When a security interest is discharged, the holder shall note a cancellation of ~~same~~ the security interest on the face of the certificate of title over the holder's signature~~,~~ and deliver the certificate of title to the county treasurer where the title was issued. In the case of a security interest that has been delivered by electronic means, the holder shall notify the department or the county treasurer, in a manner prescribed by the department, of the release of the security interest. The county treasurer shall immediately note the cancellation of the security interest on the face of the certificate of title, if applicable, and in the county records system. The county treasurer shall on the same day deliver the certificate of title, if applicable, to the then first secured party or, if there is no such person, to the person as directed by the owner, in writing, on a form prescribed by the department or, if there is no person designated, then to the owner. The cancellation of the security interest shall be noted on the certificate of title by the county treasurer without charge. The holder of a security interest discharged by payment who

fails to release the security interest within fifteen days after being requested in writing to do so shall forfeit to the person making the payment the sum of twenty-five dollars.

b. If a lien has been released by the lienholder but has not been sent to the county of record for clearance of the lien, any county may note the release on the face of the title and shall notify the county of record that the lien has been released as of the specified date~~,~~ and ~~shall~~ make entry upon the computer system. Notification to the county of record shall be made by an automated statewide system~~,~~ or by sending a photocopy of the released title to the county of record.

c. When a security interest is discharged, the lienholder shall note the cancellation of the security interest on the face of the title and, if applicable, may note the cancellation of the security interest on a form prescribed by the department and deliver a copy of the form in lieu of the title to the department or to the treasurer of the county in which the title was issued. The form may be delivered by electronic means. The department or county treasurer shall note the release of the security interest upon the statewide computer system and the county's records. A copy of the form, if used, shall be attached to the title by the lienholder, if the title is held by the lienholder, and shall be evidence of the release of the security interest. ~~The~~ If the title is held by the lienholder, the lienholder shall deliver the title to the first lienholder, or if there is no such person, to the person as designated by the owner, or if there is no such person designated, to the owner. If a certificate of title has not been issued, upon release of a security interest, the lienholder shall notify the department or the county treasurer, in a manner prescribed by the department, of the release of the security interest.

Sec. 16. Section 321.50, subsection 6, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

This subsection is repealed effective ~~July 1, 2004~~ January 1, 2005.

Sec. 17. Section 321.50, subsection 7, Code Supplement 2003, is amended to read as follows:

7. Upon request of any person, the county treasurer shall ~~issue a certificate showing~~ certify whether there are, on the date and hour stated therein, any security interests ~~noted on a particular vehicle's certificate of title,~~ or liens against a vehicle and the name and address of each secured party ~~whose security interest is noted thereon~~. The uniform fee for a ~~written certificate~~ certification shall be two dollars if the request for the ~~certificate~~ certification is on a form conforming to standards prescribed by the secretary of state; otherwise, three dollars. Upon request and payment of the appropriate fee, the county treasurer shall furnish a certified copy of any security ~~interest notations~~ interests for a uniform fee of one dollar per page.

Sec. 18. Section 321.74, Code 2003, is amended to read as follows:

321.74 ACTION BY DEPARTMENT.

The department, upon receiving a report of a stolen or embezzled vehicle as ~~hereinbefore~~ provided in section 321.72 or 321.73 or through the national motor vehicle title information system, shall file and appropriately index the same and shall immediately suspend the registration of the vehicle so reported and shall not transfer the certificate of title or registration of the ~~same~~ vehicle until such time as ~~it~~ the department is notified ~~in writing~~ that ~~such~~ the vehicle has been recovered.

Sec. 19. Section 321.101, subsection 2, Code 2003, is amended to read as follows:

2. The department shall cancel a certificate of title that appears to have been improperly issued or fraudulently obtained or, in the case of a mobile home or manufactured home, if taxes were owing under chapter 435 at the time the certificate was issued and have not been paid. However, before the certificate to a mobile home or manufactured home for which taxes were owing can be canceled, notice and opportunity to pay the taxes must be given to the person to whom the certificate was issued. Upon cancellation of ~~any~~ a certificate of title, the department shall notify the county treasurer who issued it, who shall enter the cancellation upon the records. The department shall also notify the person to whom the certificate of title was issued,

as well as ~~any lienholders appearing on the certificate of title~~ each lienholder who has a perfected lien, of the cancellation and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of any ~~lien noted on the certificate of title~~ perfected lien.

Sec. 20. Section 321.109, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The annual fee for all motor vehicles including vehicles designated by manufacturers as station wagons, and 1993 and subsequent model years for multipurpose vehicles, except motor trucks, motor homes, ambulances, hearses, motorcycles, motor bicycles, and 1992 and older model years for multipurpose vehicles, shall be equal to one percent of the value as fixed by the department plus forty cents for each one hundred pounds or fraction thereof of weight of vehicle, as fixed by the department. The weight of a motor vehicle, fixed by the department for registration purposes, shall include the weight of a battery, heater, bumpers, spare tire, and wheel. Provided, however, that for any new vehicle purchased in this state by a nonresident for removal to the nonresident's state of residence the purchaser may make application to the county treasurer in the county of purchase for a transit plate for which a fee of ten dollars shall be paid. And provided, however, that for any used vehicle held by a registered dealer and not currently registered in this state, or for any vehicle held by an individual and currently registered in this state, when purchased in this state by a nonresident for removal to the nonresident's state of residence, the purchaser may make application to the county treasurer in the county of purchase for a transit plate for which a fee of three dollars shall be paid. The county treasurer shall issue a nontransferable certificate of registration for which no refund shall be allowed; and the transit plates shall be void thirty days after issuance. Such purchaser may apply for a certificate of title by surrendering the manufacturer's or importer's certificate or certificate of title, duly assigned as provided in this chapter. In this event, the treasurer in the county of purchase shall, when satisfied with the genuineness and regularity of the application, and upon payment of a fee of ten dollars, issue a certificate of title in the name and address of the nonresident purchaser delivering the same to the person entitled to the title as provided in this chapter. The application requirements of section 321.20 apply to a title issued as provided in this subsection, except that a natural person who applies for a certificate of title shall provide either the person's social security number, passport number, or driver's license number, whether the license was issued by this state, another state, or another country. The provisions of this subsection relating to multipurpose vehicles are effective January 1, 1993, for all 1993 and subsequent model years. The annual registration fee for multipurpose vehicles that are 1992 model years and older shall be in accordance with section 321.124.

Sec. 21. Section 321.126, subsection 6, paragraph b, Code 2003, is amended by striking the paragraph.

Sec. 22. Section 321.131, Code 2003, is amended to read as follows:

321.131 LIEN OF FEE.

All registration or other fees provided for in this chapter shall ~~be and continue~~ constitute a lien against the vehicle for which ~~said~~ the fees are payable unless otherwise provided in this section until such time as they are paid as provided by law, with any accrued penalties. The county treasurer may perfect a security interest in a vehicle for the amount of such fees ~~by noting the lien upon the certificate of title for the vehicle~~ as provided in section 321.50. If the lien is not perfected as provided in this section, the lien shall not be valid against a bona fide purchaser of the vehicle without actual notice to the purchaser.

Sec. 23. Section 321.134, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 5. The department shall waive the penalties imposed by this section for an owner who is in the military service of the United States and who has been relocated as a result of being placed on active duty on or after September 11, 2001. The department shall

adopt rules to implement this subsection, including, if necessary, procedures for refunding penalties collected prior to the effective date of this Act.

Sec. 24. Section 321.149, Code Supplement 2003, is amended to read as follows:

321.149 ~~BLANKS~~ SUPPLIES.

The department shall ~~not later than November 15 of each year~~ prepare and furnish to the treasurer of each county ~~all blank books, blank forms, and~~ all supplies required for the administration of this chapter~~, including applications for registration and transfer of vehicles, quintuple receipts, and original remittance sheets to be used in remitting fees to the department~~, in such form as the department may prescribe. Contracts for the ~~blank books, blank forms, and~~ supplies shall be awarded by the director of the department of administrative services to persons, firms, partnerships, or corporations engaged in the business of printing in Iowa unless, or through them, the persons, firms, partnerships, or corporations cannot provide the required printing set forth in this section. In lieu of purchasing under competitive bids, the director of the department of administrative services shall have authority to arrange with the director of the department of corrections to furnish the supplies as can be made in the state institutions.

Sec. 25. Section 321.152, subsection 4, Code 2003, is amended to read as follows:

4. Sixty percent of all fees collected for ~~notation~~ perfection of security interests.

Sec. 26. Section 321.153, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The county treasurer on the tenth day of each month shall certify ~~under county seal~~ to the department~~, on forms furnished by it,~~ a full and complete statement of all fees and penalties received by the county treasurer during the preceding calendar month and shall remit all moneys not retained for deposit under section 321.152 to the treasurer of state.

Sec. 27. Section 321.160, Code 2003, is amended to read as follows:

321.160 DEPARTMENT TO ~~PREPARE~~ MAINTAIN STATEMENT.

The department shall ~~prepare, annually,~~ maintain a statement showing all the different makes and models of motor vehicles previously registered in the department, and all the different makes and models of motor vehicles, statements of which have been filed in the office by the manufacturers as ~~heretofore~~ provided in section 321.157, together with the retail list price and weight of the ~~same~~ vehicles.

Copies of the statement shall be furnished to each county treasurer and additional copies may be sold by the department to other persons, at a price to be set by the department, covering the approximate cost of ~~same~~ the copies and service involved. Copies of the statement required by this section may be provided electronically. All funds received shall be forwarded by the department to the treasurer of state.

Sec. 28. Section 321.188, subsection 3, Code 2003, is amended to read as follows:

3. An applicant for a hazardous material endorsement must pass a knowledge test as required under 49 C.F.R. § 383.121 as adopted by rule by the department to obtain or retain the endorsement. However, an applicant for license issuance who was previously issued a commercial driver's license from another state may retain the hazardous material endorsement from the previously issued license if the applicant successfully passed the endorsement test within the preceding twenty-four months. Pursuant to procedures established by the department, an applicant for a hazardous material endorsement must also comply with the application and security threat assessment requirements established under 49 C.F.R. pt. 383, 384, and 1572. A hazardous material endorsement shall be revoked or denied if the department determines that the applicant has not complied with or met the security threat assessment standards.

Sec. 29. Section 321.235A, unnumbered paragraph 1, Code 2003, is amended to read as follows:

An electric personal assistive mobility device, which is a two-wheeled device as defined in section 321.1, subsection 20B, may be operated by a person at least sixteen years of age on sidewalks and bikeways in accordance with this section.

Sec. 30. Section 321J.1A, subsection 2, Code 2003, is amended to read as follows:

2. The department shall publish pamphlets containing the criminal and administrative penalties for drunk driving, and related laws, rules, instructions, and explanatory matter. This information may be included in ~~pamphlets~~ publications containing information related to other motor vehicle laws, ~~published~~ issued pursuant to section 321.15. Copies of ~~such~~ the pamphlets shall be given wide distribution, and a supply shall be made available to each county treasurer.

Sec. 31. Section 322.13, subsection 1, Code 2003, is amended to read as follows:

1. The department shall have full authority to prescribe reasonable rules for the administration and enforcement of this chapter, in addition hereto and not inconsistent herewith. All rules shall be filed and entered by the department in its office in an indexed, permanent book or record, with the effective date thereof suitably indicated, and such book or record shall be a public document. ~~Whenever~~ The department may provide notice of a new rule or regulation ~~is adopted by the department, a copy of the same shall be mailed by it to each licensee hereunder~~ by a posting on the department's internet website.

Sec. 32. Section 326.15, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

326.15 REFUNDS OF REGISTRATION FEES.

Refunds of registration fees paid for motor vehicles under this chapter shall be in accordance with section 321.126. In addition, if a motor vehicle is removed from an apportioned fleet, the owner in whose name the motor vehicle was registered shall return the registration plate to the department and make a claim for refund. A refund shall not be allowed without documentation of the subsequent registration of the motor vehicle.

A qualified fleet owner may certify to the department that the registration plate has been destroyed in lieu of surrendering the plate. The department shall adopt rules to define a qualified fleet owner.

Sec. 33. 2003 Iowa Acts, chapter 8, sections 9, 10, and 12, are repealed.

Sec. 34. 2003 Iowa Acts, chapter 8, section 29, subsection 3, is repealed.

Sec. 35. EFFECTIVE DATES.

1. Except as provided in subsections 2 through 4,[1] this Act takes effect January 1, 2005.

2. The sections of this Act amending section 321.46, subsection 3, paragraph "f"; section 321.126, subsection 6, paragraph "b"; and section 326.15, being deemed of immediate importance, take effect upon enactment.

3. The section of this Act enacting section 321.134, subsection 5, being deemed of immediate importance, takes effect upon enactment.

4. The section of this Act amending section 321.188, subsection 3, being deemed of immediate importance, takes effect upon enactment.

5. The sections of this Act amending section 321.1, subsection 20B, and section 321.235A, unnumbered paragraph 1, being deemed of immediate importance, take effect upon enactment.

6. The sections of this Act amending 2003 Iowa Acts, chapter 8, being deemed of immediate importance, take effect upon enactment.

Approved March 29, 2004

[1] See chapter 1175, §397, 400 herein

CHAPTER 1014

PUBLIC UTILITIES — PUBLIC ROAD RIGHTS-OF-WAY

S.F. 2118

AN ACT regarding public utility rights-of-way and providing an effective date.

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

Section 1. NEW SECTION. 306.46 PUBLIC UTILITY FACILITIES — PUBLIC ROAD RIGHTS-OF-WAY.

1. A public utility may construct, operate, repair, or maintain its utility facilities within a public road right-of-way. The location of new utility facilities shall comply with section 319.5. A utility facility shall not be constructed or installed in a manner that causes interference with public use of the road.

2. For purposes of this section, "public utility" means a public utility as defined in section 476.1, and shall also include waterworks, municipally owned waterworks, joint water utilities, rural water districts incorporated under chapter 357A or 504A, and cooperative water associations. For the purposes of this section, "utility facilities" means any cables, conduits, wire, pipe, casing pipe, supporting poles, guys, and other material and equipment utilized for the furnishing of electric, gas, communications, water, or sewer service.[1]

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

Approved March 29, 2004

CHAPTER 1015

DESCENT AND DISTRIBUTION OF PROPERTY —
DISCLAIMERS OF POWERS, RIGHTS, OR INTERESTS IN PROPERTY
AND MEDICAL ASSISTANCE BENEFITS RECOVERY

S.F. 2167

AN ACT relating to the Iowa probate code, including provisions relating to estate recovery of medical assistance benefits, the power to disclaim property interests, and trusts.

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

Section 1. Section 249A.3, subsection 11, paragraph c, Code Supplement 2003, is amended to read as follows:

c. A disclaimer of any property, interest, or right pursuant to section ~~633.704~~ 633.704E constitutes a transfer of assets for the purpose of determining eligibility for medical assistance in an amount equal to the value of the property, interest, or right disclaimed.

Sec. 2. Section 633.356, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

When the gross value of the decedent's personal property does not exceed twenty-five thou-

[1] See chapter 1175, §332 herein

sand dollars and there is no real property or the real property passes to persons exempt from inheritance tax pursuant to section 450.9 as joint tenants with right of survivorship, and if forty days have elapsed since the death of the decedent, the successor of the decedent as defined in subsection 2 may, by filing an affidavit prepared pursuant to subsection 3 or 8, and without procuring letters of appointment, do any of the following with respect to one or more particular items of personal property:

Sec. 3. Section 633.356, subsection 3, paragraph a, Code 2003, is amended to read as follows:

a. The decedent's name, social security number, and the date and place of the decedent's death.

Sec. 4. Section 633.356, subsection 4, unnumbered paragraph 3, Code 2003, is amended to read as follows:

Judgments rendered by any court in this state and mortgages belonging to a decedent whose personal property is being distributed pursuant to this section may, without prior order of court, be released, discharged, or assigned, in whole or in part, as to any particular property, and deeds may be executed in performance of real estate contracts entered into by the decedent, where an affidavit made pursuant to subsection 3 or 8 is filed in the office of the county recorder of the county wherein any judgment, mortgage, or real estate contract appears of record.

Sec. 5. Section 633.356, subsection 7, unnumbered paragraph 1, Code 2003, is amended to read as follows:

If the requirements of this section are satisfied, receipt by the holder of the decedent's property of the affidavit under subsection 3 or 8 constitutes sufficient acquittance for the payment of money, delivery of property, or transferring the registered ownership of property pursuant to this chapter and discharges the holder from any further liability with respect to the money or property. The holder may rely in good faith on the statements in the affidavit and has no duty to inquire into the truth of any statement in the affidavit.

Sec. 6. Section 633.356, subsection 8, Code 2003, is amended to read as follows:

8. a. When a deceased distributee is entitled to money or property claimed in an affidavit presented under this section with respect to a deceased person whose estate is being administered in this state, the personal representative of the person whose estate is being administered shall present the affidavit to the court in which the estate is being administered. The court shall direct the personal representative to pay the money or deliver the property to the person identified by the affidavit as the successor of the deceased distributee to the extent that the court determines that the deceased distributee was entitled to the money or property under the will or the laws of intestate succession.

b. When the department of human services is entitled to money or property of a decedent pursuant to section 249A.5, subsection 2, and no affidavit has been presented by a successor of the decedent as defined in subsection 2, within ninety days of the date of the decedent's death, the funds in the account, up to the amount of the claim of the department, shall be paid to the department upon presentation by the department or an entity designated by the department of an affidavit to the holder of the decedent's property. Such affidavit shall include the information specified in subsection 3, except that the department may submit proof of payment of funeral expenses as verification of the decedent's death instead of a certified copy of the decedent's death certificate. The amount of the department's claim shall also be included in the affidavit, which shall entitle the department to receive the funds as a successor of the decedent. The department shall issue a refund within sixty days to any claimant with a superior priority pursuant to section 633.425, if notice of such claim is given to the department, or to the entity designated by the department to receive notice, within one year of the department's receipt of funds.

Sec. 7. Section 633.647, subsection 7, Code 2003, is amended to read as follows:

7. To exercise the right to disclaim on behalf of the ward as provided in section ~~633.704~~ 633.704E.

Sec. 8. NEW SECTION. 633.704A SHORT TITLE.

This division shall be known and may be cited as the "Iowa Uniform Disclaimer of Property Interest Act".

Sec. 9. NEW SECTION. 633.704B DEFINITIONS.

For purposes of this division, the following definitions shall apply:

1. "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

2. "Disclaimed interest" means the interest the disclaimant refuses to accept that would have passed to the disclaimant had the disclaimer not been made.

3. "Disclaimer" means the refusal to accept an interest in or power over property.

4. "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.

5. "Jointly held property" means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

6. "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

7. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes any Indian tribe or band, or Alaskan village, recognized by federal law or formally acknowledged by a state.

8. "Trust" means any of the following:

a. An express trust, charitable or noncharitable, with additions thereto, whenever and however created.

b. A trust created pursuant to a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.

Sec. 10. NEW SECTION. 633.704C SCOPE.

This division applies to disclaimers of any interest in or power over property, whenever and however created.

Sec. 11. NEW SECTION. 633.704D TAX QUALIFIED DISCLAIMER.

Notwithstanding any other provision of this division, any disclaimer or transfer that meets the requirements of section 2518 of the Internal Revenue Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, for the purpose of being a tax qualified disclaimer with the effect that the disclaimed or transferred interest is treated as never having been transferred to the disclaimant is effective as a disclaimer under this division.

Sec. 12. NEW SECTION. 633.704E POWER TO DISCLAIM — GENERAL REQUIREMENTS — WHEN IRREVOCABLE.

1. A person may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, whenever and however acquired. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

2. Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, or a dis-

claimer by a fiduciary would be a breach of trust, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if the creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

3. To be effective, a disclaimer must be in writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in section 633.704L. In this subsection, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

4. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

5. A disclaimer becomes irrevocable when it is delivered or filed pursuant to section 633.704L or when it becomes effective as provided in sections 633.704F through 633.704K, whichever occurs later.

6. A disclaimer made under this division is not a transfer, assignment, or release.

Sec. 13. NEW SECTION. 633.704F EFFECT OF DISCLAIMER OF INTEREST IN PROPERTY.

1. As used in this section:

a. "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

b. "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

2. Except for a disclaimer governed by section 633.704G or 633.704H, the following rules apply to a disclaimer of an interest in property:

a. The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

b. The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

c. If the instrument does not contain a provision described in paragraph "b", the following rules shall apply:

(1) If the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(2) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

d. Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant of the preceding interest is not accelerated in possession or enjoyment.

e. For purposes of this section, if an individual disclaims a future interest not held in trust, the disclaimed future interest passes as if that interest had been held in trust.

Sec. 14. NEW SECTION. 633.704G DISCLAIMER OF RIGHTS OF SURVIVORSHIP IN JOINTLY HELD PROPERTY.

1. Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of the following:

a. A fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates.

b. All of the property, except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

2. A disclaimer under subsection 1 takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

3. An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

Sec. 15. NEW SECTION. 633.704H DISCLAIMER OF INTEREST BY TRUSTEE.

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

Sec. 16. NEW SECTION. 633.704I DISCLAIMER OF POWER OF APPOINTMENT OR OTHER POWER NOT HELD IN FIDUCIARY CAPACITY.

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules shall apply:

1. If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

2. If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

3. The instrument creating the power is construed as if the power expired when the disclaimer became effective.

Sec. 17. NEW SECTION. 633.704J DISCLAIMER BY APPOINTEE, OBJECT, OR TAKER IN DEFAULT OF EXERCISE OF POWER OF APPOINTMENT.

1. For purposes of this section, all of the following rules shall apply:

a. An appointee is a person to whom a holder of a power has effectively appointed the property subject to the power.

b. An object of a power is a person to whom a holder of a power may appoint the property subject to the power sometime in the future.

c. A taker in default of the exercise of a power of appointment is a person designated by the person creating the power in the holder to take the property subject to the power if the power has not been effectively exercised.

2. A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

3. A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

Sec. 18. NEW SECTION. 633.704K DISCLAIMER OF POWER HELD IN FIDUCIARY CAPACITY.

1. If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

2. If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

3. A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

Sec. 19. NEW SECTION. 633.704L DELIVERY OR FILING.

1. For the purposes of this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of any of the following:

a. An annuity or insurance policy.

b. An account with a designation for payment on death.

c. A security registered in beneficiary form.

d. A pension, profit-sharing, retirement, or other employment-related benefit plan.

e. Any other nonprobate transfer at death.

2. Subject to subsections 3 through 12, delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

3. In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, the following shall apply:

a. A disclaimer must be delivered to the personal representative of the decedent's estate.

b. If no personal representative is then serving, a disclaimer must be filed with a court having jurisdiction to appoint the personal representative.

4. In the case of an interest in a testamentary trust, one of the following shall apply:

a. A disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate.

b. If no personal representative is then serving, a disclaimer shall be filed with a court having jurisdiction to enforce the trust.

5. In the case of an interest in an inter vivos trust, one of the following shall apply:

a. A disclaimer must be delivered to the trustee then serving.

b. If no trustee is then serving, a disclaimer must be filed with a court having jurisdiction to enforce the trust.

c. If a disclaimer is made before the time the instrument creating the trust becomes irrevocable, the disclaimer must be delivered to the settlor of a revocable trust or the transferor of the interest.

6. In the case of a disclaimer of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

7. In the case of a disclaimer of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, the disclaimer must be delivered to the person obligated to distribute the interest.

8. In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

9. In the case of a disclaimer by an object or taker in default of an exercise of a power of appointment at any time after the power was created, one of the following shall apply:

a. The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power.

b. If no fiduciary is then serving, the disclaimer must be filed with a court having authority to appoint the fiduciary.

10. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment, one of the following shall apply:

a. The disclaimer must be delivered to the holder, the personal representative of the holder's estate, or to the fiduciary under the instrument that created the power.

b. If no fiduciary is then serving, the disclaimer must be filed with a court having authority to appoint the fiduciary.

11. In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection 3, 4, or 5, as if the power disclaimed were an interest in property.

12. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

13. In addition to the foregoing, all of the following shall apply:

a. A copy of any instrument of disclaimer affecting real estate shall be filed in the office of the county recorder of the county where the real estate is located. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

b. A copy of an instrument of disclaimer, regardless of its subject, may be filed with the clerk of court of the county in which proceedings for administration have been commenced, if applicable.

Sec. 20. NEW SECTION. 633.704M WHEN DISCLAIMER BARRED OR LIMITED.

1. A disclaimer is barred by a written waiver of the right to disclaim.

2. A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

a. The disclaimant accepts the interest sought to be disclaimed.

b. The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so.

c. A judicial sale of the interest sought to be disclaimed occurs.

3. A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

4. A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

5. A disclaimer is barred or limited if so provided by law other than this division.

6. A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this division had the disclaimer not been barred.

Sec. 21. NEW SECTION. 633.704N DIVISION SUPPLEMENTED BY OTHER LAW.

1. Unless displaced by a provision of this division, the principles of law and equity supplement this division.

2. This division does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this division.

Sec. 22. NEW SECTION. 633.704O MEDICAL ASSISTANCE ELIGIBILITY.

A disclaimer of any property, interest, or right pursuant to the provisions of this division constitutes a transfer of assets for the purpose of determining eligibility for medical assistance under chapter 249A in an amount equal to the value of the property, interest, or right disclaimed.

Sec. 23. NEW SECTION. 633.704P APPLICATION TO EXISTING RELATIONSHIP.

Except as otherwise provided in section 633.704M, an interest in or power over property existing on the effective date of this Act as to which the time for delivering or filing a disclaimer under law superseded by this division has not expired may be disclaimed after the effective date of this Act.

Sec. 24. NEW SECTION. 633.704Q SEVERABILITY.

If any provision of this division or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of the division which can be given effect without the invalid provisions or application, and to this end, the provisions of the division are severable.

Sec. 25. Section 633.1102, subsection 17, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. m. Burial, funeral, and perpetual care trusts.

Sec. 26. Section 633.1105, Code Supplement 2003, is amended to read as follows:

633.1105 TRUST PROVISIONS CONTROL.

The ~~provisions~~ terms of a trust shall always control and take precedence over any section

of this trust code to the contrary. If a ~~provision~~ term of the trust ~~instrument~~ modifies or makes any section of this trust code inapplicable to ~~a~~ the trust, the common law shall apply to any issues raised by such ~~provision~~ term.

Sec. 27. Section 633.2301, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

633.2301 SPENDTHRIFT PROTECTION RECOGNIZED.

Except as otherwise provided in section 633.2302, all of the following provisions shall apply:

1. A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary and involuntary transfers of the beneficiary's interest.

2. a. A creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the required distribution date.

b. For the purposes of this subsection, "mandatory distribution" means a distribution required by the express terms of the trust of any of the following:

(1) All of the income, net income, or principal of the trust.

(2) A fraction or percentage of the income or principal of the trust.

(3) A specific dollar amount from the trust.

c. A distribution that is subject to a condition shall not be considered a mandatory distribution.

3. If a creditor or assignee of a beneficiary is permitted to reach a mandatory distribution under this section, the sole remedy of the creditor or assignee shall be to apply to the court having jurisdiction of the trust after such reasonable period of time has expired for a judgment ordering the trustee to pay to the creditor or the assignee a sum of money equal to the lesser of the amount of the debt or assignment, or the amount of the mandatory distribution described in subsection 2. No other remedy, including but not limited to, attachment or garnishment of any interest in the trust, recovery of court costs or attorney fees, or placing a lien of any type on any trust property or on the interest of any beneficiary in the trust, shall be permitted or ordered by any court. Any writing signed by the beneficiary allowing any remedy other than payment of the mandatory distribution not made to the beneficiary within a reasonable time after the required distribution date shall be void and shall not be enforced by any court.

4. A creditor or assignee of a beneficiary of a spendthrift trust shall not compel a distribution that is subject to the trustee's discretion if any of the following apply:

a. The distribution is expressed in the form of a standard of distribution.

b. The trustee has abused its discretion.

Sec. 28. Section 633.2302, Code 2003, is amended to read as follows:

633.2302 EXCEPTIONS TO SPENDTHRIFT PROTECTION.

A term of a trust prohibiting an involuntary transfer of a beneficiary's interest shall be invalid as against claims by any ~~of the following:~~

~~1. Any~~ creditor of the beneficiary if the beneficiary is the settlor.

~~2. Any creditor of the beneficiary as to a distribution to be made upon an event terminating or partially terminating the trust.~~

Sec. 29. NEW SECTION. 633.4507 ATTORNEY FEES AND COSTS.

In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

Sec. 30. NEW SECTION. 633.4702 DISCRETIONARY LANGUAGE PREVAILS OVER OTHER STANDARD.

In the absence of clear and convincing evidence to the contrary, language in a governing

instrument granting a trustee discretion to make or withhold a distribution shall prevail over any language in the governing instrument indicating that the beneficiary may have a legally enforceable right to distributions or indicating a standard for payments or distributions.

Sec. 31. Section 633.704, Code 2003, is repealed.

Approved March 29, 2004

CHAPTER 1016

LANDLORD-TENANT LAW — DANGEROUS ACTIVITIES OF TENANT — NOTICE OF TERMINATION AND NOTICE TO QUIT

S.F. 2199

AN ACT relating to residential landlord-tenant law, by making certain changes concerning family violence and domestic abuse.

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

Section 1. Section 562A.27A, subsection 1, Code 2003, is amended to read as follows:

1. Notwithstanding section 562A.27 or 648.3, if a tenant has created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the landlord, the landlord's employee or agent, or other persons on or within one thousand feet of the landlord's property, the landlord, after the service of a single three days' written notice of termination and notice to quit stating the specific activity causing the clear and present danger, and setting forth the language of subsection 3 which includes certain exemption provisions available to the tenant, may file suit against the tenant for recovery of possession of the premises pursuant to chapter 648, except as otherwise provided in subsection 3. The petition shall state the incident or incidents giving rise to the notice of termination and notice to quit. The tenant shall be given the opportunity to contest the termination in the court proceedings by notice thereof at least three days prior to the hearing.

Sec. 2. Section 562B.25A, subsection 1, Code 2003, is amended to read as follows:

1. Notwithstanding section 562B.25 or 648.3, if a tenant has created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the landlord, the landlord's employee or agent, or other persons on or within one thousand feet of the landlord's property, the landlord, after the service of a single three days' written notice of termination and notice to quit stating the specific activity causing the clear and present danger, and setting forth the language of subsection 3 which includes certain exemption provisions available to the tenant, may file suit against the tenant for recovery of possession of the premises pursuant to chapter 648, except as otherwise provided in subsection 3. The petition shall state the incident or incidents giving rise to the notice of termination and notice to quit. The tenant shall be given the opportunity to contest the termination in the court proceedings by notice thereof at least three days prior to the hearing.

Approved March 29, 2004

CHAPTER 1017

CRIMINAL PROCEDURE — INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS — DIRECT APPEALS

H.F. 2325

AN ACT relating to raising an ineffective assistance of counsel claim against an attorney in a criminal case on appeal.

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

Section 1. Section 13B.9, subsection 2, Code Supplement 2003, is amended to read as follows:

2. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding or on direct appeal, that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel and the ineffective assistance of counsel claim is the proximate cause of the damage.

Sec. 2. NEW SECTION. 814.7 INEFFECTIVE ASSISTANCE CLAIM ON APPEAL IN A CRIMINAL CASE.

1. An ineffective assistance of counsel claim in a criminal case shall be determined by filing an application for postconviction relief pursuant to chapter 822, except as otherwise provided in this section. The claim need not be raised on direct appeal from the criminal proceedings in order to preserve the claim for postconviction relief purposes.

2. A party may, but is not required to, raise an ineffective assistance claim on direct appeal from the criminal proceedings if the party has reasonable grounds to believe that the record is adequate to address the claim on direct appeal.

3. If an ineffective assistance of counsel claim is raised on direct appeal from the criminal proceedings, the court may decide the record is adequate to decide the claim or may choose to preserve the claim for determination under chapter 822.

Sec. 3. Section 814.11, subsection 7, Code 2003, is amended to read as follows:

7. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding or on direct appeal, that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel and the ineffective assistance of counsel claim is the proximate cause of the damage.

Sec. 4. Section 815.10, subsection 6, Code 2003, is amended to read as follows:

6. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding or on direct appeal, that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel, and the ineffective assistance of counsel claim is the proximate cause of the damage.

Approved March 29, 2004

CHAPTER 1018

REGULATION OF REAL ESTATE AUCTIONS AND AUCTIONEERS

H.F. 2373

AN ACT providing for the inapplicability of provisions regulating licensed real estate brokers and salespersons to auctioneers under specified circumstances, and providing penalties.

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

Section 1. Section 543B.7, subsection 5, Code 2003, is amended to read as follows:

5. The acts of an auctioneer in conducting a public sale or auction. The auctioneer's role must be limited to establishing the time, place, and method of an auction; advertising the auction including a brief description of the property for auction~~,~~ and the time and place for the auction~~,~~; and crying the property at the auction. The auctioneer shall provide in any advertising the name and address of the real estate broker or attorney who is providing brokerage services for the transaction and who is also responsible for closing the sale of the property~~; and crying the property at the auction~~. The real estate broker or attorney providing brokerage services and closing services shall be present at the time of the auction and if found to be in violation of this subsection shall be subject to a civil penalty of two thousand five hundred dollars. If the auctioneer closes or attempts to close the sale of the property or otherwise engages in acts defined in sections 543B.3 and 543B.6, then the requirements of this chapter do apply to the auctioneer. If an investigation pursuant to this chapter reveals that an auctioneer has violated this subsection or has assumed to act in the capacity of a real estate broker or real estate salesperson, the real estate commission may issue a cease and desist order, and shall issue a warning letter notifying the auctioneer of the violation for the first offense, and impose a penalty of up to the greater of ten thousand dollars or ten percent of the real estate sales price for each subsequent violation.

Approved March 29, 2004

CHAPTER 1019

ADMINISTRATION OF FAIRS — ALLOCATION OF FUNDS

H.F. 2403

AN ACT providing for the administration of fairs, providing for the allocation of moneys, and providing for an effective date.

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

Section 1. Section 21.2, subsection 1, paragraph f, Code 2003, is amended to read as follows:

f. A nonprofit corporation other than a ~~county or district~~ fair ~~or agricultural society~~ conducting a fair event as provided in chapter 174, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wager-

ing pursuant to chapter 99D or a nonprofit corporation which is a successor to the nonprofit corporation which built the facility.

Sec. 2. Section 22.1, subsections 1 and 3, Code 2003, are amended to read as follows:

1. The term "government body" means this state, or any county, city, township, school corporation, political subdivision, tax-supported district, nonprofit corporation other than a ~~county or district~~ fair ~~or agricultural society~~ conducting a fair event as provided in chapter 174, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D, or other entity of this state, or any branch, department, board, bureau, commission, council, committee, official or officer, of any of the foregoing or any employee delegated the responsibility for implementing the requirements of this chapter.

3. As used in this chapter, "public records" includes all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any county, city, township, school corporation, political subdivision, nonprofit corporation other than a ~~county or district~~ fair ~~or agricultural society~~ conducting a fair event as provided in chapter 174, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D, or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.

Sec. 3. Section 99B.1, subsections 4 and 13, Code Supplement 2003, are amended to read as follows:

4. "Authorized" means approved as a concession by the Iowa state fair board or a ~~county or district~~ fair ~~or agricultural society holding~~ conducting a fair event as provided in chapter 174.

13. "Fair" means an annual fair and exposition held by the Iowa state fair board and any fair ~~held by a county or district fair or agricultural society~~ event conducted by a fair under the provisions of chapter 174.

Sec. 4. Section 99D.13, subsection 3, paragraphs a and b, Code 2003, are amended to read as follows:

a. Eighty percent of the amount appropriated shall be allocated to qualified harness racing tracks, to be used by the tracks to supplement the purses for those harness races in which only Iowa-bred or owned horses may run. However, beginning with the allocation of the appropriation made for the fiscal year beginning July 1, 1992, the races for which the purses are to be supplemented under this paragraph shall be those in which only Iowa-bred two-year and three-year olds may run. In addition, the races must be held under the control or jurisdiction of the Iowa state fair board, established under section 173.1, or of a ~~society~~ fair, as defined under section 174.1.

b. Twenty percent of the amount appropriated shall be allocated to qualified harness racing tracks, to be used by the tracks for maintenance of and improvements to the tracks. Races held at the tracks must be under the control or jurisdiction of the Iowa state fair board, established under section 173.1, or of a ~~society~~ fair, as defined under section 174.1.

Sec. 5. Section 173.3, Code Supplement 2003, 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, fairs, and societies which have qualified for state aid under the provisions of chapters 176 through 178, 181, 182, 186, and 352, and which are entitled to representation in the convention as provided in section 173.2.

Sec. 6. Section 174.1, subsections 1 and 2, Code 2003, are amended to read as follows:

1. "Fair event" ~~shall mean~~ means an annual gathering of ~~people~~ the public on fairgrounds

that incorporates agricultural exhibits, demonstrations, shows, or ~~competition~~ competitions and which ~~has the following activities~~ includes all of the following:

a. ~~Extension,~~ Programs or projects sponsored by 4-H clubs, ~~or~~ future farmers of America ~~programs~~, or the Iowa cooperative extension service in agriculture and home economics of Iowa state university.

b. Commercial ~~and educational~~ exhibits sponsored by manufacturers or other businesses.

c. ~~Competition in the~~ Educational programs or exhibits sponsored by governmental entities or nonprofit organizations.

d. Competition in culinary arts, fine arts, or home craft arts.

2. "Management" shall mean president, vice-president, secretary, or treasurer of ~~the society~~ a fair.

Sec. 7. Section 174.1, subsection 3, Code 2003, is amended by striking the subsection.

Sec. 8. Section 174.1, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 0A. "Association" means the association of Iowa fairs.

NEW SUBSECTION. 0B. "Fair" means an organization which is incorporated under the laws of this state, including as a county or district fair or as an agricultural society, for the purpose of conducting a fair event, if all of the following apply:

a. The organization owns or leases at least ten acres of fairgrounds. A society[1] may meet the requirement of owning or leasing land, buildings, and improvements through ownership by a joint entity under chapter 28E.

b. The organization owns buildings and other improvements situated on the fairgrounds which have been specially constructed for purposes of conducting a fair event.

c. The market value of the fairgrounds and buildings and other improvements located on the fairgrounds is at least eighty thousand dollars.

NEW SUBSECTION. 0C. "Fairgrounds" or "grounds" means the real estate, including land, buildings, and improvements where a fair event is conducted.

NEW SUBSECTION. 4. "State aid" means moneys appropriated by the treasurer of state to the association of Iowa fairs for payments to eligible fairs pursuant to this chapter.

Sec. 9. Section 174.2, unnumbered paragraphs 1 and 2, Code 2003, are amended to read as follows:

~~Each society~~ A fair may ~~hold~~ annually ~~a fair~~ conduct a fair event to further interest in agriculture and to encourage the improvement of agricultural commodities and products, livestock, articles of domestic industry, implements, and other mechanical devices. It may offer and award such premiums as will induce general competition.

In addition to the powers granted ~~herein the society~~ in this chapter, a fair shall ~~possess~~ have the powers of a corporation not for pecuniary profit under the laws of this state and those powers enumerated in its articles of incorporation, such powers to be exercised before and after the holding of ~~such fairs~~ a fair event.

Sec. 10. Section 174.3, Code 2003, is amended to read as follows:

174.3 CONTROL OF GROUNDS.

An ordinance or resolution of a county or city shall not in any way impair the authority of ~~the society, but it~~ a fair. The fair shall have sole and exclusive control over and management of ~~such~~ a fair event and fairgrounds.

Sec. 11. Section 174.4, Code 2003, is amended to read as follows:

174.4 PERMITS TO SELL ARTICLES.

The management of ~~any society~~ a fair may grant a written permit to ~~such persons as it thinks~~ a person determined proper by the management, to sell fruit, provisions, and other articles not prohibited by law, under such regulations as the ~~board of directors~~ management may prescribe.

[1] See chapter 1175, §366 herein

Sec. 12. Section 174.6, Code 2003, is amended to read as follows:

174.6 REMOVAL OF OBSTRUCTIONS.

~~All~~ The management of a fair may order the removal of any obstruction to a fair event or on the fairgrounds, including but not limited to shows, swings, booths, tents, or vehicles~~, or any other thing that may obstruct the grounds of any society or the driveways thereof may be removed from the grounds on the order of the management~~.

Sec. 13. Section 174.8, Code 2003, is amended to read as follows:

174.8 PUBLICATION OF FINANCIAL STATEMENT.

~~Each society~~ A fair shall annually publish in one newspaper of the county a financial statement of receipts and disbursements for the current year.

Sec. 14. Section 174.9, Code 2003, is amended to read as follows:

174.9 STATE AID.

~~Each~~ An eligible ~~society~~ fair which is a member of the association of Iowa fairs as provided in the association's bylaws and which conducts a ~~county~~ fair event shall be entitled to receive state aid ~~from the state~~ as provided in this chapter. The moneys paid as state aid must be used exclusively for capital expenditures relating to the acquisition of land for fairgrounds and improvements on the fairgrounds such as the construction of new facilities and the renovation of existing facilities. In order to be eligible for state aid, a ~~society~~ fair must file with the association of Iowa fairs on or before November ~~1~~ 15 of each year, a statement which ~~shall show~~ provides information as required by the association of Iowa fairs. The information shall at least include all of the following:

1. The ~~actual~~ amount that the fair paid ~~by it~~ in cash premiums at its fair for the current year~~, which~~. The statement must correspond with its published offer of premiums.

2. ~~That~~ A statement that no part of ~~said~~ the amount of state aid was paid for any of the following:

a. Entertainment venues, including but not limited to speed events~~, or to~~.

b. To secure games or amusements.

c. Supplies, rentals, equipment, payroll, inventory, fees, or routine operating expenses.

3. A full and accurate statement of the receipts and expenditures of the ~~society~~ fair for the current year ~~and other~~.

4. A statement of statistical data relative to exhibits and attendance for the year.

~~4.~~ 5. A copy of the published financial statement published as required by law, together with proof of such publication ~~and a certified statement~~ showing an itemized list of premiums awarded~~, and such other information as the association of Iowa fairs may require~~.

Sec. 15. Section 174.10, Code 2003, is amended to read as follows:

174.10 APPROPRIATION — AVAILABILITY.

1. Any moneys appropriated for state aid ~~for county or local fairs~~ shall be paid to the office of treasurer of state ~~to be allocated~~ for allocation to the association of Iowa fairs ~~for payments to be made by the association~~. The association shall distribute the moneys to eligible ~~societies~~ fairs pursuant to this chapter.

2. a. The association ~~of Iowa fairs~~ shall maintain a list of each ~~society~~ fair in a county which is a member of the association and conducts a fair event in that county as provided in this chapter. If a county has more than one fair event, the association shall list the name of each ~~society~~ fair conducting a fair event in that county for three or more years. The association ~~of Iowa fairs~~ shall not make a payment to a ~~society~~ fair under this chapter unless the ~~society~~ fair complies with section 174.9~~,~~ ~~and~~ the name of the ~~society~~ fair appears on the association's list, and the fair is a member in good standing according to the bylaws of the association.

b. The association shall prepare a report at the end of each fiscal year concerning the state aid ~~appropriated for county or local fairs~~ that it received, the manner in which such aid was allocated to eligible ~~societies~~ fairs, and the manner in which the aid was expended by the ~~societies~~ fairs. The association shall submit the report to the governor and the general assembly

by ~~January~~ February 1 of each year. The association shall not use moneys appropriated for state aid ~~for county or local fairs~~, or interest earned on such moneys, for administrative or other expenses.

3. The association's board of directors shall determine the amount of state aid ~~for each fair which is eligible for state aid shall be equal~~ allocated to each eligible fair.

4. If no ~~society~~ fair in a county ~~qualifies~~ is eligible to receive state aid, that county's share shall be divided equally among the ~~counties with societies eligible for state aid, as provided in this section~~ eligible fairs.

~~5. The board of supervisors, upon receiving a petition seeking to designate an official county fair which meets the requirements of section 331.306, shall submit to the registered voters of the county at the next general election following submission of the petition or at a special election if requested by the petitioners at no cost to the county, the question of which fair shall be designated as the official county fair. Notice of the election shall be given as provided in section 49.53. The fair receiving a majority of the votes cast on the question shall be designated the official county fair.~~

Sec. 16. Section 174.12, Code 2003, is amended to read as follows:

174.12 PAYMENT OF STATE AID — PARTICIPATION BY DELEGATES.

The association of Iowa fairs shall pay a ~~society~~ fair the amount due in state aid, less one thousand dollars, as provided in this chapter. The association ~~of Iowa fairs~~ must certify to the treasurer that the ~~society~~ fair is eligible under this chapter to receive the amount to be paid to the ~~society~~ fair by the association. The association shall pay the ~~society~~ fair the remaining one thousand dollars, if all of the following apply:

1. The secretary of the state fair board certifies to the association that the ~~society~~ fair had an accredited delegate in attendance at the annual convention for the election of members of the Iowa state fair board as provided in section 173.2.

2. A district director of the association ~~of Iowa fairs~~ representing the district in which the county is located, and the director of the Iowa state fair board representing the ~~congressional district~~ state fair board district in which the county is located, certify to the association that the ~~society~~ fair had an accredited delegate in attendance at[2] least one of the district ~~meeting~~ meetings, and at the association's annual meeting.

Any moneys appropriated in state aid ~~moneys~~ remaining due to the failure of a ~~society~~ fair to comply with this section shall be distributed equally among the ~~societies~~ eligible fairs which have qualified for state aid under this section. The treasurer of state shall allocate to the association ~~of Iowa fairs~~ the total amount to be paid by the association to eligible ~~societies~~ fairs under this chapter.

Sec. 17. Section 174.13, Code 2003, is amended to read as follows:

174.13 COUNTY AID.

The board of supervisors of the county in which a ~~society~~ fair is located may appropriate moneys to be used for ~~fitting up or~~ purchasing fairgrounds ~~for the society or for aiding~~, constructing or restoring facilities on the fairgrounds, aiding 4-H club work, and ~~payment of~~ paying agricultural and livestock premiums in connection with the fair~~, if the society owns or leases at least ten acres of land for the fairground and owns or leases buildings and improvements on the land of at least eight thousand dollars in value~~ event. ~~A society may meet the requirement of owning or leasing land, buildings, and improvements through ownership by a joint entity under chapter 28E, of which the society is a part.~~

Sec. 18. Section 174.14, Code 2003, is amended to read as follows:

174.14 FAIRGROUND AID.

1. The board of supervisors of a county which has acquired real estate for ~~county or district fair purposes~~ fairgrounds and which has a ~~society~~ fair using the ~~real estate~~ fairgrounds, may appropriate moneys to be used for ~~the~~ any of the following:

[2] See chapter 1175, §367 herein

a. The erection and repair of buildings or other permanent improvements on ~~the real estate, and for~~ the fairgrounds.

b. The payment of debts contracted in the erection or repair and payment of agricultural and livestock premiums.

2. In addition, the net proceeds from the sale of ~~fairground sites and~~ real estate or structures ~~on~~ or improvements on the ~~sites~~ fairgrounds shall be used for the purchase of real estate or the erection of permanent buildings and installation of improvements on ~~a~~ new ~~fairground site~~ fairgrounds, or the cost of moving structures from the old fairgrounds to the new ~~site~~ fairgrounds.

Sec. 19. Section 174.15, Code 2003, is amended to read as follows:

174.15 PURCHASE AND MANAGEMENT.

Title to land purchased or received for ~~fairground~~ purposes of conducting a fair event shall be taken in the name of the county or a ~~society, but~~ fair. However, the board of supervisors shall place ~~it~~ the land under the control and management of a ~~society~~ fair. The ~~society~~ fair may act as agent for the county in the erection of buildings, maintenance of ~~grounds and~~ the fairgrounds, including the buildings~~, or~~ and improvements constructed on the grounds. Title to new buildings or improvements shall be taken in the name of the county or a ~~society, but~~ fair. However, the county is not liable for the improvements or expenditures for them.

Sec. 20. Section 174.16, Code 2003, is amended to read as follows:

174.16 TERMINATION OF RIGHTS OF ~~SOCIETY~~ FAIR.

The right of ~~such society~~ a fair to the control and management of ~~said real estate~~ its fairgrounds may be terminated by the board of supervisors whenever well conducted ~~agricultural fairs~~ fair events are not annually held ~~thereon by such society~~ on the fairgrounds.

Sec. 21. Section 174.17, subsection 1, Code 2003, is amended to read as follows:

1. The governing body of a ~~society~~ fair may issue bonds payable from revenue generated by the operations of the ~~county~~ fair event and the use or rental of the real and personal property owned or leased by the ~~society~~ fair. The governing body of a ~~society~~ fair shall comply with all of the following procedures in issuing such bonds:

a. A ~~society~~ fair may institute proceedings for the issuance of bonds by causing a notice of the proposal to issue the bonds to be published at least once in a newspaper of general circulation within the county at least ten days prior to the meeting at which the ~~society~~ fair proposes to take action for the issuance of the bonds. The notice shall include a statement of the amount and purpose of the bonds, the maximum rate of interest the bonds are to bear, and the right to petition for an election.

b. If at any time before the date fixed for taking action for the issuance of the bonds, a petition signed by three percent of the registered voters of the county is filed with the board of supervisors, asking that the question of issuing the bonds be submitted to the registered voters, the board of supervisors shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds. The proposition of issuing bonds under this subsection is not approved unless the vote in favor of the proposition is equal to at least sixty percent of the vote cast. If a petition is not filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the board of supervisors acting on behalf of the ~~society~~ fair may proceed with the authorization and issuance of the bonds. Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with the provisions of this subsection.

c. All bonds issued under this subsection shall be payable solely from and shall be secured by an irrevocable pledge of a sufficient portion of the net rents, profits, and income derived from the operation of the ~~county~~ fair event and the use or rental of the real and personal property owned or leased by the ~~society~~ fair. Bonds issued pursuant to this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or re-

striction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under this subsection shall not limit or restrict the authority of the ~~society~~ fair as otherwise provided by law.

Sec. 22. Section 174.17, subsection 3, Code 2003, is amended to read as follows:

3. ~~For purposes of this section, "society" means a society, as defined by section 174.1, that conducts a county or local~~ In order for the governing body of a fair to issue bonds under this section, the governing body must conduct a fair event that has a verifiable annual attendance of at least one hundred fifty thousand persons and annual outside gate admission revenues of at least four hundred thousand dollars.

Sec. 23. Section 174.19, Code 2003, is amended to read as follows:

174.19 REPORT OF COUNTY AID.

A ~~society~~ fair shall not receive an appropriation from a county under this chapter, until the ~~society~~ fair submits a financial statement to the county board of supervisors. The statement shall show all expenditures of moneys appropriated to the ~~society~~ fair from the county in the previous year. The financial statement submitted to the board of supervisors shall include vouchers related to the expenditures.

Sec. 24. Section 174.20, Code 2003, is amended to read as follows:

174.20 FRAUDULENT ENTRIES OF HORSES.

~~No~~ A person~~, partnership, company, or corporation~~ shall not knowingly enter or cause to be entered any horse of any age or sex under an assumed name, or out of its proper class, to compete for any purse, prize, premium, stake, or sweepstake offered or given by any ~~agricultural or other society, association,~~ person~~, or persons~~ in the state, or drive any such horse under an assumed name, or out of its proper class, where such prize, purse, premium, stake, or sweepstake is to be decided by a contest of speed.

Sec. 25. Section 174.22, Code 2003, is amended to read as follows:

174.22 ENTRY UNDER CHANGED NAME.

The name of any horse for the purpose of entry for competition in any contest of speed shall not be changed after having once contested for a prize, purse, premium, stake, or sweepstake, except as provided by the code of printed rules of the ~~society~~ fair or association under which the contest is advertised to be conducted, unless the former name is given.

Sec. 26. Section 174.23, Code 2003, is amended to read as follows:

174.23 CLASS DETERMINED.

The class to which a horse belongs for the purpose of an entry in any contest of speed, as provided by the printed rules of the ~~society~~ fair or association under which such contest is to be made, shall be determined by the public record of said horse in any such former contest.

Sec. 27. Section 331.303, subsection 5, Code 2003, is amended by striking the subsection.

Sec. 28. Section 322.5, subsection 2, paragraph a, subparagraph (2), Code 2003, is amended to read as follows:

(2) Display, offer for sale, and negotiate sales of new motor vehicles at ~~county or district fairs~~ fair events, as ~~described~~ defined in chapter 174, vehicle shows, and vehicle exhibitions, upon application for and receipt of a temporary permit issued by the department. Such activities may only be conducted at fairs, vehicle shows, and vehicle exhibitions that are held in the county of the motor vehicle dealer's principal place of business. A sale of a motor vehicle by a motor vehicle dealer shall not be completed and an agreement for the sale of a motor vehicle shall not be signed at a fair, vehicle show, or vehicle exhibition. All such sales shall be consummated at the motor vehicle dealer's principal place of business.

Sec. 29. Section 422.45, subsection 50, Code Supplement 2003, is amended to read as follows:

50. The gross receipts from sales or services rendered, furnished, or performed by the state fair organized under chapter 173 or a fair ~~society~~ organized under chapter 174.

Sec. 30. NEW SECTION. 669.25 LIABILITY.

A person who performs services for a fair, as defined in section 174.1, and is not a full-time employee of the fair is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

Sec. 31. Section 717D.3, subsection 1, paragraph b, Code 2003, is amended to read as follows:

b. A fair event as defined in section 174.1.

Sec. 32. Section 174.5, Code 2003, is repealed.

Approved March 29, 2004

CHAPTER 1020

HUMAN RIGHTS — ASIANS AND PACIFIC ISLANDERS — COMMISSION

S.F. 2188

AN ACT providing for the establishment of a commission on the status of Iowans of Asian and Pacific Islander heritage within the department of human rights.

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

Section 1. Sections 3 through 12 of this Act are enacted as subchapter 11 of Code chapter 216A.

Sec. 2. Section 216A.1, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 8. Division on the status of Iowans of Asian and Pacific Islander heritage.

Sec. 3. NEW SECTION. 216A.151 DEFINITIONS.

For purposes of this subchapter, unless the context otherwise requires:

1. "Administrator" means the administrator of the division on the status of Iowans of Asian and Pacific Islander heritage of the department of human rights.
2. "Asian and Pacific Islander" means an individual from any of the countries of Asia or islands of the Pacific.
3. "Commission" means the commission on the status of Iowans of Asian and Pacific Islander heritage.
4. "Division" means the division on the status of Iowans of Asian and Pacific Islander heritage of the department of human rights.

Sec. 4. NEW SECTION. 216A.152 ESTABLISHMENT.

A commission on the status of Iowans of Asian and Pacific Islander heritage is established consisting of nine members appointed by the governor, subject to confirmation by the senate. Members shall be appointed representing every geographical area of the state. The members of the commission shall appoint one of the members to serve as chairperson of the commission.

Sec. 5. NEW SECTION. 216A.153 TERM OF OFFICE.

Four of the members appointed to the initial commission shall be designated by the governor to serve two-year terms, and five shall be designated by the governor to serve four-year terms. Succeeding appointments shall be for a term of four years. Vacancies in the membership shall be filled for the remainder of the term of the original appointment.

Sec. 6. NEW SECTION. 216A.154 MEETINGS OF THE COMMISSION.

The commission shall meet at least four times each year, and shall hold special meetings on the call of the chairperson. The commission shall adopt rules pursuant to chapter 17A as it deems necessary for the conduct of its business. The members of the commission shall be reimbursed for actual expenses while engaged in their official duties. A member may also be eligible to receive compensation as provided in section 7E.6.

Sec. 7. NEW SECTION. 216A.155 DUTIES.

The commission shall:

1. Advise the governor and the general assembly on issues confronting Asian and Pacific Islander persons in this state, including the unique problems of non-English-speaking immigrants and refugees.
2. Advise the governor and the general assembly of administrative and legislative changes necessary to ensure Asian and Pacific Islander persons access to benefits and services provided to people in this state.
3. Recommend to the governor and the general assembly any revisions in the state's affirmative action program and other steps necessary to eliminate underutilization of Asian and Pacific Islander persons in the state's workforce.
4. Recommend legislation to the governor and the general assembly designed to improve the economic and social condition of Asian and Pacific Islander persons in this state.
5. Serve as a conduit to state government for organizations of Asian and Pacific Islander persons in this state.
6. Serve as a referral agency to assist Asian and Pacific Islander persons in securing access to state agencies and programs.
7. Serve as a liaison with federal, state, and local governmental units, and private organizations on matters relating to the Asian and Pacific Islander persons in this state.
8. Perform or contract for the performance of studies designed to suggest solutions to the problems of Asian and Pacific Islander persons in the areas of education, employment, human rights, health, housing, social welfare, and other related areas.
9. Implement programs designed to solve the problems of Asian and Pacific Islander persons when authorized by law.
10. Publicize the accomplishments of Asian and Pacific Islander persons and their contributions to this state.
11. Work with other state and federal agencies and organizations to develop small business opportunities and promote economic development for Asian and Pacific Islander persons.
12. Supervise development of an Asian and Pacific Islander trade primer, outlining Asian and Pacific Islander customs, cultural traditions, and business practices, including language usage for use by Iowa's export community.
13. Cooperate with other state and federal agencies and organizations to develop improved state trade relations with Asian and Pacific Islander countries.

Sec. 8. NEW SECTION. 216A.156 REVIEW OF GRANT APPLICATIONS AND BUDGET REQUESTS.

Before the submission of an application, state departments and agencies shall consult with the commission concerning applications for federal funding that will have its primary effect on persons of Asian and Pacific Islander heritage in Iowa. The commission shall advise the governor and the director of revenue and finance[1] concerning any state agency budget request that will have its primary effect on persons of Asian and Pacific Islander heritage in Iowa.

Sec. 9. NEW SECTION. 216A.157 ADDITIONAL AUTHORITY.

The commission may:

1. Enter into contracts, within the limit of funds made available, with individuals, organizations, and institutions for services.

2. Accept gifts, grants, devises, or bequests of real or personal property from the federal government or any other source for the use and purposes of the commission. Notwithstanding sections 8.33 and 12C.7, the interest accrued from moneys received under this subsection shall not revert to the general fund of the state, but shall remain available for expenditure by the commission.

Sec. 10. NEW SECTION. 216A.158 EMPLOYEES AND RESPONSIBILITY.

The commission may employ necessary employees. Pursuant to section 216A.2, the commission may have responsibility for budgetary and personnel decisions for the commission and division. The administrator may administer programs and policies as determined by the commission.

Sec. 11. NEW SECTION. 216A.159 STATE AGENCY ASSISTANCE.

On the request of the commission, state departments and agencies may supply the commission with advisory staff services on matters relating to the jurisdiction of the commission. The commission shall cooperate and coordinate its activities with other state agencies to the highest possible degree.

Sec. 12. NEW SECTION. 216A.160 ANNUAL REPORT.

Not later than February 1 of each year, the commission shall file a report in an electronic format with the governor and the general assembly of its activities for the previous calendar year. With the report, the commission may submit any recommendations pertaining to its activities and shall submit recommendations for legislative consideration and other action it deems necessary.

Approved March 31, 2004

[1] Director of "revenue" probably intended

CHAPTER 1021

UNIFORM LIMITED PARTNERSHIP ACT

H.F. 2347

AN ACT relating to the uniform limited partnership Act and providing a penalty and effective dates.

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

ARTICLE I
GENERAL PROVISIONS

Section 1. NEW SECTION. 488.101 SHORT TITLE.
This chapter may be cited as the "Uniform Limited Partnership Act".

Sec. 2. NEW SECTION. 488.102 DEFINITIONS.
As used in this chapter, unless the context otherwise requires:
1. "Certificate of limited partnership" means the certificate required by section 488.201. The term includes the certificate as amended or restated.
2. "Contribution", except in the phrase "right of contribution", means any benefit provided by a person to a limited partnership in order to become a partner or in the person's capacity as a partner.
3. "Debtor in bankruptcy" means a person that is the subject of either 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.
4. "Deliver", "delivery", or "delivered" means any method of delivery used in conventional commercial practice, including delivery in person, by mail, commercial delivery, and electronic transmission.
5. "Designated office" means:
a. With respect to a limited partnership, the office that the limited partnership is required to designate and maintain under section 488.114.
b. With respect to a foreign limited partnership, its principal office.
6. "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.
7. "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.
8. "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to section 488.404, subsection 3.
9. "Foreign limited partnership" means a partnership formed under the laws of a jurisdiction other than Iowa and required by those laws to have one or more general partners and one or more limited partners. The term includes a foreign limited liability limited partnership.
10. "General partner" means:
a. With respect to a limited partnership, a person that is either of the following:
(1) A person that becomes a general partner under section 488.401.
(2) A person that was a general partner in a limited partnership when the limited partnership became subject to this chapter under section 488.1206,[1] subsection 1 or 2.
b. With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership.
11. "Limited liability limited partnership", except in the phrase "foreign limited liability lim-

[1] See chapter 1175, §373 herein

ited partnership", means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

12. "Limited partner" means:

a. With respect to a limited partnership, a person that is either of the following:

(1) A person that becomes a limited partner under section 488.301.

(2) A person that was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section 488.1206,[2] subsection 1 or 2.

b. With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

13. "Limited partnership", except in the phrases "foreign limited partnership" and "foreign limited liability limited partnership", means an entity, having one or more general partners and one or more limited partners, which is formed under this chapter by two or more persons or becomes subject to this chapter under article 11 or section 488.1206,[3] subsection 1 or 2. The term includes a limited liability limited partnership.

14. "Partner" means a limited partner or general partner.

15. "Partnership agreement" means the partners' agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership. The term includes the agreement as amended.

16. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

17. "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.

18. "Principal office" means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this state.

19. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

20. "Required information" means the information that a limited partnership is required to maintain under section 488.111.

21. "Sign" means either of the following:

a. To execute or adopt a tangible symbol with the present intent to authenticate a record.

b. To attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate the record.

22. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

23. "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

24. "Transferable interest" means a partner's right to receive distributions.

25. "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

Sec. 3. NEW SECTION. 488.103 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.

d. The person has notice of it under subsection 3 or 4.

3. A certificate of limited partnership on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subsection 4, the certificate is not notice of any other fact.

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[2] See chapter 1175, §374 herein

[3] See chapter 1175, §375 herein

4. A person has notice of any of the following:

a. Another person's dissociation as a general partner, ninety days after the effective date of an amendment to the certificate of limited partnership which states that the other person has dissociated, or ninety days after the effective date of a statement of dissociation pertaining to the other person, whichever occurs first.

b. A limited partnership's dissolution, ninety days after the effective date of an amendment to the certificate of limited partnership stating that the limited partnership is dissolved.

c. A limited partnership's termination, ninety days after the effective date of a statement of termination.

d. A limited partnership's conversion under article 11, ninety days after the effective date of the articles of conversion.

e. A merger under article 11, ninety days after the effective date of the articles of merger.

5. A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

6. A person receives a notification when either of the following applies:

a. Notification comes to the person's attention.

b. Notification is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

7. Except as otherwise provided in subsection 8, 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 for the person 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. A person other than an individual exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person 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.

8. A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is effective immediately as knowledge of, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is not effective as knowledge of, notice to, or receipt of a notification by the limited partnership.

Sec. 4. NEW SECTION. 488.104 NATURE, PURPOSE, AND DURATION OF ENTITY.

1. A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

2. A limited partnership may be organized under this chapter for any lawful purpose.

3. A limited partnership has a perpetual duration.

Sec. 5. NEW SECTION. 488.105 POWERS.

A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

Sec. 6. NEW SECTION. 488.106 GOVERNING LAW.

The law of this state governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership.

Sec. 7. NEW SECTION. 488.107 SUPPLEMENTAL PRINCIPLES OF LAW — RATE OF INTEREST.

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 shall be set according to the provisions of section 535.3.

Sec. 8. NEW SECTION. 488.108 NAME.

1. The name of a limited partnership may contain the name of any partner.

2. The name of a limited partnership that is not a limited liability limited partnership must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP" and must not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P.".

3. The name of a limited liability limited partnership must contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and must not contain the abbreviation "LP" or "L.P.".

4. Unless authorized by subsection 5, the name of a limited partnership must be distinguishable in the records of the secretary of state from all of the following:

a. The name of each person other than an individual incorporated, organized, or authorized to transact business in this state.

b. Each name reserved under section 488.109, or under sections 486A.1001, 490.401, 490.402, 490A.401, 490A.402, 504A.6, 504A.7, and 547.1.

5. A limited partnership may apply to the secretary of state for authorization to use a name that does not comply with subsection 4. The secretary of state shall authorize use of the name applied for if, as to each conflicting name, at least one of the following applies:

a. The present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the secretary of state to change the conflicting name to a name that complies with subsection 4 and is distinguishable in the records of the secretary of state from the name applied for.

b. The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

c. The applicant delivers to the secretary of state proof satisfactory to the secretary of state that at least one of the following applies to the present user, registrant, or owner of the conflicting name:

(1) The present user, registrant, or owner of the conflicting name has merged into the applicant.

(2) The present user, registrant, or owner of the conflicting name has been converted into the applicant.

(3) The present user, registrant, or owner of the conflicting name has transferred substantially all of its assets, including the conflicting name, to the applicant.

6. Subject to section 488.905, this section applies to any foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

Sec. 9. NEW SECTION. 488.109 RESERVATION OF NAME.

1. The exclusive right to the use of a name that complies with section 488.108 may be reserved by any of the following:

a. A person intending to organize a limited partnership under this chapter and to adopt the name.

b. A limited partnership or a foreign limited partnership authorized to transact business in this state intending to adopt the name.

c. A foreign limited partnership intending to obtain a certificate of authority to transact business in this state and adopt the name.

d. A person intending to organize a foreign limited partnership and intending to have it obtain a certificate of authority to transact business in this state and adopt the name.

e. A foreign limited partnership formed under the name.

f. A foreign limited partnership formed under a name that does not comply with section 488.108, subsection 2 or 3, but the name reserved under this paragraph may differ from the foreign limited partnership's name only to the extent necessary to comply with section 488.108, subsections 2 and 3.

2. A person may apply to reserve a name under subsection 1 by delivering to the secretary of state for filing an application that states the name to be reserved and the paragraph of subsection 1 that applies. If the secretary of state finds that the name is available for use by the applicant, the secretary of state shall file a statement of name reservation and reserve the name for the exclusive use of the applicant for a nonrenewable period of one hundred twenty days.

3. A person that has reserved a name under this section may deliver to the secretary of state for filing a notice of transfer that states the reserved name, the name and street and mailing address of some other person to which the reservation is to be transferred, and the paragraph of subsection 1 which applies to the other person. Subject to section 488.206, subsection 3, the transfer is effective when the secretary of state files the notice of transfer.

Sec. 10. NEW SECTION. 488.110 EFFECT OF PARTNERSHIP AGREEMENT — NONWAIVABLE PROVISIONS.

1. Except as otherwise provided in subsection 2, the partnership agreement governs relations among the partners and between the partners and the partnership. 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. A partnership agreement shall not do any of the following:

a. Vary a limited partnership's power under section 488.105 to sue, be sued, and defend in its own name.

b. Vary the law applicable to a limited partnership under section 488.106.

c. Vary the requirements of section 488.204.

d. Vary the information required under section 488.111 or unreasonably restrict the right to information under section 488.304 or 488.407, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.

e. Eliminate the duty of loyalty under section 488.408, but the partnership agreement may do any of the following:

(1) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.

(2) Specify the number or percentage of partners which may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

f. Unreasonably reduce the duty of care under section 488.408, subsection 3.

g. Eliminate the obligation of good faith and fair dealing under section 488.305, subsection 2, and section 488.408, 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.

h. Vary the power of a person to dissociate as a general partner under section 488.604, subsection 1, except to require that the notice under section 488.603, subsection 1, be in a record.

i. Vary the power of a court to decree dissolution in the circumstances specified in section 488.802.

j. Vary the requirement to wind up the partnership's business as specified in section 488.803.

k. Unreasonably restrict the right to maintain an action under article 10.

l. Restrict the right of a partner under section 488.1110, subsection 1, to approve a conver-

sion or merger, or the right of a general partner under section 488.1110, subsection 2, to consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership.

m. Restrict rights under this chapter of a person other than a partner or a transferee.

Sec. 11. NEW SECTION. 488.111 REQUIRED INFORMATION.

A limited partnership shall maintain at its designated office all of the following information:

1. A current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order.

2. A copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed.

3. A copy of any filed articles of conversion or merger.

4. A copy of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years.

5. A copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement.

6. A copy of any financial statement of the limited partnership for the three most recent years.

7. A copy of the three most recent biennial reports delivered by the limited partnership to the secretary of state pursuant to section 488.210.

8. A copy of any record made by the limited partnership during the past three years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement.

9. Unless contained in a partnership agreement made in a record, a record stating all of the following:

a. The amount of cash, and a description and statement of the agreed value of the other benefits, contributed and agreed to be contributed by each partner.

b. The times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made.

c. For any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity.

d. Any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.

Sec. 12. NEW SECTION. 488.112 BUSINESS TRANSACTIONS OF PARTNER WITH PARTNERSHIP.

A partner may lend money to and transact other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.

Sec. 13. NEW SECTION. 488.113 DUAL CAPACITY.

A person may be both a general partner and a limited partner. A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for limited partners.

Sec. 14. NEW SECTION. 488.114 OFFICE AND AGENT FOR SERVICE OF PROCESS.

1. A limited partnership shall designate and continuously maintain in this state both of the following:

a. An office, which need not be a place of its activity in this state.

b. An agent for service of process.

2. A foreign limited partnership shall designate and continuously maintain in this state an agent for service of process.

3. An agent for service of process of a limited partnership or foreign limited partnership must be an individual who is a resident of Iowa or other person authorized to do business in this state.

Sec. 15. NEW SECTION. 488.115 CHANGE OF DESIGNATED OFFICE OR AGENT FOR SERVICE OF PROCESS.

1. In order to change its designated office, agent for service of process, or the address of its agent for service of process, a limited partnership or a foreign limited partnership may deliver to the secretary of state for filing a statement of change containing all of the following:

a. The name of the limited partnership or foreign limited partnership.

b. The street and mailing address of its current designated office.

c. If the current designated office is to be changed, the street and mailing address of the new designated office.

d. The name and street and mailing address of its current agent for service of process.

e. If the current agent for service of process or an address of the agent is to be changed, the new information.

2. Subject to section 488.206, subsection 3, a statement of change is effective when filed by the secretary of state.

Sec. 16. NEW SECTION. 488.116 RESIGNATION OF AGENT FOR SERVICE OF PROCESS.

1. In order to resign as an agent for service of process of a limited partnership or foreign limited partnership, the agent must deliver to the secretary of state for filing a statement of resignation containing the name of the limited partnership or foreign limited partnership.

2. After receiving a statement of resignation, the secretary of state shall file it and mail a copy to the designated office of the limited partnership or foreign limited partnership and another copy to the principal office if the address of the office appears in the records of the secretary of state and is different from the address of the designated office.

3. An agency for service of process is terminated on the date on which the statement of resignation was filed with the secretary of state.

Sec. 17. NEW SECTION. 488.117 SERVICE OF PROCESS.

1. An agent for service of process appointed by a limited partnership or foreign limited partnership is an agent of the limited partnership or foreign limited partnership for service of any process, notice, or demand required or permitted by law to be served upon the limited partnership or foreign limited partnership.

2. If a limited partnership or foreign limited partnership does not appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's address, the secretary of state is an agent of the limited partnership or foreign limited partnership upon whom process, notice, or demand may be served.

3. Service of any process, notice, or demand on the secretary of state may be made by delivering to and leaving with the secretary of state duplicate copies of the process, notice, or demand. If a process, notice, or demand is served on the secretary of state, the secretary of state shall forward one of the copies by certified mail or restricted certified mail to the limited partnership or foreign limited partnership at its designated office.

4. Service is effected under subsection 3 at the earliest of any of the following:

a. The date the limited partnership or foreign limited partnership receives the process, notice, or demand.

b. The date shown on the return receipt, if signed on behalf of the limited partnership or foreign limited partnership.

c. Five days after the process, notice, or demand is deposited in the mail, if mailed postpaid and correctly addressed.

5. The secretary of state shall keep a record of each process, notice, and demand served pursuant to this section and record the time of, and the action taken regarding, the service.

6. This section does not affect the right to serve process, notice, or demand in any other manner provided by law.

Sec. 18. NEW SECTION. 488.118 CONSENT AND PROXIES OF PARTNERS.

Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney in fact.

ARTICLE II
FORMATION — CERTIFICATE OF LIMITED PARTNERSHIP
AND OTHER FILINGS

Sec. 19. NEW SECTION. 488.201 FORMATION OF LIMITED PARTNERSHIP — CERTIFICATE OF LIMITED PARTNERSHIP.

1. In order for a limited partnership to be formed, a certificate of limited partnership must be delivered to the secretary of state for filing. The certificate must state all of the following:

a. The name of the limited partnership, which must comply with section 488.108.

b. The street and mailing address of the initial designated office and the name and street and mailing address of the initial agent for service of process.

c. The name and the street and mailing address of each general partner.

d. Whether the limited partnership is a limited liability limited partnership.

e. Any additional information required by article 11.

2. A certificate of limited partnership may also contain any other matters but shall not vary or otherwise affect the provisions specified in section 488.110, subsection 2, in a manner inconsistent with that subsection.

3. If there has been substantial compliance with subsection 1, subject to section 488.206, subsection 3, a limited partnership is formed when the secretary of state files the certificate of limited partnership. The secretary of state's filing of the certificate is conclusive proof that all conditions precedent to formation of the limited partnership have been satisfied except in a proceeding by the state to cancel or revoke the certificate or involuntarily dissolve the limited partnership.

4. Subject to subsection 2, if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination, or change or filed articles of conversion or merger, all of the following apply:

a. The partnership agreement prevails as to partners and transferees.

b. The filed certificate of limited partnership, statement of dissociation, termination, or change or articles of conversion or merger prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

Sec. 20. NEW SECTION. 488.202 AMENDMENT OR RESTATEMENT OF CERTIFICATE.

1. In order to amend its certificate of limited partnership, a limited partnership must deliver to the secretary of state for filing an amendment or, pursuant to article 11, articles of merger stating all of the following:

a. The name of the limited partnership.

b. The date of filing of its initial certificate.

c. The changes the amendment makes to the certificate as most recently amended or restated.

2. A limited partnership shall promptly deliver to the secretary of state for filing an amendment to a certificate of limited partnership to reflect any of the following:

a. The admission of a new general partner.

b. The dissociation of a person as a general partner.

c. The appointment of a person to wind up the limited partnership's activities under section 488.803, subsection 3 or 4.

3. A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly do at least one of[4] following:

a. Cause the certificate to be amended.

b. If appropriate, deliver to the secretary of state for filing a statement of change pursuant to section 488.115 or a statement of correction pursuant to section 488.207.

4. A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.

5. A restated certificate of limited partnership may be delivered to the secretary of state for filing in the same manner as an amendment.

6. Subject to section 488.206, subsection 3, an amendment or restated certificate is effective when filed by the secretary of state.

Sec. 21. NEW SECTION. 488.203 STATEMENT OF TERMINATION.

A dissolved limited partnership that has completed winding up may deliver to the secretary of state for filing a statement of termination that states all of the following:

1. The name of the limited partnership.

2. The date of filing of its initial certificate of limited partnership.

3. Any other information as determined by the general partners filing the statement or by a person appointed pursuant to section 488.803, subsection 3 or 4.

Sec. 22. NEW SECTION. 488.204 SIGNING OF RECORDS.

1. Each record delivered to the secretary of state for filing pursuant to this chapter must be signed in the following manner:

a. An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

b. An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.

c. An amendment designating as general partner a person admitted under section 488.801, subsection 3, paragraph "b", following the dissociation of a limited partnership's last general partner must be signed by the new general partner.

d. An amendment required by section 488.803, subsection 3, following the appointment of a person to wind up the dissolved limited partnership's activities must be signed by that person.

e. Any other amendment must be signed by all of the following:

(1) At least one general partner listed in the certificate.

(2) Each other person designated in the amendment as a new general partner.

(3) Each person that the amendment indicates has dissociated as a general partner, unless any of the following applies:

(a) The person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states.

(b) The person has previously delivered to the secretary of state for filing a statement of dissociation.

f. A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other paragraph of this subsection, the certificate must be signed in a manner that satisfies that paragraph.

g. A statement of termination must be signed by all general partners listed in the certificate or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to section 488.803, subsection 3 or 4, to wind up the dissolved limited partnership's activities.

[4] See chapter 1175, §376 herein

h. Articles of conversion must be signed by each general partner listed in the certificate of limited partnership.

i. Articles of merger must be signed as provided in section 488.1108, subsection 1.

j. Any other record delivered on behalf of a limited partnership to the secretary of state for filing must be signed by at least one general partner listed in the certificate.

k. A statement by a person pursuant to section 488.605, subsection 1, paragraph "d", stating that the person has dissociated as a general partner must be signed by that person.

l. A statement of withdrawal by a person pursuant to section 488.306 must be signed by that person.

m. A record delivered on behalf of a foreign limited partnership to the secretary of state for filing must be signed by at least one general partner of the foreign limited partnership.

n. Any other record delivered on behalf of any person to the secretary of state for filing must be signed by that person.

2. Any person may sign by an attorney in fact any record to be filed pursuant to this chapter.

Sec. 23. NEW SECTION. 488.205 SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.

1. If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing does not do so, any other person that is aggrieved may petition the appropriate court to order any of the following:

a. The person to sign the record.

b. The person to deliver the record to the secretary of state for filing.

c. The secretary of state to file the record unsigned.

2. If the person aggrieved under subsection 1 is not the limited partnership or foreign limited partnership to which the record pertains, the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection 1 may seek the remedies provided in subsection 1 in the same action in combination or in the alternative.

3. A record filed unsigned pursuant to this section is effective without being signed.

Sec. 24. NEW SECTION. 488.206 DELIVERY TO AND FILING OF RECORDS BY SECRETARY OF STATE — EFFECTIVE TIME AND DATE.

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the record's purpose, contain the information required by this chapter but may include other information as well, and be in a medium permitted by the secretary of state. The document must be typewritten or printed. If the document is electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form. The document must be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. The secretary of state may adopt rules for the electronic filing of documents and the certification of electronically filed documents. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require an exact or conformed copy to be delivered with the document. Unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, and if all filing fees have been paid, the secretary of state shall file the record and perform all of the following:

a. For a statement of dissociation, send all of the following:

(1) A copy of the filed statement and a receipt for the fees to the person which the statement indicates has dissociated as a general partner.

(2) A copy of the filed statement and receipt to the limited partnership.

b. For a statement of withdrawal, send all of the following:

(1) A copy of the filed statement and a receipt for the fees to the person on whose behalf the record was filed.

(2) If the statement refers to an existing limited partnership, a copy of the filed statement and receipt to the limited partnership.

c. For all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

2. Upon request and payment of a fee, the secretary of state shall send to the requester a certified copy of the requested record.

3. Except as otherwise provided in sections 488.116 and 488.207, a record delivered to the secretary of state for filing under this chapter may specify an effective time and a delayed effective date. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective according to the following:

a. If the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed, as evidenced by the secretary of state's endorsement of the date and time on the record.

b. If the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record.

c. If the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of either of the following:

(1) The specified date.

(2) The ninetieth day after the record is filed.

d. If the record specifies an effective time and a delayed effective date, at the specified time on the earlier of either of the following:

(1) The specified date.

(2) The ninetieth day after the record is filed.

4. If the secretary of state refuses to file a document, the secretary of state shall return it to the limited partnership or foreign limited partnership or its representative, together with a brief, written explanation of the reason for the refusal.

5. 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. 25. NEW SECTION. 488.207 CORRECTING FILED RECORD.

1. A limited partnership or foreign limited partnership may deliver to the secretary of state for filing a statement of correction to correct a record previously delivered by the limited partnership or foreign limited partnership to the secretary of state and filed by the secretary of state, if at the time of filing the record contained false or erroneous information or was defectively signed.

2. A statement of correction shall not state a delayed effective date and must do all of the following:

a. Describe the record to be corrected, including its filing date, or attach a copy of the record as filed.

b. Specify the incorrect information and the reason it is incorrect or the manner in which the signing was defective.

c. Correct the incorrect information or defective signature.

3. When filed by the secretary of state, a statement of correction is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed for the following:

a. For the purposes of section 488.103, subsections 3 and 4.

b. As to persons relying on the uncorrected record and adversely affected by the correction.

Sec. 26. NEW SECTION. 488.208 LIABILITY FOR FALSE INFORMATION IN FILED RECORD.

1. If a record delivered to the secretary of state for filing under this chapter and filed by the secretary of state contains false information, a person that suffers loss by reliance on the information may recover damages for the loss from any or all of the following:

a. A person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be false at the time the record was signed.

b. A general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under section 488.202, file a petition pursuant to section 488.205, or deliver to the secretary of state for filing a statement of change pursuant to section 488.115 or a statement of correction pursuant to section 488.207.

2. Signing a record authorized or required to be filed under this chapter that the signer knows to be false in material respect constitutes a serious misdemeanor punishable by a fine not to exceed one thousand dollars.

Sec. 27. NEW SECTION. 488.209 CERTIFICATE OF EXISTENCE OR AUTHORIZATION.

1. The secretary of state, upon request and payment of the requisite fee, shall furnish a certificate of existence for a limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of limited partnership and has not filed a statement of termination. A certificate of existence must state all of the following:

a. The limited partnership's name.

b. That it was duly formed under the laws of this state and the date of formation.

c. Whether all fees, taxes, and penalties under this chapter or other law due to[5] the secretary of state have been paid.

d. Whether the limited partnership's most recent biennial report required by section 488.210 has been filed by the secretary of state.

e. Whether the secretary of state has administratively dissolved the limited partnership.

f. Whether the limited partnership's certificate of limited partnership has been amended to state that the limited partnership is dissolved.

g. That a statement of termination has not been filed by the secretary of state.

h. Other facts of record in the office of the secretary of state which may be requested by the applicant.

2. The secretary of state, upon request and payment of the requisite fee, shall furnish a certificate of authorization for a foreign limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state all of the following:

a. The foreign limited partnership's name and any alternate name adopted under section 488.905, subsection 1, for use in this state.

b. That it is authorized to transact business in this state.

c. Whether all fees, taxes, and penalties under this chapter or other law due to[6] the secretary of state have been paid.

d. Whether the foreign limited partnership's most recent biennial report required by section 488.210 has been filed by the secretary of state.

e. That the secretary of state has not revoked its certificate of authority and has not filed a notice of cancellation.

f. Other facts of record in the office of the secretary of state which may be requested by the applicant.

3. Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the limited partnership or foreign limited partnership is in existence or is authorized to transact business in this state.

Sec. 28. NEW SECTION. 488.210 BIENNIAL REPORT FOR SECRETARY OF STATE.

1. A limited partnership or a foreign limited partnership authorized to transact business in

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[5] See chapter 1175, §377 herein

[6] See chapter 1175, §378 herein

this state shall deliver to the secretary of state for filing a biennial report that states all of the following:

a. The name of the limited partnership or foreign limited partnership.

b. The street and mailing address of its designated office and the name and street and mailing address of its agent for service of process in this state.

c. In the case of a limited partnership, the street and mailing address of its principal office.

d. In the case of a foreign limited partnership, the state or other jurisdiction under whose law the foreign limited partnership is formed and any alternate name adopted under section 488.905, subsection 1.

2. Information in a biennial report must be current as of the date the biennial report is delivered to the secretary of state for filing.

3. If a biennial report does not contain the information required in subsection 1, the secretary of state shall promptly notify the reporting limited partnership or foreign limited partnership and return the report to it for correction. If the report is corrected to contain the information required in subsection 1 and delivered to the secretary of state within thirty days after the effective date of the notice, it is timely delivered.

4. If a filed biennial report contains an address of a designated office or the name or address of an agent for service of process which differs from the information shown in the records of the secretary of state immediately before the filing, the differing information in the biennial report is considered a statement of change under section 488.115.

5. The first biennial report shall be delivered to the secretary of state between January 1 and April 1 of the first odd-numbered year following the calendar year in which a limited partnership was formed or a foreign limited partnership was authorized to transact business. Subsequent biennial reports must be delivered to the secretary of state between January 1 and April 1 of the following odd-numbered calendar years. A filing fee for the biennial report shall be determined by the secretary of state. For purposes of this section, each biennial report shall contain information related to the two-year period immediately preceding the calendar year in which the report is filed.

ARTICLE III
LIMITED PARTNERS

Sec. 29. NEW SECTION. 488.301 BECOMING LIMITED PARTNER.

A person becomes a limited partner according to any of the following:

1. As provided in the partnership agreement.

2. As the result of a conversion or merger under article 11.

3. With the consent of all the partners.

Sec. 30. NEW SECTION. 488.302 NO RIGHT OR POWER AS LIMITED PARTNER TO BIND LIMITED PARTNERSHIP.

A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership.

Sec. 31. NEW SECTION. 488.303 NO LIABILITY AS LIMITED PARTNER FOR LIMITED PARTNERSHIP OBLIGATIONS.

An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.

Sec. 32. NEW SECTION. 488.304 RIGHT OF LIMITED PARTNER AND FORMER LIMITED PARTNER TO INFORMATION.

1. On ten days' demand, made in a record received by the limited partnership, a limited part-

ner may inspect and copy required information during regular business hours in the limited partnership's designated office. The limited partner need not have any particular purpose for seeking the information.

2. During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may obtain from the limited partnership and inspect and copy true and full information regarding the state of the activities and financial condition of the limited partnership and other information regarding the activities of the limited partnership as is just and reasonable if the limited partner complies with all of the following:

a. The limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner.

b. The limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information.

c. The information sought is directly connected to the limited partner's purpose.

3. Within ten days after receiving a demand pursuant to subsection 2, the limited partnership in a record shall inform the limited partner that made the demand of all of the following:

a. What information the limited partnership will provide in response to the demand.

b. When and where the limited partnership will provide the information.

c. If the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.

4. Subject to subsection 6, a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's designated office if the person complies with all of the following:

a. The information pertains to the period during which the person was a limited partner.

b. The person seeks the information in good faith.

c. The person meets the requirements of subsection 2.

5. The limited partnership shall respond to a demand made pursuant to subsection 4 in the same manner as provided in subsection 3.

6. If a limited partner dies, section 488.704 applies.

7. The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

8. A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

9. Whenever this chapter or a partnership agreement provides for a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information material to the limited partner's decision that the limited partnership knows.

10. A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection 7 or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

11. The rights stated in this section do not extend to a person as transferee, but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner.

Sec. 33. NEW SECTION. 488.305 LIMITED DUTIES OF LIMITED PARTNERS.

1. A limited partner does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.

2. A limited 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.

3. A limited partner does not violate a duty or obligation under this chapter or under the

partnership agreement merely because the limited partner's conduct furthers the limited partner's own interest.

Sec. 34. NEW SECTION. 488.306 PERSON ERRONEOUSLY BELIEVING SELF TO BE LIMITED PARTNER.

1. Except as otherwise provided in subsection 2, a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person does either of the following:

a. Causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing.

b. Withdraws from future participation as an owner in the enterprise by signing and delivering to the secretary of state for filing a statement of withdrawal under this section.

2. A person that makes an investment described in subsection 1 is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the secretary of state files a statement of withdrawal, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

3. If a person makes a diligent effort in good faith to comply with subsection 1, paragraph "a", and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing, the person has the right to withdraw from the enterprise pursuant to subsection 1, paragraph "b", even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

ARTICLE IV
GENERAL PARTNERS

Sec. 35. NEW SECTION. 488.401 BECOMING GENERAL PARTNER.

A person becomes a general partner according to any of the following:

1. As provided in the partnership agreement.

2. Under section 488.801, subsection 3, paragraph "b", following the dissociation of a limited partnership's last general partner.

3. As the result of a conversion or merger under article 11.

4. With the consent of all the partners.

Sec. 36. NEW SECTION. 488.402 GENERAL PARTNER AGENT OF LIMITED PARTNERSHIP.

1. Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under section 488.103, subsection 4, that the general partner lacked authority.

2. An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was authorized in the partnership agreement or by all the other partners.

Sec. 37. NEW SECTION. 488.403 LIMITED PARTNERSHIP LIABLE FOR GENERAL PARTNER'S ACTIONABLE CONDUCT.

1. A limited partnership is liable for loss or injury caused to a person, or for a penalty in-

curred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.

2. If, in the course of the limited partnership's activities or while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the limited partnership is liable for the loss.

Sec. 38. NEW SECTION. 488.404 GENERAL PARTNER'S LIABILITY.

1. Except as otherwise provided in subsections 2 and 3, all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.

2. A person that becomes a general partner of an existing limited partnership is not personally liable for an obligation of a limited partnership incurred before the person became a general partner.

3. An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under section 488.406, subsection 2, paragraph "b".

Sec. 39. NEW SECTION. 488.405 ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS.

1. To the extent not inconsistent with section 488.404, a general partner may be joined in an action against the limited partnership or named in a separate action.

2. A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership shall not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

3. A judgment creditor of a general partner shall not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the partner is personally liable for the claim under section 488.404 and at least one of the following applies:

a. A judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part.

b. The limited partnership is a debtor in bankruptcy.

c. The general partner has agreed that the creditor need not exhaust limited partnership assets.

d. A court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of limited 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 general partner by law or contract independent of the existence of the limited partnership.

Sec. 40. NEW SECTION. 488.406 MANAGEMENT RIGHTS OF GENERAL PARTNER.

1. Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

2. The consent of each partner is necessary to do any or all of the following:

a. Amend the partnership agreement.

b. Amend the certificate of limited partnership to add or, subject to section 488.1110, delete a statement that the limited partnership is a limited liability limited partnership.

c. Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the goodwill, other than in the usual and regular course of the limited partnership's activities.

3. A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

4. A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

5. A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under subsection 3 or 4 constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.

6. A general partner is not entitled to remuneration for services performed for the partnership.

Sec. 41. NEW SECTION. 488.407 RIGHT OF GENERAL PARTNER AND FORMER GENERAL PARTNER TO INFORMATION.

1. A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours any or all of the following:

a. In the limited partnership's designated office, required information.

b. At a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition.

2. Each general partner and the limited partnership shall furnish to a general partner all of the following:

a. Without demand, any information concerning the limited partnership's activities and financial condition reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter.

b. On demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

3. Subject to subsection 5, on ten days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subsection 1 at the location specified in subsection 1 if all of the following apply:

a. The information or record pertains to the period during which the person was a general partner.

b. The person seeks the information or record in good faith.

c. The person satisfies the requirements imposed on a limited partner by section 488.304, subsection 2.

4. The limited partnership shall respond to a demand made pursuant to subsection 3 in the same manner as provided in section 488.304, subsection 3.

5. If a general partner dies, section 488.704 applies.

6. The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

7. A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

8. A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection 6 or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.

9. The rights under this section do not extend to a person as transferee, but the rights under subsection 3 of a person dissociated as a general partner may be exercised by the legal representative of an individual who dissociated as a general partner under section 488.603, subsection 7, paragraph "b" or "c".

Sec. 42. NEW SECTION. 488.408 GENERAL STANDARDS OF GENERAL PARTNER'S CONDUCT.

1. The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care under subsections 2 and 3.

2. A general partner's duty of loyalty to the limited partnership and the other partners is limited to all of the following:

a. To account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity.

b. To refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership.

c. To refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities.

3. A general partner's duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

4. A general 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 general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the general partner's conduct furthers the general partner's own interest.

ARTICLE V
CONTRIBUTIONS AND DISTRIBUTIONS

Sec. 43. NEW SECTION. 488.501 FORM OF CONTRIBUTION.

A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

Sec. 44. NEW SECTION. 488.502 LIABILITY FOR CONTRIBUTION.

1. A partner's obligation to contribute money or other property or other benefit to, or to perform services for, a limited partnership is not excused by the partner's death, disability, or other inability to perform personally.

2. If a partner does not make a promised nonmonetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution which has not been made.

3. The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. A creditor of a limited partnership which extends credit or otherwise acts in reliance on an obligation described in subsection 1, without notice of any compromise under this subsection, may enforce the original obligation.

Sec. 45. NEW SECTION. 488.503 SHARING OF DISTRIBUTIONS.

A distribution by a limited partnership must be shared among the partners on the basis of

the value, as stated in the required information, when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner.

Sec. 46. NEW SECTION. 488.504 INTERIM DISTRIBUTIONS.

A partner does not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution.

Sec. 47. NEW SECTION. 488.505 NO DISTRIBUTION ON ACCOUNT OF DISSOCIATION.

A person does not have a right to receive a distribution on account of dissociation.

Sec. 48. NEW SECTION. 488.506 DISTRIBUTION IN KIND.

A partner does not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to section 488.812, subsection 2, a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the partner's share of distributions.

Sec. 49. NEW SECTION. 488.507 RIGHT TO DISTRIBUTION.

When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.

Sec. 50. NEW SECTION. 488.508 LIMITATIONS ON DISTRIBUTION.

1. A limited partnership shall not make a distribution in violation of the partnership agreement.

2. A limited partnership shall not make a distribution if after the distribution any of the following would result:

a. The limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities.

b. The limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners whose preferential rights are superior to those of persons receiving the distribution.

3. A limited partnership may base a determination that a distribution is not prohibited under subsection 2 on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

4. Except as otherwise provided in subsection 7, the effect of a distribution under subsection 2 is measured according to either of the following:

a. In the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt incurred by the limited partnership.

b. In all other cases, as of the date of either of the following:

(1) The date the distribution is authorized, if the payment occurs within one hundred twenty days after that date.

(2) The date the payment is made, if payment occurs more than one hundred twenty days after the distribution is authorized.

5. A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors.

6. A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection 2 if the terms

of the indebtedness provide that payment of principal and interest are[7] made only to the extent that a distribution could then be made to partners under this section.

7. If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

Sec. 51. NEW SECTION. 488.509 LIABILITY FOR IMPROPER DISTRIBUTIONS.

1. A general partner that consents to a distribution made in violation of section 488.508 is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with section 488.408.

2. A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of section 488.508 is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under section 488.508.

3. A general partner against which an action is commenced under subsection 1 may do any or all of the following:

a. Implead in the action any other person that is liable under subsection 1 and compel contribution from the person.

b. Implead in the action any person that received a distribution in violation of subsection 2 and compel contribution from the person in the amount the person received in violation of subsection 2.

4. An action under this section is barred if it is not commenced within two years after the distribution.

ARTICLE VI
DISSOCIATION

Sec. 52. NEW SECTION. 488.601 DISSOCIATION AS LIMITED PARTNER.

1. A person does not have a right to dissociate as a limited partner before the termination of the limited partnership.

2. A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

a. The limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person.

b. An event agreed to in the partnership agreement as causing the person's dissociation as a limited partner.

c. The person's expulsion as a limited partner pursuant to the partnership agreement.

d. The person's expulsion as a limited partner by the unanimous consent of the other partners if any of the following apply:

(1) It is unlawful to carry on the limited partnership's activities with the person as a limited partner.

(2) There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed.

(3) The person is a corporation and, within ninety days after the limited partnership notifies the person that it will be expelled as a limited partner 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.

(4) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up.

e. On application by the limited partnership, the person's expulsion as a limited partner by judicial order because of any of the following:

[7] See chapter 1175, §379 herein

(1) The person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities.

(2) The person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under section 488.305, subsection 2.

(3) The person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities with the person as limited partner.

f. In the case of a person who is an individual, the person's death.

g. In the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee.

h. In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative.

i. Termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate.

j. The limited partnership's participation in a conversion or merger under article 11, if either of the following applies:

(1) The limited partnership is not the converted or surviving entity.

(2) The limited partnership is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.

Sec. 53. NEW SECTION. 488.602 EFFECT OF DISSOCIATION AS LIMITED PARTNER.

1. Upon a person's dissociation as a limited partner, all of the following apply:

a. Subject to section 488.704, the person does not have further rights as a limited partner.

b. The person's obligation of good faith and fair dealing as a limited partner under section 488.305, subsection 2, continues only as to matters arising and events occurring before the dissociation.

c. Subject to section 488.704 and article 11, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee.

2. A person's dissociation as a limited partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a limited partner.

Sec. 54. NEW SECTION. 488.603 DISSOCIATION AS GENERAL PARTNER.

A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

1. The limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person.

2. An event agreed to in the partnership agreement as causing the person's dissociation as a general partner.

3. The person's expulsion as a general partner pursuant to the partnership agreement.

4. The person's expulsion as a general partner by the unanimous consent of the other partners if any of the following apply:

a. It is unlawful to carry on the limited partnership's activities with the person as a general partner.

b. There has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed.

c. The person is an entity which participates in a merger and is not the surviving entity.

5. On application by the limited partnership, the person's expulsion as a general partner by judicial determination because of any of the following:

a. The person engaged in wrongful conduct that adversely and materially affected the limited partnership activities.

b. The person 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 488.408.

c. The person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner.

6. The person does or is one of the following:

a. Becomes a debtor in bankruptcy.

b. Executes an assignment for the benefit of creditors.

c. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property.

d. Fails, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated.

e. Is a corporation that has filed articles of dissolution or the equivalent, has had its charter revoked, or has had its right to conduct business suspended by the jurisdiction of its incorporation, and all of the following apply:

(1) There is no revocation of the articles of dissolution or no reinstatement of its charter of its right to conduct business within ninety days after such filing, revocation, or suspension.

(2) The limited partnership, or any partner, notifies the partners that such filing, revocation, or suspension has occurred, and no vote to retain the general partner occurs within ninety days of such notification.

f. Is a limited liability company or partnership that has been dissolved and whose business is being wound up, and the limited partnership, or any partner, notifies the partners that such dissolution has occurred and no vote to retain the general partner occurs with[8] ninety days of such notification.

7. In the case of a person who is an individual, any of the following:

a. The person's death.

b. The appointment of a guardian or general conservator for the person.

c. A judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement.

8. In the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee.

9. In the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative.

10. Termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate.

11. The limited partnership's participation in a conversion or merger under article 11, if either of the following applies:

a. The limited partnership is not the converted or surviving entity.

b. The limited partnership is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

Sec. 55. NEW SECTION. 488.604 PERSON'S POWER TO DISSOCIATE AS GENERAL PARTNER — WRONGFUL DISSOCIATION.

1. A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to section 488.603, subsection 1.

2. A person's dissociation as a general partner is wrongful only if either of the following applies:

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[8] According to enrolled Act

a. The dissociation is in breach of an express provision of the partnership agreement.

b. The dissociation occurs before the termination of the limited partnership, and at least one of the following also applies:

(1) The person withdraws as a general partner by express will.

(2) The person is expelled as a general partner by judicial determination under section 488.603, subsection 5.

(3) The person is dissociated as a general partner by becoming a debtor in bankruptcy.

(4) In the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

3. A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to section 488.1001, to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.

Sec. 56. NEW SECTION. 488.605 EFFECT OF DISSOCIATION AS GENERAL PARTNER.

1. Upon a person's dissociation as a general partner, all of the following apply:

a. The person's right to participate as a general partner in the management and conduct of the partnership's activities terminates.

b. The person's duty of loyalty as a general partner under section 488.408, subsection 2, paragraph "c", terminates.

c. The person's duty of loyalty as a general partner under section 488.408, subsection 2, paragraphs "a" and "b", and duty of care under section 488.408, subsection 3, continue only with regard to matters arising and events occurring before the person's dissociation as a general partner.

d. The person may sign and deliver to the secretary of state for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated.

e. Subject to section 488.704 and article 11, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee.

2. A person's dissociation as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a general partner.

Sec. 57. NEW SECTION. 488.606 POWER TO BIND — LIABILITY TO LIMITED PARTNERSHIP BEFORE DISSOLUTION OF PARTNERSHIP OF PERSON DISSOCIATED AS GENERAL PARTNER.

1. After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under article 11, or merged out of existence under article 11, the limited partnership is bound by an act of the person only if all of the following apply:

a. The act would have bound the limited partnership under section 488.402 before the dissociation.

b. At the time the other party enters into the transaction, all of the following apply:

(1) Less than two years have passed since the dissociation.

(2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

2. If a limited partnership is bound under subsection 1, the person dissociated as a general partner which caused the limited partnership to be bound is liable to the following:

a. To the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection 1.

b. If a general partner or another person dissociated as a general partner is liable for the

obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

Sec. 58. NEW SECTION. 488.607 LIABILITY TO OTHER PERSONS OF PERSON DISSOCIATED AS GENERAL PARTNER.

1. A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subsections 2 and 3, the person is not liable for a limited partnership's obligation incurred after dissociation.

2. A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities is liable to the same extent as a general partner under section 488.404 on an obligation incurred by the limited partnership under section 488.804.

3. A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities is liable on a transaction entered into by the limited partnership after the dissociation only if all of the following apply:

a. A general partner would be liable on the transaction.

b. At the time the other party enters into the transaction, all of the following apply:

(1) Less than two years have passed since the dissociation.

(2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

4. By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.

5. A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

ARTICLE VII
TRANSFERABLE INTERESTS AND RIGHTS

Sec. 59. NEW SECTION. 488.701 PARTNER'S TRANSFERABLE INTEREST.

The only interest of a partner which is transferable is the partner's transferable interest. A transferable interest is personal property.

Sec. 60. NEW SECTION. 488.702 TRANSFER OF PARTNER'S TRANSFERABLE INTEREST.

1. All of the following apply to a transfer, in whole or in part, of a partner's transferable interest:

a. It is permissible.

b. It does not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities.

c. It does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection 3, or to inspect or copy the required information or the limited partnership's other records.

2. A transferee has a right to receive, in accordance with the transfer, all of the following:

a. Distributions to which the transferor would otherwise be entitled.

b. Upon the dissolution and winding up of the limited partnership's activities, the net amount otherwise distributable to the transferor.

3. In a dissolution and winding up, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.

4. Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.

5. A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.

6. A transfer of a partner's transferable interest in the limited 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.

7. A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under sections 488.502 and 488.509. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.

Sec. 61. NEW SECTION. 488.703 RIGHTS OF CREDITOR OF PARTNER OR TRANSFEREE.

1. On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to[9] 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 to give effect to the charging order.

2. A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon 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 any of the following:

a. By the judgment debtor.

b. With property other than limited partnership property, by one or more of the other partners.

c. With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

4. This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

5. This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest.

Sec. 62. NEW SECTION. 488.704 POWER OF ESTATE OF DECEASED PARTNER.

If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in section 488.702 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under section 488.304.

ARTICLE VIII
DISSOLUTION

Sec. 63. NEW SECTION. 488.801 NONJUDICIAL DISSOLUTION.

Except as otherwise provided in section 488.802, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following:

1. The happening of an event specified in the partnership agreement.

2. The consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective.

3. After the dissociation of a person as a general partner, upon occurrence of either of the following:

a. If the limited partnership has at least one remaining general partner, the consent to dis-

[9] See chapter 1175, §380 herein

solve the limited partnership given within ninety days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective.

b. If the limited partnership does not have a remaining general partner, the passage of ninety days after the dissociation, unless before the end of the period, all of the following occur:

(1) Consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective.

(2) At least one person is admitted as a general partner in accordance with the consent.

4. The passage of ninety days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner.

5. The signing and filing of a declaration of dissolution by the secretary of state under section 488.809, subsection 3.

Sec. 64. NEW SECTION. 488.802 JUDICIAL DISSOLUTION.

On application by or for a partner, the district court for the county in which the office described in section 488.114, subsection 1, paragraph "a", is located may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.

Sec. 65. NEW SECTION. 488.803 WINDING UP.

1. A limited partnership continues after dissolution only for the purpose of winding up its activities.

2. In winding up its activities, the limited partnership:

a. May amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in section 488.203, and perform other necessary acts.

b. Shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

3. If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:

a. Has the powers of a general partner under section 488.804.

b. Shall promptly amend the certificate of limited partnership to state all of the following:

(1) That the limited partnership does not have a general partner.

(2) The name of the person that has been appointed to wind up the limited partnership.

(3) The street and mailing address of the person.

4. On the application of any partner, the district court in the county in which the office described in section 488.144,[10] subsection 1, paragraph "a", is located may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if any of the following applies:

a. A limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection 3.

b. The applicant establishes other good cause.

Sec. 66. NEW SECTION. 488.804 POWER OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER TO BIND PARTNERSHIP AFTER DISSOLUTION.

1. A limited partnership is bound by a general partner's act after dissolution in which any of the following applies:

[10] Section "488.114" probably intended

a. The act is appropriate for winding up the limited partnership's activities.

b. The act would have bound the limited partnership under section 488.402 before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.

2. A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if both of the following apply:

a. At the time the other party enters into the transaction, all of the following apply:

(1) Less than two years have passed since the dissociation.

(2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

b. At least one of the following applies:

(1) The act is appropriate for winding up the limited partnership's activities.

(2) The act would have bound the limited partnership under section 488.402 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

Sec. 67. NEW SECTION. 488.805 LIABILITY AFTER DISSOLUTION OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER TO LIMITED PARTNERSHIP, OTHER GENERAL PARTNERS, AND PERSONS DISSOCIATED AS GENERAL PARTNER.

1. If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under section 488.804, subsection 1, by an act that is not appropriate for winding up the partnership's activities, the general partner is liable for all of the following:

a. To the limited partnership for any damage caused to the limited partnership arising from the obligation.

b. If another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

2. If a person dissociated as a general partner causes a limited partnership to incur an obligation under section 488.804, subsection 2, the person is liable for all of the following:

a. To the limited partnership for any damage caused to the limited partnership arising from the obligation.

b. If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

Sec. 68. NEW SECTION. 488.806 KNOWN CLAIMS AGAINST DISSOLVED LIMITED PARTNERSHIP.

1. A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection 2.

2. A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice must do all of the following:

a. Specify the information required to be included in a claim.

b. Provide a mailing address to which the claim is to be sent.

c. State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant.

d. State that the claim will be barred if not received by the deadline.

e. Unless the limited partnership has been throughout its existence a limited liability limited partnership or elected under prior law to become a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on section 488.404.

3. A claim against a dissolved limited partnership is barred if the requirements of subsection 2 are met and at least one of the following applies:

a. The claim is not received by the specified deadline.

b. In the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within ninety days after the receipt of the notice of the rejection.

4. This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date.

Sec. 69. NEW SECTION. 488.807 OTHER CLAIMS AGAINST DISSOLVED LIMITED PARTNERSHIP.

1. A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.

2. The notice must do all of the following:

a. Be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located or, if it has none in this state, in the county in which the limited partnership's designated office is or was last located.

b. Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent.

c. State that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within five years after publication of the notice.

d. Unless the limited partnership has been throughout its existence a limited liability limited partnership or elected under prior law to become a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on section 488.404.

3. If a dissolved limited partnership publishes a notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within five years after the publication date of the notice:

a. A claimant that did not receive notice in a record under section 488.806.

b. A claimant whose claim was timely sent to the dissolved limited partnership 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 not barred under this section may be enforced:

a. Against the dissolved limited partnership, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership.

c. Against any person liable on the claim under section 488.404.

Sec. 70. NEW SECTION. 488.808 COURT PROCEEDINGS.

1. A dissolved limited partnership that has published a notice under section 488.807 may file an application with the district court of the county in which the office described in section 488.114 is located for a determination of the amount and form of security to be provided for the payment of claims that are contingent or have not been made known to the dissolved limited partnership or that are based on an event occurring after the effective date of dissolution but that based on the facts known to the dissolved limited partnership, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under section 488.807.

2. Within ten days after the filing of the application, notice of the proceeding shall be given by the dissolved limited partnership to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved limited partnership.

3. The court may appoint a guardian ad litem to represent all claimants whose identities are

unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved limited partnership.

4. Provision by the dissolved limited partnership for security in the amount and form ordered by the court under subsection 1 shall satisfy the dissolved limited partnership's obligations with respect to claims that are contingent, have not been made known to the dissolved limited partnership or are based on an event occurring after the effective date of dissolution, and such claims shall not be enforced against a partner who received assets in liquidation.

Sec. 71. NEW SECTION. 488.808A LIABILITY OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER WHEN CLAIM AGAINST LIMITED PARTNERSHIP BARRED.

If a claim against a dissolved limited partnership is barred under section 488.806 or 488.807, any corresponding claim under section 488.404 is also barred.

Sec. 72. NEW SECTION. 488.809 ADMINISTRATIVE DISSOLUTION.

1. The secretary of state may dissolve a limited partnership administratively if the limited partnership does not, within sixty days after the due date, do any of the following:

a. Pay any fee, tax, or penalty under this chapter or other law due to[11] the secretary of state.

b. Deliver its biennial report to the secretary of state.

2. If the secretary of state determines that a ground exists for administratively dissolving a limited partnership, the secretary of state shall file a record of the determination and serve the limited partnership with a copy of the filed record.

3. If within sixty days after service of the copy the limited partnership 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, the secretary of state shall administratively dissolve the limited partnership by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The secretary of state shall serve the limited partnership with a copy of the filed declaration.

4. A limited partnership administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under sections 488.803 and 488.812 and to notify claimants under sections 488.806 and 488.807.

5. The administrative dissolution of a limited partnership does not terminate the authority of its agent for service of process.

Sec. 73. NEW SECTION. 488.810 REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

1. A limited partnership that has been administratively dissolved may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must be delivered to the secretary of state for filing and state all of the following:

a. The name of the limited partnership and the effective date of its administrative dissolution.

b. That the grounds for dissolution either did not exist or have been eliminated.

c. That the limited partnership's name satisfies the requirements of section 488.108.

2. If the secretary of state determines that an application contains the information required by subsection 2 and that the information is correct, the secretary of state shall prepare a declaration of reinstatement that states this determination, sign, and file the original of the declaration of reinstatement, and serve the limited partnership with a copy.

3. When reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership may resume its activities as if the administrative dissolution had never occurred.

Sec. 74. NEW SECTION. 488.811 APPEAL FROM DENIAL OF REINSTATEMENT.

1. If the secretary of state denies a limited partnership's application for reinstatement following administrative dissolution, the secretary of state shall prepare, sign, and file a notice

[11] See chapter 1175, §381 herein

that explains the reason or reasons for denial and serve the limited partnership with a copy of the notice.

2. Within thirty days after service of the notice of denial, the limited partnership may appeal from the denial of reinstatement by petitioning the district court to set aside the dissolution. The petition must be served on the secretary of state and contain a copy of the secretary of state's declaration of dissolution, the limited partnership'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 limited partnership or may take other action the court considers appropriate.

Sec. 75. NEW SECTION. 488.812 DISPOSITION OF ASSETS — WHEN CONTRIBUTIONS REQUIRED.

1. In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section, must be applied to satisfy the limited partnership's obligations to creditors, including, to the extent permitted by law, partners that are creditors.

2. Any surplus remaining after the limited partnership complies with subsection 1 must be paid in cash as a distribution.

3. If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection 1, with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply:

a. Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under section 488.607 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

b. If a person does not contribute the full amount required under paragraph "a" with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by paragraph "a" on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.

c. If a person does not make the additional contribution required by paragraph "b", further additional contributions are determined and due in the same manner as provided in that paragraph.

4. A person that makes an additional contribution under subsection 3, paragraph "b" or "c", may recover from any person whose failure to contribute under subsection 3, paragraph "b" or "c", necessitated the additional contribution. A person shall not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection shall not exceed the amount the person failed to contribute.

5. The estate of a deceased individual is liable for the person's obligations under this section.

6. An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute under subsection 3.

ARTICLE IX
FOREIGN LIMITED PARTNERSHIPS

Sec. 76. NEW SECTION. 488.901 GOVERNING LAW.

1. The laws of the state or other jurisdiction under which a foreign limited partnership is organized govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.

2. A foreign limited partnership shall not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this state.

3. A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership shall not engage in or exercise in this state.

Sec. 77. NEW SECTION. 488.902 APPLICATION FOR CERTIFICATE OF AUTHORITY.

1. A foreign limited partnership may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must state all of the following:

a. The name of the foreign limited partnership and, if the name does not comply with section 488.108, an alternate name adopted pursuant to section 488.905, subsection 1.

b. The name of the state or other jurisdiction under whose law the foreign limited partnership is organized.

c. The street and mailing address of the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the street and mailing address of the required office.

d. The name and street and mailing address of the foreign limited partnership's initial agent for service of process in this state.

e. The name and street and mailing address of each of the foreign limited partnership's general partners.

f. Whether the foreign limited partnership is a foreign limited liability limited partnership.

2. A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized.

Sec. 78. NEW SECTION. 488.903 ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS.

1. Activities of a foreign limited partnership which do not constitute transacting business in this state within the meaning of this article include all of the following:

a. Maintaining, defending, and settling an action or proceeding.

b. Holding meetings of its partners or carrying on any other activity concerning its internal affairs.

c. Maintaining accounts in financial institutions.

d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities.

e. Selling through independent contractors.

f. Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

g. Creating or acquiring indebtedness, mortgages, or security interests in real or personal property.

h. Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired.

i. Owning, without more, real or personal property.

j. Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner.

k. Transacting business in interstate commerce.

2. For purposes of this article, the ownership in this state of income-producing real 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 contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this state.

Sec. 79. NEW SECTION. 488.904 FILING OF CERTIFICATE OF AUTHORITY.

Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the secretary of state, upon receiving payment of all filing fees, shall file the application, notify the applicant that the application has been approved, and provide a receipt for the payment of fees. Such notification shall serve as certificate of authority to transact business in this state.

Sec. 80. NEW SECTION. 488.905 NONCOMPLYING NAME OF FOREIGN LIMITED PARTNERSHIP.

1. A foreign limited partnership whose name does not comply with section 488.108 shall not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with section 488.108. A foreign limited partnership that adopts an alternate name under this subsection and then obtains a certificate of authority with the name need not also comply with chapter 547. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this state under the name unless the foreign limited partnership is authorized under chapter 547 to transact business in this state under another name.

2. If a foreign limited partnership authorized to transact business in this state changes its name to one that does not comply with section 488.108, it shall not thereafter transact business in this state until it complies with subsection 1 and obtains an amended certificate of authority.

Sec. 81. NEW SECTION. 488.906 REVOCATION OF CERTIFICATE OF AUTHORITY.

1. A certificate of authority of a foreign limited partnership to transact business in this state may be revoked by the secretary of state in the manner provided in subsections 2 and 3 if the foreign limited partnership does not do any of the following:

a. Pay, within sixty days after the due date, any fee, tax or penalty under this chapter or other law due to[12] the secretary of state.

b. Deliver, within sixty days after the due date, its biennial report required under section 488.210.

c. Appoint and maintain an agent for service of process as required by section 488.114, subsection 2.

d. Deliver for filing a statement of a change under section 488.115 within thirty days after a change has occurred in the name or address of the agent.

2. In order to revoke a certificate of authority, the secretary of state must prepare, sign, and file a notice of revocation and send a copy to the foreign limited partnership's agent for service of process in this state, or if the foreign limited partnership does not appoint and maintain a proper agent in this state, to the foreign limited partnership's designated office. The notice must state all of the following:

a. The revocation's effective date, which must be at least sixty days after the date the secretary of state sends the copy.

b. The foreign limited partnership's failures to comply with subsection 1 which are the reason for the revocation.

3. The authority of the foreign limited partnership to transact business in this state ceases on the effective date of the notice of revocation unless before that date the foreign limited partnership cures each failure to comply with subsection 1 stated in the notice. If the foreign limited partnership cures the failures, the secretary of state shall so indicate on the filed notice.

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[12] See chapter 1175, §382 herein

Sec. 82. NEW SECTION. 488.907 CANCELLATION OF CERTIFICATE OF AUTHORITY — EFFECT OF FAILURE TO HAVE CERTIFICATE.

1. In order to cancel its certificate of authority to transact business in this state, a foreign limited partnership must deliver to the secretary of state for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under section 488.206.

2. A foreign limited partnership transacting business in this state shall not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

3. The failure of a foreign limited partnership to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action or proceeding in this state.

4. A partner of a foreign limited partnership is not liable for the obligations of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this state without a certificate of authority.

5. If a foreign limited partnership transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the secretary of state as its agent for service of process for rights of action arising out of the transaction of business in this state.

Sec. 83. NEW SECTION. 488.908 ACTION BY ATTORNEY GENERAL.

The attorney general may maintain an action to restrain a foreign limited partnership from transacting business in this state in violation of this article.

ARTICLE X
ACTIONS BY PARTNERS

Sec. 84. NEW SECTION. 488.1001 DIRECT ACTION BY PARTNER.

1. Subject to subsection 2, a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

2. A partner commencing a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

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. 85. NEW SECTION. 488.1002 DERIVATIVE ACTION.

A partner may maintain a derivative action to enforce a right of a limited partnership, but a partner shall not commence such a proceeding until both of the following have occurred:

1. A written demand has been made upon the general partner or partners, requesting that they cause the limited partnership to take suitable action.

2. Ninety days have expired from the date the demand was made, unless the partner has earlier been notified that the demand has been rejected by the general partner or partners or unless irreparable injury to the limited partnership would result by waiting for the expiration of the ninety-day period.

Sec. 86. NEW SECTION. 488.1003 PROPER PLAINTIFF.

A derivative action may be maintained only by a person that is a partner at the time the action is commenced and where one of the following also applies:

1. The person that was a partner when the conduct giving rise to the action occurred.

2. The person whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

Sec. 87. NEW SECTION. 488.1004 PLEADING.

In a derivative action, the petition must state with particularity the date and content of plaintiff's demand and either the general partners' response to the demand or how the limited partnership would be irreparably harmed by waiting for such a response for ninety days.

Sec. 88. NEW SECTION. 488.1005 PROCEEDS AND EXPENSES.

1. Except as otherwise provided in subsection 2:

a. Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff.

b. If the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

2. If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, from the recovery of the limited partnership.

3. If the court finds that the derivative proceeding was commenced or maintained without reasonable cause or for an improper purpose, it may order the plaintiff to pay any defendant's reasonable expenses, including reasonable attorney fees, incurred in defending the action.

ARTICLE XI
CONVERSION AND MERGER

Sec. 89. NEW SECTION. 488.1101 DEFINITIONS.

For purposes of this article, unless the context otherwise requires:

1. "Constituent limited partnership" means a constituent organization that is a limited partnership.

2. "Constituent organization" means an organization that is party to a merger.

3. "Converted organization" means the organization into which a converting organization converts pursuant to sections 488.1102 through 488.1105.

4. "Converting limited partnership" means a converting organization that is a limited partnership.

5. "Converting organization" means an organization that converts into another organization pursuant to section 488.1102.

6. "General partner" means a general partner of a limited partnership.

7. "Governing statute" of an organization means the statute that governs the organization's internal affairs.

8. "Organization" means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit.

9. "Organizational documents" means all of the following:

a. For a domestic or foreign general partnership, its partnership agreement.

b. For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement.

c. For a domestic or foreign limited liability company, its articles of organization and operating agreement, or comparable records as provided in its governing statute.

d. For a business trust, its agreement of trust and declaration of trust.

e. For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute.

f. For any other organization, the basic records that create the organization and determine

its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

10. "Personal liability" means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization according to either of the following:

a. By the organization's governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization.

b. By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities, and other obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

11. "Surviving organization" means an organization into which one or more other organizations are merged. A surviving organization may preexist the merger or be created by the merger.

Sec. 90. NEW SECTION. 488.1102 CONVERSION.

1. An organization other than a limited partnership may convert to a limited partnership, and a limited partnership may convert to another organization pursuant to this section and sections 488.1103 through 488.1105 and a plan of conversion, if all of the following apply:

a. The other organization's governing statute authorizes the conversion.

b. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute.

c. The other organization complies with its governing statute in effecting the conversion.

2. A plan of conversion must be in a record and must include all of the following:

a. The name and form of the organization before conversion.

b. The name and form of the organization after conversion.

c. The terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration.

d. The organizational documents of the converted organization.

Sec. 91. NEW SECTION. 488.1103 ACTION ON PLAN OF CONVERSION BY CONVERTING LIMITED PARTNERSHIP.

1. Subject to section 488.1110, a plan of conversion must be consented to by all the partners of a converting limited partnership.

2. Subject to section 488.1110 and any contractual rights, after a conversion is approved, and at any time before a filing is made under section 488.1104, a converting limited partnership may amend the plan or abandon the planned conversion according to any or all of the following:

a. As provided in the plan.

b. Except as prohibited by the plan, by the same consent as was required to approve the plan.

Sec. 92. NEW SECTION. 488.1104 FILINGS REQUIRED FOR CONVERSION — EFFECTIVE DATE.

1. After a plan of conversion is approved:

a. A converting limited partnership shall deliver to the secretary of state for filing articles of conversion, which must include all of the following:

(1) A statement that the limited partnership has been converted into another organization.

(2) The name and form of the organization and the jurisdiction of its governing statute.

(3) The date the conversion is effective under the governing statute of the converted organization.

(4) A statement that the conversion was approved as required by this chapter.

(5) A statement that the conversion was approved as required by the governing statute of the converted organization.

(6) If the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office which the secretary of state may use for the purposes of section 488.1105, subsection 3.

b. If the converting organization is not a converting limited partnership, the converting organization shall deliver to the secretary of state for filing a certificate of limited partnership, which must include, in addition to the information required by section 488.201, all of the following:

(1) A statement that the limited partnership was converted from another organization.

(2) The name and form of the organization and the jurisdiction of its governing statute.

(3) A statement that the conversion was approved in a manner that complied with the organization's governing statute.

2. A conversion becomes effective according to the following:

a. If the converted organization is a limited partnership, when the certificate of limited partnership takes effect.

b. If the converted organization is not a limited partnership, as provided by the governing statute of the converted organization.

Sec. 93. NEW SECTION. 488.1105 EFFECT OF CONVERSION.

1. An organization 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 organization remains vested in the converted organization.

b. All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization.

c. An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred.

d. Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization.

e. Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

f. Except as otherwise agreed, the conversion does not dissolve a converting limited partnership for the purposes of article VIII.

3. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in section 488.117, subsections 3 and 4.

Sec. 94. NEW SECTION. 488.1106 MERGERS.

1. A limited partnership may merge with one or more other constituent organizations pursuant to this section and sections 488.1107 through 488.1109 and a plan of merger, if all of the following apply:

a. The governing statute of each[13] the other organizations authorizes the merger.

b. The merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes.

c. Each of the other organizations complies with its governing statute in effecting the merger.

2. A plan of merger must be in a record and must include all of the following:

[13] See chapter 1175, §383 herein

a. The name and form of each constituent organization.

b. The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect.

c. The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration.

d. If the surviving organization is to be created by the merger, the surviving organization's organizational documents.

e. If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents.

Sec. 95. NEW SECTION. 488.1107 ACTION ON PLAN OF MERGER BY CONSTITUENT LIMITED PARTNERSHIP.

1. Subject to section 488.1110, a plan of merger must be consented to by all the partners of a constituent limited partnership.

2. Subject to section 488.1110 and any contractual rights, after a merger is approved, and at any time before a filing is made under section 488.1108, a constituent limited partnership may amend the plan or abandon the planned merger according to any or all the following:

a. As provided in the plan.

b. Except as prohibited by the plan, with the same consent as was required to approve the plan.

Sec. 96. NEW SECTION. 488.1108 FILINGS REQUIRED FOR MERGER — EFFECTIVE DATE.

1. After each constituent organization has approved a merger, articles of merger must be signed on behalf of all of the following:

a. Each preexisting constituent limited partnership, by each general partner listed in the certificate of limited partnership.

b. Each other preexisting constituent organization, by an authorized representative.

2. The articles of merger must include all of the following:

a. The name and form of each constituent organization and the jurisdiction of its governing statute.

b. The name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect.

c. The date the merger is effective under the governing statute of the surviving organization.

d. If the surviving organization is to be created by the merger, one of the following:

(1) If it will be a limited partnership, the limited partnership's certificate of limited partnership.

(2) If it will be an organization other than a limited partnership, the organizational document that creates the organization.

e. If the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization.

f. A statement as to each constituent organization that the merger was approved as required by the organization's governing statute.

g. If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office which the secretary of state may use for the purposes of section 488.1109, subsection 2.

h. Any additional information required by the governing statute of any constituent organization.

3. Each constituent limited partnership shall deliver the articles of merger for filing in the office of the secretary of state.

4. A merger becomes effective under this article according to one of the following:

a. If the surviving organization is a limited partnership, upon the later of the following:

(1) Compliance with subsection 3.

(2) Subject to section 488.206, subsection 3, as specified in the articles of merger.

b. If the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization.

Sec. 97. NEW SECTION. 488.1109 EFFECT OF MERGER.

1. When a merger becomes effective, all of the following apply:

a. The surviving organization continues or comes into existence.

b. Each constituent organization that merges into the surviving organization ceases to exist as a separate entity.

c. All property owned by each constituent organization that ceases to exist vests in the surviving organization.

d. All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization.

e. An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred.

f. Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization.

g. Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect.

h. Except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of article VIII.

i. If the surviving organization is created by the merger, one of the following applies:

(1) If it is a limited partnership, the certificate of limited partnership becomes effective.

(2) If it is an organization other than a limited partnership, the organizational document that creates the organization becomes effective.

j. If the surviving organization preexists the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

2. A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for the purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in section 488.117, subsections 3 and 4.

Sec. 98. NEW SECTION. 488.1110 RESTRICTIONS ON APPROVAL OF CONVERSIONS AND MERGERS AND ON RELINQUISHING LIMITED LIABILITY LIMITED PARTNERSHIP STATUS.

1. If a partner of a converting or constituent limited partnership will have personal liability with respect to a converted or surviving organization, approval and amendment of a plan of conversion or merger are ineffective without the consent of the partner, unless all of the following apply:

a. The limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners.

b. The partner has consented to the provision of the partnership agreement.

2. An amendment to a certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without the consent of each general partner, unless all of the following apply:

a. The limited partnership's partnership agreement provides for the amendment with the consent of less than all the general partners.

b. Each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

3. A partner does not give the consent required by subsection 1 or 2 merely by consenting to a provision of the partnership agreement which permits the partnership agreement to be amended with the consent of fewer than all the partners.

Sec. 99. NEW SECTION. 488.1111 LIABILITY OF GENERAL PARTNER AFTER CONVERSION OR MERGER.

1. A conversion or merger under this article does not discharge any liability under sections 488.404 and 488.607 of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership, but all of the following apply:

a. The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability.

b. For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership.

c. If a person is required to pay any amount under this subsection, all of the following apply:

(1) The person has a right of contribution from each other person that was liable as a general partner under section 488.404 when the obligation was incurred and has not been released from the obligation under section 488.607.

(2) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

2. In addition to any other liability provided by law, both of the following apply:

a. A person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, all of the following apply to the third party:

(1) The third party does not have notice of the conversion or merger.

(2) The third party reasonably believes all of the following:

(a) The converted or surviving business is the converting or constituent limited partnership.

(b) The converting or constituent limited partnership is not a limited liability limited partnership.

(c) The person is a general partner in the converting or constituent limited partnership.

b. A person that was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if all of the following apply:

(1) Immediately before the conversion or merger became effective the converting or surviving limited partnership was not a limited liability limited partnership.

(2) At the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and all of the following apply to the third party:

(a) The third party does not have notice of the dissociation.

(b) The third party does not have notice of the conversion or merger.

(c) The third party reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting or constituent limited partnership.

Sec. 100. NEW SECTION. 488.1112 POWER OF GENERAL PARTNERS AND PERSONS DISSOCIATED AS GENERAL PARTNERS TO BIND ORGANIZATION AFTER CONVERSION OR MERGER.

1. An act of a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or sur-

viving organization after the conversion or merger becomes effective, if all of the following apply:

a. Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 488.402.

b. At the time the third party enters into the transaction, all of the following apply to the third party:

(1) The third party does not have notice of the conversion or merger.

(2) The third party reasonably believes that the converted or surviving business is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

2. An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if all of the following apply:

a. Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 488.402 if the person had been a general partner.

b. At the time the third party enters into the transaction, less than two years have passed since the person dissociated as a general partner and all of the following apply to the third party:

(1) The third party does not have notice of the dissociation.

(2) The third party does not have notice of the conversion or merger.

(3) The third party reasonably believes that the converted or surviving organization is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

3. If a person having knowledge of the conversion or merger causes a converted or surviving organization to incur an obligation under subsection 1 or 2, the person is liable to either or both of the following:

a. To the converted or surviving organization for any damage caused to the organization arising from the obligation.

b. If another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability.

Sec. 101. NEW SECTION. 488.1113 ARTICLE NOT EXCLUSIVE.

This article does not preclude an entity from being converted or merged under other law.

ARTICLE XII
MISCELLANEOUS PROVISIONS

Sec. 102. NEW SECTION. 488.1201 UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 103. NEW SECTION. 488.1202 SEVERABILITY.

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. 104. NEW SECTION. 488.1203 RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and

National Commerce Act, 15 U.S.C. § 7001 et seq., but this chapter does not modify, limit, or supersede section 101(c) of that Act or authorize electronic delivery of any of the notices described in section 103(b) of that Act.

Sec. 105. NEW SECTION. 488.1204 APPLICATION TO EXISTING RELATIONSHIPS.

1. Before January 1, 2006, this chapter governs only the following:

a. A limited partnership formed on or after January 1, 2005.

b. Except as otherwise provided in subsections 3 and 4, a limited partnership formed before January 1, 2005, that elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

2. Except as otherwise provided in subsection 3, on and after January 1, 2006, this chapter governs all limited partnerships.

3. With respect to a limited partnership formed before January 1, 2005, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

a. Section 488.104, subsection 3, does not apply and the limited partnership has whatever duration it had under the law applicable immediately before January 1, 2005.

b. The limited partnership is not required to amend its certificate of limited partnership to comply with section 488.201, subsection 1, paragraph "d".

c. Sections 488.505, 488.601, and 488.602 do not apply, and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before January 1, 2005.

d. Section 488.603, subsection 4, does not apply.

e. Section 488.603, subsection 5, does not apply, and a court has the same power to expel a general partner as the court had immediately before January 1, 2005.

f. Section 488.801, subsection 3, does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before January 1, 2005.

g. If a limited partnership elected under prior law to become a limited liability limited partnership by filing a statement of qualification with the secretary of state, the statement of qualification is deemed to be an amendment to the certificate of limited partnership in compliance with section 488.201, subsection 1, paragraph "d", and the limited liability limited partnership automatically is a limited liability limited partnership under this chapter.

4. With respect to a limited partnership that elects pursuant to subsection 1, paragraph "b", to be subject to this chapter, after the election takes effect, the provisions of this chapter relating to the liability of the limited partnership's general partners to third parties apply according to the following:

a. Before January 1, 2006, to all of the following:

(1) A third party that had not done business with the limited partnership in the year before the election took effect.

(2) A third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election.

b. On and after January 1, 2006, to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under paragraph "a", subparagraph (2).

c. Notwithstanding the foregoing provisions of this subsection, if a preexisting limited liability limited partnership elects to be subject to this chapter prior to January 1, 2006, this chapter's provisions relating to the liability of general partners to third parties apply immediately to all third parties, regardless of whether a third party has previously done business with the limited liability limited partnership.

Sec. 106. NEW SECTION. 488.1205 SAVINGS CLAUSE.

This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

Sec. 107. NEW SECTION. 488.1206 FEES.

1. The secretary of state shall collect the following fees when the documents described in this subsection are delivered to the secretary's office for filing:

a. Certificate of limited partnership ..... $ 100

b. Application for registration of foreign limited partnership and for issuance of a certificate of registration to transact business in this state ..... $ 100

c. Amendment to certificate of limited partnership ..... $ 100

d. Amendment to application for registration of foreign limited partnership ..... $ 100

e. Cancellation of certificate of limited partnership ..... $ 20

f. Cancellation of registration of foreign limited partnership ..... $ 20

g. A consent required to be filed under this chapter ..... $ 20

h. Application to reserve a limited partnership name ..... $ 10

i. A notice of transfer of reservation of name ..... $ 10

j. Articles of correction ..... $ 5

k. Application for certificate of existence or registration ..... $ 5

l. A statement of dissociation ..... $ 20

m. A statement of dissolution ..... $ 20

n. A statement of termination ..... $ 20

o. A statement of change ..... $ 20

p. Any other 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 the following fees for copying and certifying the copy of any filed document relating to a limited partnership or foreign limited partnership:

a. One dollar per page for copying.

b. Five dollars for certification.

Sec. 108. NEW SECTION. 488.1207 EFFECTIVE DATE.

This chapter takes effect January 1, 2005, and applies as provided in section 488.1204 and in other sections of this chapter.

Sec. 109. Section 15E.149, Code 2003, is amended to read as follows:

15E.149 MULTIPLE CORPORATIONS.

The public directors, by a majority vote, may create more than one corporation. Each additional corporation shall be governed by this division. An additional corporation may act as a general partner in a limited partnership under chapter 487 or 488.

Sec. 110. Section 422.15, subsection 2, Code 2003, is amended to read as follows:

2. Every partnership including limited partnerships organized under chapter 487 or 488, having a place of business in the state, shall make a return, stating specifically the net income and capital gains (or losses) reported on the federal partnership return, the names and addresses of the partners, and their respective shares in said amounts.

Sec. 111. Section 486A.901, subsection 3, Code 2003, is amended to read as follows:

3. "Limited partnership" means a limited partnership created under chapter 487 or 488, predecessor law, or comparable law of another jurisdiction.

Sec. 112. Section 486A.902, subsection 5, Code 2003, is amended to read as follows:

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 or 488.

Sec. 113. Section 486A.906, subsection 4, Code 2003, is amended to read as follows:

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 486A.807 or in chapter 487 or 488 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.

Sec. 114. NEW SECTION. 487.1401 REPEAL OF CHAPTER.

This chapter is repealed effective January 1, 2006.

Sec. 115. Section 490A.1203, subsection 1, paragraph c, Code 2003, is amended to read as follows:

c. 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 by its partnership agreement and in accordance with chapter 487 or 488.

Sec. 116. Section 669.14, subsection 11, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

Any claim for financial loss based upon an act or omission in financial regulation, including but not limited to examinations, inspections, audits, or other financial oversight responsibilities, pursuant to chapters 87, 203, 203C, 203D, 421B, 486, ~~487~~ or the figure "487",[14] 488, and 490 through 553, excluding chapters 540A, 542, 542B, 543B, 543C, 543D, 544A, and 544B.

Sec. 117. Sections 15E.149, 422.15, 486A.901, 486A.902, 486A.906, 490A.1203, and 669.14,[15] Code 2003, as amended by this Act, are amended by striking from the sections the figure and word "487 or" or the figure "487,".

Sec. 118. EFFECTIVE DATES. This Act takes effect January 1, 2005, except that section 117 of this Act takes effect January 1, 2006.

Sec. 119. CODE EDITOR DIRECTIVE. The Code editor shall correct, effective January 1, 2006, any outstanding references to chapter 487 in the Code or to be codified in the Code, when there appears to be no doubt as to the proper methods of making the correction.

Approved March 31, 2004

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[14] See chapter 1175, §388 herein

[15] Section 669.14 appeared in Code Supplement 2003

CHAPTER 1022

MUNICIPAL UTILITIES AND LOCAL EXCHANGE SERVICES

S.F. 2187

AN ACT relating to municipal utilities that provide local exchange services, including the confidentiality and audits of certain accounting records, the allocation of the cost of use of city resources, and exemption from sales and use taxes.

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

Section 1. Section 11.6, subsection 1, paragraph a, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The financial condition and transactions of all cities and city offices, counties, county hospitals organized under chapters 347 and 347A, memorial hospitals organized under chapter 37, entities organized under chapter 28E having gross receipts in excess of one hundred thousand dollars in a fiscal year, merged areas, area education agencies, and all school offices in school districts, shall be examined at least once each year, except that cities having a population of seven hundred or more but less than two thousand shall be examined at least once every four years, and cities having a population of less than seven hundred may be examined as otherwise provided in this section. The examination shall cover the fiscal year next preceding the year in which the audit is conducted. The examination of school offices shall include an audit of all school funds, the certified annual financial report, and the certified enrollment as provided in section 257.6. Differences in certified enrollment shall be reported to the department of management. The examination of a city that owns or operates a municipal utility providing local exchange services pursuant to chapter 476 shall include an audit of the city's compliance with section 388.10.

Sec. 2. Section 388.10, subsection 2, paragraph a, Code 2003, is amended to read as follows:

a. Prepare and maintain records which record the full cost accounting of providing local exchange service. The records shall show the amount and source of capital for initial construction or acquisition of the local exchange system or facilities. These records shall be public records subject to the requirements of chapter 22. Information in the records that is not subject to examination or copying as provided in section 388.9, subsection 2, may be expunged from the records prior to public disclosure. This section shall not prohibit a municipal utility from utilizing capital from any lawful source, provided that the reasonable cost of such capital is accounted for as a cost of providing the service. In accounting for the cost of use of any city employees, facilities, equipment, or services, a city or municipal utility may make a reasonable allocation of the cost of use of any city employees, facilities, equipment, or services used by a municipal utility providing telecommunications service based upon reasonable criteria for the distribution of the cost of use in any manner which is not inconsistent with generally accepted accounting principles.

Sec. 3. Section 388.10, subsection 2, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. Make an annual certification of compliance with this section. For any year in which the city or municipal utility is not audited in accordance with section 11.6, the city or municipal utility shall contract with or employ the auditor of state or a certified public accountant certified in the state of Iowa to attest to the certification. The attestation report shall be a public record for purposes of chapter 22.

Sec. 4. Section 423.3, subsection 31, paragraph a, as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 96, is amended to read as follows:

a. The sales price of goods, wares, or merchandise sold to, or of services furnished, and used

by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, heat, ~~or~~ pay television service, or communication service to the general public.

Approved April 2, 2004

CHAPTER 1023

MENINGOCOCCAL DISEASE — VACCINATION INFORMATION FOR POSTSECONDARY STUDENTS

S.F. 2202

AN ACT relating to meningococcal disease vaccination information for students who are enrolled in an institution of higher learning that has an on-campus dormitory or residence hall, and providing for related matters.

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

Section 1. NEW SECTION. 139A.26 MENINGOCOCCAL DISEASE VACCINATION INFORMATION FOR POSTSECONDARY STUDENTS.

1. Each institution of higher education that has an on-campus residence hall or dormitory shall provide vaccination information on meningococcal disease to each student enrolled in the institution. The vaccination information shall be contained on student health forms provided to each student by the institution, which forms shall include space for the student to indicate whether or not the student has received the vaccination against meningococcal disease. The vaccination information about meningococcal disease shall include any recommendations issued by the national centers for disease control and prevention regarding the disease. Vaccination information obtained under this section that is in possession of an institution of higher education pursuant to this section shall not be considered a public record. Data obtained under this section shall be submitted annually to the department in a manner prescribed by the department and such that no individual person can be identified.

2. This section shall not be construed to require any institution of higher education to provide the vaccination against meningococcal disease to students.

3. This section shall not apply if the national centers for disease control and prevention no longer recommend the meningococcal disease vaccine.

4. This section does not create a private right of action.

5. The department shall adopt rules for administration of this section. The department shall review the requirements of this section at least every five years, and shall submit its recommendations for modification to, or continuation of, this section based upon new information about the disease or vaccination against the disease in a report that shall be submitted to the general assembly no later than January 15, 2010, with subsequent reports developed and submitted by January 15 at least every fifth year thereafter.

Approved April 2, 2004

CHAPTER 1024

IOWA CORN PROMOTION BOARD — MISCELLANEOUS PROVISIONS

S.F. 2210

AN ACT relating to the Iowa corn promotion board, including its ex officio, nonvoting membership and the expenditure of moneys for programs.

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

Section 1. Section 185C.1, subsections 12 and 15, Code 2003, are amended to read as follows:

12. "Promotional order" means an order ~~administered~~ pursuant to this chapter which ~~establishes a program for the promotion, research, and market development of corn~~ provides for the administration of this chapter and provides for a state assessment ~~to finance the program~~ necessary to provide for its administration.

15. "State assessment" means a state excise tax on each bushel of corn marketed in this state which is imposed ~~for purposes related to market development~~ as part of a promotional order to administer this chapter.

Sec. 2. Section 185C.1, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 14A. "Secretary" means the secretary of agriculture.

Sec. 3. Section 185C.10, Code 2003, is amended to read as follows:

185C.10 EX OFFICIO NONVOTING MEMBERS.

The following persons shall serve on the board as ex officio, nonvoting members:

1. The secretary~~,~~ or the secretary's designee.

2. The dean of the college of agriculture of Iowa state university of science and technology~~,~~ ~~and~~ or the dean's designee.

3. The director of the Iowa department of economic development~~,~~ or ~~their designees, and two~~ the director's designee.

4. Two representatives of first purchaser organizations appointed by the board ~~shall serve on the board as ex officio members~~.

Sec. 4. Section 185C.11, Code 2003, is amended to read as follows:

185C.11 ~~PURPOSE~~ PURPOSES AND POWERS OF THE BOARD.

1. The purposes of the board shall be to:

~~1.~~ a. Provide for market development.

b. ~~Enter into contracts or agreements with recognized and qualified agencies or organizations for the development and carrying out of~~ Provide for research and education programs directed toward better and more efficient production, marketing, and utilization of corn and corn products.

~~2.~~ c. Provide methods and means, including, but not limited to, public relations and other promotion techniques for the maintenance of present markets.

~~3.~~ d. Assist in development of new or larger markets, both domestic and foreign, for corn and corn products.

~~4.~~ e. Work for prevention, modification, or elimination of trade barriers which obstruct the free flow of corn and corn products to market.

~~5.~~ f. Promote the production and marketing of ethanol.

g. Administer the financial assistance program as provided in section 185C.11A.

h. Support education and training programs, or demonstration projects, which improve the production and marketing of corn or corn products or which improve environmental stewardship practices when producing corn.

i. Grant academic scholarships to full-time graduate and postgraduate students engaged in

the study of areas or subjects relating to improving or increasing the production, marketing, or utilization of corn or corn products.

2. The board may carry out these purposes directly or contract with recognized and qualified persons.

Sec. 5. NEW SECTION. 185C.11A FINANCIAL ASSISTANCE PROGRAM.

1. The board shall assist in efforts to improve the economic conditions of corn producers by providing financial assistance to eligible persons for purposes of supporting projects which expand markets for all corn produced in this state and products derived from that corn. A project must relate to any of the following:

a. The planning, development, construction, operation, or improvement of a new or existing value-added facility which utilizes corn or corn products.

b. The development, production, or utilization of a variety of corn which expresses new or specialized traits.

c. The development of products or the delivery of services likely to increase the profits or reduce the risks associated with corn production or marketing.

2. The board may provide financial assistance in the form of an interest loan, low-interest loan, no-interest loan, forgivable loan, loan guarantee, grant, letter of credit, equity financing, principal buy-down, interest buy-down, or a combination of these forms. The board shall not approve an application for financial assistance under this section to refinance an existing loan.

3. A person is eligible for financial assistance under this section if all of the following apply:

a. The financial assistance will be used to support a project that will provide a demonstrable benefit to corn producers.

b. The board approves a business plan submitted by the person. The business plan must demonstrate the person's managerial and technical expertise to carry out the project.

c. The person agrees to comply with terms and conditions of the financial assistance as determined by the board.

4. The board shall award financial assistance to an eligible person based on all of the following criteria:

a. The degree to which the project will benefit corn producers.

b. The feasibility of the project to become a viable enterprise.

c. The amount of the investment in the project contributed by corn producers.

d. The economic and technical viability of the processes to be employed.

e. The economic and technical viability of the products to be produced.

Sec. 6. Section 185C.26, Code Supplement 2003, is amended to read as follows:

185C.26 DEPOSIT OF MONEYS — CORN PROMOTION FUND.

~~State assessments~~ A state assessment 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, interest, 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 administrative services 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~~ carrying out the purposes of this chapter as provided in section 185C.11.

Sec. 7. Section 185C.29, unnumbered paragraph 1, Code 2003, is amended to read as follows:

After the costs of elections, referendum, necessary board expenses, and administrative costs

have been paid, at least seventy-five percent of the remaining ~~funds~~ moneys from a state ~~assessments~~ assessment deposited in the corn promotion fund shall be ~~allocated~~ used to ~~organizations selected by the corn promotion board on the basis of their ability to~~ carry out the purposes of this chapter as provided in section 185C.11. ~~The funds can only be used for research, promotion, and education in co-operation with agencies equipped to perform these activities.~~

Approved April 2, 2004

CHAPTER 1025

BLOOD DONATION BY SIXTEEN-YEAR-OLD PERSONS

H.F. 2042

AN ACT relating to the donation of blood by persons sixteen years of age.

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

Section 1. Section 599.6, Code 2003, is amended to read as follows:

599.6 DONATION OF BLOOD BY MINORS.

1. A person who is seventeen years of age or older may consent to donate blood in a voluntary and noncompensatory blood program without the permission of a parent or guardian. The consent is not subject to later disaffirmance because of minority.

2. A person who is sixteen years of age may donate blood in a voluntary and noncompensatory blood program if the person obtains written permission from the person's parent or guardian.

Approved April 2, 2004

CHAPTER 1026

DEPARTMENT OF INSPECTIONS AND APPEALS —
INSPECTIONS DIVISION ELIMINATED

H.F. 2167

AN ACT to eliminate the inspections division of the department of inspections and appeals.

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

Section 1. Section 10A.104, Code Supplement 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 12. Administer inspections and licensing of hotels, home food establishments, and egg handlers.

NEW SUBSECTION. 13. Administer inspections and licensing of food establishments,

including but not limited to restaurants, vending machines, food processing plants, grocery stores, convenience stores, temporary food establishments, and mobile food units.

NEW SUBSECTION. 14. Administer inspections for sanitation in any locality of the state upon the written petition of five or more residents of the locality.

NEW SUBSECTION. 15. Administer inspections of cosmetology salons under section 157.7 and barbershops under section 158.6.

Sec. 2. Section 10A.106, Code 2003, is amended to read as follows:

10A.106 DIVISIONS OF THE DEPARTMENT.

The department is comprised of the following divisions:

1. Administrative hearings division.
2. Investigations division.
~~3. Inspections division.~~
~~4.~~ 3. Health facilities division.

The allocation of departmental duties to the divisions of the department in sections 10A.402, ~~10A.502,~~ 10A.702, and 10A.801 does not prohibit the director from reallocating departmental duties within the department.

Sec. 3. Section 137C.2, subsection 2, Code 2003, is amended to read as follows:

2. "Director" means the director of the department of inspections and appeals or the ~~chief inspector of the inspections division of the department of inspections and appeals~~ director's designee.

Sec. 4. Sections 10A.501 and 10A.502, Code 2003, are repealed.

Approved April 2, 2004

CHAPTER 1027

PRIMARY AND SECONDARY EDUCATION STANDARDS —
ACADEMIC CREDIT FOR MILITARY BASIC TRAINING COMPLETION

H.F. 2241

AN ACT authorizing school districts and nonpublic schools to apply credit under the state education program for successful completion of military basic training.

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

Section 1. Section 256.11, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 15. The board of directors of a school district or the authorities in charge of a nonpublic school may award credit toward graduation to a student if the student successfully completes basic training in the Iowa army national guard, the Iowa air national guard, or as a member of the active military forces of the United States or as a member of the army national guard of the United States or the air national guard of the United States.

Approved April 2, 2004

CHAPTER 1028

COOPERATIVE ASSOCIATIONS AND RETENTION OF ABANDONED PROPERTY — NOTICE REQUIREMENTS

H.F. 2270

AN ACT relating to certain notice requirements for cooperative associations retaining abandoned property.

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

Section 1. Section 499.30A, subsection 4, unnumbered paragraph 1, Code 2003, is amended to read as follows:

~~Any~~ A disbursement having an aggregate value of fifty dollars or more that is retained by the cooperative association shall be forfeited to the cooperative association only if the cooperative association publishes at least one notice of the abandoned property in a publication regularly distributed to its membership or in a newspaper having a general circulation in the county where the cooperative association is located. The notice shall include all of the following:

Approved April 2, 2004

CHAPTER 1029

BAIT SALES BY AQUACULTURE UNITS

H.F. 2282

AN ACT relating to the selling of bait by an aquaculture unit licensee.

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

Section 1. Section 481A.142, subsection 5, Code 2003, is amended to read as follows:

5. a. Sell bait, including minnows, frogs, and clams, propagated or raised within the licensed unit without having to obtain a bait dealer's license. However, aquaculture units wishing to take bait from areas other than their licensed units must also obtain a bait dealer's license.

b. A nonresident aquaculture unit licensee shall be limited to selling bait at wholesale unless the home state of the nonresident licensee allows residents of this state to sell bait at retail.

Approved April 2, 2004

CHAPTER 1030

WASTE TIRE MANAGEMENT — ENFORCEMENT

H.F. 2351

AN ACT relating to enforcement of waste tire violations and providing a penalty.

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

Section 1. Section 455D.11, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 9. The commission or the director may issue any order necessary to secure compliance with or prevent a violation of a provision of this section or a rule adopted pursuant to this section. The attorney general shall, upon request by the department, institute any civil or criminal legal proceeding necessary to obtain compliance with an order of the commission or director or to prosecute a person for a violation of a provision of this section or a rule adopted pursuant to this section.

Unless otherwise provided in this section, a person who violates a provision of this section, a rule adopted pursuant to this section, or a condition of a permit or order issued pursuant to this section shall be subject to a civil penalty not to exceed five thousand dollars for each day of such violation.

Approved April 2, 2004

CHAPTER 1031

BIRTH DEFECTS INSTITUTE — RENAMED — DUTIES

H.F. 2362

AN ACT relating to the duties of the birth defects institute by providing for a work group to study stillbirths and renaming the institute.

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

Section 1. LEGISLATIVE INTENT AND PURPOSE — STILLBIRTHS PROTOCOL WORK GROUP.

1. It is the intent of the general assembly that the department of public health study and develop prevention strategies to reduce stillbirths and other congenital or inherited disorders which cause the death and disability of newborns in this state. It is the purpose of this Act to enable the department to carry out the intent of the general assembly through a stillbirths protocol work group and the redesign of the birth defects institute.

2. The Iowa department of public health shall establish a work group to develop protocol and implementation guidelines for the evaluation of causes and prevention of stillbirths including environmental and maternal factors. The director of public health shall select the members of the work group, which may include representatives from the child death review team, the health care industry, the health insurance industry, and parents or other interested parties as deemed appropriate by the director. The director shall submit a report from the work group to the general assembly on or before July 15, 2005.

Sec. 2. NEW SECTION. 136E.1 PURPOSE.

To reduce and avoid adverse health conditions of inhabitants of the state, the Iowa department of public health shall initiate, conduct, and supervise screening and health care programs in order to detect and predict congenital or inherited disorders. The department shall assist in the translation and integration of genetic and genomic advances into public health services to improve health outcomes throughout the life span of the inhabitants of the state.

Sec. 3. NEW SECTION. 136E.2 DEFINITIONS.

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

1. "Attending health care provider" means a licensed physician, nurse practitioner, certified nurse midwife, or physician assistant.

2. "Congenital disorder" means an abnormality existing prior to or at birth, including a stillbirth, that adversely affects the health and development of a fetus, newborn, child, or adult, including a structural malformation or a genetic, chromosomal, inherited, or biochemical disorder.

3. "Department" means the Iowa department of public health.

4. "Disorder" means a congenital or inherited disorder.

5. "Genetics" means the study of inheritance and how genes contribute to health conditions and the potential for disease.

6. "Genomics" mean the functions and interactions of all human genes and their variation within human populations, including their interaction with environmental factors, and their contribution to health.

7. "Inherited disorder" means a condition caused by an abnormal change in a gene or genes passed from a parent or parents to their child. Onset of the disorder may be prior to or at birth, during childhood, or in adulthood.

8. "Stillbirth" means an unintended fetal death occurring after a gestation period of twenty completed weeks, or an unintended fetal death of a fetus with a weight of three hundred fifty or more grams.

Sec. 4. NEW SECTION. 136E.3 ESTABLISHMENT OF CENTER FOR CONGENITAL AND INHERITED DISORDERS — DUTIES.

A center for congenital and inherited disorders is established within the department. The center shall do all of the following:

1. Initiate, conduct, and supervise statewide screening programs for congenital and inherited disorders amenable to population screening.

2. Initiate, conduct, and supervise statewide health care programs to aid in the early detection, treatment, prevention, education, and provision of supportive care related to congenital and inherited disorders.

3. Develop specifications for and designate a central laboratory in which tests conducted pursuant to the screening programs provided for in subsection 1 will be performed.

4. Gather, evaluate, and maintain information related to causes, severity, prevention, and methods of treatment for congenital and inherited disorders in conjunction with a central registry, screening programs, genetic health care programs, and ongoing scientific investigations and surveys.

5. Perform surveillance and monitoring of congenital and inherited disorders to determine the occurrence and trends of the disorders, to conduct thorough and complete epidemiological surveys, to assist in the planning for and provision of services to children with congenital and inherited disorders and their families, and to identify environmental and genetic risk factors for congenital and inherited disorders.

6. Provide information related to severity, causes, prevention, and methods of treatment for congenital and inherited disorders to the public, medical and scientific communities, and health science disciplines.

7. Implement public education programs, continuing education programs for health practi-

tioners, and education programs for trainees of the health science disciplines related to genetics, congenital disorders, and inheritable disorders.

8. Participate in policy development to assure the appropriate use and confidentiality of genetic information and technologies to improve health and prevent disease.

9. Collaborate with state and local health agencies and other public and private organizations to provide education, intervention, and treatment for congenital and inherited disorders and to integrate genetics and genomics advances into public health activities and policies.

Sec. 5. NEW SECTION. 136E.4 GENETIC HEALTH SERVICES.

The center may initiate, conduct, and supervise genetic health services for the inhabitants of the state, including the provision of regional genetic consultation clinics, comprehensive neuromuscular health care outreach clinics, and other outreach services and clinics as established by rule.

Sec. 6. NEW SECTION. 136E.5 NEWBORN METABOLIC SCREENING.

1. All newborns born in this state shall be screened for congenital and inherited disorders in accordance with rules adopted by the department.

2. An attending health care provider shall ensure that every newborn under the provider's care is screened for congenital and inherited disorders in accordance with rules adopted by the department.

3. This section does not apply if the parent objects to the screening. If a parent objects to the screening of a newborn, the attending health care provider shall document the refusal in the newborn's medical record and shall obtain a written refusal from the parent and report the refusal to the department as provided by rule of the department.

Sec. 7. NEW SECTION. 136E.6 CENTRAL REGISTRY.

The center for congenital and inherited disorders shall maintain a central registry, or shall establish an agreement with a designated contractor to maintain a central registry, to compile, evaluate, retain, and disseminate information on the occurrence, prevalence, causes, treatment, and prevention of congenital disorders. Congenital disorders shall be considered reportable conditions in accordance with rules adopted by the department and shall be abstracted and maintained by the registry.

Sec. 8. NEW SECTION. 136E.7 CONFIDENTIALITY.

The center for congenital and inherited disorders and the department shall maintain the confidentiality of any identifying information collected, used, or maintained pursuant to this chapter in accordance with section 22.7, subsection 2.

Sec. 9. NEW SECTION. 136E.8 RULES.

The center for congenital and inherited disorders, with assistance provided by the Iowa department of public health, shall adopt rules pursuant to chapter 17A to administer this chapter.

Sec. 10. NEW SECTION. 136E.9 COOPERATION OF OTHER AGENCIES.

All state, district, county, and city health or welfare agencies shall cooperate and participate in the administration of this chapter.

Sec. 11. Chapter 136A, Code 2003, is repealed.

Sec. 12. CODE EDITOR DIRECTIVE.

1. The Code editor may transfer chapter 136E to chapter 136A.

2. The Code editor is directed to strike the words "birth defects institute" and insert the words "center for congenital and inherited disorders" where the words appear in section 144.13A.

3. The Code editor shall correct any references to the center for congenital and inherited disorders as the successor to the birth defects institute, including grammatical constructions,

anywhere else in the Code, in any bills awaiting codification, and in any bills enacted by the Eighteenth General Assembly, 2004 Regular Session.

Approved April 2, 2004

CHAPTER 1032

COUNTY HOSPITAL BUDGET CERTIFICATION

H.F. 2381

AN ACT changing the budget certification deadline for county hospital budgets.

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

Section 1. Section 347.13, subsection 9, Code 2003, is amended to read as follows:

9. Fix ~~at its regular February meeting in each year,~~ the amount necessary for the improvement and maintenance of the hospital and for support of ambulance service during the ensuing fiscal year, and cause the president and the secretary to certify the amount to the county auditor before March ~~1~~ 15 of each year, subject to any limitation in section 347.7.

Approved April 2, 2004

CHAPTER 1033

EDUCATIONAL INSTITUTIONS UNDER
UNIVERSITY-BASED RESEARCH UTILIZATION PROGRAM

H.F. 2431

AN ACT relating to educational institutions under the university-based research utilization program.

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

Section 1. Section 262B.11, subsections 1, 2, 3, and 4, Code Supplement 2003, are amended to read as follows:

1. The department of economic development shall establish and administer a university-based research utilization program for purposes of encouraging the utilization of university-based research, primarily in the area of high technology, in new or existing businesses. The program shall include the three universities under the control of the state board of regents, community colleges established under chapter 260C, and all accredited private universities located in the state. For purposes of this section, "educational institution" means a university under the control of the state board of regents, a community college established under chapter 260C, or an accredited private university located in the state.

2. A new or existing business that utilizes a technology developed by an employee at ~~a university under the control of the state board of regents~~ an educational institution may apply to the department of economic development for approval to participate in the university-based research utilization program. The department shall approve an applicant if the applicant meets all of the following criteria:

a. The applicant utilizes a technology developed by an employee at ~~a university under the control of the state board of regents~~ an educational institution, provided that the technology has received a patent after July 1, 2003. If the applicant has been in existence more than one year prior to applying, the applicant shall organize a separate company to utilize the technology. For purposes of this section, the separate company shall be considered the applicant and, if approved, the approved business.

b. The applicant develops a five-year business plan approved by the department. The plan shall include information concerning the applicant's Iowa employment goals and projected impact on the Iowa economy. The department shall only approve plans showing sufficient potential impact on Iowa employment and economic development.

c. The applicant meets a minimum-size business standard determined by the department.

d. The applicant provides annual reports to the department that include employment statistics for the applicant and the total taxable wages paid to Iowa employees and reported to the department of revenue pursuant to section 422.16.

3. A business approved under the program and the ~~university~~ employee of an educational institution responsible for the development of the technology utilized by the approved business shall be eligible for a tax credit. The credit shall be allowed against the taxes imposed in chapter 422, divisions II and III. An individual may claim a tax credit under this section of a partnership, limited liability company, S corporation, estate, or trust electing to have 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 from the partnership, limited liability company, S corporation, estate, or trust. A tax credit shall not be claimed under this subsection unless a tax credit certificate issued by the department of economic development is attached to the taxpayer's tax return for the tax year for which the tax credit is claimed. The amount of a tax credit allowed under this subsection shall equal the amount listed on a tax credit certificate issued by the department of economic development pursuant to subsection 4. A tax credit certificate shall not be transferable. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the taxpayer's tax liability for the following five years or until depleted, whichever occurs first. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit.

4. For the five tax years following the tax year in which a business is approved under the program, the department of revenue shall provide the department of economic development with information required by the department of economic development from each tax return filed by the approved business. Upon receiving the tax return-related information, the department of economic development shall do all of the following:

a. Review the information provided by the department of revenue pursuant to this subsection and the annual report submitted by the applicant pursuant to subsection 2, paragraph "d". If the department determines that the business activities of the applicant are not providing the benefits to Iowa employment and economic development projected in the applicant's approved five-year business plan, the department shall not issue tax credit certificates for that year to the applicant or ~~university~~ employee of an educational institution and shall determine any related university share to be equal to zero for that year.

b. Effective for the fiscal year beginning July 1, 2004, and for subsequent fiscal years, issue a tax credit certificate to the approved business and the ~~university~~ employee of an educational institution responsible for the development of the technology utilized by the approved business in an amount determined pursuant to subsection 5. A tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the tax credit, and other information required by the department of revenue.

c. (1) ~~Determine~~ If the educational institution at issue is a university under the control of

the state board of regents, determine the university share which is equal to the value of thirty percent of the tax liability of the approved business for purposes of making an appropriation pursuant to section 262B.12, to the university where the technology utilized by the approved business was developed. A university share shall not exceed two hundred twenty-five thousand dollars per year per technology utilized. For each technology utilized, the aggregate university share over a five-year period shall not exceed six hundred thousand dollars.

(2) The department shall maintain records for each university during each fiscal year regarding the university share each university is entitled to receive through the appropriation in section 262B.12. A university shall be entitled to receive the total university share for that particular university during the previous fiscal year.

d. For the fiscal year beginning July 1, 2004, not more than two million dollars worth of certificates shall be issued pursuant to paragraph "b". For the fiscal year beginning July 1, 2005, and every fiscal year thereafter, not more than ten million dollars worth of certificates shall be issued pursuant to paragraph "b".

Sec. 2. Section 262B.11, subsection 5, paragraph b, Code Supplement 2003, is amended to read as follows:

b. For the ~~university~~ employee of an educational institution responsible for the development of the technology utilized by the approved business, the value of the tax credit certificate shall equal ten percent of the tax liability of the approved business. If more than one employee is responsible for the development of the technology, the value equal to ten percent of the tax liability of the approved business shall be divided equally and individual tax credit certificates shall be issued to each employee responsible for the development of the technology. Each year, the total value of a certificate or certificates issued for a utilized technology shall not exceed seventy-five thousand dollars. For each technology utilized, the total aggregate value of certificates issued over a five-year period to the ~~university~~ employee of an educational institution responsible for the development of the technology shall not exceed two hundred thousand dollars.

Approved April 2, 2004

CHAPTER 1034

AUTOMATED EXTERNAL DEFIBRILLATOR GRANT PROGRAM

H.F. 2464

AN ACT providing for the establishment and funding of an automated external defibrillator grant program, and providing an effective date.

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

Section 1. NEW SECTION. 135.26 AUTOMATED EXTERNAL DEFIBRILLATOR GRANT PROGRAM.

The department shall establish and implement an automated external defibrillator grant program which provides matching funds to local boards of health, community organizations, or cities for the program after standards and requirements for the utilization of automated external defibrillator equipment, and training on the use of such equipment, are developed at the local level. The objective of the program shall be to enhance the emergency response system

in rural areas of the state where access to health care providers is often limited by providing increased access to automated external defibrillator equipment by rural emergency and community personnel. A local board of health, community organization, or city may submit an application to the department for review. The department shall establish criteria for the review and approval of grant applications by rule, and may accept gifts, grants, bequests, and other private contributions, as well as state or federal funds, for purposes of the program. The amount of a grant shall not exceed fifty percent of the cost of the automated external defibrillator equipment to be distributed to the applicant and the training program to be administered by the applicant at the local level. Each application shall include information demonstrating that the applicant will provide matching funds of fifty percent of the cost of the program. Grant recipients shall submit an annual report to the department indicating automated external defibrillator equipment usage levels, patient outcomes, and number of individuals trained.

Sec. 2. CONTINGENT EFFECTIVE DATE. This Act shall become effective upon receipt by the Iowa department of public health of federal or state funding for the establishment of an automated external defibrillator grant program. The department shall notify the Code editor when such funds are received.

Approved April 2, 2004

CHAPTER 1035

STATE GOVERNMENT EMPLOYMENT — SICK LEAVE AND VACATION INCENTIVE PROGRAM — EMPLOYEE SUPERVISION

H.F. 2497

AN ACT providing for a sick leave and vacation incentive program for state employees and providing an effective date.

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

Section 1. 2004 SICK LEAVE AND VACATION INCENTIVE PROGRAM.

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

a. "Credited service" means service under the Iowa public employees' retirement system, as service is defined in section 97B.1A, and membership service under the public safety peace officers' retirement, accident, and disability system, as defined in section 97A.1.

b. "Eligible employee" means an employee for which, but for participation in the program, the sum of the number of years of credited service and the employee's age in years as of December 31, 2004, equals or exceeds seventy-five.

c. "Employee" means an employee of the executive branch of this state, including an employee of a judicial district department of correctional services if the district elects to participate in the program, an employee of the state board of regents if the board elects to participate in the program, and an employee of the department of justice. However, "employee" does not mean an elected official.

d. "Participant" means a person who timely submits an election to participate, and does participate, in the sick leave and vacation incentive program established under this section.

e. "Program" means the sick leave and vacation incentive program established under this section.

f. "Regular annual salary" means an amount equal to the eligible employee's regular biweekly rate of pay as of the date of separation from employment multiplied by twenty-six.

g. "Sick leave and vacation incentive benefit" means an amount equal to the entire value of an eligible employee's accumulated but unused vacation plus the lesser of seventy-five percent of the value of the eligible employee's accumulated and unused sick leave or seventy-five percent of the employee's regular annual salary.

2. To become a participant in the program, an eligible employee shall do all of the following:

a. Submit by May 21, 2004, a written application, on forms prescribed by the department of administrative services, seeking participation in the program.

b. Agree to waive any and all rights to receive payments of sick leave balances under section 70A.23 and accrued vacation balances in a form other than as provided in this section.

c. Agree to waive all rights to file suit against the state of Iowa, including all of its departments, agencies, and other subdivisions, based on state or federal claims arising out of the employment relationship.

d. Acknowledge, in writing, that participation in the program waives any right to accept permanent part-time or permanent full-time employment with the state other than as an elected official on or after the date the eligible employee separates from employment as provided in this section.

e. Agree to separate from employment with the state on or after July 2, 2004, but no later than August 12, 2004.

3. a. Upon acceptance to participate in the program and separation from employment with the state on or after July 2, 2004, but no later than August 12, 2004, a participant shall receive a sick leave and vacation incentive benefit. The state shall pay to the participant a portion of the sick leave and vacation incentive benefit each fiscal year for a period of five years commencing with the fiscal year ending June 30, 2005.

b. A participant in the program shall be eligible to continue participation in the group plan or under the group contract at the participant's own expense in the same manner as a retired employee pursuant to section 509A.13. In addition, a participant shall be deemed an eligible retired state employee for purposes of eligibility for continuation of group insurance covering spouses as provided in section 509A.13A.

4. a. The department of administrative services shall administer the program, including the determination of eligibility for participation in the program, and shall adopt administrative rules to administer the program. The department may adopt rules on an emergency basis under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement this section and the rules shall be effective immediately upon filing unless a later date is specified in the rules.

b. Records of the Iowa public employees' retirement system may be released for the purposes of administering and monitoring the program subject to the requirements of section 97B.17, subsection 5.

c. The department of administrative services, in collaboration with the department of management, shall present an interim report to the general assembly, including copies to the legislative services agency and the fiscal committee of the legislative council, by October 1, 2004, concerning the operation of the program. The department shall also submit an annual update concerning the program by October 1 of each year for four years, commencing October 1, 2005. The reports shall include information concerning the number of program participants, the cost of the program including any payments made to participants, the number of state employment positions eliminated pursuant to the program, and the number of positions vacated by a program participant that have been refilled.

5. The legislative council shall provide an incentive program for employees of the legislative branch consistent with the program provided in this section for executive branch employees. The legislative council shall collaborate with the department of administrative services to establish the program as required under this subsection as nearly identical as possible to the program provided executive branch employees under this section. The program provided pursuant to this subsection shall establish the same guidelines used to establish an eligible

employee and benefit calculations as provided under the program for executive branch employees.

Sec. 2. SPAN OF CONTROL. The department of administrative services, in consultation with the department of management and after discussion and collaboration with executive branch agencies, shall pursue a goal of increasing the ratio of the number of employees per supervisor for executive branch agencies in the aggregate to twelve employees for one supervisor by December 31, 2005.

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

Approved April 2, 2004

CHAPTER 1036

ELECTRONIC AND FACSIMILE PRESCRIPTIONS

H.F. 2506

AN ACT relating to electronic and facsimile prescriptions and making penalties applicable.

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

Section 1. Section 124.101, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 13A. "Electronic prescription" means a prescription which is transmitted by a computer device in a secure manner, including computer-to-computer transmission and computer-to-facsimile transmission.

NEW SUBSECTION. 13B. "Facsimile prescription" means a prescription which is transmitted by a device which sends an exact image to the receiver.

Sec. 2. Section 124.308, subsections 1 and 3, Code 2003, are amended to read as follows:

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner or without the electronic or facsimile prescription of a practitioner in accordance with subsection 1A.

3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under chapter 155A, shall not be dispensed without a written or oral prescription of a practitioner or without an electronic or facsimile prescription in accordance with subsection 3A. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

Sec. 3. Section 124.308, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 1A. A practitioner, other than a pharmacy, or a practitioner's authorized agent may transmit an electronic prescription or facsimile prescription to a pharmacy for a schedule II controlled substance, provided that the electronic prescription complies with section 155A.27 and provided that the original signed prescription is presented to the pharma-

cist prior to the dispensing of the schedule II controlled substance. If permitted by federal law, and in accordance with federal requirements, the electronic or facsimile prescription shall serve as the original signed prescription and the practitioner shall not provide the patient or the patient's authorized representative with a signed, written prescription.

NEW SUBSECTION. 3A. A practitioner, other than a pharmacy, or the practitioner's authorized agent may transmit an electronic prescription or a facsimile prescription to a pharmacy for a schedule III, IV, or V controlled substance, provided that the prescription complies with section 155A.27, and provided that the original signed prescription is presented to the pharmacist prior to the dispensing of the controlled substance, or if the prescription is electronic, an oral prescription or a facsimile prescription is provided. If permitted by federal law, and in accordance with federal requirements, the electronic or facsimile prescription shall serve as the original signed prescription and the practitioner shall not provide the patient or the patient's authorized representative with a signed, written prescription.

Sec. 4. Section 126.2, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 8A. "Electronic prescription" means a prescription which is transmitted by a computer device in a secure manner, including computer-to-computer transmission and computer-to-facsimile transmission.

NEW SUBSECTION. 8B. "Facsimile prescription" means a prescription which is transmitted by a device which sends an exact image to the receiver.

Sec. 5. Section 126.11, subsection 3, paragraph a, unnumbered paragraph 2, Code 2003, is amended to read as follows:

Such a drug shall be dispensed only upon a written, electronic, or facsimile prescription of a practitioner licensed by law to administer the drug, or upon an oral prescription of such a practitioner which is reduced promptly to writing and filed by the pharmacist, or by refilling any such written, electronic, facsimile, or oral prescription if the refilling is authorized by the prescriber either in the original written, electronic, or facsimile prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to this paragraph while the drug is held for sale results in the drug being misbranded.

Sec. 6. Section 126.11, subsection 3, paragraph b, Code 2003, is amended to read as follows:

b. A drug dispensed by filling or refilling a written, electronic, facsimile, or oral prescription of a practitioner licensed by law to administer the drug is exempt from section 126.10, except subsection 1, subsection 9, paragraphs "b" and "c", and subsections 11 and 12, and the packaging requirements of subsections 7, 8, and 16, if the drug bears a label containing the name and address of the dispenser, the date of the prescription or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in the prescription. This exemption does not apply to a drug dispensed in the course of the conduct of the business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of paragraph "a" of this subsection.

Sec. 7. Section 126.11, subsection 3, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. All electronic or facsimile prescriptions transmitted under this section shall comply with section 155A.27.

Sec. 8. Section 147.107, subsection 2, unnumbered paragraph 3, Code Supplement 2003, is amended to read as follows:

A physician, dentist, or podiatric physician who dispenses prescription drugs, other than drug samples, pursuant to this subsection, shall offer to provide the patient with a written prescription that may be dispensed from a pharmacy of the patient's choice or offer to transmit the prescription orally, electronically, or by facsimile in accordance with section 155A.27 to a pharmacy of the patient's choice.

Sec. 9. Section 147.108, subsection 1, Code 2003, is amended to read as follows:

1. A person shall not dispense or adapt contact lenses without first receiving authorization to do so by a written, electronic, or facsimile prescription, except when authorized orally under subsection 2, from a person licensed under chapter 148, 150, 150A, or 154. The board of optometry examiners shall adopt rules relating to electronic or facsimile transmission of a prescription under this section.

Sec. 10. Section 147.109, subsection 1, Code 2003, is amended to read as follows:

1. A person shall not dispense or adapt an ophthalmic spectacle lens or lenses without first receiving authorization to do so by a written, electronic, or facsimile prescription from a person licensed under chapter 148, 150, 150A, or 154. For the purpose of this section, "ophthalmic spectacle lens" means one which has been fabricated to fill the requirements of a particular spectacle lens prescription. The board of optometry examiners shall adopt rules relating to electronic or facsimile transmission of a prescription under this section.

Sec. 11. Section 155A.3, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 15A. "Electronic order" or "electronic prescription" means an order or prescription which is transmitted by a computer device in a secure manner, including computer-to-computer transmission and computer-to-facsimile transmission.

NEW SUBSECTION. 15B. "Facsimile order" or "facsimile prescription" means an order or prescription which is transmitted by a device which sends an exact image to the receiver.

Sec. 12. Section 155A.3, subsection 31, Code 2003, is amended to read as follows:

31. "Prescription drug order" means a written, electronic, or facsimile order from a practitioner or an oral order from a practitioner or the practitioner's authorized agent who communicates the practitioner's instructions for a prescription drug or device to be dispensed.

Sec. 13. Section 155A.23, subsection 1, paragraph b, Code 2003, is amended to read as follows:

b. Forgery or alteration of a written, electronic, or facsimile prescription or of any written, electronic, or facsimile order.

Sec. 14. Section 155A.23, subsection 4, Code 2003, is amended to read as follows:

4. Make or utter any false or forged oral, written, electronic, or facsimile prescription or oral, written, electronic, or facsimile order.

Sec. 15. Section 155A.27, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

If written, ~~or~~ electronic, or facsimile shall contain:

Sec. 16. Section 155A.27, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 1A. If electronic:

a. The practitioner shall ensure that the electronic system used to transmit the electronic prescription has adequate security and system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of the prescription.

b. The practitioner shall provide verbal verification of the electronic prescription upon the request of the pharmacy.

NEW SUBSECTION. 1B. a. If facsimile, in addition to the requirements of subsection 1, shall contain all of the following:

(1) The identification number of the facsimile machine which is used to transmit the prescription.

(2) The time and date of transmission of the prescription.

(3) The name, address, telephone number, and facsimile number of the pharmacy to which the prescription is being transmitted.

b. A practitioner shall provide verbal verification of the facsimile prescription upon the request of the pharmacy.

Sec. 17. Section 155A.32, subsections 1 and 3, Code 2003, are amended to read as follows:

1. If an authorized prescriber prescribes, ~~either~~ in writing, electronically, by facsimile, or orally, a drug by its brand or trade name, the pharmacist may exercise professional judgment in the economic interest of the patient by selecting a drug product with the same generic name and demonstrated bioavailability as the one prescribed for dispensing and sale to the patient. If the cost of the prescription or any part of it will be paid by expenditure of public funds authorized under chapter 249A, the pharmacist shall exercise professional judgment by selecting a drug product with the same generic name and demonstrated bioavailability as the one prescribed for dispensing and sale. If the pharmacist exercises drug product selection, the pharmacist shall inform the patient of the savings which the patient will obtain as a result of the drug product selection and pass on to the patient no less than fifty percent of the difference in actual acquisition costs between the drug prescribed and the drug substituted.

3. If selection of a generically equivalent product is made under this section, the pharmacist making the selection shall note that fact and the name of the manufacturer of the selected drug on the prescription presented by the patient or the patient's adult representative or transmitted by the prescriber or the prescriber's authorized agent.

Approved April 2, 2004

CHAPTER 1037

CATTLE INDUSTRY PROMOTION, EDUCATION, AND RESEARCH — ASSESSMENTS ON CATTLE SALES

S.F. 2217

AN ACT relating to assessments imposed on cattle for purposes of promotion, education, and research, and providing an effective date.

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

Section 1. Section 181.1, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

181.1 DEFINITIONS.

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

1. "Association" means the Iowa beef cattle producers association.
2. "Cattle" means any live domesticated bovine animal regardless of age.
3. "Council" means the Iowa beef industry council.
4. "Federal act" means the federal Beef Promotion and Research Act of 1985, 7 U.S.C., § 2901 et seq.
5. "Federal assessment" means an excise tax on the sale of bovine animals imposed pursuant to the federal act.
6. "Producer" means any person who owns or acquires ownership of cattle. However, a person shall not be considered a producer if any of the following apply:

a. The person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

b. The person acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party; resold such cattle no later than ten days from the date on which the person acquired ownership; and certified as required by rules adopted by the council.

7. "Qualified financial institution" means a bank, credit union, or savings and loan as defined in section 12C.1.

8. "Records" means books, papers, documents, accounts, agreements, memoranda, electronic records of accounts, or correspondence relating to a matter regulated under this chapter.

9. "Secretary" means the secretary of agriculture.

10. "State assessment" means an excise tax on the sale of cattle imposed pursuant to this chapter.

Sec. 2. Section 181.2, Code 2003, is amended to read as follows:

181.2 DUTIES AND OBJECTS OF ASSOCIATION.

The Iowa beef cattle producers association shall do all of the following:

1. Aid in the promotion of the ~~beef~~ cattle industry of the state.

2. Provide for practical and scientific instruction in the breeding and raising of ~~beef~~ cattle.

3. ~~Provide for the inspection of herds, premises, appliances, methods, and feedstuffs used in the raising of beef cattle.~~

~~4.~~ Make demonstrations in the feeding of ~~beef~~ cattle and publish suggestions beneficial to such business.

~~5.~~ 4. Aid and promote ~~beef~~ cattle feeding contests, shows, and sales.

~~6. Publish a breeders' directory.~~

~~7.~~ 5. Prepare an annual report of the proceedings and expenditures of the council as provided in section 181.18B.

Sec. 3. Section 181.3, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

An ~~executive committee~~ Iowa beef industry council of the Iowa beef cattle producers association is created. The ~~executive committee~~ council consists of eight members, ~~as follows~~ including all of the following:

Sec. 4. Section 181.3, subsections 2 through 4, Code 2003, are amended to read as follows:

2. The Iowa livestock auction market association shall nominate two livestock market representatives. The secretary of agriculture shall appoint one of the nominees or another livestock market representative of the secretary's choice ~~as the livestock market representative on the executive committee~~, who shall serve at the pleasure of the secretary.

3. The ~~executive committee~~ council shall elect a chairperson, secretary, and other officers it deems necessary.

4. Except for ex officio members, vacancies in the ~~executive committee~~ council resulting from death, inability or refusal to serve, or failure to meet the qualifications of this chapter, shall be filled by the ~~executive committee~~ council. If the ~~executive committee~~ council fails to fill a vacancy, the secretary ~~of agriculture~~ shall fill it. Vacancy appointments shall be only for the remainder of the unexpired term.

Sec. 5. Section 181.4, Code 2003, is amended to read as follows:

181.4 EMPLOYEES OF ~~COMMITTEE~~ COUNCIL.

The ~~executive committee~~ council may employ two or more competent persons who shall devote their entire time, under the direction of the ~~committee~~ council, in carrying out the provisions of this chapter. The salary of persons so employed shall be set by the ~~executive committee~~ council, and the persons shall hold office at the pleasure of the ~~executive committee~~ council.

Sec. 6. Section 181.6A, Code 2003, is amended to read as follows:

181.6A ELECTION OF ~~EXECUTIVE COMMITTEE~~ COUNCIL.

1. The Iowa beef cattle producers association shall hold an annual meeting of producers. An election shall be held at the annual meeting, as necessary, for election of producers to the ~~executive committee~~ council.

2. Prior to the annual meeting, the ~~Iowa beef cattle producers~~ association shall appoint a nominating committee. At least sixty days prior to the annual meeting of the ~~Iowa beef cattle producers~~ association, the nominating committee shall nominate two producers as candidates for each position on the ~~executive committee~~ council for which an election is to be held. At least forty-five days prior to the annual meeting of the ~~Iowa beef cattle producers~~ association, additional candidates may be nominated by a written petition of fifty producers. Procedures governing the place of filing and the contents of the petition shall be promulgated and publicized by the ~~executive committee~~ council.

3. Producers attending the annual meeting of the ~~Iowa beef cattle producers~~ association may vote for one nominee for each position on the ~~executive committee~~ council for which an election is held. Producers not attending the annual meeting of the ~~Iowa beef cattle producers~~ association may vote by absentee ballot, if the ballot is requested and mailed, with proper postage, to the ~~executive committee~~ council prior to the annual meeting of the ~~Iowa beef cattle producers~~ association. For each position for which an election is held, the candidate receiving the highest number of votes shall be elected.

4. Notice of election for ~~executive committee~~ council membership shall be given by the ~~executive committee~~ council by publication in a newspaper of general circulation in the state and in any other reasonable manner as determined by the ~~executive committee~~ council, and shall set forth the date, time, and place of the annual meeting of the ~~Iowa beef cattle producers~~ association. The ~~executive committee~~ council shall administer the elections, with the assistance of the secretary ~~of agriculture~~.

Sec. 7. Section 181.7, Code 2003, is amended to read as follows:

181.7 RESEARCH AND EDUCATIONAL PROGRAMS.

The ~~executive committee~~ council shall ~~engage in~~ initiate, administer, or participate in research and education programs directed toward the better and more efficient production, ~~marketing~~ promotion, and utilization of cattle ~~and veal calves~~ and the marketing of products made ~~therefrom;~~ from cattle. The council shall provide for the methods and means that it determines are necessary to further the purposes of this section including~~,~~ but not limited to~~, public~~ any of the following:

1. Providing public relations and other promotion techniques for the maintenance of present markets~~; make~~.

2. Making donations to nonprofit organizations ~~working toward~~ furthering the purposes of this section~~; assist~~.

3. Assisting in the development of new or larger domestic markets ~~both domestic and foreign~~ for ~~cattle and veal calves and~~ products made ~~therefrom~~ from cattle.

4. Assisting in the development of new or larger foreign markets for cattle and products made from cattle.

Sec. 8. Section 181.7A, Code 2003, is amended to read as follows:

181.7A ~~COLLECTION~~ COMMENCEMENT OF FEDERAL ASSESSMENT — SUSPENSION AND RECOMMENCEMENT OF THE STATE ASSESSMENT.

1. Prior to the commencement of the collection of the federal assessment ~~pursuant to the Beef Promotion and Research Act of 1985,~~ the ~~executive committee~~ council may seek certification as a qualified state beef council within the meaning of ~~that~~ the federal Act. ~~If the executive committee does not receive certification as a qualified state beef council it shall, if necessary to prevent collection of an excise tax on beef cattle in addition to the national assessment, suspend the collection of the excise tax provided in this chapter. If the executive committee does suspend collection of the excise tax provided in this chapter, the period of that suspension terminates upon expiration of the~~

2. The council shall suspend the state assessment upon collection of the federal assessment. The state assessment shall recommence upon the earlier of the following:

a. The noncollection of the federal assessment ~~collected pursuant to the Beef Promotion and Research Act of 1985~~. The recommenced state assessment shall be imposed for a four-year period. Its effective date shall be the first date for which the federal assessment is not collected.

b. The passage of a special referendum pursuant to section 181.19 regardless of whether a federal assessment is being collected.

Sec. 9. Section 181.8, Code 2003, is amended to read as follows:

181.8 ~~EXAMINING BOOKS AND PAPERS~~ ENTERING PREMISES — EXAMINING RECORDS.

The ~~executive committee shall have power to~~ council may authorize its agents to enter at a reasonable time upon the premises of any purchaser charged by this chapter with remitting the state assessment to the ~~committee the excise tax~~ council, and to ~~cause to be examined by such agent or agents, all books,~~ examine records~~, documents~~, and other instruments ~~bearing upon~~ relating to the ~~amount~~ collection of ~~such excise tax; provided, however, that~~ the state assessment. However, the ~~executive committee~~ council must first have reasonable grounds to believe that ~~all such excise taxes have~~ the state assessment has not been remitted or fully accounted for~~, as herein provided~~.

The ~~executive committee is authorized to~~ council may enter into arrangements with persons purchasing cattle ~~and veal calves for slaughter~~ outside of ~~Iowa on the basis provided in section 181.9,~~ this state for remitting the ~~excise tax~~ state assessment by such ~~buyers~~ purchasers.

Sec. 10. NEW SECTION. 181.11 RATE OF ASSESSMENT.

A state assessment imposed as provided in this chapter shall be levied and collected from the purchaser on each sale of cattle at a rate provided in this chapter. The state assessment shall be imposed on any person selling cattle and shall be deducted by the purchaser from the price paid to the seller. The purchaser, at the time of the sale, shall make and deliver to the seller, a separate invoice for each sale showing the names and addresses of the seller and the purchaser, the number of cattle sold, and the date of sale. The purchaser shall forward the state assessment to the council at a time prescribed by the council, but not later than the last day of the month following the end of the prior reporting period in which the cattle are sold.

Sec. 11. Section 181.12, Code 2003, is amended to read as follows:

181.12 REMISSION OF ~~TAX~~ STATE ASSESSMENT ON APPLICATION.

A person from whom ~~the excise tax~~ a state assessment is collected may, by written application filed with the ~~executive committee~~ council within sixty days after its collection, have the amount remitted to the person by the ~~executive committee~~ council. The information that the ~~excise tax~~ state assessment is refundable and the address of the ~~executive committee~~ council to which application for a refund may be made shall appear on the invoice of sale form supplied by the purchaser to the producer near the area on the form which shows the amount of the ~~excise tax~~ state assessment paid. The ~~executive committee~~ council shall furnish uniform application for refund forms and envelopes properly addressed to the ~~executive committee~~ council to each purchaser charged by this chapter with remitting the ~~excise tax~~ state assessment in sufficient number to make the refund forms and envelopes readily available to all producers. A purchaser charged by this chapter with remitting the ~~excise tax~~ state assessment shall display the application for refund forms and envelopes in a prominent position in its place of business and make them readily available to all producers.

Sec. 12. Section 181.13, Code Supplement 2003, is amended to read as follows:

181.13 ADMINISTRATION OF MONEYS ORIGINATING FROM STATE ASSESSMENT — APPROPRIATION.

1. All ~~excise taxes imposed and levied~~ state assessments imposed under this chapter shall

be paid to and collected by the ~~executive committee~~ council and deposited with the treasurer of state in a separate cattle ~~and veal calf~~ promotion fund which shall be created by the treasurer of state. The department of administrative services shall transfer moneys from the fund to the ~~executive committee~~ council for deposit into an account established by the ~~executive committee~~ council in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the ~~executive committee~~ council. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open. From the moneys collected, deposited, and transferred to the ~~executive committee~~ council, in accordance with the provisions of this chapter, the ~~executive committee~~ council shall first pay the costs of referendums held pursuant to this chapter, the costs of collection of such ~~excise tax~~ state assessments, and the expenses of its agents ~~and expenses of officers provided for in section 181.5~~. Except as otherwise provided in section 181.19, at least ten percent of the remaining ~~funds~~ moneys shall be remitted to the ~~Iowa beef cattle producers~~ association in proportions determined by the ~~executive committee~~ council, for use in a manner not inconsistent with section 181.7. The remaining moneys, with approval of a majority of the ~~executive committee~~ council, shall be expended as the ~~executive committee~~ council finds necessary to carry out the provisions and purposes of this chapter. However, in no event shall the total expenses exceed the total amount transferred from the fund for use by the ~~executive committee~~ council.

2. All moneys deposited in the cattle ~~and veal calf~~ promotion fund and transferred to the ~~executive committee~~ council pursuant to this section are appropriated and shall be used for the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions set forth in this chapter.

3. If the state assessment is suspended as provided in section 181.7A or a continuance referendum fails to pass as provided in section 181.19A, moneys remaining in the cattle promotion fund and transferred to the council shall continue to be transferred and expended in accordance with the provisions of this chapter until exhausted.

Sec. 13. Section 181.15, Code 2003, is amended to read as follows:

181.15 ~~IMPOSITION FOR ADDITIONAL PERIOD~~ REFERENDUM — PROCEDURES.

Upon receiving a petition to conduct a referendum as provided in section 181.19 or 181.19A, the secretary shall conduct the referendum as follows:

1. The secretary shall provide for the publication of a notice of the referendum for a period of not less than five days in a newspaper of general circulation in the state and in such other newspapers as the secretary may prescribe. The notice of referendum shall set forth the period for voting and the voting places for the referendum and the amount of the state assessment. A referendum shall not be commenced prior to fourteen days after the last day of such period of publication.

2. Each producer upon signing a statement certifying that the person is a bona fide producer~~, as defined in this chapter,~~ shall be entitled to one vote. At the close of the referendum period, the secretary shall count and tabulate the ballots filed during the referendum period. The ballots cast in the referendum shall constitute complete and conclusive evidence for use in any determination made by the secretary under the provisions of this chapter.

3. The secretary shall tabulate the ballots to determine whether the referendum has passed. If from such tabulation the secretary ~~finds~~ determines that a majority of the total number of producers voting ~~favor~~ approves the ~~assessment~~ imposition of a state assessment, the ~~excise tax provided for in section 181.9~~ state assessment shall be ~~levied and~~ imposed ~~for an additional four years from the end of the previous taxing period~~ as provided in section 181.11 at a rate provided for in section 181.19.

4. ~~The ballots thus cast shall constitute complete and conclusive evidence for use in any finding made by the secretary under the provisions of this chapter.~~ The secretary may prescribe such additional procedures as may be necessary to conduct a referendum.

~~In the event of the failure of any referendum provided for herein to pass, a subsequent referendum may be called by the secretary upon petition therefor by at least one hundred producers~~

~~within one hundred eighty days after the secretary's determination that the prior referendum has failed. In the event of failure to make such petition within said period, or, the second consecutive failure of a referendum to pass, no further referendum shall be conducted and the levy and assessment herein created shall terminate and be of no further force or effect.~~

Sec. 14. Section 181.18B, Code 2003, is amended to read as follows:

181.18B REPORT.

~~The executive committee~~ Each year, the council shall ~~each year~~ prepare and submit a report summarizing the activities of the ~~executive committee~~ council under this chapter to the auditor of state and the secretary of agriculture. The report shall show all income, expenses, and other relevant information concerning fees collected and expended under this chapter.

Sec. 15. Section 181.19, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

181.19 INITIAL AND SPECIAL REFERENDUMS.

1. The secretary shall, upon the petition of five hundred producers, conduct an initial referendum to determine whether a state assessment is to be imposed, at a rate established by the council, of not to exceed fifty cents per head on all cattle sold for any purpose.

2. The secretary shall, upon the petition of five hundred producers, conduct a special referendum to do any of the following:

a. Determine whether a state assessment already imposed shall be increased to a rate, established by the council, not to exceed one dollar per head on all cattle sold for any purpose.

b. Determine whether a state assessment suspended pursuant to section 181.7A is to be in addition to a federal assessment. The state assessment shall be imposed at a rate of fifty cents per head on all cattle sold for whatever purpose.

3. If a referendum passes, the secretary shall establish an effective date to commence the state assessment. However, the state assessment must be commenced within ninety days from the date that the secretary determines that the referendum has passed.

4. If a special referendum to increase the rate of the state assessment does not pass, the result of the special referendum shall not affect the existence or length of the state assessment in effect on the date that the special referendum was conducted.

Sec. 16. NEW SECTION. 181.19A CONTINUANCE REFERENDUM.

1. The secretary shall, upon the petition of producers, conduct a continuance referendum to determine whether a state assessment should be renewed. The secretary must receive the petition not less than one hundred fifty and not more than two hundred forty days before the four-year anniversary of a state assessment's effective date. The petition must be signed within that period by a number of producers equal to or greater than two percent of the number of producers in this state reported in the most recent United States census of agriculture, requesting a referendum to determine whether to continue the state assessment. The referendum shall be conducted not earlier than thirty days before the four-year anniversary date of the state assessment.

2. If the secretary determines that a continuance referendum has passed, the state assessment shall continue in effect for four additional years from the anniversary of its effective date.

3. If the secretary determines that the referendum has not passed, the secretary and the council shall terminate the assessment in an orderly manner as soon as practicable after the determination. Another referendum shall not be held for at least one hundred eighty days from the date that the assessment is terminated.

4. If no valid petition for a continuance referendum is received by the secretary within the time period provided in this section, the state assessment shall continue in effect for four additional years from the anniversary of its effective date.

Sec. 17. RATE OF ASSESSMENT. If a state assessment which has been suspended as provided in section 181.7A, as amended by this Act, is recommenced as provided in that section,

as amended by this Act, the rate of the state assessment shall be fifty cents per head on all cattle sold for any purpose, unless another rate is established by referendum conducted pursuant to section 181.19, as amended by this Act.

Sec. 18. Sections 181.9, 181.10, 181.14, and 181.16, Code 2003, are repealed.

Sec. 19. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 7, 2004

CHAPTER 1038

GRAIN REGULATION

S.F. 2224

AN ACT relating to grain regulation.

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

Section 1. Section 203.1, subsection 10, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

"Grain dealer" means a person who ~~buys~~ cumulatively purchases at least one thousand bushels of grain from producers during any calendar month ~~one thousand bushels of grain or more directly from the producers of the grain~~, if such grain is delivered within or into this state for purposes of resale, milling, or processing in this state. However, "grain dealer" does not include any of the following:

Approved April 7, 2004

CHAPTER 1039

USE OF CREDIT INFORMATION — PERSONAL INSURANCE

S.F. 2257

AN ACT relating to the use of credit information for underwriting or rating risks for personal insurance and providing an applicability date.

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

Section 1. NEW SECTION. 515.109A USE OF CREDIT INFORMATION — PERSONAL INSURANCE.

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

a. "Adverse action" means a denial of issuance, cancellation, or refusal to renew, an increase in any charge for, or a reduction or other unfavorable change in the terms of coverage or amount of any personal insurance existing or applied for, or in connection with the underwriting of personal insurance.

b. "Affiliate" means any company that controls, is controlled by, or is under common control with another company.

c. "Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer.

d. "Consumer" means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for such a personal insurance policy.

e. "Consumer reporting agency" means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information concerning consumers for the purpose of furnishing consumer credit reports to third parties.

f. "Credit information" means any information related to credit that is contained in or derived from a credit report, or provided in an application for personal insurance. Information that is not related to credit shall not be considered "credit information" regardless of whether the information is contained in or derived from a credit report or an application for credit or is used to calculate an insurance score.

g. "Credit report" means any written, oral, or other communication of information by a consumer reporting agency that relates to a consumer's creditworthiness, credit standing, or credit capacity and that is used or expected to be used or is collected, in whole or in part, for the purpose of serving as a factor in determining personal insurance premiums, eligibility for personal insurance coverage, or tier placement.

h. "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of a consumer.

i. "Insured" means an individual who is covered by a personal insurance policy.

j. "Personal insurance" means personal insurance and not commercial insurance and is limited to private passenger automobile, homeowners, farm owners, personal farm liability, motorcycle, mobile home owners, noncommercial dwelling fire insurance, boat, personal watercraft, snowmobile, and recreational vehicle policies, that are individually underwritten for personal, family, farm, or household use. No other type of insurance is included as personal insurance for the purposes of this section.

2. USE OF CREDIT INFORMATION. An insurer authorized to do business in Iowa that uses credit information to underwrite or rate risks for a policy of personal insurance shall not do any of the following:

a. Use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, race, or nationality of a consumer as a factor.

b. Deny issuance, cancel, or refuse to renew a policy of personal insurance solely on the basis of credit information, without consideration of any other applicable underwriting factors independent of credit information that are not otherwise prohibited under paragraph "a".

c. Base a consumer's renewal rates for personal insurance solely on the basis of credit information, without consideration of any other applicable underwriting factors independent of credit information that are not otherwise prohibited under paragraph "a".

d. Take adverse action against a consumer solely because the consumer does not have a credit card account, without consideration of any other applicable underwriting factors independent of credit information that are not otherwise prohibited under paragraph "a".

e. Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer does one of the following:

(1) Treats the consumer as if the consumer has neutral credit information, as defined by the insurer.

(2) Excludes the use of credit information as an underwriting factor and only uses other underwriting criteria.

f. Take adverse action against a consumer based on credit information, unless the insurer obtains and uses a credit report issued or an insurance score calculated within ninety days before the date a personal insurance policy is first written or a renewal is issued.

g. Use credit information unless not later than every thirty-six months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report for the insured. Regardless of the requirements of this paragraph:

(1) At annual renewal, upon the request of the consumer or the consumer's agent, the insurer shall re-underwrite and re-rate the personal insurance policy based upon a current credit report or insurance score. An insurer is not required to recalculate an insurance score or obtain a current credit report more than once in a twelve-month period.

(2) The insurer shall have the discretion to obtain current credit information for a consumer more frequently than every thirty-six months, if consistent with the insurer's underwriting guidelines.

(3) Notwithstanding subparagraph (1), an insurer is not required to obtain current credit information for a consumer if any of the following applies:

(a) The insurer is treating the consumer as otherwise approved by the commissioner of insurance.

(b) The consumer is in the most favorably priced tier of the insurer, within a group of affiliated insurers. However, the insurer shall have the discretion to obtain current credit information, if consistent with the insurer's underwriting guidelines.

(c) Credit information was not used for underwriting or rating the insured when the personal insurance policy was initially written. However, the insurer shall have the discretion to use current credit information for underwriting or rating the insured upon renewal of the policy, if consistent with the insurer's underwriting guidelines.

(d) The insurer reevaluates the insured beginning no later than thirty-six months after the personal insurance policy was initially written and thereafter, based on other underwriting or rating factors, excluding credit information.

h. Use any of the following as a negative factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a personal insurance policy:

(1) Credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer's own credit information.

(2) Inquiries relating to insurance coverage, if so identified on a consumer's credit report.

(3) Collection accounts with a medical industry code, if so identified on a consumer's credit report.

(4) Multiple lender inquiries, if coded by a consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within thirty days of one another, unless only one inquiry is considered.

(5) Multiple lender inquiries, if coded by a consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within thirty days of one another, unless only one inquiry is considered.

3. DISPUTE RESOLUTION AND ERROR CORRECTION. If it is determined through the dispute resolution process set forth under the federal Fair Credit Reporting Act, 15 U.S.C. § 1681i(a)(5), that the credit information of a current insured is incorrect or incomplete and the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the insured within thirty days of receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with the insurer's underwriting and rating guidelines. If an insurer determines that an insured has overpaid premium on a personal insurance policy, the insurer shall refund the amount of the overpayment to the insured, calculated for either the last twelve months of coverage or the actual policy period, whichever is shorter.

4. INITIAL NOTIFICATION.

a. If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or the insurer's agent shall disclose, either on the insurance application or at the time that the insurance application is taken that the insurer may obtain credit information of the consumer in connection with the application. Such disclosure to a consumer shall either be written or provided in the same medium as the application for insurance. An insurer is not required to provide the disclosure statement required under this subsection to a consumer in connection with the renewal of a personal insurance policy if the consumer has previously been provided with such a disclosure statement.

b. An insurer that uses the following statement of disclosure shall be deemed to be in compliance with this subsection:

"In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score."

5. NOTIFICATION OF ADVERSE ACTION. If an insurer takes adverse action against a consumer based on credit information, the insurer shall do all of the following:

a. Provide notification to the consumer that adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681m(a).

b. Provide notification to the consumer explaining the reasons for the adverse action taken. Such notice shall give reasons for the adverse action taken in language that is sufficiently clear and specific so that a person can identify the basis for the insurer's decision to take adverse action. Such notification shall include a description of up to four factors that were the primary influences for the adverse action taken. The use of generalized terms such as "poor credit history", "poor credit rating", or "poor insurance score" does not meet the explanation requirements of this paragraph. Standardized credit explanations that are provided by consumer reporting agencies or other third-party vendors are deemed to comply with this paragraph.

6. INFORMATION FILED WITH THE COMMISSIONER OF INSURANCE.

a. An insurer that uses insurance scores to underwrite and rate risks for personal insurance shall file the insurer's scoring models or other scoring processes with the commissioner of insurance. A third party may file scoring models on behalf of an insurer. Information filed with the commissioner that includes insurance scoring models may include information including loss experience that justifies the insurer's use of credit information.

b. Information filed with the commissioner of insurance pursuant to this subsection shall be considered a confidential record and be recognized and protected as a trade secret pursuant to section 22.7, subsection 3.

7. INDEMNIFICATION. An insurer shall indemnify, defend, and hold harmless agents or producers of the insurer from and against all liability, fees, and costs, arising out of or relating to the actions, errors, or omissions of an agent or producer who obtains or uses credit information or insurance scores on behalf of an insurer, provided that the agent or producer follows the instructions or procedures established by the insurer and complies with any applicable law or regulation. This subsection shall not be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this subsection.

8. CONSUMER REPORTING AGENCY — SALE OF CREDIT INFORMATION.

a. A consumer reporting agency shall not provide or sell data or lists that include any information that was submitted, in whole or in part, in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. Such information includes, but is not limited to, the expiration dates of an insurance policy or any other information that can be used to identify the expiration date of a consumer's insurance policy or the terms and conditions of the consumer's insurance coverage.

b. This subsection does not apply to the provision of information, including data or lists, by a consumer reporting agency to the agent or producer from whom the information was received, to the insurer on whose behalf the agent or producer acted, or to the insurer's affiliates or holding companies.

c. This subsection shall not be construed to restrict an insurer from obtaining a claims history report or a motor vehicle report of a consumer.

9. SEVERABILITY. If any subsection, paragraph, sentence, clause, phrase, or any other part of this section is declared invalid due to an interpretation of or a future change in the federal Fair Credit Reporting Act, the remaining subsections, paragraphs, sentences, clauses, phrases, or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

10. APPLICABILITY DATE. This section applies to personal insurance contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after April 1, 2005.[1]

Approved April 7, 2004

CHAPTER 1040

INDIGENT DEFENSE — APPOINTMENT AND PAYMENT OF LEGAL COUNSEL

H.F. 2138

AN ACT relating to payment of legal expenses for indigent persons by the state public defender.

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

Section 1. Section 13B.4, subsection 2, Code Supplement 2003, is amended to read as follows:

2. The state public defender shall file a notice with the clerk of the district court in each county served by a public defender ~~a designation of which local~~ designating which public defender office shall receive notice of appointment of cases. The state public defender may also designate a nonprofit organization which contracts with the state public defender to provide legal services to eligible indigent persons.[1] Except as otherwise provided, in each county in which the state public defender files ~~such~~ a designation, the state public ~~defender or its~~ defender's designee shall be appointed by the court to represent all eligible indigents, in all of the cases and proceedings specified ~~under subsection 1~~ in the designation. The appointment shall not be made if the state public defender notifies the court that the ~~local~~ public defender designee will not provide legal representation in certain cases as identified in the designation by the state public defender.

Sec. 2. Section 13B.4, subsection 3, Code Supplement 2003, is amended to read as follows:

3. The state public defender may contract with persons admitted to practice law in this state and nonprofit organizations employing persons admitted to practice law in this state for the provision of legal services to indigent persons.

Sec. 3. Section 13B.4, subsection 4, paragraph c, subparagraph (2), subparagraph subdivision (d), Code Supplement 2003, is amended to read as follows:

(d) If ~~the appointment of~~ the claimant was ~~obtained without complying~~ appointed contrary to section 814.11, or the claimant failed to comply with section ~~814.11, subsection 6, or section~~ 815.10, subsection 5.

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[1] See chapter 1175, §341 herein

[1] See chapter 1175, §195 herein

Sec. 4. Section 13B.9, subsection 4, Code Supplement 2003, is amended to read as follows:

4. If a conflict of interest arises or if the local public defender is unable to handle a case because of a temporary overload of cases, the local public defender shall return the case to the court. If the case is returned and the state public defender has filed a successor designation, the court shall appoint the successor designee. If there is no successor designee on file, the court shall make the appointment pursuant to section 815.10. As used in this subsection, "successor designee" may include another local public defender office or a nonprofit organization that has ~~a contract with the office of the state public defender for the provision of legal services to indigent persons~~ contracted with the state public defender under section 13B.4, subsection 3.

Sec. 5. Section 815.10A, Code 2003, is amended to read as follows:

815.10A CLAIMS FOR COMPENSATION.

1. An attorney other than a public defender who has been appointed by the court under this chapter must ~~apply~~ submit a claim to the state public defender for compensation and reimbursement of expenses incurred in the representation of an indigent person.

2. Claims for compensation and reimbursement submitted by an attorney appointed after June 30, 2004, are not considered timely unless the claim is submitted to the state public defender within forty-five days of the sentencing, acquittal, or dismissal of a criminal case or the final ruling or dismissal of any other type of case.

~~2.~~ 3. An attorney shall obtain court approval prior to exceeding the fee limitations established by the state public defender pursuant to section 13B.4. An attorney may exceed the fee limitations, if good cause for exceeding the fee limitations is shown. An attorney may obtain court approval after exceeding the fee limitations, if good cause excusing the attorney's failure to seek approval prior to exceeding the fee limitations is shown. However, failure to file an application to exceed a fee limitation prior to exceeding the fee limitation does not constitute good cause. The order approving an application to exceed the fee limitations shall be effective from the date of filing the application unless the court order provides an alternative effective date. ~~Failure to timely file an application to exceed a fee limitation after exceeding the fees shall not constitute good cause.~~ The application and the court order approving the application to exceed fee limitations and any other order affecting the amount of compensation or reimbursement shall be submitted with any claim for compensation.

~~3.~~ 4. If the information is not submitted as required under this section and under the rules of the state public defender, the claim for compensation may be denied until the information is provided. Upon ~~submitting~~ receipt of the required information, the state public defender may approve reasonable and necessary compensation, as provided for in the administrative rules and the law.

Sec. 6. Section 815.11, Code Supplement 2003, is amended to read as follows:

815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

Costs incurred under chapter 229A, 665, or 822, or section 232.141, subsection 3, paragraph "c", or section 598.23A, 814.9, 814.10, 814.11, 815.4, 815.7, 815.10, or 908.11 on behalf of an indigent shall be paid from funds appropriated by the general assembly to the office of the state public defender in the department of inspections and appeals for those purposes. Costs incurred representing an indigent defendant in a contempt action, or representing an indigent juvenile in a juvenile court proceeding under chapter 600, are also payable from these funds. However, costs incurred in any administrative proceeding or in any other proceeding under chapter 598, 600, 600A, 633, or 915 or other provisions of the Code or administrative rules are not payable from these funds.

Approved April 7, 2004

CHAPTER 1041

VENUE FOR TRIAL OF SIMPLE MISDEMEANORS
— CITIES IN TWO OR MORE COUNTIES

H.F. 2149

AN ACT relating to the prosecution of certain simple misdemeanors committed in a city located in two or more counties.

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

Section 1. Section 803.3, subsection 5, Code Supplement 2003, is amended to read as follows:

5. If a simple misdemeanor is committed in a city which is located in two or more counties, venue shall be in the county in which the seat of government of the city is located. However, if the simple misdemeanor is committed in conjunction with an offense greater than a simple misdemeanor, the trial of the simple misdemeanor shall be in the county where the greater offense was committed as provided in section 803.2.

Sec. 2. Section 805.13, subsection 1, Code Supplement 2003, is amended to read as follows:

1. Traffic violations, whether or not scheduled, and all other scheduled violations may be tried before the nearest magistrate in the judicial district in which the offense is committed, or if the offense occurred in a city which is located in two counties, the violation shall be tried ~~in the county in which the seat of government of the city is located~~ as provided in section 803.3, subsection 5.

Approved April 7, 2004

CHAPTER 1042

CAMPAIGN FINANCE — COMMITTEE ORGANIZATION
OR DISSOLUTION — CONTRIBUTIONS

H.F. 2318

AN ACT relating to the filing of statements of organization or dissolution by a political or candidate's committee, and regulating campaign and other contributions.

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

Section 1. Section 68A.201, subsection 3, Code Supplement 2003, is amended to read as follows:

3. Any change in information previously submitted in a statement of organization or notice in case of dissolution of the committee shall be reported to the board ~~or commissioner~~ not more than thirty days from the date of the change or dissolution.

Sec. 2. Section 68A.201, subsection 5, Code Supplement 2003, is amended to read as follows:

5. ~~A~~ When either a committee or organization not organized as a committee under this

section ~~which~~ makes a contribution to a ~~candidate's committee or political~~ committee organized in Iowa that committee or organization shall disclose each contribution in excess of fifty dollars to the board. A committee or organization not organized as a committee under this section which is not registered and filing full disclosure reports of all financial activities with the federal election commission or another state's disclosure commission shall register and file full disclosure reports with the board pursuant to this chapter, and shall either appoint an eligible Iowa elector as committee or organization treasurer, or shall maintain all committee funds in an account in a financial institution located in Iowa. A committee which is currently filing a disclosure report in another jurisdiction shall either file a statement of organization under subsections 1 and 2 and file disclosure reports, the same as those required of committees organized only in Iowa, under section 68A.402, or shall file one copy of a verified statement with the board and a second copy with the treasurer of the committee receiving the contribution. The form shall be completed and filed at the time the contribution is made. The verified statement shall be on forms prescribed by the board and shall attest that the committee is filing reports with the federal election commission or in a jurisdiction with reporting requirements which are substantially similar to those of this chapter, and that the contribution is made from an account which does not accept contributions which would be in violation of section 68A.503. The form shall include the complete name, address, and telephone number of the contributing committee, the state or federal jurisdiction under which it is registered or operates, the identification of any parent entity or other affiliates or sponsors, its purpose, the name and address of an Iowa resident authorized to receive service of original notice and the name and address of the receiving committee, the amount of the cash or in-kind contribution, and the date the contribution was made.

Sec. 3. Section 68A.202, subsection 2, Code Supplement 2003, is amended to read as follows:

2. A political committee shall not be established to expressly advocate the nomination, election, or defeat of only one candidate for office. However, ~~except that~~ a political committee may be established to expressly advocate the passage or defeat of approval of a single judge standing for retention. A permanent organization, as defined in subsection[1] 68A.402, subsection 6, may make a one-time contribution to only one candidate for office in excess of seven hundred fifty dollars.

Sec. 4. Section 68A.301, Code Supplement 2003, is amended to read as follows:

68A.301 CAMPAIGN FUNDS.

~~As used in this division, "campaign funds" means contributions to a candidate or candidate's committee which are required by this chapter to be deposited in a separate campaign account.~~

1. A candidate's committee shall not accept contributions from, or make contributions to, any other candidate's committee including candidate's committees from other states or for federal office, unless the candidate for whom each committee is established is the same person. For purposes of this section, "contributions" does not ~~mean~~ include travel costs incurred by a candidate in attending a campaign event of another candidate and does not include the sharing of information in any format.

2. This section shall not be construed to prohibit a candidate or candidate's committee from using campaign funds or accepting contributions for tickets to meals if the candidate attends solely for the purpose of enhancing the person's candidacy or the candidacy of another person.

Sec. 5. Section 68A.303, subsection 1, paragraph a, Code Supplement 2003, is amended to read as follows:

a. Contributions to charitable organizations unless the candidate or the candidate's spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent is employed by the charitable organization and will receive a direct financial benefit from a contribution.

[1] The word "section" probably intended

Sec. 6. Section 68A.403, subsection 1, Code Supplement 2003, is amended to read as follows:

1. A report or statement required to be filed ~~by a treasurer of a political committee, a candidate, or by any other person,~~ under this chapter shall be signed by the person filing the report.

Sec. 7. Section 68A.503, subsection 4, Code Supplement 2003, is amended by striking the subsection and inserting in lieu thereof the following:

4. The prohibitions in sections[2] 1 and 2 shall not apply to an insurance company, savings and loan association, bank, credit union, or corporation engaged in any of the following activities:

a. Using its funds to encourage registration of voters and participation in the political process or to publicize public issues, but does not use any part of those contributions to expressly advocate the nomination, election, or defeat of any candidate for public office.

b. Using its funds to expressly advocate the passage or defeat of ballot issues so long as the transactions are reported as required under section 68A.402.

c. The placement of yard signs under section 68A.405, subsection 2.

Sec. 8. Section 68A.504, Code Supplement 2003, is amended to read as follows:

68A.504 PROHIBITING CONTRIBUTIONS DURING THE LEGISLATIVE SESSION.

1. A lobbyist or political committee, other than a state statutory political committee, county statutory political committee, or a national political party, shall not contribute to, act as an agent or intermediary for contributions to, or arrange for the making of monetary or in-kind contributions to the campaign of an elected state official, member of the general assembly, or candidate for state office on any day during the regular legislative session and, in the case of the governor or a gubernatorial candidate, during the thirty days following the adjournment of a regular legislative session allowed for the signing of bills. ~~This section shall not apply to the receipt of contributions by an elected state official, member of the general assembly, or other state official who has taken affirmative action to seek nomination or election to a federal elective office~~ Except as set out in subsection 2, an elected state official, member of the general assembly, or candidate for state office shall not accept a contribution as prohibited in this subsection.

~~This section shall not apply to a candidate for state office who filed nomination papers for an office for which a special election is called or held during the regular legislative session, if the candidate receives the contribution at any time during the period commencing on the date on which at least two candidates have been nominated for the office and ending on the date on which the election is held. A person who is an elected state official shall not, however, solicit contributions during a legislative session from any lobbyist or political committee, other than a state statutory political committee, county statutory political committee, or a national political party, for another candidate for a state office for which a special election is held.~~

2. The prohibition in subsection 1 shall not apply to the following:

a. The receipt of contributions by an elected state official, member of the general assembly, or candidate for state office who has taken affirmative action to seek nomination or election to a federal elective office so long as the contribution is placed in a federal campaign account.

b. The receipt of contributions by a candidate for state office who filed nomination papers for an office for which a special election is called or held during the regular legislative session, if the candidate receives the contribution during the period commencing on the date that at least two candidates have been nominated for the office and ending on the date the election is held. A person who is an elected state official shall not solicit contributions during a legislative session from any lobbyist or political committee, other than a state statutory political committee, county statutory political committee, or a national political party, for another candidate for a state office for which a special election is held.

Approved April 7, 2004

[2] See chapter 1175, §364 herein

CHAPTER 1043

FAMILY INVESTMENT PROGRAM ELIGIBILITY REQUIREMENTS

H.F. 2350

AN ACT relating to family investment program eligibility requirements involving motor vehicle equity, family investment plans, limited benefit plans, and required school attendance and including an applicability provision.

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

Section 1. Section 239B.7, subsection 8, Code 2003, is amended to read as follows:

8. MOTOR VEHICLE DISREGARD. The department shall disregard the ~~first three thousand eight hundred eighty-nine dollars in equity~~ value of ~~a~~ one motor vehicle. ~~Beginning July 1, 1997, and continuing in succeeding fiscal years, the motor vehicle equity value disregarded by the department shall be increased by the latest increase in the consumer price index for used vehicles during the previous state fiscal year. This disregard shall be applicable to each adult and to each working individual in a family who is nineteen years of age or younger.~~ The ~~amount of a motor vehicle's equity in excess of the amount of the motor vehicle disregard~~ countable equity value of any additional motor vehicle shall apply to the resource limitation established in subsection 9.

Sec. 2. Section 239B.8, subsection 1, paragraph b, Code 2003, is amended to read as follows:

b. The individual is sixteen through eighteen years of age, is not a parent, and is attending elementary or secondary school, or the equivalent level of vocational or technical school, on a full-time basis. If an individual loses exempt status under this paragraph and the individual has signed a family investment agreement, the individual shall remain subject to the terms of the agreement until the terms are completed.

Sec. 3. Section 239B.8, subsection 2, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. j. INCREMENTAL FAMILY INVESTMENT AGREEMENTS. If an individual or family has an acknowledged barrier, the individual's or family's plan for self-sufficiency may be specified in one or more incremental family investment agreements.

Sec. 4. Section 239B.9, subsection 2, paragraphs a and b, Code 2003, are amended to read as follows:

a. PARENT. If the participant responsible for the family investment agreement is a parent ~~or a specified relative~~, the limited benefit plan is applicable to the entire participant family. If the family reapplies for assistance after an ineligibility period, eligibility shall be established in the same manner as for any other new applicant.

b. NEEDY RELATIVE ~~PAYEE~~ OR INCAPACITATED STEP PARENT. 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, is a needy relative who assumes the role of parent, or is a dependent child's step parent 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.

Sec. 5. Section 299.6, unnumbered paragraph 7, Code 2003, is amended by striking the unnumbered paragraph.

Sec. 6. Section 299.6A, subsection 1, Code 2003, is amended to read as follows:

1. In lieu of a criminal proceeding under section 299.6, a county attorney may bring a civil

action against a parent, guardian, or legal or actual custodian of a child who is of compulsory attendance age, has not completed educational requirements, and is truant, if the parent, guardian, or legal or actual custodian has failed to cause the child to attend a public school, an accredited nonpublic school, or competent private instruction in the manner provided in this chapter. If the court finds that the parent, guardian, or legal or actual custodian has failed to cause the child to attend as required in this section, the court shall assess a civil penalty of not less than one hundred but not more than one thousand dollars, for each violation established. ~~However, if the court finds that the parent, guardian, or legal or actual custodian of the child has been subject to sanction under section 239B.2A as a result of the child's truancy, the court may waive the civil penalty under this section.~~

Sec. 7. Section 299.12, subsections 2 and 4, Code 2003, are amended to read as follows:

2. This section is not applicable to a child who is receiving competent private instruction in accordance with the requirements of chapter 299A. If a child is not in compliance with the attendance requirements established under section 299.1, and has not completed educational requirements through the sixth grade, and the school has used every means available to assure the child does attend, the school truancy officer shall contact the child's parent, guardian, or legal or actual custodian to participate in an attendance cooperation meeting. The parties to the attendance cooperation meeting may include the child and shall include the child's parent, guardian, or legal or actual custodian and the school truancy officer. ~~If the child is a member of a family receiving assistance under the family investment program, the department of human services shall be notified and shall make the contacts for participation in the attendance cooperation meeting in lieu of the school truancy officer. For a child who is a member of a family receiving assistance under the family investment program, the attendance cooperation meeting shall include the child's parent or specified relative whose needs are included in the child's assistance grant and a representative of the department of human services.~~ The school truancy officer ~~or the representative of the department of human services~~ contacting the participants in the attendance cooperation meeting may invite other school officials, a designee of the juvenile court, the county attorney or the county attorney's designee, or other persons deemed appropriate to participate in the attendance cooperation meeting.

4. If the parties to an attendance cooperation meeting determine that a monitor would improve compliance with the attendance cooperation agreement, the parties may designate a person to monitor the agreement. The monitor shall be a designee of the public school board or governing body of the accredited nonpublic school~~, or a designee of the department of human services, if the department made the contacts for the attendance cooperation meeting~~. The monitor may be a volunteer if the volunteer is approved by all parties to the agreement and receives a written authorization for access to confidential information and for performing monitor activities from the child's parent, guardian, or custodian. A monitor shall contact parties to the attendance cooperation agreement on a periodic basis as appropriate to monitor performance of the agreement.

Sec. 8. Section 299.12, subsection 6, Code 2003, is amended by striking the subsection.

Sec. 9. Section 299.13, Code 2003, is amended to read as follows:

299.13 CIVIL ENFORCEMENT.

A person shall not disseminate or redisseminate information shared with the person pursuant to section ~~239B.2A,~~ 299.5A~~,~~ or 299.12, unless specifically authorized to do so by section 217.30, ~~239B.2A,~~ 299.5A, or 299.12. Unless a prohibited dissemination or redissemination of information is subject to injunction or sanction under other state or federal law, an action for judicial enforcement may be brought in accordance with this section. An aggrieved person, the attorney general, or a county attorney may seek judicial enforcement of the requirements of this section in an action brought against the public school or accredited nonpublic school or any other person who has been granted access to information pursuant to section ~~239B.2A,~~ 299.5A~~,~~ or 299.12. Suits to enforce this section shall be brought in the district court for the

county in which the information was disseminated or redisseminated. Upon a finding by a preponderance of the evidence that a person has violated this section, the court shall issue an injunction punishable by civil contempt ordering the person in violation of this section to comply with the requirements of, and to refrain from any violations of section ~~239B.2A,~~ 299.5A~~,~~ or 299.12 with respect to the dissemination or redissemination of information shared with the person pursuant to section ~~239B.2A,~~ 299.5A~~,~~ or 299.12.

Sec. 10. CODE EDITOR. In codifying the provisions of this Act, the Code editor shall revise the section 299.12 headnote to eliminate the reference to the family investment program.

Sec. 11. Section 239B.2A, Code Supplement 2003, is repealed.

Sec. 12. APPLICABILITY. The provisions of this Act amending section 239B.7 are applicable during the fiscal year commencing July 1, 2004, on a date identified in administrative rule adopted for this purpose by the department of human services.

Approved April 7, 2004

CHAPTER 1044

PRACTICE OF COSMETOLOGY — MISCELLANEOUS CHANGES

H.F. 2358

AN ACT providing for technical and substantive changes relating to the practice of cosmetology, establishing penalties, and making penalties applicable.

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

Section 1. Section 157.1, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 1A. "Certified laser product" means a product which is certified by a manufacturer pursuant to the requirements of 21 C.F.R. pt. 1040 and as specified by rule.

NEW SUBSECTION. 1B. "Chemical exfoliation" means the removal of surface epidermal cells of the skin by using only nonmedical strength cosmetic preparations consistent with labeled instructions and as specified by rule.

Sec. 2. Section 157.1, subsection 3, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

3. "Cosmetology" means all of the following practices:

a. Arranging, braiding, dressing, curling, waving, press and curl hair straightening, shampooing, cutting, singeing, bleaching, coloring, or similar works, upon the hair of any person; or upon a wig or hairpiece when done in conjunction with haircutting or hairstyling by any means.

b. Massaging, cleansing, stimulating, exercising, or beautifying the superficial epidermis of the scalp, face, neck, arms, hands, legs, feet, or upper body of any person with the hands or mechanical or electrical apparatus or appliances or with the use of cosmetic preparations, including cleansers, toners, moisturizers, or masques.

c. Removing superfluous hair from the face or body of a person with the use of depilatories, wax, sugars, or tweezing.

d. Applying makeup or eyelashes, tinting of lashes or brows, or lightening of hair on the face or body.

e. Cleansing, shaping, or polishing the fingernails, applying sculptured nails, nail extensions, wraps, overlays, nail art, or any other nail technique to the fingernails or toenails of a person.

Sec. 3. Section 157.1, subsection 4, Code 2003, is amended to read as follows:

4. "Cosmetology arts and sciences" means any or all of the following ~~practices~~ disciplines, performed with or without compensation by a licensee:

a. Cosmetology.

b. Electrology.

c. Esthetics.

d. Nail technology.

e. Manicuring.

Sec. 4. Section 157.1, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. "Depilatory" means an agent used for the temporary removal of superfluous hair by dissolving it at the epidermal surface.

Sec. 5. Section 157.1, subsection 9, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

9. "Esthetics" means the following:

a. Beautifying, massaging, cleansing, stimulating, or hydrating the skin of a person, except the scalp, by the use of cosmetic preparations, including cleansers, antiseptics, tonics, lotions, creams, exfoliants, masques, and essential oils, to be applied with the hands or any device, electrical or otherwise, designed for the nonmedical care of the skin.

b. Applying makeup or eyelashes to a person, tinting eyelashes or eyebrows, or lightening hair on the body except the scalp.

c. Removing superfluous hair from the body of a person by the use of depilatories, waxing, sugaring, tweezers, or use of any certified laser products. This excludes the practice of electrology, whereby hair is removed with an electric needle.

d. The application of permanent makeup or cosmetic micropigmentation.

Sec. 6. Section 157.1, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 9A. "Exfoliation" means the process whereby the superficial epidermal cells are removed from the skin.

NEW SUBSECTION. 9B. "General supervision" means the supervising physician is not onsite for laser procedures conducted on minors, but is available for direct communication, either in person or by telephone, radio, radiotelephone, television, or similar means.

NEW SUBSECTION. 10A. "Laser" means light amplification by the stimulated emission of radiation.

NEW SUBSECTION. 12A. "Mechanical exfoliation" means the physical removal of surface epidermal cells by means that include but are not limited to brushing machines, granulated scrubs, peel-off masques, peeling creams or drying preparations that are rubbed off, and microdermabrasion.

NEW SUBSECTION. 12B. "Microdermabrasion" means mechanical exfoliation using an abrasive material or apparatus to remove surface epidermal cells with a machine which is specified by rule.

NEW SUBSECTION. 12C. "Minor" means an unmarried person who is under the age of eighteen years.

NEW SUBSECTION. 14A. "Physician" means a person licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

Sec. 7. Section 157.2, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 3. Persons licensed under this chapter shall not administer any practice of removing the skin by means of a razor-edged instrument.

NEW SUBSECTION. 4. With the exception of hair removal, manicuring, and nail technology services, persons licensed under this chapter shall not administer any procedure in which human tissue is cut, shaped, vaporized, or otherwise structurally altered.

Sec. 8. NEW SECTION. 157.3A LICENSE REQUIREMENTS — ADDITIONAL TRAINING.

In addition to the license requirements of section 157.3, as provided in this section, a written application and proof of additional training and certification shall be required prior to approval by the board for the provision of the services described in this section.

1. a. A licensed esthetician, who intends to provide services pursuant to section 157.1, subsection 9, paragraphs "a" and "c", having received additional training on the use of microdermabrasion or a certified laser product shall submit a written application and proof of additional training and certification for approval by the board. Training shall be specific to the service provided or certified laser product used.

b. A licensed esthetician who applies permanent makeup or cosmetic micropigmentation shall comply with the provisions of section 135.37 and applicable rules.

c. Extractions shall be administered only by a licensed esthetician who has been trained in extraction procedures.

d. Chemical peels shall be administered only by a licensed esthetician who has been certified by the manufacturer of the product being used.

2. a. A licensed cosmetologist having received additional training in the use of chemical peels, microdermabrasion, or a certified laser product shall submit a written application and proof of additional training and certification for approval by the board. A cosmetologist who is licensed after July 1, 2005, shall not be eligible to provide chemical peels, practice microdermabrasion procedures, or use certified laser products.

b. A licensed cosmetologist who applies permanent makeup or cosmetic micropigmentation shall comply with the provisions of section 135.37 and applicable rules.

3. A licensed electrologist having received additional training on the use of a certified laser product for the purpose of hair removal shall submit a written application and proof of additional training and certification for approval by the board.

4. Any additional training received by a licensed esthetician, cosmetologist, or electrologist and submitted to the board relating to utilization of a certified laser product shall include a safety training component which provides a thorough understanding of the procedures being performed. The training program shall address fundamentals of nonbeam hazards, management and employee responsibilities relating to control measures, and regulatory requirements.

5. A certified laser product shall only be used on surface epidermal layers of the skin except for hair removal.

Sec. 9. NEW SECTION. 157.5 CONSENT AND REPORTING REQUIREMENTS.

1. A licensed cosmetologist, esthetician, or electrologist who provides services relating to the use of a certified laser product, chemical peel, or microdermabrasion, shall obtain a consent in writing prior to the administration of the services. A consent in writing shall create a presumption that informed consent was given if the consent:

a. Sets forth in general terms the nature and purpose of the procedure or procedures, together with the known risks associated with the procedure or procedures, if reasonably determinable.

b. Acknowledges that the disclosure of that information has been made and that all questions asked about the procedure or procedures have been answered in a satisfactory manner.

c. Is signed by the client for whom the procedure is to be performed, or if the client for any reason lacks legal capacity to consent, is signed by a person who has legal authority to consent on behalf of that client in those circumstances.

2. A licensed cosmetologist, esthetician, or electrologist who provides services related to the use of a certified laser product, chemical peel, or microdermabrasion, shall submit a report to

the board within thirty days of any incident involving the provision of such services which results in physical injury requiring medical attention. Failure to comply with this section shall result in disciplinary action being taken by the board.

Sec. 10. Section 157.8, subsection 1, Code 2003, is amended to read as follows:

1. It is unlawful for a school of cosmetology arts and sciences to operate unless the owner has obtained a license issued by the department. The owner shall file a verified application with the department on forms prescribed by the board. The application for a license for a school shall be accompanied by the annual license fee determined pursuant to section 147.80 and shall state the name and location of the school and such other additional information as the board may require. The license is valid for one year and may be renewed. A license for a school of cosmetology arts and sciences shall not be issued for any space in any location where the same space is also licensed as a barber school. The school of cosmetology arts and sciences must pass a sanitary inspection under section 157.6. An annual inspection of each school of cosmetology arts and sciences, including the educational activities of each school, shall be conducted and completed by the board or its designee prior to renewal of the license.

Sec. 11. NEW SECTION. 157.12A USE OF LASER PRODUCTS ON MINORS.

A laser hair removal product or device shall not be used on a minor unless the minor is accompanied by a parent or guardian and only under the general supervision of a physician.

Sec. 12. Section 157.13, subsection 1, Code 2003, is amended to read as follows:

1. It is unlawful for a person to employ an individual to practice cosmetology arts and sciences unless that individual is licensed or has obtained a temporary permit under this chapter. It is unlawful for a licensee to practice with or without compensation in any place other than a licensed salon, a licensed school of cosmetology arts and sciences, or a licensed barbershop as defined in section 158.1, except that a licensee may practice at a location which is not a licensed salon or school of cosmetology arts and sciences under extenuating circumstances arising from physical or mental disability or death of a customer. It is unlawful for a licensee to claim to be a licensed barber, but it is lawful for a licensed cosmetologist to work in a licensed barbershop. It is unlawful for a person to employ a licensed cosmetologist, esthetician, or electrologist to perform the services described in section 157.3A if the licensee has not received the additional training and met the other requirements specified in section 157.3A.

Sec. 13. Section 157.13, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 3. If the board has reasonable grounds to believe that a person or establishment which is not licensed under this chapter has engaged, or is about to engage, in an act or practice which requires licensure under this chapter, or otherwise violates a provision of this chapter, the board may issue an order to require the unlicensed person or establishment to comply with the provisions of this chapter, and may impose a civil penalty not to exceed one thousand dollars for each violation of this chapter by an unlicensed person or establishment. Each day of a continued violation after an order or citation by the board constitutes a separate offense, with the maximum penalty not to exceed ten thousand dollars.

a. In determining the amount of a civil penalty, the board may consider the following:

(1) Whether the amount imposed will be a substantial economic deterrent to the violation.

(2) The circumstances leading to or resulting in the violation.

(3) The severity of the violation and the risk of harm to the public.

(4) The economic benefits gained by the violator as a result of noncompliance.

(5) The welfare or best interest of the public.

b. The board may conduct an investigation as needed to determine whether probable cause exists to initiate the proceedings described in this subsection. Before issuing an order or citation under this section, the board shall provide written notice and the opportunity to request a hearing on the record. The hearing must be requested within thirty days of the issuance of the notice and shall be conducted as provided in chapter 17A. The board may, in connection

with a proceeding under this section, issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence and may request the attorney general to bring an action to enforce the subpoena.

c. A person aggrieved by the imposition of a civil penalty under this section may seek judicial review in accordance with section 17A.19. The board shall notify the attorney general of the failure to pay a civil penalty within thirty days after entry of an order pursuant to this subsection, or within ten days following final judgment in favor of the board if an order has been stayed pending appeal. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs. An action to enforce an order under this subsection may be joined with an action for an injunction.

Approved April 7, 2004

CHAPTER 1045

ATHLETIC TRAINING — LICENSURE REQUIREMENTS

H.F. 2452

AN ACT providing for licensure requirements relating to the practice of athletic training and increasing a penalty.

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

Section 1. Section 147.2, unnumbered paragraph 1, Code 2003, 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, massage therapy, mortuary science, athletic training, or acupuncture, 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 147.74, subsection 20, Code Supplement 2003, is amended to read as follows:

20. An athletic trainer licensed under chapter 152D and this chapter may use the ~~title~~ words "licensed athletic trainer" or the letters "LAT" after the person's name.

Sec. 3. Section 152D.1, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

152D.1 DEFINITIONS.

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

1. "Athlete" means a person who participates in a sanctioned amateur or professional sport or other recreational sports activity.

2. "Athletic injury" means any of the following:

a. An injury or illness sustained by an athlete as a result of the athlete's participation in sports, games, or recreational sports activities.

b. An injury or illness that impedes or prevents an athlete from participating in sports, games, or recreational sports activities.

3. "Athletic trainer" means a person licensed under this chapter to practice athletic training under the direction of a licensed physician.

4. "Athletic training" means the practice of prevention, recognition, assessment, physical evaluation, management, treatment, disposition, and physical reconditioning of athletic injuries that are within the professional preparation and education of a licensed athletic trainer and under the direction of a licensed physician. The term "athletic training" includes the organization and administration of educational programs and athletic facilities, and the education and counseling of the public on matters relating to athletic training.

5. "Board" means the board of examiners for athletic training created under chapter 147.

Sec. 4. Section 152D.3, Code 2003, is amended to read as follows:

152D.3 ~~QUALIFICATIONS — PROCEDURES~~ REQUIREMENTS FOR LICENSURE.

1. An applicant for ~~an athletic trainer license must possess the following qualifications~~ a license to practice athletic training shall:

a. ~~Graduation from~~ Be a graduate of an accredited college or university and ~~compliance~~ comply with the minimum athletic training curriculum requirements established by the board.

b. ~~Successful completion of~~ Have successfully completed an examination prepared or selected by the board.

~~2. An out-of-state applicant for an athletic trainer license must fulfill the requirements of subsection 1, paragraphs "a" and "b", and submit proof of active engagement as an athletic trainer in the other state.~~

~~3.~~ 2. Application and renewal procedures, fees, and reciprocal agreements shall be provided in accordance with ~~this chapter~~ rules adopted by the board pursuant to chapter 17A.

Sec. 5. Section 152D.4, subsection 1, Code 2003, is amended to read as follows:

1. Persons otherwise licensed to practice medicine and surgery, osteopathy, osteopathic medicine and surgery, optometry, occupational therapy, nursing, chiropractic, podiatry, dentistry, or physical therapy, or a licensed physician assistant who do[1] not represent themselves to the public as athletic trainers.

Sec. 6. Section 152D.4, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4. An athletic trainer who is in this state temporarily with an individual or group that is participating in an athletic event and who is licensed, certified, or registered by another state or country, or certified as an athletic trainer by the board of certification of the national athletic trainers association or its successor organization.

Sec. 7. Section 152D.5, subsection 3, Code 2003, is amended to read as follows:

3. Prepare and conduct, or prescribe, an examination for applicants for a license.

Sec. 8. NEW SECTION. 152D.7 PRACTICE OR USE OF TITLE — LICENSE REQUIRED.

1. An individual licensed pursuant to this chapter shall be designated a licensed athletic trainer and may use the letters "LAT" after the individual's name.

2. It is unlawful for a person to engage in the practice of athletic training, or use in connection with the person's name the title "athletic trainer", "licensed athletic trainer", "registered athletic trainer", the letters "AT", "AT,C", "LAT", "ATC/L", or "ATC-L", or other words, abbreviations, or insignia that imply or represent that the person practices athletic training, unless the person is licensed pursuant to this chapter.

3. The practice of physical reconditioning shall be carried out under the oral or written orders of a physician or physician assistant. A physician or physician assistant who issues an oral order must reduce the order to writing and provide a copy of the order to the athletic trainer within thirty days of the oral order.

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[1] According to enrolled Act

Sec. 9. Section 152D.8, Code 2003, is amended to read as follows:

152D.8 PENALTY.

A person who violates a provision of this chapter is guilty of a ~~simple~~ serious misdemeanor.

Sec. 10. NEW SECTION. 152D.9 TRANSITION PROVISIONS.

1. Applicants for licensure under this chapter who have not passed a licensure examination administered or approved by the board by July 1, 2004, shall be issued a temporary license to practice athletic training for a period of three years, commencing on July 1, 2004, provided that the applicant satisfies all of the following requirements:

a. Submits a letter of recommendation to the board from the applicant's most recent employer.

b. Submits letters of recommendation to the board from two licensed physicians attesting to the competency of the applicant.

c. Presents satisfactory evidence to the board that the applicant possesses current cardiopulmonary resuscitation and first aid certification.

d. Presents satisfactory evidence to the board demonstrating that the applicant possesses a baccalaureate degree from an accredited college or university.

2. An applicant issued a temporary license pursuant to this section shall pass a licensure examination administered or approved by the board on or before July 1, 2007, in order to remain licensed as an athletic trainer.

Sec. 11. Section 152D.2, Code 2003, is repealed.

Approved April 7, 2004

CHAPTER 1046

GOVERNMENT PURCHASING PROCEDURES —
IOWA-BASED PRODUCTS AND SERVICES

H.F. 2520

AN ACT relating to purchasing preferences for Iowa-based products and services.

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

Section 1. Section 73.1, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. All requests for proposals for materials, products, supplies, provisions, and other needed articles and services to be purchased at public expense shall not knowingly be written in such a way as to exclude an Iowa-based company capable of filling the needs of the purchasing entity from submitting a responsive proposal.

Approved April 7, 2004

CHAPTER 1047

STATE BOARD OF REGENTS —
APPOINTMENT OF STUDENT MEMBER

S.F. 2174

AN ACT relating to the appointment of the ninth member of the state board of regents.

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

Section 1. Section 262.2, Code 2003, is amended to read as follows:

262.2 APPOINTMENT — TERM OF OFFICE.

The members shall be appointed by the governor subject to confirmation by the senate. Prior to appointing the ninth member as specified in section 262.1, the governor shall consult with the appropriate student body government at the institution at which the proposed appointee is enrolled. The term of each member of the board shall be for six years, unless the ninth member, appointed in accordance with section 262.1, graduates or is no longer enrolled at an institution of higher education under the board's control, at which time the term of the ninth member shall expire one year from the date on which the member graduates or is no longer enrolled in an institution of higher education under the board's control. However, if within that year the ninth member reenrolls in any institution of higher education under the board's control on a full-time basis and is a student in good standing at either the graduate or undergraduate level, the term of the ninth member shall continue in effect. The terms of three members of the board shall begin and expire in each odd-numbered year as provided in section 69.19.

Approved April 8, 2004

CHAPTER 1048

MUNICIPAL UTILITIES AND TELECOMMUNICATIONS SERVICES

S.F. 2244

AN ACT relating to municipal utilities that provide telecommunications services, including the examination and confidentiality of certain accounting records.

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

Section 1. Section 11.6, subsection 1, paragraph a, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The financial condition and transactions of all cities and city offices, counties, county hospitals organized under chapters 347 and 347A, memorial hospitals organized under chapter 37, entities organized under chapter 28E having gross receipts in excess of one hundred thousand dollars in a fiscal year, merged areas, area education agencies, and all school offices in school districts, shall be examined at least once each year, except that cities having a population of seven hundred or more but less than two thousand shall be examined at least once every four years, and cities having a population of less than seven hundred may be examined as otherwise provided in this section. The examination shall cover the fiscal year next preceding the year in which the audit is conducted. The examination of school offices shall include an audit of all school funds, the certified annual financial report, and the certified enrollment as provided

in section 257.6. Differences in certified enrollment shall be reported to the department of management. The examination of a city that owns or operates a municipal utility providing telecommunications services pursuant to section 388.10 shall include an audit of the city's compliance with section 388.10.

Sec. 2. Section 388.10, Code 2003, is amended to read as follows:

388.10 MUNICIPAL UTILITY PROVIDING ~~LOCAL EXCHANGE~~ TELECOMMUNICATIONS SERVICES.

1. a. A city that owns or operates a municipal utility providing ~~local exchange~~ telecommunications services ~~pursuant to chapter 476~~ or ~~the~~ such a municipal utility shall not do, directly or indirectly, any of the following:

(1) Use general fund moneys for the ongoing support or subsidy of a telecommunications system.

(2) Provide any city facilities, equipment, or services to provide telecommunications systems or services at a cost for such facilities, equipment, or services which is less than the reasonable cost of providing such city facilities, equipment, or services.

(3) Provide any other city service, other than a communications service, to a telecommunications customer at a cost which is less than would be paid by the same person receiving such other city service if the person was not a telecommunications customer.

(4) Use funds or revenue generated from electric, gas, water, sewage, or garbage services provided by the city for the ongoing support of ~~that portion of a system or service used to provide local exchange services~~ any city telecommunications system.

b. For purposes of this section~~, "telecommunications~~:

(1) "Telecommunications system" means ~~only that portion of~~ a system ~~or facilities which is used to provide local exchange~~ that provides telecommunications services.

(2) "Telecommunications services" means the retail provision of any of the following services:

(a) Local exchange telephone services.

(b) Long distance telephone services.

(c) Internet access services.

(d) Cable television services.

2. A city that owns or operates a municipal utility providing ~~local exchange~~ telecommunications services ~~pursuant to chapter 476~~ or ~~the~~ such a municipal utility shall do the following:

a. Prepare and maintain records which record the full cost accounting of providing ~~local exchange service~~ telecommunications services. The records shall show the amount and source of capital for initial construction or acquisition of the ~~local exchange~~ telecommunications system or facilities. The records shall be public records subject to the requirements of chapter 22. Information in the records that is not subject to examination or copying as provided in section 388.9, subsection 2, may be expunged from the records prior to public disclosure. This section shall not prohibit a municipal utility from utilizing capital from any lawful source, provided that the reasonable cost of such capital is accounted for as a cost of providing the service. In accounting for the cost of use of any city employees, facilities, equipment, or services, a city or municipal utility may make a reasonable allocation of the cost of use of any city employees, facilities, equipment, or services used by the municipal utility based upon reasonable criteria for the distribution of the cost of use in any manner which is not inconsistent with generally accepted accounting principles.

b. Adopt rates for the provision of ~~local exchange~~ telecommunications services that reflect the actual cost of providing the ~~local exchange service~~ telecommunications services. However, this paragraph shall not prohibit the municipal utility from establishing market-based prices for competitive ~~local exchange~~ telecommunications services.

c. Be subject to all requirements of the city which would apply to any other provider of ~~local exchange~~ telecommunications services in the same manner as such requirements would apply to such other provider. For purposes of cable television services, a city that is in compliance with section 364.3, subsection 7, shall be considered in compliance with this paragraph.

d. Make an annual certification of compliance with this section. For any year in which the city or municipal utility is not audited in accordance with section 11.6, the city or municipal utility shall contract with or employ the auditor of state or a certified public accountant certified in the state of Iowa to attest to the certification. The attestation report shall be a public record for purposes of chapter 22.

3. This section shall not prohibit the marketing or bundling of other products or services, in addition to ~~local exchange~~ telecommunications services. However, a city shall include on a billing statement sent to a person receiving services from the city, a separate charge for each service provided to the person. This subsection does not prohibit the city from also including on the billing statement a total amount to be paid by the person.

4. This section shall not apply to telecommunications services provided directly by a municipal airport.

Sec. 3. VALIDITY OF ACTIONS. Except for an action that violates section 364.3, subsection 7, actions taken prior to July 1, 2004, by a city or municipal utility regarding the provision of cable, internet, or long distance service including financing are deemed valid.

Approved April 8, 2004

CHAPTER 1049

REVISED IOWA NONPROFIT CORPORATION ACT

S.F. 2274

AN ACT relating to the revised Iowa nonprofit corporation Act and providing penalties and effective and applicability dates.

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

SUBCHAPTER I
GENERAL PROVISIONS
PART 1
SHORT TITLE AND APPLICATIONS

Section 1. NEW SECTION. 504.101A SHORT TITLE.

This chapter shall be known and may be cited as the "Revised Iowa Nonprofit Corporation Act".

Sec. 2. NEW SECTION. 504.101B RESERVATION OF POWER TO AMEND OR REPEAL.

The general assembly has power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

PART 2
FILING DOCUMENTS

Sec. 3. NEW SECTION. 504.111 FILING REQUIREMENTS.

1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

2. This chapter must require or permit filing the document in the office of the secretary of state.

3. The document must contain the information required by this subchapter. It may contain other information as well.

4. The document must be typewritten or printed. If the document is electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

5. The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

6. The document must be executed by one of the following:

a. The presiding officer of the board of directors of a domestic or foreign corporation, its president, or by another of its officers.

b. If directors have not been selected or the corporation has not been formed, by an incorporator.

c. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

7. The person executing a document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the person signs. The document may contain a corporate seal, an attestation, an acknowledgment, or a verification.

8. If the secretary of state has prescribed a mandatory form for a document under section 504.112, the document must be in or on the prescribed form.

9. The document must be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one exact or conformed copy to be delivered with the document, except as provided in sections 504.503 and 504.1509.

10. When the document is delivered to the office of the secretary of state for filing, the correct filing fee, and any franchise tax, license fee, or penalty, shall be paid in a manner permitted by the secretary of state.

11. The secretary of state may adopt rules for the electronic filing of documents and the certification of electronically filed documents.

Sec. 4. NEW SECTION. 504.112 FORMS.

1. The secretary of state may prescribe and furnish on request, forms for an application for a certificate of existence, a foreign corporation's application for a certificate of authority to transact business in this state, a foreign corporation's application for a certificate of withdrawal, and the biennial report. If the secretary of state so requires, use of these forms is mandatory.

2. The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

Sec. 5. NEW SECTION. 504.113 FILING, SERVICE, AND COPYING FEES.

1. The secretary of state shall collect the following fees, as provided by the secretary of state, when the documents described in this subsection are delivered for filing:

DOCUMENT	FEE
a. Articles of incorporation	$_____[1]
b. Application for use of indistinguishable name	$_____
c. Application for reserved name	$_____
d. Notice of transfer of reserved name	$_____
e. Application for registered name	$_____
f. Application for renewal of registered name	$_____

[1] Enrolled Act did not include any fee amounts where a blank line is indicated

g. Corporation's statement of change of registered agent or registered office or both ..... $_____
h. Agent's statement of change of registered office for each affected corporation not to exceed a total of _____ ..... $_____
i. Agent's statement of resignation ..... no fee
j. Amendment of articles of incorporation ..... $_____
k. Restatement of articles of incorporation with amendments ..... $_____
l. Articles of merger ..... $_____
m. Articles of dissolution ..... $_____
n. Articles of revocation of dissolution ..... $_____
o. Certificate of administrative dissolution ..... $_____
p. Application for reinstatement following administrative dissolution ..... $_____
q. Certificate of reinstatement ..... no fee
r. Certificate of judicial dissolution ..... no fee
s. Application for certificate of authority ..... $_____
t. Application for amended certificate of authority ..... $_____
u. Application for certificate of withdrawal ..... $_____
v. Certificate of revocation of authority to transact business ..... no fee
w. Biennial report ..... $_____
x. Articles of correction ..... $_____
y. Application for certificate of existence or authorization ..... $_____
z. Any other document required or permitted to be filed by this Act ..... $_____

2. The secretary of state shall collect a fee upon being served with process under this chapter. The party to a proceeding causing service of process is entitled to recover the fee paid the secretary of state 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 corporation.

Sec. 6. NEW SECTION. 504.114 EFFECTIVE DATE OF DOCUMENT.

1. Except as provided in subsection 2 and section 504.115, a document is effective at the later of the following times:

a. At the date and time of filing, as evidenced by such means as the secretary of state may use for the purpose of recording the date and time of filing.

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 filed.

Sec. 7. NEW SECTION. 504.115 CORRECTING FILED DOCUMENT.

1. A domestic or foreign corporation may correct a document filed by the secretary of state if the document satisfies one of the following:

a. The document contains an inaccuracy.

b. The document was defectively executed, attested, sealed, verified, or acknowledged.

c. The electronic transmission was defective.

2. A document is corrected by doing both of the following:

a. By preparing articles of correction that satisfy all of the following requirements:

(1) Describe the document, including its filing date, or attaching a copy of the document to the articles.

(2) Specify the inaccuracy or defect to be corrected.

(3) Correct the incorrect statement or defective execution.

b. By delivering the articles of correction to the secretary of state for filing.

3. Articles of correction 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, articles of correction are effective when filed.

Sec. 8. NEW SECTION. 504.116 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 504.111, the secretary of state shall file it.

2. The secretary of state files a document by recording the document as filed on the date and the time of receipt. After filing a document, except as provided in sections 504.504, 504.1510, and 504.1613, the secretary of state shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

3. Upon refusing to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative, together with a brief, written explanation of the reason or reasons for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusal to file a document does not do any of the following:

a. Affect the validity or invalidity of the document in whole or in 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. 9. NEW SECTION. 504.117 APPEAL FROM SECRETARY OF STATE'S REFUSAL TO FILE DOCUMENT.

1. If the secretary of state refuses to file a document delivered for filing to the secretary of state's office, the domestic or foreign corporation may appeal the refusal to the district court in the county where the corporation's principal office, or if there is none in this state, 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. 10. NEW SECTION. 504.118 EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT.

A certificate from the secretary of state delivered with a copy of a document filed by the secretary of state is conclusive evidence that the original document is on file with the secretary of state.

Sec. 11. NEW SECTION. 504.119 CERTIFICATE OF EXISTENCE.

1. Any person may apply to the secretary of state to furnish a certificate of existence for a domestic or foreign corporation.

2. The certificate of existence shall set forth all of the following:

a. The domestic corporation's corporate name or the foreign corporation's corporate name used in this state.

b. That the domestic corporation is duly incorporated under the laws of this state, the date of its incorporation, and the period of its duration if less than perpetual; or that the foreign corporation is authorized to transact business in this state.

c. That all fees have been paid.

d. That its most recent biennial report required by section 504.1613 has been delivered to the secretary of state.

e. That articles of dissolution have not been filed.

f. Other facts of record in the office of the secretary of state that may be requested by the applicant.

3. Subject to any qualification stated in the certificate, a certificate of existence issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this state.

Sec. 12. NEW SECTION. 504.120 PENALTY FOR SIGNING FALSE DOCUMENT.

1. A person commits an offense by signing 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.

PART 3
SECRETARY OF STATE

Sec. 13. NEW SECTION. 504.131 POWERS.

The secretary of state has all powers reasonably necessary to perform the duties required of the secretary of state's office by this chapter.

PART 4
DEFINITIONS

Sec. 14. NEW SECTION. 504.141 CHAPTER DEFINITIONS.

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

1. "Approved by the members" or "approval by the members" means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present which affirmative votes also constitute a majority of the required quorum or by a written ballot or written consent in conformity with this chapter or by the affirmative vote, written ballot, or written consent of such greater proportion, including the votes of all the members of any class, unit, or grouping as may be provided in the articles, bylaws, or this chapter for any specified member action.

2. "Articles of incorporation" or "articles" includes amended and restated articles of incorporation and articles of merger.

3. "Board" or "board of directors" means the board of directors of a corporation except that no person or group of persons are[2] the board of directors because of powers delegated to that person or group pursuant to section 504.801.

4. "Bylaws" means the code or codes of rules other than the articles adopted pursuant to this chapter for the regulation or management of the affairs of a corporation irrespective of the name or names by which such rules are designated.

5. "Class" means a group of memberships which have the same rights with respect to voting, dissolution, redemption, and transfer. For purposes of this section, rights shall be considered the same if they are determined by a formula applied uniformly.

6. "Corporation" means a public benefit, mutual benefit, or religious corporation.

7. "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

8. "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery in person, by mail, commercial delivery, and electronic transmission.

9. "Directors" means individuals, designated in the articles or bylaws or elected by the incorporators, and their successors and individuals elected or appointed by any other name or title to act as members of the board.

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[2] The word "is" probably intended

10. "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

11. "Domestic corporation" means a corporation.

12. "Effective date of notice" is defined in section 504.142.

13. "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

14. "Employee" does not include an officer or director of a corporation who is not otherwise employed by the corporation.

15. "Entity" includes a corporation and foreign corporation; business corporation and foreign business corporation; limited liability company and foreign limited liability company; profit and nonprofit unincorporated association; corporation sole; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, the United States, and foreign government.

16. "File", "filed", or "filing" means filed in the office of the secretary of state.

17. "Foreign corporation" means a corporation organized under laws other than the laws of this state which would be a nonprofit corporation if formed under the laws of this state.

18. "Governmental subdivision" includes an authority, county, district, and municipality.

19. "Includes" denotes a partial definition.

20. "Individual" includes the estate of an incompetent individual.

21. "Means" denotes a complete definition.

22. "Member" means a person who on more than one occasion, pursuant to the provisions of a corporation's articles or bylaws, has a right to vote for the election of a director or directors of a corporation, irrespective of how a member is defined in the articles or bylaws of the corporation. A person is not a member because of any of the following:

a. The person's rights as a delegate.

b. The person's rights to designate a director.

c. The person's rights as a director.

23. "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and this chapter.

24. "Mutual benefit corporation" means a domestic or foreign corporation that is required to be a mutual benefit corporation pursuant to section 504.1705.

25. "Notice" is defined in section 504.142.

26. "Person" includes any individual or entity.

27. "Principal office" means the office in or out of this state so designated in the biennial report filed pursuant to section 504.1613 where the principal offices of a domestic or foreign corporation are located.

28. "Proceeding" includes a civil suit and criminal, administrative, or investigatory actions.

29. "Public benefit corporation" means a domestic or foreign corporation that is required to be a public benefit corporation pursuant to section 504.1705.

30. "Record date" means the date established under subchapter VI or VII on which a corporation determines the identity of its members for the purposes of this subchapter.

31. "Religious corporation" means a domestic or foreign corporation, that engages in religious activity as one of the corporation's principal purposes.

32. "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under section 504.841, subsection 2, for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

33. "Sign" or "signature" includes a manual, facsimile, conformed, or electronic signature.

34. "State", when referring to a part of the United States, includes a state and commonwealth and their agencies and governmental subdivisions, and a territory and insular possession and their agencies and governmental subdivisions of the United States.

35. "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

36. "Vote" includes authorization by written ballot and written consent.

37. "Voting power" means the total number of votes entitled to be cast for the election of

directors at the time the determination of voting power is made, excluding a vote that is contingent upon the happening of a condition or event that has not occurred at the time. When a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

Sec. 15. NEW SECTION. 504.142 NOTICE.

1. Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

2. Subject to subsection 1, notice may be communicated in person, by mail, or other method of delivery; or by telephone, voice mail, or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication.

3. Oral notice is effective when communicated if communicated in a comprehensible manner.

4. Written notice by a domestic or foreign corporation to its member, if in a comprehensible form, is effective according to one of the following:

a. Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members.

b. When electronically transmitted to the shareholder in a manner authorized by the shareholder.

5. Except as provided in subsection 4, written notice, if in a comprehensible form, is effective at the earliest of the following:

a. When received.

b. Five days after its deposit in the United States mail, if mailed correctly addressed and with first-class postage affixed.

c. On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

d. Thirty days after its deposit in the United States mail, if mailed correctly addressed and with other than first-class, registered, or certified postage affixed.

6. Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members.

7. A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of such members, at the address appearing on the current list of members.

8. Written notice is correctly addressed to a domestic or foreign corporation authorized to transact business in this state, other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent biennial report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

9. If section 504.705, subsection 2, or any other provision of this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements govern.

PART 5
JUDICIAL RELIEF

Sec. 16. NEW SECTION. 504.151 JUDICIAL RELIEF.

1. If for any reason it is impractical or impossible for a corporation to call or conduct a

meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the attorney general, the district court may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

2. The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, and this chapter, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

3. An order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.

4. Whenever practical, an order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided, however, that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.

5. A meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section, and which complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter.

SUBCHAPTER II
ORGANIZATION

Sec. 17. NEW SECTION. 504.201 INCORPORATORS.

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

Sec. 18. NEW SECTION. 504.202 ARTICLES OF INCORPORATION.

1. The articles of incorporation shall set forth all of the following:

a. A corporate name for the corporation that satisfies the requirements of section 504.401.

b. The address of the corporation's initial registered office and the name of its initial registered agent at that office.

c. The name and address of each incorporator.

d. Whether the corporation will have members. A corporation incorporated prior to January 1, 2005, may state whether it will have members in either the articles of incorporation or in the corporate bylaws.

e. For corporations incorporated after January 1, 2005, provisions not inconsistent with law regarding the distribution of assets on dissolution.

2. The articles of incorporation may set forth any of the following:

a. The purpose for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity.

b. The names and addresses of the individuals who are to serve as the initial directors.

c. Provisions not inconsistent with law regarding all of the following:

(1) Managing and regulating the affairs of the corporation.

(2) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members, or any class of members.

(3) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members.

d. A provision eliminating or limiting the liability of a director to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for any of the following:

(1) The amount of a financial benefit received by a director to which the director is not entitled.

(2) An intentional infliction of harm on the corporation or its members.

(3) A violation of section 504.834.

(4) An intentional violation of criminal law.

A provision set forth in the articles of incorporation pursuant to this paragraph shall not eliminate or limit the liability of a director for an act or omission that occurs prior to the date when the provision becomes effective. The absence of a provision eliminating or limiting the liability of a director pursuant to this paragraph shall not affect the applicability of section 504.901.

e. A provision permitting or requiring a corporation to indemnify a director for liability, as defined in section 504.851, subsection 5, to a person for any action taken, or any failure to take any action, as a director except liability for any of the following:

(1) Receipt of a financial benefit to which the person is not entitled.

(2) Intentional infliction of harm on the corporation or its members.

(3) A violation of section 504.834.

(4) Intentional violation of criminal law.

f. Any provision that under this chapter is required or permitted to be set forth in the bylaws.

3. An incorporator named in the articles must sign the articles.

4. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

Sec. 19. NEW SECTION. 504.203 INCORPORATION.

1. Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

2. The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Sec. 20. NEW SECTION. 504.204 LIABILITY FOR PREINCORPORATION TRANSACTIONS.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

Sec. 21. NEW SECTION. 504.205 ORGANIZATION OF CORPORATION.

1. After incorporation:

a. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting.

b. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to do one of the following:

(1) Elect directors and complete the organization of the corporation.

(2) Elect a board of directors who shall complete the organization of the corporation.

2. Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

3. An organizational meeting may be held in or out of this state in accordance with section 504.821.

Sec. 22. NEW SECTION. 504.206 BYLAWS.

1. The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

2. The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

Sec. 23. NEW SECTION. 504.207 EMERGENCY BYLAWS AND POWERS.

1. Unless the articles provide otherwise the directors of a corporation may adopt, amend, or repeal bylaws to be effective only in an emergency as described in subsection 4. The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures necessary for managing the corporation during the emergency, including all of the following:

a. How to call a meeting of the board.

b. Quorum requirements for the meeting.

c. Designation of additional or substitute directors.

2. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

3. Corporate action taken in good faith in accordance with the emergency bylaws does both of the following:

a. Binds the corporation.

b. Shall not be used to impose liability on a corporate director, officer, employee, or agent.

4. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

SUBCHAPTER III
PURPOSES AND POWERS

Sec. 24. NEW SECTION. 504.301 PURPOSES.

1. Every corporation incorporated under this chapter has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

2. A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if incorporation under this chapter is not prohibited by the other statute. The corporation shall be subject to all limitations of the other statute.

Sec. 25. NEW SECTION. 504.302 GENERAL POWERS.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including without limitation all of the following powers:

1. Sue and be sued, complain, and defend in its corporate name.

2. Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing, affixing, or in any other manner reproducing it.

3. Make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation.

4. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located.

5. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

6. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mort-

gage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of, any entity.

7. Make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.

8. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by section 504.833.

9. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

10. Conduct its activities, locate offices, and exercise the powers granted by this chapter in or out of this state.

11. Elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation.

12. Pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents.

13. Make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest.

14. Impose dues, assessments, and admission and transfer fees upon its members.

15. Establish conditions for admission of members, admit members, and issue memberships.

16. Carry on a business.

17. Do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

Sec. 26. NEW SECTION. 504.303 EMERGENCY POWERS.

1. In anticipation of or during an emergency as described in subsection 4, the board of directors of a corporation may do both of the following:

a. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent.

b. Relocate the principal office, designate alternative principal offices or regional offices, or authorize an officer to do so.

2. During an emergency described in subsection 4, unless emergency bylaws provide otherwise, all of the following shall apply:

a. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and such notice may be given in any practicable manner, including by publication and radio.

b. One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

3. Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation does both of the following:

a. Binds the corporation.

b. Shall not be used to impose liability on a corporate director, officer, employee, or agent.

4. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Sec. 27. NEW SECTION. 504.304 ULTRA VIRES.

1. Except as provided in subsection 2, the validity of corporate action may[3] not be challenged on the ground that the corporation lacks or lacked power to act.

2. A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act when a third party has not acquired rights. The proceeding may be brought by the attorney general, a director, or by a member or members in a derivative proceeding.

3. A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation. The proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee

[3] See chapter 1175, §384 herein

or other legal representative, or in the case of a public benefit corporation, by the attorney general.

SUBCHAPTER IV
NAMES

Sec. 28. NEW SECTION. 504.401 CORPORATE NAME.

1. A corporate name shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 504.301 and its articles of incorporation.

2. Except as authorized by subsections 3 and 4, a corporate name must be distinguishable upon the records of the secretary of state from:

a. The corporate name of any other nonprofit or business corporation incorporated or authorized to do business in this state.

b. A corporate name reserved or registered under section 490.402, 490.403, 504.402, or 504.403.

c. The fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable.

3. A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one or more of the names described in subsection 2. The secretary of state shall authorize use of the name applied for if either of the following applies:

a. The other corporation consents to the use of the name in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of a final judgment from a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is being used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation submits documentation to the satisfaction of the secretary of state establishing any of the following conditions:

a. The user corporation has merged with the other corporation.

b. The user corporation has been formed by reorganization of the other corporation.

c. The user corporation has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. This subchapter does not control the use of fictitious names; however, if a corporation or a foreign corporation uses a fictitious name in this state it shall deliver to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

Sec. 29. NEW SECTION. 504.402 RESERVED NAME.

1. A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available by delivering an application to the secretary of state for filing. Upon finding that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty-day period.

2. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

Sec. 30. NEW SECTION. 504.403 REGISTERED NAME.

1. A foreign corporation may register its corporate name, or its corporate name with any

change required by section 504.1506, if the name is distinguishable upon the records of the secretary of state from both of the following:

a. The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state.

b. A corporate name reserved under section 490.402, 490.403, or 504.402, or registered under this section.

2. A foreign corporation shall register its corporate name, or its corporate name with any change required by section 504.1506, by delivering to the secretary of state an application that does both of the following:

a. Sets forth its corporate name, or its corporate name with any change required by section 504.1506, the state or country and date of its incorporation, and a brief description of the nature of the activities in which it is engaged.

b. Is accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

3. The name is registered for the applicant's exclusive use upon the effective date of the application.

4. A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application which complies with the requirements of subsection 2, between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

5. A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

SUBCHAPTER V
OFFICE AND AGENT

Sec. 31. NEW SECTION. 504.501 REGISTERED OFFICE AND REGISTERED AGENT.

A corporation shall continuously maintain both of the following in this state:

1. A registered office with the same address as that of the registered agent.

2. A registered agent, who may be any of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic business or nonprofit corporation whose business office is identical to the registered office.

c. A foreign business or nonprofit corporation authorized to transact business in this state whose business office is identical to the registered office.

Sec. 32. NEW SECTION. 504.502 CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT.

1. A corporation 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 corporation.

b. If the current registered office is to be changed, the address of the new registered office.

c. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the change.

d. That after the change or changes are made, the addresses of its registered office and the office of its registered agent will be identical.

2. If the address of a registered agent's business office is changed, the registered agent may change the address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing,

either manually or in facsimile, and delivering to the secretary of state for filing, a statement that complies with the requirements of subsection 1 and recites that the corporation has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the address of the registered office of any corporation for which the registered agent is the registered agent by filing a statement as required in subsection 2 for each corporation, or by filing a single statement for all corporations named in the notice, except that it need be signed, either manually or in facsimile, only once by the registered agent and must recite that a copy of the statement has been mailed to each corporation named in the notice.

Sec. 33. NEW SECTION. 504.503 RESIGNATION OF REGISTERED AGENT.

1. A registered agent may resign as registered agent by signing and delivering to the secretary of state for filing a 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 corporation at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that copies have been sent to the corporation, including the date the copies were sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date the statement was filed.

Sec. 34. NEW SECTION. 504.504 SERVICE ON CORPORATION.

1. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

2. If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office shown in the most recent biennial report filed pursuant to section 504.1613. Service is perfected under this subsection on the earliest of any of the following:

a. The date the corporation receives the mail.

b. The date shown on the return receipt, if signed on behalf of the corporation.

c. Five days after its deposit in the United States mail, if mailed and correctly addressed with first class postage affixed.

3. This section does not prescribe the only means, or necessarily the required means, of serving a corporation. A corporation may also be served in any other manner permitted by law.

SUBCHAPTER VI
MEMBERS AND MEMBERSHIPS
PART 1
ADMISSION OF MEMBERS

Sec. 35. NEW SECTION. 504.601 ADMISSION.

1. The articles or bylaws may establish criteria or procedures for admission of members.

2. A person shall not be admitted as a member without the person's consent or affirmative action evidencing consent.

Sec. 36. NEW SECTION. 504.602 CONSIDERATION.

Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

Sec. 37. NEW SECTION. 504.603 NO REQUIREMENT OF MEMBERS.

A corporation is not required to have members.

PART 2
TYPES OF MEMBERSHIPS — MEMBERS' RIGHTS AND OBLIGATIONS

Sec. 38. NEW SECTION. 504.611 DIFFERENCES IN RIGHTS AND OBLIGATIONS OF MEMBERS.

All members shall have the same rights and obligations with respect to voting, dissolution, redemption, and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws. A person that does not meet the qualifications for a member under section 504.141, subsection 22, and is identified as a member in the articles or bylaws of the corporation shall have only those rights set forth for such a member in the articles or bylaws of the corporation.

Sec. 39. NEW SECTION. 504.612 TRANSFERS.

1. Except as set forth in or authorized by the articles or bylaws, a member of a mutual benefit corporation shall not transfer a membership or any right arising therefrom.

2. A member of a public benefit or religious corporation shall not transfer a membership or any right arising therefrom.

3. Where transfer rights have been provided, a restriction on them shall not be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

Sec. 40. NEW SECTION. 504.613 MEMBER'S LIABILITY TO THIRD PARTIES.

A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

Sec. 41. NEW SECTION. 504.614 MEMBER'S LIABILITY FOR DUES, ASSESSMENTS, AND FEES.

A member may become liable to the corporation for dues, assessments, or fees. However, an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments, or fees does not, of itself, create liability.

Sec. 42. NEW SECTION. 504.615 CREDITOR'S ACTION AGAINST MEMBER.

1. A proceeding shall not be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.

2. All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection 1 to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in such proceeding.

PART 3
RESIGNATION AND TERMINATION

Sec. 43. NEW SECTION. 504.621 RESIGNATION.

1. A member may resign at any time.

2. The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

Sec. 44. NEW SECTION. 504.622 TERMINATION, EXPULSION, OR SUSPENSION.

1. A member of a public benefit or mutual benefit corporation shall not be expelled or suspended, and a membership or memberships in such a corporation shall not be terminated or

suspended except pursuant to a procedure which is fair and reasonable and is carried out in good faith.

2. A procedure is fair and reasonable when either of the following occurs:

a. The articles or bylaws set forth a procedure which provides both of the following:

(1) Not less than fifteen days' prior written notice of the expulsion, suspension, or termination and the reasons therefor.

(2) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place.

b. The procedure requires consideration of all relevant facts and circumstances surrounding the expulsion, suspension, or termination by a person or persons authorized to make a decision regarding the proposed expulsion, termination, or suspension.

3. Any written notice given by mail pursuant to this section must be given by first class or certified mail sent to the last address of the member shown on the corporation's records.

4. A proceeding challenging an expulsion, suspension, or termination, including a proceeding alleging defective notice, must be commenced within one year after the effective date of the expulsion, suspension, or termination.

5. A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

Sec. 45. NEW SECTION. 504.623 PURCHASE OF MEMBERSHIPS.

1. A public benefit or religious corporation shall not purchase any of its memberships or any right arising therefrom.

2. A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws. A payment shall not be made in violation of subchapter 13.

PART 4
DERIVATIVE PROCEEDINGS

Sec. 46. NEW SECTION. 504.631 DERIVATIVE PROCEEDINGS — DEFINITION.

In this part, unless the context otherwise requires, "derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in section 504.638, in the right of a foreign corporation.

Sec. 47. NEW SECTION. 504.632 STANDING.

A derivative proceeding may be brought by any of the following persons:

1. A member or members of the corporation representing five percent or more of the voting power of the corporation or by fifty members, whichever is less.

2. A director of the corporation.

Sec. 48. NEW SECTION. 504.633 DEMAND.

A derivative proceeding shall not be commenced until both of the following have occurred:

1. A written demand has been made upon the corporation to take suitable action.

2. Ninety days have expired from the date the demand was made, unless the member or director has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

Sec. 49. NEW SECTION. 504.634 STAY OF PROCEEDINGS.

If a corporation commences an inquiry into the allegations made in a demand or complaint, the court may stay any derivative proceeding for a period of time as the court deems appropriate.

Sec. 50. NEW SECTION. 504.635 DISMISSAL.

1. A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection 2 or 6 has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation. A corporation moving to dismiss on this basis shall submit in support of the motion a short and concise statement of the reasons for its determination.

2. Unless a panel is appointed pursuant to subsection 6, the determination in subsection 1 shall be made by one of the following:

a. A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum.

b. A majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constitute a quorum.

3. None of the following shall by itself cause a director to be considered not independent for purposes of this section:

a. The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded.

b. The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded.

c. The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

4. If a derivative proceeding is commenced after a determination has been made rejecting a demand by a member or director, the complaint shall allege with particularity facts establishing one of the following:

a. That a majority of the board of directors did not consist of independent directors at the time the determination was made.

b. That the requirements of subsection 1 have not been met.

All discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or prevent undue prejudice to that party.

5. If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of subsection 1 have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection 1 have not been met.

6. The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection 1 have not been met.

Sec. 51. NEW SECTION. 504.636 DISCONTINUANCE OR SETTLEMENT.

A derivative proceeding shall not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of a corporation's member or class of members or director, the court shall direct that notice be given to the members or director affected.

Sec. 52. NEW SECTION. 504.637 PAYMENT OF EXPENSES.

On termination of a derivative proceeding, the court may do either of the following:

1. Order the corporation to pay the plaintiff's reasonable expenses, including attorney fees incurred in the proceeding, if it finds that the proceeding has resulted in a substantial benefit to the corporation.

2. Order the plaintiff to pay any defendant's reasonable expenses, including attorney fees incurred in defending the proceeding, if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

Sec. 53. NEW SECTION. 504.638 APPLICABILITY TO FOREIGN CORPORATIONS.

In any derivative proceeding in the right of a foreign corporation, the matters covered by this part shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except that sections 504.634, 504.636, and 504.637 shall apply.

PART 5
DELEGATES

Sec. 54. NEW SECTION. 504.641 DELEGATES.

1. A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members.

2. The articles or bylaws may set forth provisions relating to all of the following:

a. The characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal.

b. Calling, noticing, holding, and conducting meetings of delegates.

c. Carrying on corporate activities during and between meetings of delegates.

SUBCHAPTER VII
MEMBERS' MEETINGS AND VOTING
PART 1
MEETINGS AND ACTION WITHOUT MEETINGS

Sec. 55. NEW SECTION. 504.701 ANNUAL AND REGULAR MEETINGS.

1. A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

2. A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

3. Annual or regular membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office.

4. At the annual meeting all of the following shall occur:

a. The president and chief financial officer shall report on the activities and financial condition of the corporation.

b. The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of sections 504.705 and 504.713, subsection 4.

5. At regular meetings, the members shall consider and act upon such matters as may be raised consistent with the notice requirements of sections 504.705 and 504.713, subsection 4.

6. The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

Sec. 56. NEW SECTION. 504.702 SPECIAL MEETING.

1. A corporation with members shall hold a special meeting of members when either of the following occurs:

a. At the call of its board or the person or persons authorized to do so by the corporation's articles or bylaws.

b. Except as provided in the articles or bylaws of a religious corporation, if the holders of at least five percent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting describing the purpose for which it is to be held. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

2. The close of business on the thirtieth day before delivery of the demand for a special meeting to any corporate officer is the record date for the purpose of determining whether the five percent requirement of subsection 1, paragraph "b", has been met.

3. If a notice for a special meeting demanded under subsection 1, paragraph "b", is not given pursuant to section 504.705 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection 4, a person signing the demand may set the time and place of the meeting and give notice pursuant to section 504.705.

4. Special meetings of members may be held in or out of this state at a place stated in or fixed in accordance with the bylaws. If a place is not stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

5. Only those matters that are within the purpose described in the meeting notice required by section 504.705 may be considered at a special meeting of members.

Sec. 57. NEW SECTION. 504.703 COURT-ORDERED MEETING.

1. The district court of the county where a corporation's principal office is located or, if none is located in this state, where its registered office is located, may summarily order a meeting to be held when any of the following occurs:

a. On application of any member or other person entitled to participate in an annual or regular meeting of the corporation, if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting.

b. On application of any member or other person entitled to participate in a regular meeting of the corporation, if a regular meeting was not held within forty days after the date it was required to be held.

c. On application of a member who signed a demand for a special meeting valid under section 504.702, or a person entitled to call a special meeting, if any of the following applies:

(1) The notice of the special meeting was not given within thirty days after the date the demand was delivered to a corporate officer.

(2) The special meeting was not held in accordance with the notice.

2. The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose of the meeting.

3. If the court orders a meeting, it may also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

Sec. 58. NEW SECTION. 504.704 ACTION BY WRITTEN CONSENT.

1. Unless limited or prohibited by the articles or bylaws of the corporation, action required or permitted by this subchapter to be approved by the members of a corporation may be approved without a meeting of members if the action is approved by members holding at least eighty percent of the voting power. The action must be evidenced by one or more written consents describing the action taken, signed by those members representing at least eighty percent of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. A written consent may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of unrevoked written consents sufficient in number to take corporation action.

2. If not otherwise determined under section 504.703 or 504.707, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection 1.

3. A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the secretary of state.

4. Written notice of member approval pursuant to this section shall be given to all members

who have not signed the written consent. If written notice is required, member approval pursuant to this section shall be effective ten days after such written notice is given.

Sec. 59. NEW SECTION. 504.705 NOTICE OF MEETING.

1. A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

2. Any notice which conforms to the requirements of subsection 3 is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered. However, notice of matters referred to in subsection 3, paragraph "b", must be given as provided in subsection 3.

3. Notice is fair and reasonable if all of the following occur:

a. The corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members not more than sixty days and not less than ten days, or if notice is mailed by other than first class or registered mail, not less than thirty days, before the date of the meeting.

b. The notice of an annual or regular meeting includes a description of any matter or matters which must be considered for approval by the members under sections 504.833, 504.857, 504.1003, 504.1022, 504.1104, 504.1202, 504.1401, and 504.1402.

c. The notice of a special meeting includes a description of the purpose for which the meeting is called.

4. Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 504.707, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

5. When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if requested in writing to do so by a person entitled to call a special meeting and if the request is received by the secretary or president of the corporation at least ten days before the corporation gives notice of the meeting.

Sec. 60. NEW SECTION. 504.706 WAIVER OF NOTICE.

1. A member may waive any notice required by this subchapter, the articles, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

2. A member's attendance at a meeting does all of the following:

a. Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

b. Waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the member objects to considering the matter when it is presented.

Sec. 61. NEW SECTION. 504.707 RECORD DATE — DETERMINING MEMBERS ENTITLED TO NOTICE AND VOTE.

1. The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If a record date is not fixed, members at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held are entitled to notice of the meeting.

2. The bylaws of a corporation may fix or provide the manner of fixing a date as the record

date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If a record date is not fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

3. The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix in advance such a record date. If a record date is not fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

4. A record date fixed under this section shall not be more than seventy days before the meeting or action requiring a determination of members occurs.

5. A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than seventy days after the record date for determining members entitled to notice of the original meeting.

6. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

Sec. 62. NEW SECTION. 504.708 ACTION BY WRITTEN BALLOT.

1. Unless prohibited or limited by the articles or bylaws, any action which may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

2. A written ballot shall do both of the following:

a. Set forth each proposed action.

b. Provide an opportunity to vote for or against each proposed action.

3. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

4. All solicitations for votes by written ballot shall do all of the following:

a. Indicate the number of responses needed to meet the quorum requirements.

b. State the percentage of approvals necessary to approve each matter other than election of directors.

c. Specify the time by which a ballot must be received by the corporation in order to be counted.

5. Except as otherwise provided in the articles or bylaws, a written ballot shall not be revoked.

6. Unless prohibited by the articles or bylaws, a written ballot may be delivered and a vote may be cast on that ballot by electronic transmission. An electronic transmission of a written ballot shall contain or be accompanied by information indicating that a member, a member's agent, or a member's attorney authorized the electronic transmission of the ballot.

PART 2
VOTING

Sec. 63. NEW SECTION. 504.711 MEMBERS' LIST FOR MEETING.

1. After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address of each member and number of votes each member is entitled to cast at the meeting. The corporation shall prepare on a current basis through the time of the

membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis as and be part of the list of members.

2. Except as set forth in section 504.1602, subsection 6, the list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. Except as set forth in section 504.1602, subsection 6, a member, a member's agent, or a member's attorney is entitled on written demand to inspect and, subject to the limitations of section 504.1602, subsection 3, and section 504.1605, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

3. Except as set forth in section 504.1602, subsection 6, a corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

4. Except as set forth in section 504.1602, subsection 6, if a corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or copy the list as permitted by subsection 2, the district court of the county where a corporation's principal office is located or, if none is located in this state, where its registered office is located, on application of the member, may summarily order the inspection or copying of the membership list at the corporation's expense, may postpone the meeting for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees incurred to obtain the order.

5. Unless a written demand to inspect and copy a membership list has been made under subsection 2 prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

6. The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

Sec. 64. NEW SECTION. 504.712 VOTING ENTITLEMENT GENERALLY.

1. The right of the members of a corporation, or any class or classes of members, to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or, if the articles of incorporation so provide, by the bylaws. Unless so limited, enlarged, or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

2. Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, the persons' acts with respect to voting shall have the following effect:

a. If only one votes, such act binds all.

b. If more than one votes, the vote shall be divided on a pro rata basis.

Sec. 65. NEW SECTION. 504.713 QUORUM REQUIREMENTS.

1. Unless this subchapter, or the articles or bylaws of a corporation provide for a higher or lower quorum, ten percent of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

2. A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

3. A bylaw amendment to increase the quorum required for any member action must be approved by the members.

4. Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

Sec. 66. NEW SECTION. 504.714 VOTING REQUIREMENTS.

1. Unless this subchapter, or the articles or bylaws of a corporation require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting, which affirmative votes also constitute a majority of the required quorum, is the act of the members.

2. A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

Sec. 67. NEW SECTION. 504.715 PROXIES.

1. Unless the articles or bylaws of a corporation prohibit or limit proxy voting, a member or the member's agent or attorney in fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which it can be determined that the member, the member's agent, or the member's attorney in fact authorized the electronic transmission.

2. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of an appointment form is received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided for in the appointment. However, a proxy shall not be valid for more than three years from its date of execution.

3. An appointment of a proxy is revocable by the member.

4. The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

5. Appointment of a proxy is revoked by the person appointing the proxy if either of the following occurs:

a. The person appointing the proxy attends any meeting and votes in person.

b. The person appointing the proxy signs and delivers or sends through electronic transmission to the secretary or other officer or agent authorized to tabulate proxy votes either a writing or electronic transmission stating that the appointment of the proxy is revoked or a subsequent appointment form.

6. Subject to section 504.718 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

Sec. 68. NEW SECTION. 504.716 CUMULATIVE VOTING FOR DIRECTORS.

1. If the articles or bylaws of a corporation provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and casting the product for a single candidate or distributing the product among two or more candidates.

2. A director elected by cumulative voting may be removed by the members without cause if the requirements of section 504.808 are met unless the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast or, if such action is taken by written ballot, all memberships entitled to vote were voted, and the entire number of directors authorized at the time of the director's most recent election were then being elected.

3. Members shall not cumulatively vote if the directors and members are identical.

Sec. 69. NEW SECTION. 504.717 OTHER METHODS OF ELECTING DIRECTORS.

A corporation may provide in its articles or bylaws for election of directors by members or delegates on the basis of chapter or other organizational unit, by region or other geographic unit, by preferential voting, or by any other reasonable method.

Sec. 70. NEW SECTION. 504.718 CORPORATION'S ACCEPTANCE OF VOTES.

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

2. If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if any of the following is applicable:

a. The member is an entity and the name signed purports to be that of an officer or agent of the entity.

b. The name signed purports to be that of an attorney in fact of the member and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment.

c. Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.

d. In the case of a mutual benefit corporation:

(1) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(2) The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

3. The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

4. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

PART 3
VOTING AGREEMENTS

Sec. 71. NEW SECTION. 504.721 VOTING AGREEMENTS.

1. Two or more members of a corporation may provide for the manner in which they will vote by signing an agreement for that purpose. For public benefit corporations, such agreements must have a reasonable purpose not inconsistent with the corporation's public or charitable purposes.

2. A voting agreement created under this section is specifically enforceable.

SUBCHAPTER VIII
DIRECTORS AND OFFICERS
PART 1
BOARD OF DIRECTORS

Sec. 72. NEW SECTION. 504.801 REQUIREMENT FOR AND DUTIES OF BOARD.

1. Each corporation must have a board of directors.

2. Except as otherwise provided in this subchapter or subsection 3, all corporate powers

shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board.

3. The articles of incorporation may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized, any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

Sec. 73. NEW SECTION. 504.802 QUALIFICATIONS OF DIRECTORS.

All directors of a corporation must be individuals. The articles or bylaws may prescribe other qualifications for directors.

Sec. 74. NEW SECTION. 504.803 NUMBER OF DIRECTORS.

1. The board of directors of a corporation must consist of one or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.

2. The number of directors may be increased or decreased from time to time by amendment to or in the manner prescribed in the articles or bylaws.

Sec. 75. NEW SECTION. 504.804 ELECTION, DESIGNATION, AND APPOINTMENT OF DIRECTORS.

1. If the corporation has members, all the directors, except the initial directors, shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated.

2. If a corporation does not have members, all the directors, except the initial directors, shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors other than the initial directors shall be elected by the board.

Sec. 76. NEW SECTION. 504.805 TERMS OF DIRECTORS GENERALLY.

1. The articles or bylaws of a corporation must specify the terms of directors. Except for designated or appointed directors, and except as otherwise provided in the articles or bylaws, the terms of directors shall not exceed five years. In the absence of any term specified in the articles or bylaws, the term of each director shall be one year. Directors may be elected for successive terms.

2. A decrease in the number or term of directors does not shorten an incumbent director's term.

3. Except as provided in the articles or bylaws, both of the following apply:

a. The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members.

b. The term of a director filling any other vacancy expires at the end of the unexpired term which such director is filling.

4. Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed, and qualifies, or until there is a decrease in the number of directors.

Sec. 77. NEW SECTION. 504.806 STAGGERED TERMS FOR DIRECTORS.

The articles or bylaws of a corporation may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of the several groups need not be uniform.

Sec. 78. NEW SECTION. 504.807 RESIGNATION OF DIRECTORS.

1. A director of a corporation may resign at any time by delivering written notice to the board of directors, its presiding officer, or the president or secretary.

2. A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending

vacancy before the effective date if the board provides that the successor does not take office until the effective date.

Sec. 79. NEW SECTION. 504.808 REMOVAL OF DIRECTORS ELECTED BY MEMBERS OR DIRECTORS.

1. The members of a corporation may remove one or more directors elected by the members without cause.

2. If a director is elected by a class, chapter, or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.

3. Except as provided in subsection 9, a director may be removed under subsection 1 or 2 only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

4. If cumulative voting is authorized, a director shall not be removed if the number of votes, or if the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping, sufficient to elect the director under cumulative voting, is voted against the director's removal.

5. A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is the removal of the director.

6. For the purpose of computing whether a director is protected from removal under subsections 2 through 4, it should be assumed that the votes against removal are cast in an election for the number of directors of the group to which the director to be removed belonged on the date of that director's election.

7. An entire board of directors may be removed under subsections 1 through 5.

8. A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws. However, a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not by the board.

9. If at the beginning of a director's term on the board the articles or bylaws provide that a director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office votes for the removal.

10. The articles or bylaws of a religious corporation may do both of the following:

a. Limit the application of this section.

b. Set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members or the board.

Sec. 80. NEW SECTION. 504.809 REMOVAL OF DESIGNATED OR APPOINTED DIRECTORS.

1. A designated director of a corporation may be removed by an amendment to the articles or bylaws deleting or changing the designation.

2. a. Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director.

b. The person removing the appointed director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary.

c. A removal of an appointed director is effective when the notice is effective unless the notice specifies a future effective date.

Sec. 81. NEW SECTION. 504.810 REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING.

1. The district court of the county where a corporation's principal office is located or if there is no principal office located in this state, where the registered office is located, may remove

a director of the corporation from office in a proceeding commenced by or in the right of the corporation by a member or director if the court finds both of the following apply:

a. A director engaged in fraudulent conduct with respect to the corporation or its members grossly abused the position of director, or intentionally inflicted harm on the corporation.

b. Upon consideration of the director's course of conduct and the inadequacy of other available remedies, the court determines that removal is in the best interest of the corporation.

2. A member or a director who proceeds by or in the right of a corporation pursuant to subsection 1 shall comply with all of the requirements of section 504.631 and sections 504.633 through 504.638.

3. The court, in addition to removing a director, may bar the director from serving on the board for a period of time prescribed by the court.

4. This section does not limit the equitable powers of the court to order other relief that the court determines is appropriate.

5. The articles or bylaws of a religious corporation may limit or prohibit the application of this section.

Sec. 82. NEW SECTION. 504.811 VACANCY ON BOARD.

1. Unless the articles or bylaws of a corporation provide otherwise, and except as provided in subsections 2 and 3, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors, any of the following may occur:

a. The members, if any, may fill the vacancy. If the vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members.

b. The board of directors may fill the vacancy.

c. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

2. Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

3. If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy shall be filled by the board.

4. A vacancy that will occur at a specific later date by reason of a resignation effective at a later date under section 504.807, subsection 2, or otherwise, may be filled before the vacancy occurs, but the new director shall not take office until the vacancy occurs.

Sec. 83. NEW SECTION. 504.812 COMPENSATION OF DIRECTORS.

Unless the articles or bylaws of a corporation provide otherwise, a board of directors may fix the compensation of directors.

PART 2
MEETINGS AND ACTION OF THE BOARD

Sec. 84. NEW SECTION. 504.821 REGULAR AND SPECIAL MEETINGS.

1. If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

2. A board of directors may hold regular or special meetings in or out of this state.

3. Unless the articles or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Sec. 85. NEW SECTION. 504.822 ACTION WITHOUT MEETING.

1. Except to the extent the articles or bylaws of a corporation require that action by the

board of directors be taken at a meeting, action required or permitted by this subchapter to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken, and delivers it to the corporation.

2. Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken is to be effective. A director's consent may be withdrawn by revocation signed by the director and delivered to the corporation prior to the delivery to the corporation of unrevoked written consents signed by all of the directors.

3. A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

Sec. 86. NEW SECTION. 504.823 CALL AND NOTICE OF MEETINGS.

1. Unless the articles or bylaws of a corporation, or subsection 3, provide otherwise, regular meetings of the board may be held without notice.

2. Unless the articles, bylaws, or subsection 3 provide otherwise, special meetings of the board must be preceded by at least two days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

3. In corporations without members, any board action to remove a director or to approve a matter which would require approval by the members if the corporation had members shall not be valid unless each director is given at least seven days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to section 504.824.

4. Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president, or twenty percent of the directors then in office may call and give notice of a meeting of the board.

Sec. 87. NEW SECTION. 504.824 WAIVER OF NOTICE.

1. A director may at any time waive any notice required by this subchapter, the articles, or bylaws. Except as provided in subsection 2, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or the corporate records.

2. A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with this subchapter, the articles, or bylaws, objects to lack of notice and does not thereafter vote for or assent to the objected-to action.

Sec. 88. NEW SECTION. 504.825 QUORUM AND VOTING.

1. Except as otherwise provided in this subchapter, or the articles or bylaws of a corporation, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. The articles or bylaws shall not authorize a quorum of fewer than one-third of the number of directors in office.

2. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless this subchapter, the articles, or bylaws require the vote of a greater number of directors.

Sec. 89. NEW SECTION. 504.826 COMMITTEES OF THE BOARD.

1. Unless prohibited or limited by the articles or bylaws of a corporation, the board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee shall have two or more directors, who serve at the pleasure of the board.

2. The creation of a committee and appointment of members to it must be approved by the greater of either of the following:

a. A majority of all the directors in office when the action is taken.

b. The number of directors required by the articles or bylaws to take action under section 504.825.

3. Sections 504.821 through 504.825, which govern meetings, action without meetings,

notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members as well.

4. To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under section 504.801.

5. A committee of the board shall not, however, do any of the following:

a. Authorize distributions.

b. Approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets.

c. Elect, appoint, or remove directors or fill vacancies on the board or on any of its committees.

d. Adopt, amend, or repeal the articles or bylaws.

6. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 504.831.

PART 3
STANDARDS OF CONDUCT

Sec. 90. NEW SECTION. 504.831 GENERAL STANDARDS FOR DIRECTORS.

1. Each member of the board of directors of a corporation, when discharging the duties of a director, shall act in conformity with all of the following:

a. In good faith.

b. In a manner the director reasonably believes to be in the best interests of the corporation.

2. The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making functions, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

3. In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection 5, paragraph "a", to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

4. In discharging board or committee duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the persons specified in subsection 5.

5. A director is entitled to rely, in accordance with subsection 3 or 4, on any of the following:

a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided by the officer or employee.

b. Legal counsel, public accountants, or other persons as to matters involving skills or expertise the director reasonably believes are either of the following:

(1) Matters within the particular person's professional or expert competence.

(2) Matters as to which the particular person merits confidence.

c. A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.

d. In the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

6. A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.

Sec. 91. NEW SECTION. 504.832 STANDARDS OF LIABILITY FOR DIRECTORS.

1. A director shall not be liable to the corporation or its members for any decision to take

or not to take action, or any failure to take any action, as director, unless the party asserting liability in a proceeding establishes both of the following:

a. That section 504.901 or the protection afforded by section 504.831, if interposed as a bar to the proceeding by the director, does not preclude liability.

b. That the challenged conduct consisted or was the result of one of the following:

(1) Action not in good faith.

(2) A decision that satisfies one of the following:

(a) That the director did not reasonably believe to be in the best interests of the corporation.

(b) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances.

(3) A lack of objectivity due to the director's familial, financial, or business relationship with, or lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct which also meets both of the following criteria:

(a) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation.

(b) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation.

(4) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor.

(5) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its members that is actionable under applicable law.

2. a. A party seeking to hold a director liable for money damages shall also have the burden of establishing both of the following:

(1) That harm to the corporation or its members has been suffered.

(2) The harm suffered was proximately caused by the director's challenged conduct.

b. A party seeking to hold a director liable for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever burden of persuasion that may be called for to establish that the payment sought is appropriate in the circumstances.

c. A party seeking to hold a director liable for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever burden of persuasion that may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

3. This section shall not do any of the following:

a. In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under section 504.833, alter the burden of proving the fact or lack of fairness otherwise applicable.

b. Alter the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of a transactional interest under section 504.833 or an unlawful distribution under section 504.835.

c. Affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

Sec. 92. NEW SECTION. 504.833 DIRECTOR CONFLICT OF INTEREST.

1. A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation on the basis of the director's interest in the transaction if the transaction was fair at the time it was entered into or is approved as provided in subsection 2.

2. A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if either of the following occurs:

a. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction.

b. The material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

3. For the purposes of this section, a director of the corporation has an indirect interest in a transaction under either of the following circumstances:

a. If another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction.

b. If another entity of which the director is a director, officer, or trustee is a party to the transaction.

4. For purposes of subsection 2, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board or on a committee of the board, who have no direct or indirect interest in the transaction, but a transaction shall not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection 2, paragraph "a", if the transaction is otherwise approved as provided in subsection 2.

5. For purposes of subsection 2, paragraph "b", a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection 3, 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 subsection 2, paragraph "b". The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this subchapter. A majority of the voting power, whether or not present, that is entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

6. The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

Sec. 93. NEW SECTION. 504.834 LOANS TO OR GUARANTEES FOR DIRECTORS AND OFFICERS.

1. A corporation shall not lend money to or guarantee the obligation of a director or officer of the corporation.

2. The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

Sec. 94. NEW SECTION. 504.835 LIABILITY FOR UNLAWFUL DISTRIBUTIONS.

1. Unless a director complies with the applicable standards of conduct described in section 504.831, a director who votes for or assents to a distribution made in violation of this subchapter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this subchapter.

2. A director held liable for an unlawful distribution under subsection 1 is entitled to contribution from both of the following:

a. Every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in section 504.831.

b. Each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this subchapter.

PART 4
OFFICERS

Sec. 95. NEW SECTION. 504.841 REQUIRED OFFICERS.

1. Unless otherwise provided in the articles or bylaws of a corporation, a corporation shall have a president, a secretary, a treasurer, and such other officers as are appointed by the board. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

2. The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

3. The same individual may simultaneously hold more than one office in a corporation.

Sec. 96. NEW SECTION. 504.842 DUTIES AND AUTHORITY OF OFFICERS.

Each officer of a corporation has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

Sec. 97. NEW SECTION. 504.843 STANDARDS OF CONDUCT FOR OFFICERS.

1. An officer, when performing in such capacity, shall act in conformity with all of the following:

a. In good faith.

b. With the care that a person in a like position would reasonably exercise under similar circumstances.

c. In a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

2. In discharging the officer's duties, an officer who does not have knowledge that makes reliance unwarranted, is entitled to rely on any of the following:

a. The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated.

b. Information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented.

c. Legal counsel, public accountants, or other persons retained by the corporation as to matters involving the skills or expertise the officer reasonably believes are within the person's professional or expert competence, or as to which the particular person merits confidence.

d. In the case of religious corporations, religious authorities, and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and whom the officer believes to be reliable and competent in the matters presented.

3. An officer shall not be liable as an officer to the corporation or its members for any decision to take or not to take action, or any failure to take any action, if the duties of the officer are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of sections 504.832 and 504.901 that have relevance.

Sec. 98. NEW SECTION. 504.844 RESIGNATION AND REMOVAL OF OFFICERS.

1. An officer of a corporation may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective time. If a resignation is made effective at a future time and the board or appointing officer accepts the future effective time, its board or appointing officer may fill the pending vacancy before the effective time if the board or appointing officer provides that the successor does not take office until the effective time.

2. An officer may be removed at any time with or without cause by any of the following:

a. The board of directors.

b. The officer who appointed such officer, unless the bylaws or the board of directors provide otherwise.

c. Any other officer if authorized by the bylaws or the board of directors.

d. In this section, "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

Sec. 99. NEW SECTION. 504.845 CONTRACT RIGHTS OF OFFICERS.

1. The appointment of an officer of a corporation does not itself create contract rights.

2. An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Sec. 100. NEW SECTION. 504.846 OFFICERS' AUTHORITY TO EXECUTE DOCUMENTS.

1. A contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two officers in category 1 or by one officer in category 1 and one officer in category 2 as set out in subsection 2.

2. a. Category 1 officers include the presiding officer of the board and the president.

b. Category 2 officers include a vice president and the secretary, treasurer, and executive director.

PART 5
INDEMNIFICATION

Sec. 101. NEW SECTION. 504.851 DEFINITIONS.

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

1. "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

2. "Director" or "officer" means an individual who is or was a director or officer of a corporation or an individual who, while a director or officer of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A "director" or "officer" is considered to be serving an employee benefit plan at the corporation's request if the director's or officer's duties to the corporation also impose duties on, or otherwise involve services by, the director or officer to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context otherwise requires, the estate or personal representative of a director or officer.

3. "Disinterested director" means a director who at the time of a vote referred to in section 504.854, subsection 3, or a vote or selection referred to in section 504.856, subsection 2 or 3, is not either of the following:

a. A party to the proceeding.

b. An individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.

4. "Expenses" includes attorney fees.

5. "Liability" means the obligation to pay a judgment, settlement, penalty, or fine including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses actually incurred with respect to a proceeding.

6. "Official capacity" means either of the following:

a. When used with respect to a director, the office of director in a corporation.

b. When used with respect to an officer, as contemplated in section 504.857, the office in a corporation held by the officer. "Official capacity" does not include service for any other foreign or domestic business or nonprofit corporation or any partnership joint venture, trust, employee benefit plan, or other entity.

7. "Party" means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

8. "Proceeding" means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

Sec. 102. NEW SECTION. 504.852 PERMISSIBLE INDEMNIFICATION.

1. Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is 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, that the individual's conduct was in the best interests of the corporation.

(2) In all other cases, that the individual's conduct was at least not opposed to the best interests of the corporation.

c. In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

d. The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by section 504.202, subsection 2, paragraph "d".

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 requirements 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 relevant standard of conduct described in this section.

4. Unless ordered by a court under section 504.855, subsection 1, paragraph "b", a corporation shall not indemnify a director under this section under either of the following circumstances:

a. In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in the relevant standard of conduct under subsection 1.

b. In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity.

Sec. 103. NEW SECTION. 504.853 MANDATORY INDEMNIFICATION.

A corporation 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 corporation against reasonable expenses actually incurred by the director in connection with the proceeding.

Sec. 104. NEW SECTION. 504.854 ADVANCE FOR EXPENSES.

1. A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because the person is a director if the person delivers all of the following to the corporation:

a. A written affirmation of the director's good faith belief that the director has met the relevant standard of conduct described in section 504.852 or that the proceeding involved conduct

for which liability has been eliminated under a provision of the articles of incorporation as authorized by section 504.202, subsection 2, paragraph "d".

b. The director's written undertaking to repay any funds advanced if the director is not entitled to mandatory indemnification under section 504.853 and it is ultimately determined under section 504.855 or 504.856 that the director has not met the relevant standard of conduct described in section 504.852.

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 the financial ability of the director to make repayment.

3. Authorizations under this section shall be made according to one of the following:

a. By the board of directors as follows:

(1) If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such vote.

(2) If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with section 504.825, subsection 2, in which authorization directors who do not qualify as disinterested directors may participate.

b. By the members, but the director who, at the time does not qualify as a disinterested director, may[4] not vote as a member or on behalf of a member.

Sec. 105. NEW SECTION. 504.855 COURT-ORDERED INDEMNIFICATION.

1. A director who is a party to a proceeding because the person is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application, and after giving any notice the court considers necessary, the court shall do one of the following:

a. Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 504.853.

b. Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by section 504.859, subsection 1.

c. Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable to do one of the following:

(1) To indemnify the director.

(2) To indemnify or advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in section 504.852, subsection 1, failed to comply with section 504.854 or was adjudged liable in a proceeding referred to in section 504.852, subsection 4, paragraph "a" or "b", but if the director was adjudged so liable the director's indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

2. If the court determines that the director is entitled to indemnification under subsection 1, paragraph "a", or to indemnification or advance for expenses under subsection 1, paragraph "b", it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection 1, paragraph "c", it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

Sec. 106. NEW SECTION. 504.856 DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION.

1. A corporation shall not indemnify a director under section 504.852 unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because the director has met the standard of conduct set forth in section 504.852.

2. The determination shall be made by any of the following:

a. If there are two or more disinterested directors, by the board of directors by a majority

[4] See chapter 1175, §385 herein

vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such vote.

b. By special legal counsel under one of the following circumstances:

(1) Selected in the manner prescribed in paragraph "a".

(2) If there are fewer than two disinterested directors selected by the board in which selection directors who do not qualify as disinterested directors may participate.

c. By the members of a mutual benefit corporation, but directors who are at the time parties to the proceeding shall not vote on the determination.

3. Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subsection 2, paragraph "c", to select special legal counsel.

Sec. 107. NEW SECTION. 504.857 INDEMNIFICATION OF OFFICERS.

1. A corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to a proceeding because the person is an officer, according to all of the following:

a. To the same extent as to a director.

b. If the person is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract, except for either of the following:

(1) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding.

(2) Liability arising out of conduct that constitutes any of the following:

(a) Receipt by the officer of a financial benefit to which the officer is not entitled.

(b) An intentional infliction of harm on the corporation or the shareholders.

(c) An intentional violation of criminal law.

2. The provisions of subsection 1, paragraph "b", shall apply to an officer who is also a director if the basis on which the officer is made a party to a proceeding is an act or omission solely as an officer.

3. An officer of a corporation who is not a director is entitled to mandatory indemnification under section 504.853, and may apply to a court under section 504.855 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

Sec. 108. NEW SECTION. 504.858 INSURANCE.

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to that individual against the same liability under this part.

Sec. 109. NEW SECTION. 504.859 APPLICATION OF PART.

1. A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 504.852 or advance funds to pay for or reimburse expenses in accordance with section 504.854. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section 504.854, subsection 3, and in section 504.856,

subsection 2 or 3. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 504.854 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

2. Any provision pursuant to subsection 1 shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or members of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by section 504.1104.

3. A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

4. This part does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with the director's or officer's appearance as a witness in a proceeding at a time when the director or officer is not a party.

5. This part does not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

Sec. 110. NEW SECTION. 504.860 EXCLUSIVITY OF PART.

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this part.

SUBCHAPTER IX
PERSONAL LIABILITY

Sec. 111. NEW SECTION. 504.901 PERSONAL LIABILITY.

Except as otherwise provided in this chapter, a director, officer, employee, or member of a corporation is not liable for the corporation's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, to any person for any action taken or failure to take any action in the discharge of the person's duties except liability for any of the following:

1. The amount of any financial benefit to which the person is not entitled.
2. An intentional infliction of harm on the corporation or the members.
3. A violation of section 504.834.
4. An intentional violation of criminal law.

SUBCHAPTER X
AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS
PART 1
ARTICLES OF INCORPORATION

Sec. 112. NEW SECTION. 504.1001 AUTHORITY TO AMEND.

A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

Sec. 113. NEW SECTION. 504.1002 AMENDMENT BY DIRECTORS.

1. Unless the articles provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles without member approval to do any of the following:

a. Extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.

b. Delete the names and addresses of the initial directors.

c. Delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state.

d. Change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution to the name.

e. Make any other change expressly permitted by this subchapter to be made by director action.

2. If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the corporation's articles subject to any approval required pursuant to section 504.1031. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with section 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

Sec. 114. NEW SECTION. 504.1003 AMENDMENT BY DIRECTORS AND MEMBERS.

1. Unless this chapter, the articles or bylaws of a corporation, the members acting pursuant to subsection 2, or the board of directors acting pursuant to subsection 3, require a greater vote or voting by class, or unless the articles or bylaws impose other requirements, an amendment to the corporation's articles must be approved by all of the following to be adopted:

a. The board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected.

b. Except as provided in section 504.1002, subsection 1, by the members by two-thirds of the votes cast by the members or a majority of the members' voting power that could be cast, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031.

2. The members may condition the adoption of an amendment on receipt of a higher percentage of affirmative votes or on any other basis.

3. If the board initiates an amendment to the articles or board approval is required by subsection 1 to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

4. If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 504.705. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

5. If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

Sec. 115. NEW SECTION. 504.1004 CLASS VOTING BY MEMBERS ON AMENDMENTS.

1. Unless the articles or bylaws of the corporation provide otherwise, the members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would change the rights of that class as to voting in a manner different than such amendment affects another class or members of another class.

2. Unless the articles or bylaws of the corporation provide otherwise, the members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would do any of the following:

a. Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class.

b. Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

c. Increase or decrease the number of memberships authorized for that class.

d. Increase the number of memberships authorized for another class.

e. Effect an exchange, reclassification, or termination of the memberships of that class.

f. Authorize a new class of memberships.

3. The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the articles only if a class vote is provided for in the articles or bylaws.

4. Unless the articles or bylaws of the corporation provide otherwise, if a class is to be divided into two or more classes as a result of an amendment to the articles of a public benefit or mutual benefit corporation, the amendment must be approved by the members of each class that would be created by the amendment.

5. Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of the corporation, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

Sec. 116. NEW SECTION. 504.1005 ARTICLES OF AMENDMENT.

A corporation amending its articles shall deliver to the secretary of state articles of amendment setting forth:

1. The name of the corporation.

2. The text of each amendment adopted.

3. The date of each amendment's adoption.

4. If approval by members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators.

5. If approval by members was required, both of the following:

a. The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment.

b. Either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class and a statement that the number of votes cast for the amendment by each class was sufficient for approval by that class.

6. If approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to section 504.1031, a statement that the approval was obtained.

Sec. 117. NEW SECTION. 504.1006 RESTATED ARTICLES OF INCORPORATION.

1. A corporation's board of directors may restate the corporation's articles of incorporation at any time with or without approval by members or any other person.

2. The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval by the members or any other person, it must be adopted as provided in section 504.1003.

3. If the restatement includes an amendment requiring approval by members, the board must submit the restatement to the members for their approval.

4. If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with section 504.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and must contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other changes the restatement would make in the articles.

5. If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other changes the restatement would make in the articles.

6. A restatement requiring approval by the members must be approved by the same vote as an amendment to articles under section 504.1003.

7. If the restatement includes an amendment requiring approval pursuant to section 504.1031, the board must submit the restatement for such approval.

8. A corporation restating its articles shall deliver to the secretary of state articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth all of the following:

a. Whether the restatement contains an amendment to the articles requiring approval by the members or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement.

b. If the restatement contains an amendment to the articles requiring approval by the members, the information required by section 504.1005.

c. If the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to section 504.1031, a statement that such approval was obtained.

9. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the original articles.

10. The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection 8.

Sec. 118. NEW SECTION. 504.1007 AMENDMENT PURSUANT TO JUDICIAL REORGANIZATION.

1. A corporation's articles may be amended without board approval or approval by the members or approval required pursuant to section 504.1031 to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles after amendment contain only provisions required or permitted by section 504.202.

2. An individual or individuals designated by the court shall deliver to the secretary of state articles of amendment setting forth all of the following:

a. The name of the corporation.

b. The text of each amendment approved by the court.

c. The date of the court's order or decree approving the articles of amendment.

d. The title of the reorganization proceeding in which the order or decree was entered.

e. A statement that the court had jurisdiction of the proceeding under federal statute.

3. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Sec. 119. NEW SECTION. 504.1008 EFFECT OF AMENDMENT AND RESTATEMENT.

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation or any property held by it by virtue of any trust upon which such property is held by the corporation or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

PART 2
BYLAWS

Sec. 120. NEW SECTION. 504.1021 AMENDMENT BY DIRECTORS.

If a corporation has no members, its incorporators, until directors have been chosen, and

thereafter its board of directors, may adopt one or more amendments to the corporation's bylaws subject to any approval required pursuant to section 504.1031. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice must be given in accordance with section 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

Sec. 121. NEW SECTION. 504.1022 AMENDMENT BY DIRECTORS AND MEMBERS.

1. Unless this chapter, the articles, bylaws, the members acting pursuant to subsection 2, or the board of directors acting pursuant to subsection 3, require a greater vote or voting by class, or the articles or bylaws provide otherwise, an amendment to a corporation's bylaws must be approved by all of the following to be adopted:

a. By the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected.

b. By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031.

2. The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

3. If the board initiates an amendment to the bylaws or board approval is required by subsection 1 to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

4. If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 504.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

5. If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

Sec. 122. NEW SECTION. 504.1023 CLASS VOTING BY MEMBERS ON AMENDMENTS.

1. Unless the articles or bylaws of the corporation provide otherwise, the members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would change the rights of that class as to voting in a manner different than such amendment affects another class or members of another class.

2. Unless the articles or bylaws of the corporation provide otherwise, members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would do any of the following:

a. Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class.

b. Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

c. Increase or decrease the number of memberships authorized for that class.

d. Increase the number of memberships authorized for another class.

e. Effect an exchange, reclassification, or termination of all or part of the memberships of that class.

f. Authorize a new class of memberships.

3. The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles or bylaws.

4. Unless the articles or bylaws of the corporation provide otherwise, if a class is to be divided into two or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment.

5. Unless the articles or bylaws of the corporation provide otherwise, if a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

PART 3
ARTICLES OF INCORPORATION AND BYLAWS

Sec. 123. NEW SECTION. 504.1031 APPROVAL BY THIRD PERSONS.

The articles of a corporation may require that an amendment to the articles or bylaws be approved in writing by a specified person or persons other than the board. Such a provision in the articles may only be amended with the approval in writing of the person or persons specified in the provision.

Sec. 124. NEW SECTION. 504.1032 AMENDMENT TERMINATING MEMBERS OR REDEEMING OR CANCELING MEMBERSHIPS.

1. Unless the articles or bylaws provide otherwise, an amendment to the articles or bylaws of a public benefit or mutual benefit corporation which would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships must meet the requirements of this chapter and this section.

2. Before adopting a resolution proposing such an amendment, the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

3. After adopting a resolution proposing such an amendment, the notice to members proposing such amendment shall include one statement of up to five hundred words opposing the proposed amendment, if such statement is submitted by any five members or members having three percent or more of the voting power, whichever is less, not later than twenty days after the board has voted to submit such amendment to the members for their approval. In public benefit corporations, the production and mailing costs of the statement opposing the proposed amendment shall be paid by the requesting members. In mutual benefit corporations, the production and mailing costs of the statement opposing the proposed amendment shall be paid by the corporation.

4. Any such amendment shall be approved by the members by two-thirds of the votes cast by each class.

5. The provisions of section 504.622 shall not apply to any amendment meeting the requirements of this chapter and this section.

SUBCHAPTER XI
MERGER

Sec. 125. NEW SECTION. 504.1101 APPROVAL OF PLAN OF MERGER.

1. Subject to the limitations set forth in section 504.1102, one or more nonprofit corporations may merge with or into any one or more corporations or nonprofit corporations or limited liability companies, if the plan of merger is approved as provided in section 504.1103.

2. The plan of merger shall set forth all of the following:

a. The name of each corporation or limited liability company planning to merge and the name of the surviving corporation into which each plans to merge.

b. The terms and conditions of the planned merger.

c. The manner and basis, if any, of converting the memberships of each public benefit or

religious corporation into memberships of the surviving corporation or limited liability company.

d. If the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or limited liability company or into cash or other property in whole or in part.

3. The plan of merger may set forth any of the following:

a. Any amendments to the articles of incorporation or bylaws of the surviving corporation or limited liability company to be effected by the planned merger.

b. Other provisions relating to the planned merger.

Sec. 126. NEW SECTION. 504.1102 LIMITATIONS ON MERGERS BY PUBLIC BENEFIT OR RELIGIOUS CORPORATIONS.

1. Without the prior approval of the district court, a public benefit or religious corporation may merge only with one of the following:

a. A public benefit or religious corporation.

b. A foreign corporation which would qualify under this chapter as a public benefit or religious corporation.

c. A wholly owned foreign or domestic business or mutual benefit corporation, provided the public benefit or religious corporation is the surviving corporation and continues to be a public benefit or religious corporation after the merger.

d. A business or mutual benefit corporation or limited liability company, provided that all of the following apply:

(1) On or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the public benefit or religious corporation or the fair market value of the public benefit or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under section 504.1406, subsection 1, paragraphs "e" and "f", had it dissolved.

(2) The business or mutual benefit corporation or limited liability company shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger, in accordance with such condition.

(3) The merger is approved by a majority of directors of the public benefit or religious corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving corporation.

2. Without the prior approval of the district court in a proceeding in which a guardian ad litem has been appointed to represent the interests of the corporation, a member of a public benefit or religious corporation shall not receive or keep anything as a result of a merger other than a membership in the surviving public benefit or religious corporation. The court shall approve the transaction if it is in the public interest.

Sec. 127. NEW SECTION. 504.1103 ACTION ON PLAN BY BOARD, MEMBERS, AND THIRD PERSONS.

1. Unless this chapter, the articles, bylaws, or the board of directors or members acting pursuant to subsection 3 require a greater vote or voting by class, or the articles or bylaws impose other requirements, a plan of merger for a corporation must be approved by all of the following to be adopted:

a. The board.

b. The members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031 for an amendment to the articles or bylaws.

2. If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall

provide notice of any directors' meeting at which such approval is to be obtained in accordance with section 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

3. The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

4. If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 504.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws which will be in effect immediately after the merger takes effect.

5. If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws which will be in effect immediately after the merger takes effect.

6. Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under section 504.1004 or 504.1023. The plan must be approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

7. After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned subject to any contractual rights without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

Sec. 128. NEW SECTION. 504.1104 ARTICLES OF MERGER.

After a plan of merger is approved by the board of directors, and if required by section 504.1103, by the members and any other persons, the surviving or acquiring corporation shall deliver to the secretary of state articles of merger setting forth all of the following, as applicable:

1. The plan of merger.

2. If approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors.

3. If approval by members was required, both of the following:

a. The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan.

b. Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number of votes cast for the plan by each class was sufficient for approval by that class.

4. If approval of the plan by some person or persons other than the members of the board is required pursuant to section 504.1103, subsection 1, paragraph "c", a statement that the approval was obtained.

Sec. 129. NEW SECTION. 504.1105 EFFECT OF MERGER.

When a merger takes effect, all of the following occur:

1. Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases.

2. The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger.

3. The surviving corporation has all the liabilities and obligations of each corporation party to the merger.

4. A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased.

5. The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

Sec. 130. NEW SECTION. 504.1106 MERGER WITH FOREIGN CORPORATION.

1. Except as provided in section 504.1102, one or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if all of the following conditions are met:

a. The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger.

b. The foreign corporation complies with section 504.1104 if it is the surviving corporation of the merger.

c. Each domestic nonprofit corporation complies with the applicable provisions of sections 504.1101 through 504.1103 and, if it is the surviving corporation of the merger, with section 504.1104.

2. Upon the merger taking effect, the surviving foreign business or nonprofit corporation is deemed to have irrevocably appointed the secretary of state as its agent for service of process in any proceeding brought against it.

Sec. 131. NEW SECTION. 504.1107 BEQUESTS, DEVISES, AND GIFTS.

Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, that is made to a constituent corporation and which takes effect or remains payable after the merger, inures to the surviving corporation unless the will or other instrument otherwise specifically provides.

Sec. 132. NEW SECTION. 504.1108 CONVERSION.

A corporation organized under this chapter that is an insurance company may voluntarily elect to be organized as a mutual insurance company under chapter 490 or 491 pursuant to the procedures set forth in section 514.23.

SUBCHAPTER XII
SALE OF ASSETS

Sec. 133. NEW SECTION. 504.1201 SALE OF ASSETS IN REGULAR COURSE OF ACTIVITIES AND MORTGAGE OF ASSETS.

1. A corporation may on the terms and conditions and for the consideration determined by the board of directors do either of the following:

a. Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of its activities.

b. Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.

2. Unless the articles require it, approval of the members or any other persons of a transaction described in subsection 1 is not required.

Sec. 134. NEW SECTION. 504.1202 SALE OF ASSETS OTHER THAN IN REGULAR COURSE OF ACTIVITIES.

1. A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the goodwill, other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is authorized by subsection 2.

2. Unless this chapter, the articles, bylaws, or the board of directors or members acting pursuant to subsection 4 require a greater vote or voting by a class or the articles or bylaws impose other requirements, the proposed transaction to be authorized must be approved by all of the following:

a. The board.

b. The members by two-thirds of the votes cast or a majority of the voting power, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031 for an amendment to the articles or bylaws.

3. If the corporation does not have members, the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with section 504.823, subsection 3. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

4. The board may condition its submission of the proposed transaction, and the members may condition their approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

5. If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 504.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

6. If the board is required to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

7. After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

SUBCHAPTER XIII
DISTRIBUTIONS

Sec. 135. NEW SECTION. 504.1301 PROHIBITED DISTRIBUTIONS.

Except as authorized by section 504.1302, a corporation shall not make any distributions.

Sec. 136. NEW SECTION. 504.1302 AUTHORIZED DISTRIBUTIONS.

1. A mutual benefit corporation may purchase its memberships if after the purchase is completed, both of the following apply:

a. The corporation will be able to pay its debts as they become due in the usual course of its activities.

b. The corporation's total assets will at least equal the sum of its total liabilities.

2. Corporations may make distributions upon dissolution in conformity with subchapter 14.

SUBCHAPTER XIV
DISSOLUTION
PART 1
VOLUNTARY DISSOLUTION

Sec. 137. NEW SECTION. 504.1401 DISSOLUTION BY INCORPORATORS OR DIRECTORS AND THIRD PERSONS.

1. A majority of the incorporators of a corporation that has no directors and no members or a majority of the directors of a corporation that has no members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering articles of dissolution to the secretary of state.

2. The corporation shall give notice of any meeting at which dissolution will be approved. The notice must be in accordance with section 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation.

3. The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

Sec. 138. NEW SECTION. 504.1402 DISSOLUTION BY DIRECTORS, MEMBERS, AND THIRD PERSONS.

1. Unless this chapter, the articles, bylaws, or the board of directors or members acting pursuant to subsection 3 require a greater vote or voting by class or the articles or bylaws impose other requirements, dissolution is authorized if it is approved by all of the following:

a. The board.

b. The members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less.

c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031 for an amendment to the articles or bylaws.

2. If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with section 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

3. The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution, on receipt of a higher percentage of affirmative votes or on any other basis.

4. If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 504.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and must contain or be accompanied by a copy or summary of the plan of dissolution.

5. If the board seeks to have the dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

6. The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

Sec. 139. NEW SECTION. 504.1404 ARTICLES OF DISSOLUTION.

1. At any time after dissolution is authorized, a corporation may dissolve by delivering articles of dissolution to the secretary of state setting forth all of the following:

a. The name of the corporation.

b. The date dissolution was authorized.

c. A statement that dissolution was approved by a sufficient vote of the board.

d. If approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators.

e. If approval by members was required, both of the following:

(1) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution.

(2) Either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class and a statement that the number cast for dissolution by each class was sufficient for approval by that class.

f. If approval of dissolution by some person or persons other than the members, the board, or the incorporators is required pursuant to section 504.1402, subsection 1, paragraph "c", a statement that the approval was obtained.

2. A corporation is dissolved upon the effective date of its articles of dissolution.

Sec. 140. NEW SECTION. 504.1405 REVOCATION OF DISSOLUTION.

1. A corporation may revoke its dissolution within one hundred twenty days of its effective date.

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 action by the members or any other person.

3. After the revocation of dissolution is authorized, the corporation 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 corporation.

b. The effective date of the dissolution that was revoked.

c. The date that the revocation of dissolution was authorized.

d. If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect.

e. If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action of the board of directors alone pursuant to that authorization.

f. If member or third person action was required to revoke the dissolution, the information required by section 504.1404, subsection 1, paragraphs "e" and "f".

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 and the corporation resumes carrying on its activities as if dissolution had never occurred.

Sec. 141. NEW SECTION. 504.1406 EFFECT OF DISSOLUTION.

1. A dissolved corporation continues its corporate existence but shall not carry on any activities except those appropriate to wind up and liquidate its affairs, including all of the following:

a. Preserving and protecting its assets and minimizing its liabilities.

b. Discharging or making provision for discharging its liabilities and obligations.

c. Disposing of its properties that will not be distributed in kind.

d. Returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition.

e. Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws.

f. If the corporation is a public benefit or religious corporation, and a provision has not been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets to one or more persons described in section

501(c)(3) of the Internal Revenue Code, or if the dissolved corporation is not described in section 501(c)(3) of the Internal Revenue Code, to one or more public benefit or religious corporations.

g. If the corporation is a mutual benefit corporation and a provision has not been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, those persons whom the corporation holds itself out as benefiting or serving.

h. Doing every other act necessary to wind up and liquidate its assets and affairs.

2. Dissolution of a corporation does not do any of the following:

a. Transfer title to the corporation's property.

b. Subject its directors or officers to standards of conduct different from those prescribed in subchapter 8.

c. Change quorum or voting requirements for its board or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws.

d. Prevent commencement of a proceeding by or against the corporation in its corporate name.

e. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.

f. Terminate the authority of the registered agent.

Sec. 142. NEW SECTION. 504.1407 KNOWN CLAIMS AGAINST DISSOLVED CORPORATION.

1. A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

2. The dissolved corporation 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 corporation must receive the claim.

d. State that the claim will be barred if not received by the deadline.

3. A claim against the dissolved corporation is barred if either of the following occurs:

a. A claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved corporation by the deadline.

b. A claimant whose claim was rejected by the dissolved corporation 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. 143. NEW SECTION. 504.1408 UNKNOWN CLAIMS AGAINST DISSOLVED CORPORATION.

1. A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

2. The notice must do all of the following:

a. Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is located, or, if none is located in this state, where 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 corporation will be barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

3. If the dissolved corporation 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 corporation within five years after the publication date of the newspaper notice:

a. A claimant who did not receive written notice under section 504.1407.

b. A claimant whose claim was timely sent to the dissolved corporation 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 to the following extent, as applicable:

a. Against the dissolved corporation, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section shall not exceed the total amount of assets distributed to the distributee.

PART 2
ADMINISTRATIVE DISSOLUTION

Sec. 144. NEW SECTION. 504.1421 GROUNDS FOR ADMINISTRATIVE DISSOLUTION.

The secretary of state may commence a proceeding under section 504.1422 to administratively dissolve a corporation if any of the following occurs:

1. The corporation does not deliver its biennial report to the secretary of state, in a form that meets the requirements of section 504.1613, within sixty days after the report is due.

2. The corporation is without a registered agent or registered office in this state for sixty days or more.

3. The corporation 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 corporation's period of duration, if any, stated in its articles of incorporation expires.

Sec. 145. NEW SECTION. 504.1422 PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE DISSOLUTION.

1. Upon determining that one or more grounds exist under section 504.1421 for dissolving a corporation, the secretary of state shall serve the corporation with written notice of that determination under section 504.504.

2. If the corporation 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 at least sixty days after service of notice is perfected under section 504.504, the secretary of state may administratively dissolve the corporation 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 of dissolution and serve a copy on the corporation under section 504.504.

3. A corporation that is administratively dissolved continues its corporate existence but may[5] not carry on any activities except those necessary to wind up and liquidate its affairs pursuant to section 504.1406 and notify its claimants pursuant to sections 504.1407 and 504.1408.

4. The administrative dissolution of a corporation does not terminate the authority of its registered agent.

5. The secretary of state's administrative dissolution of a corporation pursuant to this section appoints the secretary of state as the corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the corporation. Upon receipt of process, the secretary of state shall serve

[5] See chapter 1175, §386 herein

a copy of the process on the corporation as provided in section 504.504. This subsection does not preclude service on the corporation's registered agent, if any.

Sec. 146. NEW SECTION. 504.1423 REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

1. A corporation administratively dissolved under section 504.1422 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must state all of the following:

a. The name of the corporation and the effective date of its administrative dissolution.

b. That the ground or grounds for dissolution either did not exist or have been eliminated.

c. That the corporation's name satisfies the requirements of section 504.401.

d. The federal tax identification number of the corporation.

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.[6] The department of revenue and finance shall report to the secretary of state the tax status of the corporation. If the department reports to the secretary of state that a filing delinquency or liability exists against the corporation, 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, that a delinquency or liability reported pursuant to paragraph "a" has been satisfied, and that all of the application information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 504.504. If the corporate name in subsection 1, paragraph "c", is different from the corporate name in subsection 1, paragraph "a", the certificate of reinstatement shall constitute an amendment to the articles of incorporation insofar as it pertains to the corporate name.

3. When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

Sec. 147. NEW SECTION. 504.1424 APPEAL FROM DENIAL OF REINSTATEMENT.

1. The secretary of state, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation under section 504.504 with a written notice that explains the reason or reasons for denial.

2. The corporation may appeal the denial of reinstatement to the district court within ninety days after service of the notice of denial is perfected by petitioning to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial of reinstatement.

3. The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

PART 3
JUDICIAL DISSOLUTION

Sec. 148. NEW SECTION. 504.1431 GROUNDS FOR JUDICIAL DISSOLUTION.

1. The district court may dissolve a corporation in any of the following ways:

a. In a proceeding brought by the attorney general, if any of the following is established:

(1) The corporation obtained its articles of incorporation through fraud.

(2) The corporation has continued to exceed or abuse the authority conferred upon it by law.

b. Except as provided in the articles or bylaws of a religious corporation, in a proceeding brought by fifty members or members holding five percent of the voting power, whichever is

[6] The "department of revenue" probably intended

less, or by a director or any person specified in the articles, if any of the following is established:

(1) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock.

(2) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.

(3) 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, or would otherwise have, expired.

(4) The corporate assets are being misapplied or wasted.

c. In a proceeding brought by a creditor, if either of the following is established:

(1) The creditor's claim has been reduced to judgment, the execution on the judgment is returned unsatisfied, and the corporation is insolvent.

(2) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

d. In a proceeding brought by the corporation to have its voluntary dissolution continued under court supervision.

2. Prior to dissolving a corporation, the court shall consider whether:

a. There are reasonable alternatives to dissolution.

b. Dissolution is in the public interest, if the corporation is a public benefit corporation.

c. Dissolution is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation.

Sec. 149. NEW SECTION. 504.1432 PROCEDURE FOR JUDICIAL DISSOLUTION.

1. Venue for a proceeding brought by the attorney general to dissolve a corporation lies in Polk county. Venue for a proceeding brought by any other party named in section 504.1431 lies in the county where a corporation's principal office is located or, if none is located in this state, where its registered office is or was last located.

2. It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

3. A court in a proceeding brought to dissolve a corporation 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 corporate assets wherever located, or carry on the activities of the corporation until a full hearing can be held.

Sec. 150. NEW SECTION. 504.1433 RECEIVERSHIP OR CUSTODIANSHIP.

1. A court in a judicial proceeding brought to dissolve a public benefit or mutual benefit corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. 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 corporation and all of its property wherever located.

2. The court may appoint an individual, or a domestic or foreign business or nonprofit 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 including the following:

a. The receiver or custodian may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court. However, the receiver's or custodian's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation. The receiver or custodian may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation, as applicable, in all courts of this state.

b. The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members 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 corporation, its members, and creditors.

5. The court during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and to the receiver's or custodian's attorney from the assets of the corporation or proceeds from the sale of the assets.

Sec. 151. NEW SECTION. 504.1434 DECREE OF DISSOLUTION.

1. If after a hearing the court determines that one or more grounds for judicial dissolution described in section 504.1431 exist, the court may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the 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 of the corporation's affairs and liquidation of the corporation in accordance with section 504.1406 and the notification of its claimants in accordance with sections 504.1407 and 504.1408.

PART 4
MISCELLANEOUS

Sec. 152. NEW SECTION. 504.1441 DEPOSIT WITH STATE TREASURER.

Assets of a dissolved corporation which should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash subject to known trust restrictions and deposited with the treasurer of state for safekeeping. However, in the treasurer of state's discretion, property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the treasurer of state shall deliver to the creditor, member, or other person or to the representative of the creditor, member, or other person that amount or property.

SUBCHAPTER XV
FOREIGN CORPORATIONS
PART 1
CERTIFICATE OF AUTHORITY

Sec. 153. NEW SECTION. 504.1501 AUTHORITY TO TRANSACT BUSINESS REQUIRED.

1. A foreign corporation shall not transact business in this state until it obtains a certificate of authority from the secretary of state.

2. The following activities, among others, do not constitute transacting business within the meaning of subsection 1:

a. Maintaining, defending, or settling any proceeding.

b. Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs.

c. Maintaining bank accounts.

d. Maintaining offices or agencies for the transfer, exchange, or registration of memberships or securities or maintaining trustees or depositaries with respect to those securities.

e. Selling through independent contractors.

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, mortgages, or security interests in real or personal property.

h. Securing or collecting debts or enforcing mortgages or security interests in property securing the debts.

i. Owning, without more, real or personal property.

j. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature.

k. Transacting business in interstate commerce.

Sec. 154. NEW SECTION. 504.1502 CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT AUTHORITY.

1. A foreign corporation transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority.

2. The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

3. A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until the court determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

4. A foreign corporation is liable for a civil penalty of an amount not to exceed a total of one thousand dollars if it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

5. Notwithstanding subsections 1 and 2, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

Sec. 155. NEW SECTION. 504.1503 APPLICATION FOR CERTIFICATE OF AUTHORITY.

1. A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth all of the following:

a. The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 504.1506.

b. The name of the state or country under whose law it is incorporated.

c. The date of incorporation and period of duration.

d. The address of its principal office.

e. The address of its registered office in this state and the name of its registered agent at that office.

f. The names and usual business or home addresses of its current directors and officers.

g. Whether the foreign corporation has members.

2. The foreign corporation shall deliver the completed application to the secretary of state, and shall also deliver to the secretary of state a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated which is dated no earlier than ninety days prior to the date the application is filed with the secretary of state.

Sec. 156. NEW SECTION. 504.1504 AMENDED CERTIFICATE OF AUTHORITY.

1. A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes any of the following:

a. Its corporate name.

b. The period of its duration.

c. The state or country of its incorporation.

2. The requirements of section 504.1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

Sec. 157. NEW SECTION. 504.1505 EFFECT OF CERTIFICATE OF AUTHORITY.

1. A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

2. A foreign corporation with a valid certificate of authority has the same rights and has the same privileges as and, except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of like character.

3. This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Sec. 158. NEW SECTION. 504.1506 CORPORATE NAME OF FOREIGN CORPORATION.

1. If the corporate name of a foreign corporation does not satisfy the requirements of section 504.401, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if the corporation's real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

2. Except as authorized by subsections 3 and 4, the corporate name of a foreign corporation, including a fictitious name, must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state.

b. A corporate name reserved or registered under section 504.402 or 504.403 or section 490.402 or 490.403.

c. The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state.

3. A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation incorporated or authorized to transact business in this state that is not distinguishable upon the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if either of the following applies:

a. The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation has filed documentation satisfactory to the secretary of state of the occurrence of any of the following:

a. The foreign corporation has merged with the other corporation.

b. The foreign corporation has been formed by reorganization of the other corporation.

c. The foreign corporation has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 504.401, it shall not transact busi-

ness in this state under the changed name until it adopts a name satisfying the requirements of section 504.401 and obtains an amended certificate of authority under section 504.1504.

Sec. 159. NEW SECTION. 504.1507 REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN CORPORATION.

Each foreign corporation authorized to transact business in this state shall continuously maintain in this state both of the following:

1. A registered office with the same address as that of its registered agent.

2. A registered agent, who may be any of the following:

a. An individual who resides in this state and whose office is identical to the registered office.

b. A domestic business or nonprofit corporation whose office is identical to the registered office.

c. A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical to the registered office.

Sec. 160. NEW SECTION. 504.1508 CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION.

1. A foreign corporation authorized to transact business in this state 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 that apply:

a. The name of its registered office or registered agent.

b. If the current registered office is to be changed, the address of its new registered office.

c. If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it.

d. That after the change or changes are made, the addresses of its registered office and the office of its registered agent will be identical.

2. If a registered agent changes the address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing 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 the corporation has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the address of the registered office of any corporation for which the registered agent is the registered agent by filing a statement as required in subsection 2 for each corporation, or by filing a single statement for all corporations named in the notice, except that it must be signed either manually or in facsimile only by the registered agent and must recite that a copy of the statement has been mailed to each corporation named in the notice.

4. A corporation may also change its registered office or registered agent in its biennial report as provided in section 504.1613.

Sec. 161. NEW SECTION. 504.1509 RESIGNATION OF REGISTERED AGENT OF FOREIGN CORPORATION.

1. The registered agent of a foreign corporation may resign as agent by signing and delivering to the secretary of state for filing the original statement of resignation. The statement of resignation 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 corporation 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 corporation, including the date the copies were sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed with the secretary of state.

Sec. 162. NEW SECTION. 504.1510 SERVICE ON FOREIGN CORPORATION.

1. The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

2. A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent biennial report filed under section 504.1613 if any of the following conditions apply:

a. The foreign corporation has no registered agent or its registered agent cannot with reasonable diligence be served.

b. The foreign corporation has withdrawn from transacting business in this state under section 504.1521.

c. The foreign corporation has had its certificate of authority revoked under section 504.1532.

3. Service is perfected under subsection 2 at the earliest of any of the following:

a. The date the foreign corporation receives the mail.

b. The date shown on the return receipt, if signed on behalf of the foreign corporation.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

4. This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation. A foreign corporation may also be served in any other manner permitted by law.

PART 2
WITHDRAWAL

Sec. 163. NEW SECTION. 504.1521 WITHDRAWAL OF FOREIGN CORPORATION.

1. A foreign corporation authorized to transact business in this state shall not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

2. A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application shall set forth all of the following:

a. The name of the foreign corporation and the name of the state or country under whose law it is incorporated.

b. That it is not transacting business in this state and that it surrenders its authority to transact business in this state.

c. That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state.

d. A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under paragraph "c".

3. After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth in its application for withdrawal.

PART 3
REVOCATION OF CERTIFICATE OF AUTHORITY

Sec. 164. NEW SECTION. 504.1531 GROUNDS FOR REVOCATION.

1. The secretary of state may commence a proceeding under section 504.1532 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if any of the following applies:

a. The foreign corporation does not deliver the biennial report to the secretary of state in a form that meets the requirements of section 504.1613 within sixty days after it is due.

b. The foreign corporation is without a registered agent or registered office in this state for sixty days or more.

c. The foreign corporation does not inform the secretary of state under section 504.1508 or 504.1509 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within ninety days of the change, resignation, or discontinuance.

d. An incorporator, director, officer, or agent of the foreign corporation signed a document that such person knew was false in any material respect with intent that the document be delivered to the secretary of state for filing.

e. The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated, stating that it has been dissolved or disappeared as the result of a merger.

2. The attorney general may commence a proceeding under section 504.1532 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if the corporation has continued to exceed or abuse the authority conferred upon it by law.

Sec. 165. NEW SECTION. 504.1532 PROCEDURE FOR AND EFFECT OF REVOCATION.

1. The secretary of state, upon determining that one or more grounds exist under section 504.1531 for revocation of a certificate of authority, shall serve the foreign corporation with written notice of that determination under section 504.1510.

2. The attorney general, upon determining that one or more grounds exist under section 504.1531, subsection 2, for revocation of a certificate of authority, shall request the secretary of state to serve, and the secretary of state shall serve, the foreign corporation with written notice of that determination under section 504.1510.

3. If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state or attorney general that each ground for revocation determined by the secretary of state or attorney general does not exist within sixty days after service of the notice is perfected under section 504.1510, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under section 504.1510.

4. The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

5. The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent biennial report or in any subsequent communications received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

6. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

Sec. 166. NEW SECTION. 504.1533 APPEAL FROM REVOCATION.

1. A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court within thirty days after the service of the certificate of revocation is perfected under section 504.1510 by petitioning to set aside the revocation and attaching to

the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

2. The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

SUBCHAPTER XVI
RECORDS AND REPORTS
PART 1
RECORDS

Sec. 167. NEW SECTION. 504.1601 CORPORATE RECORDS.

1. A corporation 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 directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by section 504.826, subsection 4.

2. A corporation shall maintain appropriate accounting records.

3. A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to vote.

4. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. A corporation shall keep a copy of all of the following records:

a. Its articles or restated articles of incorporation 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 relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members.

d. The minutes of all meetings of members and records of all actions approved by the members for the past three years.

e. All written communications to members generally within the past three years, including the financial statements furnished for the past three years under section 504.1611.

f. A list of the names and business or home addresses of its current directors and officers.

g. Its most recent biennial report delivered to the secretary of state under section 504.1613.

Sec. 168. NEW SECTION. 504.1602 INSPECTION OF RECORDS BY MEMBERS.

1. Subject to subsection 5, a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in section 504.1601, subsection 5, if the member gives the corporation written notice or a written demand at least five business days before the date on which the member wishes to inspect and copy.

2. Subject to subsection[7] 5 and 6, a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection 3 and gives the corporation written notice at least ten business days before the date on which the member wishes to inspect and copy:

a. Excerpts from any records required to be maintained under section 504.1601, subsection 1, to the extent not subject to inspection under section 504.1602, subsection 1.

b. Accounting records of the corporation.

c. The membership list.

3. A member may inspect and copy the records identified in subsection 2 only if all of the following apply:

a. The member's demand is made in good faith and for a proper purpose.

b. The member describes with reasonable particularity the purpose of the demand and the records the member desires to inspect.

[7] The word "subsections" probably intended

c. The records are directly connected to the purpose described.

d. The board consents, if consent is required by section 504.1605.

4. This section does not affect either of the following:

a. The right of a member to inspect records under section 504.711 or, if the member is in litigation with the corporation, to the same extent as any other litigant.

b. The power of a court, independently of this chapter, to compel the production of corporate records for examination.

5. The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.

6. A corporation may, within ten business days after receiving a demand for inspection of a membership list under section 504.711 or subsection 2 of this section, respond to the demand with a written proposal offering a reasonable alternative to the demand for inspection that will achieve the purpose of the demand without providing access to or a copy of the membership list. A proposal offering an alternative that reasonably and in a timely manner accomplishes a proper purpose identified in a demand for inspection shall be considered to offer a reasonable alternative. A proposal for a reasonable alternative that has been accepted by the person making the demand for inspection shall cease to be considered a reasonable alternative if the terms of the proposal are not carried out by the corporation within a reasonable time after acceptance of the proposal. For the purposes of this subsection, a reasonable alternative may include, but is not limited to, a communication prepared by a member and mailed by the corporation at the expense of the member.

Sec. 169. NEW SECTION. 504.1603 SCOPE OF INSPECTION RIGHT.

1. A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

2. The right to copy records under section 504.1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

3. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge shall not exceed the estimated cost of production or reproduction of the records.

4. The corporation may comply with a member's demand to inspect the record of members under section 504.1602, subsection 2, paragraph "c", by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

Sec. 170. NEW SECTION. 504.1604 COURT-ORDERED INSPECTION.

1. If a corporation does not allow a member who complies with section 504.1602, subsection 1, to inspect and copy any records required by that subsection to be available for inspection, the district court in the county where the corporation's principal office is located or, if none is located in this state, where its registered office is located, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

2. If a corporation does not within a reasonable time allow a member to inspect and copy any other records, or propose a reasonable alternative to such inspection and copying, the member who complies with section 504.1602, subsections 2 and 3, may apply to the district court in the county where the corporation's principal office is located or, if none is located in this state, where 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 or other relief deemed appropriate by the court, it shall also order the corporation to pay the member's costs, including reasonable attorney fees incurred, to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

4. If the court orders inspection and copying of the records demanded or other relief deemed appropriate by the court, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

Sec. 171. NEW SECTION. 504.1605 LIMITATIONS ON USE OF CORPORATE RECORDS.

Without consent of the board, no corporate record may be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board, corporate records including, without limitation, a membership list or any part thereof, shall not be used for any of the following:

1. To solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation.
2. For any commercial purpose.
3. For sale to or purchase by any person.
4. For any purpose that is detrimental to the interests of the corporation.

Sec. 172. NEW SECTION. 504.1606 INSPECTION OF RECORDS BY DIRECTORS.

1. A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.
2. The district court of the county where the corporation's principal office, or if none in this state, its registered office, is located may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.
3. If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

PART 2
REPORTS

Sec. 173. NEW SECTION. 504.1611 FINANCIAL STATEMENTS FOR MEMBERS.

1. Except as provided in the articles or bylaws of a religious corporation, a corporation upon written demand from a member shall furnish that member the corporation's latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for that year.
2. If annual financial statements are reported upon by a public accountant, the accountant's report must accompany them.

Sec. 174. NEW SECTION. 504.1612 REPORT OF INDEMNIFICATION TO MEMBERS.

If a corporation indemnifies or advances expenses to a director under section 504.852, 504.853, 504.854, or 504.855 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

Sec. 175. NEW SECTION. 504.1613 BIENNIAL REPORT FOR SECRETARY OF STATE.

1. Each domestic corporation, and each foreign corporation authorized to transact business

in this state, shall deliver to the secretary of state for filing a biennial report on a form prescribed and furnished by the secretary of state that sets forth all of the following:

a. The name of the corporation and the state or country under whose law it is incorporated.

b. The address of the corporation's registered office and the name of the corporation's registered agent at that office in this state, together with the consent of any new registered agent.

c. The address of the corporation's principal office.

d. The names and addresses of the president, secretary, treasurer, and one member of the board of directors.

e. Whether or not the corporation has members.

2. The information in the biennial report must be current on the date the biennial report is executed on behalf of the corporation.

3. The first biennial report shall be delivered to the secretary of state between January 1 and April 1 of the first odd-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent biennial reports must be delivered to the secretary of state between January 1 and April 1 of the following odd-numbered calendar years.

4. a. If a biennial report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to the corporation for correction.

b. A filing fee for the biennial report shall be determined by the secretary of state.

c. For purposes of this section, each biennial report shall contain information related to the two-year period immediately preceding the calendar year in which the report is filed.

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 biennial report, provided that the form contains the information required in section 504.502 or 504.503. If the secretary of state determines that a biennial report does not contain the information required by this section but otherwise meets the requirements of section 504.502 or 504.503 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 504.114, before returning the biennial report to the corporation 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 biennial report.

SUBCHAPTER XVII
TRANSITION PROVISIONS

Sec. 176. NEW SECTION. 504.1701 APPLICATION TO EXISTING DOMESTIC CORPORATIONS.

1. A domestic corporation that is incorporated under chapter 504A is subject to this chapter beginning on July 1, 2005.

2. Prior to July 1, 2005, only the following corporations are subject to the provisions of this chapter:

a. A corporation formed on or after January 1, 2005.

b. A corporation incorporated under chapter 504A, that voluntarily elects to be subject to the provisions of this chapter, in accordance with the procedures set forth in subsection 3.

3. A corporation incorporated under chapter 504A may voluntarily elect to be subject to the provisions of this chapter by doing all of the following:

a. The corporation shall amend or restate its articles of incorporation to indicate that the corporation voluntarily elects to be subject to the provisions of this chapter.

b. The corporation shall deliver a copy of the amended or restated articles of incorporation to the secretary of state for filing and recording in the office of the secretary of state.

4. After the amended or restated articles of incorporation have been filed with the secretary of state all of the following shall occur:

a. The corporation shall be subject to all provisions of this chapter.

b. The secretary of state shall issue a certificate of filing of the corporation's amended or restated articles of incorporation indicating that the corporation has made a voluntary election to be subject to the provisions of this chapter and shall deliver the certificate to the corporation or to the corporation's representative.

c. The secretary of state shall not file the amended or restated articles of incorporation of a corporation pursuant to this subsection unless at the time of filing the corporation is validly organized under the chapter under which it is incorporated, and has filed all biennial reports that are required and paid all fees that are due in connection with such reports.

5. The voluntary election of a corporation to be subject to the provisions of this chapter that is made pursuant to this section does not affect any right accrued or established, or any liability or penalty incurred by the corporation pursuant to the chapter under which the corporation was organized prior to such voluntary election.

Sec. 177. NEW SECTION. 504.1702 APPLICATION TO QUALIFIED FOREIGN CORPORATIONS.

A foreign corporation authorized to transact business in this state prior to January 1, 2005, is subject to this chapter beginning on July 1, 2005, but is not required to obtain a new certificate of authority to transact business under this chapter.

Sec. 178. NEW SECTION. 504.1703 SAVINGS PROVISIONS.

1. Except as provided in subsection 2, the repeal of a statute by this Act does not affect any of the following:

a. The operation of the statute or any action taken under it before its repeal.

b. Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal.

c. Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal.

d. Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

2. If a penalty or punishment imposed for violation of a statute repealed by this Act is reduced by this chapter, the penalty or punishment, if not already imposed, shall be imposed in accordance with this chapter.

Sec. 179. NEW SECTION. 504.1704 SEVERABILITY.

If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

Sec. 180. NEW SECTION. 504.1705 PUBLIC BENEFIT, MUTUAL BENEFIT, AND RELIGIOUS CORPORATIONS.

For the purposes of this chapter, each domestic corporation shall be deemed a public benefit, mutual benefit, or religious corporation as follows:

1. A corporation designated by statute as a public benefit corporation, a mutual benefit corporation, or a religious corporation is deemed to be the type of corporation designated by that statute.

2. A corporation that does not come within subsection 1 but is organized primarily or exclusively for religious purposes is a religious corporation.

3. A corporation that does not come within subsection 1 or 2 but which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation.

4. A corporation that does not come within subsection 1, 2, or 3, but which is organized for

a public or charitable purpose and which upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a person recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation.

5. A corporation that does not come within subsection 1, 2, 3, or 4 is a mutual benefit corporation.

Sec. 181. Section 15E.64, subsection 2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

To facilitate the organization of an Iowa capital investment corporation, both of the following persons shall serve as incorporators as provided in section 504.201 or 504A.28, as applicable:

Sec. 182. Section 230A.12, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

Each community mental health center established or continued in operation pursuant to section 230A.3, shall be organized under the Iowa nonprofit corporation Act appearing as chapter 504A, Code and Code Supplement 2003, except that a community mental health center organized after January 1, 2005, and a community mental health center continued in operation after July 1, 2005, shall be organized under the revised Iowa nonprofit corporation Act appearing as chapter 504, and except that a community mental health center organized under former chapter 504 prior to July 1, 1974, and existing under the provisions of chapter 504, Code 1989, shall not be required by this chapter to adopt the Iowa nonprofit corporation Act or the revised 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. 183. Section 490.401, subsection 2, paragraph b, Code 2003, is amended to read as follows:

b. A corporate name reserved or registered under section 490.402, 490.403, 504.402, or 504A.7.

Sec. 184. Section 497.22, unnumbered paragraph 1, Code 2003, is amended to read as follows:

~~Sections~~ Section 504.1613 or sections 504A.83 and 504A.84 apply to a cooperative association organized under this chapter in the same manner as those sections apply to a corporation organized under chapter 504 or 504A. In addition to the information required to be set forth in the biennial report under section 504.1613 or 504A.83, the cooperative association shall also set forth the total amount of business transacted, number of members, total expense of operation, total amount of indebtedness, and total profits or losses for each calendar or fiscal year of the two-year period which ended immediately preceding the first day of January of the year in which the report is filed.

Sec. 185. Section 498.24, unnumbered paragraph 1, Code 2003, is amended to read as follows:

~~Sections~~ Section 504.1613 or sections 504A.83 and 504A.84 apply to a cooperative association organized under this chapter in the same manner as those sections apply to a corporation

organized under chapter 504 or 504A. In addition to the information required to be set forth in the biennial report under section 504.1613 or 504A.83, the cooperative association shall also set forth the total amount of business transacted, number of members, total expense of operation, total amount of indebtedness, and total profits or losses for each calendar or fiscal year of the two-year period which ended immediately preceding the first day of January of the year in which the report is filed.

Sec. 186. Section 499.49, Code 2003, is amended to read as follows:

499.49 BIENNIAL REPORT.

~~Sections~~ Section 504.1613 or sections 504A.83 and 504A.84 apply to a cooperative organized under this chapter in the same manner as those sections apply to a corporation organized under chapter 504 or 504A. In addition to the information required to be set forth in the biennial report under section 504.1613 or 504A.83, the cooperative shall also set forth the number of members of the cooperative, the percentage of the cooperative's business done with or for its own members during each of the fiscal or calendar years of the preceding two-year period, the percentage of the cooperative's business done with or for each class of nonmembers specified in section 499.3, and any other information deemed necessary by the secretary of state to advise the secretary whether the cooperative is actually functioning as a cooperative.

Sec. 187. Section 504A.102, Code 2003, is amended to read as follows:

504A.102 FARM AID ASSOCIATIONS — TERMINATION AND ELECTION TO BE GOVERNED UNDER THE IOWA NONPROFIT CORPORATION ACT OR REVISED IOWA NONPROFIT CORPORATION ACT.

1. TERMINATION. A corporation incorporated and governed under chapter 176 as an association organized under chapter 176 prior to July 1, 2005, that is not governed as a corporation under this chapter ~~on or~~ before January 1, 2005, or under chapter 504 on or after January 1, 2005, but prior to June 30, 2005, as provided in this section is terminated on July 1, 2005.

2. ELECTION PROCEDURE. A corporation incorporated and governed under chapter 176 as an association organized under chapter 176 prior to July 1, 2005, may elect to be governed as a corporation under this chapter prior to January 1, 2005, or under chapter 504 on or after January 1, 2005, but prior to July 1, 2005. The association governed under chapter 176 shall be a corporation governed under this chapter or chapter 504 by complying with all of the following requirements:

a. The adoption of a resolution or resolutions at a meeting of the board of directors upon receiving the vote of a majority of the directors in office and of the members of the association in the same manner as provided in section 504A.35 or 504.1003. The resolution or resolutions shall recite that the association voluntarily elects to be governed as a corporation under this chapter. The resolution must designate the address of the association's initial registered office and the name of the association's registered agent at that office, if any.

b. The adoption of articles of incorporation in compliance with section 504A.29 or 504.202 at a meeting of the board of directors upon receiving the vote of a majority of the directors in office and of the members of the association in the same manner as provided in section 504A.35 or 504.1003. The articles of incorporation may be a restatement, substitution, or amendment of articles of incorporation adopted by the association pursuant to section 176.3. The articles of incorporation may be made part of the resolution or resolutions adopted by the association pursuant to paragraph "a" of this subsection.

c. Upon the adoption of a resolution or resolutions and articles of incorporation as provided in paragraphs "a" and "b" of this subsection, the president or vice president and secretary or an assistant secretary shall execute an instrument of verification. The instrument of verification shall certify all of the following:

(1) The association name as provided in the association's articles of incorporation pursuant to section 176.3 and the new corporation's corporate name, if different, as provided in section 504A.6 or 504.401.

(2) An identification of each resolution adopted under paragraph "a" of this subsection,

including the date of each resolution's adoption, and a recitation that each resolution and the articles of incorporation for the new corporation are filed with the office of secretary of state.

(3) The address of the new corporation's registered office and the name of the new corporation's registered agent as provided in section 504A.8 or 504.501.

d. All of the following shall be delivered to the office of the secretary of state for filing and recording as provided in section 504A.30 or 504.111:

(1) Each resolution adopted pursuant to paragraph "a" of this subsection.

(2) The new corporation's articles of incorporation adopted pursuant to paragraph "b" of this subsection.

(3) The instrument of verification that is executed pursuant to paragraph "c" of this subsection.

3. CERTIFICATE OF INCORPORATION. ~~Upon~~ For an association electing to be governed under this chapter prior to January 1, 2005, upon filing of the resolution or resolutions, the articles of incorporation, and the instrument of verification as provided in subsection 2, the office of secretary of state shall issue a certificate of incorporation and send the certificate to the corporation or its representative as provided in section 504A.30. For an association electing to be governed under chapter 504 on or after January 1, 2005, but prior to July 1, 2005, unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed as provided in section 504.203.

4. LIABILITIES AND RIGHTS PRIOR TO THE ELECTION. An association's election to be governed as a corporation under this chapter or chapter 504 does not affect any right accrued or established, or any liability or penalty incurred, under the provisions of chapter 176, prior to filing of the resolution or resolutions, articles of incorporation, and instrument of verification by the association as provided in subsection 2.

5. REPEAL. This section is repealed on July 1, 2005.

Sec. 188. Section 534.501, subsection 4, Code 2003, is amended to read as follows:

4. AMENDMENT PROCEDURE. The procedure for amending articles of incorporation or adopting restated articles for mutual associations is that specified in section 504A.35 or chapter 504, subchapter 10, as applicable, and for stock associations it is that specified in section 490.726 and sections 490.1002 through 490.1005.

Sec. 189. Section 602.8102, subsection 70, Code Supplement 2003, is amended to read as follows:

70. Certify a copy of a decree of dissolution of a nonprofit corporation to the secretary of state and the recorder in the county in which the corporation is located as provided in section 504A.62 or 504.1434, as applicable.

Sec. 190. Chapter 504A, Code 2005, is repealed effective July 1, 2005.

Sec. 191. CODE EDITOR DIRECTIVE. After July 1, 2005, the Code editor is directed to remove Code references to chapter 504A as required due to the July 1, 2005, repeal of sections 504A.1 through 504A.102 by this Act.

Sec. 192. EFFECTIVE DATE. Except as otherwise provided in this Act, this Act takes effect July 1, 2004.

Approved April 8, 2004

CHAPTER 1050

PRODUCT LIABILITY ACTIONS

H.F. 2170

AN ACT relating to product liability actions.

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

Section 1. Section 668.12, Code 2003, is amended to read as follows:

668.12 LIABILITY FOR PRODUCTS — ~~STATE OF THE ART DEFENSE~~ DEFENSES.

1. In any action brought pursuant to this chapter against an assembler, designer, supplier of specifications, distributor, manufacturer, or seller for damages arising from an alleged defect in the design, testing, manufacturing, formulation, packaging, warning, or labeling of a product, a percentage of fault shall not be assigned to such persons if they plead and prove that the product conformed to the state of the art in existence at the time the product was designed, tested, manufactured, formulated, packaged, provided with a warning, or labeled.

2. Nothing contained in ~~this section~~ subsection 1 shall diminish the duty of an assembler, designer, supplier of specifications, distributor, manufacturer or seller to warn concerning subsequently acquired knowledge of a defect or dangerous condition that would render the product unreasonably dangerous for its foreseeable use or diminish the liability for failure to so warn.

3. An assembler, designer, supplier of specifications, distributor, manufacturer, or seller shall not be subject to liability for failure to warn regarding risks and risk-avoidance measures that should be obvious to, or generally known by, foreseeable product users. When reasonable minds may differ as to whether the risk or risk-avoidance measure was obvious or generally known, the issues shall be decided by the trier of fact.

4. In any action brought pursuant to this chapter against an assembler, designer, supplier of specifications, distributor, manufacturer, or seller for damages arising from an alleged defect in packaging, warning, or labeling of a product, a product bearing or accompanied by a reasonable and visible warning or instruction that is reasonably safe for use if the warning or instruction is followed shall not be deemed defective or unreasonably dangerous on the basis of failure to warn or instruct. When reasonable minds may differ as to whether the warning or instruction is reasonable and visible, the issues shall be decided by the trier of fact.

Approved April 8, 2004

CHAPTER 1051

SOIL AND WATER CONSERVATION PRACTICES — REPAIRS AND IMPROVEMENTS

H.F. 2315

AN ACT relating to agricultural conservation practices.

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

Section 1. Section 468.126, subsection 1, paragraph c, Code 2003, is amended to read as follows:

c. If the estimated cost of a repair exceeds ~~ten~~ fifteen thousand dollars, or seventy-five

percent of the original total cost of the district and subsequent improvements, whichever is the greater amount, the board shall set a date for a hearing on the matter of making the proposed repairs, and shall give notice as provided in sections 468.14 through 468.18. If a hearing is required and the estimated cost of the repair exceeds twenty-five thousand dollars, an engineer's report or a report from the soil and water conservation district conservationist shall be presented at the hearing. The requirement of a report may be waived by the board if a prior report on the repair exists and that report is less than ten years old. The board shall not divide proposed repairs into separate programs in order to avoid the notice and hearing requirements of this paragraph. At the hearing the board shall hear objections to the feasibility of the proposed repairs, and following the hearing the board shall order that the repairs it deems desirable and feasible be made. Any interested party has the right of appeal from such orders in the manner provided in this subchapter, parts 1 through 5.

Sec. 2. Section 468.126, subsection 2, Code 2003, is amended to read as follows:

2. In the case of minor repairs, or in the eradication of brush and weeds along the open ditches, not in excess of ~~ten~~ fifteen thousand dollars where the board finds that a saving to the district will result the board may cause the repairs or eradication to be done by secondary road equipment, or weed fund equipment, and labor of the county and then reimburse the secondary road fund or the weed fund from the fund of the drainage district thus benefited.

Sec. 3. Section 468.126, subsection 4, paragraph a, Code 2003, is amended to read as follows:

a. When the board determines that improvements are necessary or desirable, the board shall appoint an engineer to make surveys as seem appropriate to determine the nature and extent of the needed improvements, and to file a report showing what improvements are recommended and their estimated costs, which report may be amended before final action. If the estimated cost of the improvements does not exceed ~~ten~~ fifteen thousand dollars, or twenty-five percent of the original cost of the district and subsequent improvements, whichever is the greater amount, the board may order the work done without notice. The board shall not divide proposed improvements into separate programs in order to avoid the limitation for making improvements without notice. If the board deems it desirable to make improvements where the estimated cost exceeds the ~~ten~~ fifteen thousand dollar or twenty-five percent limit, the board shall set a date for a hearing on the matter of constructing the proposed improvements and also on the matter of whether there shall be a reclassification of benefits for the cost of the proposed improvements, and shall give notice as provided in sections 468.14 through 468.18. At the hearing the board shall hear objections to the feasibility of the proposed improvements and arguments for or against a reclassification presented by or for any taxpayer of the district. Following the hearing the board shall order that the improvements it deems desirable and feasible be made, and shall also determine whether there should be a reclassification of benefits for the cost of improvements. If it is determined that a reclassification of benefits should be made the board shall proceed as provided in section 468.38. In lieu of publishing the notice of a hearing as provided by this subsection the board may mail a copy of the notice to each address where a landowner in the district resides by first class mail if the cost of mailing is less than publication of the notice. The mailing shall be made during the time the notice would otherwise be required to be published.

Approved April 8, 2004

CHAPTER 1052

REAL PROPERTY — CONVEYANCES AND OTHER TRANSFERS — MARKETABLE RECORD TITLE

H.F. 2450

AN ACT relating to real property, including acknowledgments of real property conveyances and limitations on causes of action concerning real property.

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

Section 1. Section 558.20, Code 2003, is amended to read as follows:

558.20 ACKNOWLEDGMENTS ~~WITHIN STATE~~.

The acknowledgment of any deed, conveyance, or other instrument in writing by which real estate in this state is conveyed or encumbered, ~~if~~ whether made within this state, ~~must be before some court having a seal, or some judge or clerk thereof, or some county auditor, or judicial magistrate or district associate judge within the county, or notary public within the state. Each of the officers above named is authorized to take and certify acknowledgments of all written instruments, authorized or required by law to be acknowledged~~ outside this state, outside the United States, or under federal authority, shall comply with the provisions of chapter 9E.

Sec. 2. Section 558.40, Code 2003, is amended to read as follows:

558.40 LIABILITY OF OFFICER.

Any officer, who knowingly misstates a material fact in ~~either~~ any of the certificates mentioned in this chapter or chapter 9E, shall be liable for all damages caused thereby, and shall be guilty of a serious misdemeanor.

Sec. 3. Section 558.42, Code 2003, is amended to read as follows:

558.42 ACKNOWLEDGMENT AS CONDITION PRECEDENT.

~~It~~ A document shall not be deemed lawfully recorded, unless it has been previously acknowledged or proved in the manner prescribed in ~~this chapter or~~ chapter 9E, except that affidavits, and certified copies of petitions in bankruptcy with or without the schedules appended, of decrees of adjudication in bankruptcy, and of orders approving trustees' bonds in bankruptcy, and Uniform Commercial Code financing statements and financing statement changes need not be thus acknowledged.

Sec. 4. Section 602.8102, subsection 78, Code 2003,[1] is amended to read as follows:

78. Certify an acknowledgment of a written instrument relating to real estate as provided in section 9E.10 or 558.20.

Sec. 5. Section 614.29, unnumbered paragraph 1, Code 2003, is amended to read as follows:

As used in this ~~division~~ chapter:

Sec. 6. Section 614.30, Code 2003, is amended to read as follows:

614.30 CONSTRUCTION LIBERAL.

This ~~division~~ chapter shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in section 614.31, subject only to such limitations as appear in section 614.32.

Sec. 7. Section 614.36, Code 2003, is amended to read as follows:

614.36 LESSORS, REVERSIONERS, AND EASEMENTS.

This ~~division~~ chapter shall not be applied to bar any lessor or lessor's successor as a reversioner of the lessor's right to possession on the expiration of any lease; or to bar or extinguish

[1] "Code Supplement 2003" probably intended

any easement or interest in the nature of an easement, the existence of which is apparent from or can be proved by physical evidence of its use; or to bar any right, title or interest of the United States, by reason of failure to file the notice herein required.

Sec. 8. Section 614.37, Code 2003, is amended to read as follows:

614.37 LIMITATION STATUTES NOT EXTENDED.

Nothing contained in this ~~division~~ chapter shall be construed to extend the period for the bringing of an action or for the doing of any other required act under any statutes of limitations, nor, except as herein specifically provided, to effect the operation of any statutes governing the effect of the recording or the failure to record any instrument affecting land. It is intended that nothing contained in this division[2] be interpreted to revive or extend the period of filing a claim or bringing an action that may be limited or barred by any other statute.

Sec. 9. Section 614.38, Code 2003, is amended to read as follows:

614.38 PERIOD EXTENSION IN CERTAIN CASES.

If the forty-year period specified in this ~~division~~ chapter shall have expired prior to one year after July 1, 1969, such period shall be extended one year after July 1, 1969.

Sec. 10. Sections 558.21 through 558.30 and 558.37 through 558.39, Code 2003, are repealed.

Approved April 8, 2004

CHAPTER 1053

UNUSED PROPERTY MARKETS — REGULATION OF SALES

H.F. 2493

AN ACT relating to regulation of sales at unused property markets and providing penalties.

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

Section 1. NEW SECTION. 546B.1 DEFINITIONS.

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

1. "Baby food" or "infant formula" means any food manufactured, packaged, and labeled specifically for sale for consumption by a child under two years of age.

2. "Cosmetic" means any of the following, but does not include soap:

a. An article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part of a human body for cleaning, beautifying, promoting attractiveness, or altering the appearance.

b. An article intended for use as a component of an article defined in paragraph "a".

3. "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, tool, or other similar or related article, including any component, part, or accessory, to which either of the following applies:

a. The article is required under federal law to bear the label "Caution: Federal law requires dispensing by or on the order of a physician".

b. The article is defined by federal law as a medical device, and is intended for use in one of the following:

(1) The diagnosis of disease or other conditions.

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[2] See chapter 1175, §387 herein

(2) The cure, mitigation, treatment, or prevention of disease in humans or other animals.

(3) To affect the structure or any function of the body of man or other animals, but none of its principal intended purposes are achieved through chemical action within or on the body of a human or other animal nor is achievement of any of its principal intended purposes dependent upon the article being metabolized.

4. "New and unused property" means tangible personal property that was acquired by the unused property merchant directly from the producer, manufacturer, wholesaler, or retailer in the ordinary course of business that has never been used since its production or manufacture or which is in its original and unopened package or container, if such personal property was so packaged when originally produced or manufactured.

5. "Nonprescription drug" means any nonnarcotic medicine, drug, or other substance that may be sold without a prescription or medication order, and is prepackaged for use by the consumer, prepared by the manufacturer or producer for use by the consumer, and properly labeled and unadulterated, pursuant to the requirements of state and federal laws. "Nonprescription drug" does not include herbal products, dietary supplements, botanical extracts, or vitamins.

6. "Personal care product" means an item used in essential activities of daily living which may include but are not limited to bathing, personal hygiene, dressing, and grooming.

7. a. "Unused property market" means any of the following:

(1) An event where two or more persons offer personal property for sale or exchange, for which a fee is charged for sale or exchange of personal property, or at which a fee is charged to prospective buyers for admission to the area at which personal property is offered or displayed for sale or exchange, provided that the event is held more than six times in any twelve-month period.

(2) Any similar event that involves a series of sales sufficient in number, scope, and character to constitute a regular course of business, regardless of where the event is held, and regardless of the terminology applied to such event, including but not limited to "swap meet", "indoor swap meet", "flea market", or other similar terms.

b. "Unused property market" shall not mean any of the following:

(1) An event that is organized for the exclusive benefit of any community chest, fund, foundation, association, or corporation organized and operated for religious, educational, or charitable purposes, provided that no part of any admission fee or parking fee charged vendors or prospective purchasers or the gross receipts or net earnings from the sale or exchange of personal property, whether in the form of a percentage of the receipts or earnings, as salary, or otherwise, inures to the benefit of any private shareholder or person participating in the organization or conduct of the event.

(2) An event where all of the personal property offered for sale or displayed is new, and all persons selling, exchanging, or offering or displaying personal property for sale or exchange are manufacturers or authorized representatives of manufacturers or distributors.

8. "Unused property merchant" means any person, other than a vendor or merchant with an established retail store in the county where the unused property market event occurs, who transports an inventory of goods to a building, vacant lot, or other unused property market location and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. "Unused property merchant" does not mean a merchant as defined in section 554.2104.

Sec. 2. NEW SECTION. 546B.2 SALES PROHIBITED.

1. An unused property merchant shall not offer for sale or knowingly permit the sale at an unused property market of baby food, infant formula, cosmetics or personal care products, or any nonprescription drug or medical device.

2. This section shall not apply to a person who possesses and keeps available for public inspection, authentic written authorization identifying that person as an authorized representative of the manufacturer or distributor of such product. Authorization that is false, fraudulent, or fraudulently obtained shall not satisfy the requirement under this subsection.

Sec. 3. NEW SECTION. 546B.3 RECEIPTS.

1. An unused property merchant shall maintain receipts for the purchase of new and unused property from the producer, manufacturer, wholesaler, or retailer. A receipt shall include all of the following:

a. The date of the purchase.

b. The name and address of the person from whom the new or unused property was acquired.

c. An identification and description of the new and unused property acquired.

d. The price paid for such new and unused property.

e. The signature of the seller and buyer of the new and unused property.

2. An unused property merchant shall maintain receipts required under subsection 1 for two years.

3. An unused property merchant shall not knowingly do either of the following:

a. Falsify, obliterate, or destroy receipts required under subsection 1. Disposal or destruction of receipts after the two-year retention period required by subsection 2 shall not violate this paragraph.

b. Refuse or fail upon request and reasonable notice to make receipts required under subsection 1 available for inspection.

4. This section shall not apply to any of the following:

a. The sale of a motor vehicle or trailer that is required to be registered or is subject to the certificate of title laws of this state.

b. The sale of wood for fuel, ice, or livestock.

c. Business conducted during an industry or association trade show.

d. New and unused property that was not recently produced or manufactured, and the style, packaging, or material of the property clearly indicates that it was not recently produced or manufactured.

e. A person who sells by sample, catalog, or brochure for future delivery.

f. The sale of arts or crafts or other merchandise by a person who produces such arts or crafts or merchandise or by a person acting on such person's behalf.

g. A person who makes a sales presentation pursuant to a prior, individualized invitation issued to the consumer by the owner or legal occupant of the premises.

Sec. 4. NEW SECTION. 546B.4 PENALTIES.

A person who violates any provision of this chapter commits:

1. A simple misdemeanor for a first offense.

2. A serious misdemeanor for a second offense.

3. An aggravated misdemeanor for a third or subsequent violation.

Approved April 8, 2004

CHAPTER 1054

NOTARIAL ACTS — CERTIFICATIONS OF
UNIFORM CITATION AND COMPLAINTS

H.F. 2516

AN ACT relating to the performance of a notarial act by a chief officer when certifying a uniform citation and complaint under oath, and providing an effective date.

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

Section 1. Section 9E.6A, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Each person performing a notarial act pursuant to section 9E.10 must acquire and use a stamp or seal as provided in this chapter. However, this section shall not apply to a notarial act performed by a judicial officer as defined in section 602.1101, if the notarial act is performed in accordance with state or federal statutory authority, or is[1] a certification by a chief officer or a chief officer's designee of a peace officer's verification of a uniform citation and complaint pursuant to section 805.6, subsection 5.

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

Approved April 8, 2004

CHAPTER 1055

SEXUAL ABUSE — EVIDENCE

H.F. 2522

†**AN ACT** relating to evidence in a sexual abuse case.

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

Section 1. NEW SECTION. 709.10 SEXUAL ABUSE — EVIDENCE.

1. When an alleged victim of sexual abuse consents to undergo a sexual abuse examination and to having the evidence preserved, a sexual abuse evidence collection kit must be collected and properly stored with the law enforcement agency under whose jurisdiction the offense occurred or with the agency collecting the evidence to ensure that the chain of custody is complete and sufficient.

2. If an alleged victim of sexual abuse has not filed a complaint and a sexual abuse evidence collection kit has been completed, the kit must be stored by the law enforcement agency for a minimum of ten years. In addition, if the alleged victim does not want their name recorded on the sexual abuse collection kit, a case number or other identifying information shall be assigned to the kit in place of the name of the alleged victim.

Approved April 8, 2004

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[1] See chapter 1175, §349 herein

† Estimate of additional local revenue expenditures required by state mandate on file with the Secretary of State

CHAPTER 1056

CONTESTS OR EXHIBITIONS INVOLVING ANIMALS

S.F. 2249

AN ACT regulating contest events involving animals, and providing a penalty and effective date.

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

Section 1. Section 99B.11, subsection 2, paragraph c, Code 2003, is amended to read as follows:

c. Contests or exhibitions of cooking, horticulture, livestock, poultry, fish or other animals, artwork, hobbywork or craftwork, except those prohibited by chapter 717A[1] or section 725.11.

Sec. 2. Section 709A.1, subsection 2, paragraph c, Code 2003, is amended to read as follows:

c. Any premises the use of which constitutes a violation of ~~sections~~ chapter 717A, or section 725.5, 725.10,[2] or 725.11.

Sec. 3. Section 717D.1, subsection 2, Code Supplement 2003, is amended by striking the subsection.

Sec. 4. Section 717D.1, subsections 3, 4, 5, 10, and 11, Code Supplement 2003, are amended to read as follows:

3. "Contest device" means equipment designed to enhance ~~a contest~~ an animal's entertainment value during training or a contest event, including a device to improve the contest animal's competitiveness. A contest device includes but is not limited to an implement designed to be attached in place of a natural spur of a cock or other fighting bird in order to enhance the bird's fighting ability, and which is commonly referred to as a spur or gaff.

4. "Contest event" means a function organized for the entertainment or profit of spectators where ~~a contest~~ an animal is injured, tormented, or killed, ~~if the contest animal is~~ including but not limited to a bull involved in a bullfight or bull baiting, a bear involved in bear baiting, a chicken involved in cock fighting, or a dog involved in dog fighting.

5. "Establishment" means the location where a contest event occurs or is to occur, regardless of whether ~~a contest~~ an animal is present at the establishment or the contest animal is witnessed by means of an electronic signal transmitted to the location.

10. "Trainer" means a person who trains ~~a contest~~ an animal for purposes of engaging in a contest event, regardless of where the contest event is located. A trainer includes a person who uses a contest device.

11. "Transporter" means a person who moves ~~a contest~~ an animal for delivery to a training location or a contest event location.

Sec. 5. Section 717D.2, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 2A. Possess or own an animal engaged or to be engaged in a contest event conducted in this state or another state.

NEW SUBSECTION. 2B. Be a party to a commercial transaction for the transfer of an animal engaged or to be engaged in a contest event conducted in this state or another state, including but not limited to a transaction by purchase or sale, barter, trade, or an offer involving such a transaction.

NEW SUBSECTION. 3A. Possess, own, or manufacture a contest device.

NEW SUBSECTION. 3B. Be a party to a commercial transaction for the transfer of a contest device, including but not limited to a transaction by purchase or sale, barter, trade, or an offer involving such a transaction.

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[1] See chapter 1175, §365 herein

[2] See chapter 1175, §389 herein

Sec. 6. Section 717D.2, subsections 3 and 4, Code 2003, are amended to read as follows:

3. Act as a trainer of ~~a contest~~ an animal engaged or to be engaged in a contest event conducted in this state or another state. For purposes of this subsection, a person who aids, abets, or assists in the training of ~~a contest~~ an animal engaged or to be engaged in a contest event shall be deemed to act as a trainer.

4. Act as a transporter moving ~~a contest~~ an animal engaged or to be engaged in a contest event in this state.

Sec. 7. Section 717D.4, Code 2003, is amended to read as follows:

717D.4 PENALTIES.

1. ~~A~~ Except as provided in subsection 2, a person who violates a provision of this chapter is guilty of a ~~serious~~ class "D" felony.

2. A person who violates section 717D.2 by acting as a spectator of a contest event conducted in this state is guilty of an aggravated misdemeanor.

Sec. 8. Section 717D.5, Code 2003, is amended to read as follows:

717D.5 CONFISCATION AND DISPOSITION OF ANIMALS.

1. A local authority may confiscate ~~a contest~~ an animal that is ~~trained with a contest device or is part of a contest event~~ involved in a violation of section 717D.2. ~~The contest~~ An animal that is livestock shall be considered neglected and may be rescued and disposed of as ~~neglected livestock or other~~ provided in section 717.5. An animal ~~pursuant to~~ which is not livestock shall be considered threatened and rescued and disposed of as provided in section ~~717.5 or~~ 717B.4.

2. If ~~the contest~~ an animal that is involved in a violation of section 717D.2 is not rescued and disposed of pursuant to section 717.5 or 717B.4, it shall be forfeited to the state and subject to disposition as ordered by the court. In addition, the court shall order the owner of the ~~contest~~ animal to pay an amount which shall not be more than the expenses incurred in maintaining or disposing of the ~~contest~~ animal. The court may also order that the person pay reasonable attorney fees and expenses related to the investigation of the case that shall be taxed as other court costs. If more than one person has a divisible interest in the ~~contest~~ animal, the amount required to be paid shall be prorated based on the percentage of interest in the ~~contest~~ animal owned by each person. The moneys shall be paid to the local authority incurring the expense. The amount shall be subtracted from proceeds which are received from the sale of the ~~contest~~ animal ordered by the court.

Sec. 9. Section 725.11, Code 2003, is repealed.

Sec. 10. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 9, 2004

CHAPTER 1057

CONTROLLED SUBSTANCE VIOLATIONS — RECEIPT OR POSSESSION OF PRECURSOR OR OTHER SUBSTANCES — INTENT

S.F. 2101

AN ACT relating to receiving a precursor substance or possessing a product to be used in the unlawful manufacture of a controlled substance.

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

Section 1. Section 124.401, subsection 4, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

A person who possesses any product containing any of the following commits a class "D" felony, if the person possesses with the intent ~~to use the product~~ that the product be used to manufacture any controlled substance:

Sec. 2. Section 124B.9, subsection 2, Code 2003, is amended to read as follows:

2. A person who receives a precursor substance with the intent ~~to use the~~ that the substance be used unlawfully to manufacture a controlled substance commits a class "C" felony.

Approved April 12, 2004

CHAPTER 1058

BINGO AND RAFFLES

S.F. 2149

AN ACT relating to games of chance by authorizing certain bingo games and prizes for bingo and raffles and providing an effective date.

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

Section 1. Section 99B.7, subsection 1, paragraph c, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

Cash or merchandise prizes may be awarded in the game of bingo and, except as otherwise provided in this paragraph, shall not exceed one hundred dollars. Merchandise prizes may be awarded in the game of bingo, but the actual retail value of the prize, or if the prize consists of more than one item, unit or part, the aggregate retail value of all items, units or parts, shall not exceed the maximum provided by this paragraph. Bingo games allowing for a trade-in of a bingo card during a bingo game for not more than fifty cents a trade-in may be conducted. A jackpot bingo game may be conducted ~~once~~ twice during any twenty-four hour period in which the prize may begin at not more than three hundred dollars in cash or actual retail value of merchandise prizes and may be increased by not more than ~~one~~ two hundred dollars after each bingo occasion to a maximum prize of one thousand dollars for the first jackpot bingo game and two thousand five hundred dollars for the second jackpot bingo game. However, the cost of play in a jackpot bingo game shall not be increased ~~and the jackpot shall not amount to more than eight hundred dollars in cash or actual retail value of merchandise prizes~~. A jackpot bingo game is not prohibited by paragraph "h". A bingo occasion shall not last for longer

than four consecutive hours. A qualified organization shall not hold more than fourteen bingo occasions per month. Bingo occasions held under a limited license shall not be counted in determining whether a qualified organization has conducted more than fourteen bingo occasions per month, nor shall bingo occasions held under a limited license be limited to four consecutive hours. With the exception of a limited license bingo, no more than three bingo occasions per week shall be held within a structure or building and only one person licensed to conduct games under this section may hold bingo occasions within a structure or building. A licensed qualified organization shall not conduct free games.

Sec. 2. Section 99B.7, subsection 1, paragraph d, unnumbered paragraphs 1, 2, and 3, Code Supplement 2003, are amended to read as follows:

Cash prizes shall not be awarded in games other than bingo and raffles. The value of a prize shall not exceed ten 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 ten thousand dollars. However, one raffle may be conducted per calendar year at which real property or one or more merchandise prizes having a combined value of more than ten thousand dollars may be awarded or a cash prize of up to two hundred thousand dollars may be awarded.

If a raffle licensee holds a statewide raffle license, the licensee may hold not more than eight raffles per calendar year at which real property or one or more merchandise prizes having a combined value of more than ten thousand dollars may be awarded or a cash prize of up to two hundred thousand dollars may be awarded. Each such raffle held under a statewide license shall be held in a separate county.

If a prize is merchandise, its value shall be determined by the purchase price paid by the organization or donor. If a prize is real property or is cash and the combined value of the prize or the cash prize exceeds one hundred thousand dollars, the department shall conduct a special audit to verify compliance with the appropriate requirements of this chapter including all of the following applicable requirements:

Sec. 3. Section 99B.7, subsection 1, paragraph d, subparagraph (1), Code Supplement 2003, is amended to read as follows:

(1) The licensee has submitted a real property or cash raffle license application and a fee of one hundred dollars to the department, has been issued a license, and prominently displays the license at the drawing area of the raffle.

Sec. 4. Section 99B.7, subsection 3, paragraph a, Code Supplement 2003, is amended to read as follows:

a. A person wishing to conduct games and raffles pursuant to this section as a qualified organization shall submit an application and a license fee of one hundred fifty dollars. The annual license fee for a statewide raffle license shall be one hundred fifty dollars. However, upon submission of an application accompanied by a license fee of fifteen dollars, a person may be issued a limited license to conduct all games and raffles pursuant to this section at a specified location and during a specified period of fourteen consecutive calendar days, except that bingo may only be conducted once per each seven consecutive calendar days of the specified period. In addition, a qualified organization may be issued a limited license to conduct raffles pursuant to this section for a period of ninety days for a license fee of forty dollars or for a period of one hundred eighty days for a license fee of seventy-five dollars. For the purposes of this paragraph, a limited license is deemed to be issued on the first day of the period for which the license is issued.

Sec. 5. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 12, 2004

CHAPTER 1059

POSSESSION AND ADMINISTRATION OF
ASTHMA OR OTHER AIRWAY CONSTRICTING DISEASE MEDICATION

S.F. 2177

AN ACT relating to the possession and self-administration of asthma or other airway constricting disease medication by public and accredited nonpublic school students.

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

Section 1. NEW SECTION. 280.16 SELF-ADMINISTRATION OF ASTHMA OR OTHER AIRWAY CONSTRICTING DISEASE MEDICATION.

1. DEFINITIONS. For purposes of this section:

a. "Medication" means a drug that meets the definition provided in section 126.2, subsection 8, has an individual prescription label, is prescribed by a physician for a student, and pertains to the student's asthma or other airway constricting disease.

b. "Physician" means a person licensed under chapter 148, 150, or 150A, or a physician's assistant, advanced registered nurse practitioner, or other person licensed or registered to distribute or dispense a prescription drug or device in the course of professional practice in this state in accordance with section 147.107, or a person licensed by another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs.

c. "Self-administration" means a student's discretionary use of medication prescribed by a physician for the student.

2. The board of directors of a school district and the authorities in charge of an accredited nonpublic school shall permit the self-administration of medication by a student with asthma or other airway constricting disease if the following conditions are met:

a. The student's parent or guardian provides to the school written authorization for the self-administration of medication.

b. The student's parent or guardian provides to the school a written statement from the student's physician containing the following information:

(1) The name and purpose of the medication.

(2) The prescribed dosage.

(3) The times at which or the special circumstances under which the medication is to be administered.

c. The parent or guardian and the school meet the requirements of subsection 3.

3. The school district or accredited nonpublic school shall notify the parent or guardian of the student, in writing, that the school district or accredited nonpublic school and its employees are to incur no liability, except for gross negligence, as a result of any injury arising from self-administration of medication by the student. The parent or guardian of the student shall sign a statement acknowledging that the school district or nonpublic school is to incur no liability, except for gross negligence, as a result of self-administration of medication by the student. A school district or accredited nonpublic school and its employees acting reasonably and in good faith shall incur no liability for any improper use of medication as defined in this section or for supervising, monitoring, or interfering with a student's self-administration of medication as defined in this section.

4. The permission for self-administration of medication is effective for the school year for which it is granted and shall be renewed each subsequent school year upon fulfillment of the requirements of this section. However, the parent or guardian shall immediately notify the school of any changes in the conditions listed under subsection 2.

5. Provided that the requirements of this section are fulfilled, a student with asthma or other airway constricting disease may possess and use the student's medication while in school, at school-sponsored activities, under the supervision of school personnel, and before or after normal school activities, such as while in before-school or after-school care on school-operated property. If the student misuses this privilege, the privilege may be withdrawn.

6. Information provided to the school under subsection 2 shall be kept on file in the office of the school nurse or, in the absence of a school nurse, the school's administrator.

7. The Iowa braille and sight saving school, the state school for the deaf, and the institutions under the control of the department of human services as provided in section 218.1 are exempt from the provisions of this section.

Approved April 12, 2004

CHAPTER 1060

SEXUALLY VIOLENT OFFENSES —
INSANITY OF DEFENDANT — CIVIL COMMITMENT

S.F. 2193

AN ACT relating to the civil commitment of sexually violent predators.

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

Section 1. Section 229A.7, subsection 1, Code 2003, is amended to read as follows:

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.

Sec. 2. Section 229A.7, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. If a person has been found not guilty by reason of insanity, the court shall determine whether the acts charged were proven as a matter of law. If as a matter of law, the finding of not guilty by reason of insanity requires a finding that the underlying elements of the charged offense were proven, then no further fact-finding is required. If as a matter of law, the finding of not guilty by reason of insanity does not require a finding that the underlying elements of the charged offense be proven, the case shall proceed in the same manner as if the person were found to be incompetent to stand trial as provided in subsection 1.

Approved April 12, 2004

CHAPTER 1061

CHILD CUSTODY AND VISITATION

S.F. 2234

AN ACT relating to child custody and visitation provisions.

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

Section 1. NEW SECTION. 598.14B CHILD VISITATION — TEMPORARY CUSTODY ORDERS.

In order to encourage compliance with a visitation order, a temporary order for custody shall provide for a minimum visitation schedule with the noncustodial parent, unless the court determines that such visitation is not in the best interest of the child.

Sec. 2. Section 600B.40, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The mother of a child born out of wedlock whose paternity has not been acknowledged and who has not been adopted has sole custody of the child unless the court orders otherwise. If a judgment of paternity is entered, the father may petition for rights of visitation or custody in the same paternity action or in an equity proceeding separate from any action to establish paternity.

Approved April 12, 2004

CHAPTER 1062

SPANISH LANGUAGE INTERPRETER QUALIFICATIONS

H.F. 2441

AN ACT relating to the statutory duties of the commission of Latino affairs regarding Spanish language interpreter qualifications.

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

Section 1. Section 216A.15, subsection 9, Code 2003, is amended to read as follows:

9. ~~Maintain information on~~ Adopt rules, with stakeholder input, pursuant to chapter 17A to develop a mechanism to ensure the qualifications of Spanish language interpreters and maintain and provide a list of those deemed qualified to Iowa courts, ~~or~~ administrative agencies, social service agencies, and health agencies, as requested.

Approved April 12, 2004

CHAPTER 1063

VOLUNTEER EMERGENCY SERVICES PROVIDER DEATH BENEFITS — HEART ATTACKS OR STROKES

S.F. 2044

AN ACT concerning eligibility requirements for payment of a volunteer emergency services provider death benefit resulting from a heart attack or stroke.

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

Section 1. Section 100B.11, subsection 2, paragraph b, subparagraph (1), Code Supplement 2003, is amended to read as follows:

(1) (a) The death resulted from stress, strain, occupational illness, or a chronic, progressive, or congenital illness, including, but not limited to, a disease of the heart, lungs, or respiratory system, unless a traumatic personal injury was a substantial contributing factor to the volunteer emergency services provider's death.

(b) However, if the death was the direct and proximate result of a heart attack or stroke, the volunteer emergency services provider shall be presumed to have died as a result of a traumatic personal injury if the provider engaged in a nonroutine stressful or strenuous physical activity within the scope of the provider's duties and the death resulted while engaging in that activity, while still on duty after engaging in that activity, or not later than twenty-four hours after engaging in that activity, and the presumption is not overcome by competent medical evidence to the contrary. For purposes of this subparagraph subdivision, "nonroutine stressful or strenuous physical activity" includes, but is not limited to, nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, emergency response, and training exercise activities. "Nonroutine stressful or strenuous physical activity" does not include activities of a clerical, administrative, or nonmanual nature.

Approved April 13, 2004

CHAPTER 1064

SEX OFFENDER REGISTRATION REQUIREMENTS — INCEST COMMITTED AGAINST DEPENDENT ADULT

H.F. 2146

AN ACT making changes to sex offender registry requirements for persons convicted of incest against a dependent adult.

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

Section 1. Section 692A.1, subsection 7, paragraph d, Code Supplement 2003, is amended to read as follows:

d. Incest committed against a dependent adult as defined in section 235B.2 in violation of section 726.2.

e. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs "a" through ~~"c"~~ "d" if committed in this state.

Approved April 13, 2004

CHAPTER 1065

MASSAGE THERAPY —
EXEMPTIONS FROM LICENSURE REQUIREMENTS

H.F. 2201

AN ACT providing for exemptions from massage therapy licensure requirements.

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

Section 1. Section 152C.1, subsection 3, Code 2003, is amended to read as follows:

3. "Massage therapy" means performance for compensation of massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications, or other therapy which involves manipulation of the muscle and connective tissue of the body, excluding osseous tissue, to treat the muscle tonus system for the purpose of enhancing health, muscle relaxation, increasing range of motion, reducing stress, relieving pain, or improving circulation. ~~"Massage therapy" does not include diagnosis or service which requires a license to practice medicine or surgery, osteopathic medicine and surgery, osteopathy, chiropractic, cosmetology arts and sciences, or podiatry, and does not include service performed by athletic trainers, technicians, nurses, occupational therapists, or physical therapists who act under a professional license, certificate, or registration or under the prescription or supervision of a person licensed to practice medicine or surgery or osteopathic medicine and surgery.~~

Sec. 2. Section 152C.1, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4. "Reflexology" means manipulation of the soft tissues of the human body which is restricted to the hands, feet, or ears, performed by persons who do not hold themselves out to be massage therapists or to be performing massage therapy.

Sec. 3. NEW SECTION. 152C.9 EXEMPTIONS.

This chapter shall not apply to the following persons:

1. Persons who are licensed to practice medicine or surgery, osteopathic medicine and surgery, osteopathy, chiropractic, cosmetology arts and sciences, or podiatry in this state; or athletic trainers, technicians, nurses, occupational therapists, physical therapists, or physician assistants licensed, certified, or registered in this state or acting under the prescription or supervision of a person licensed to practice medicine or surgery or osteopathic medicine and surgery in this state.

2. Persons who are licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally present in this state to teach a course of instruction related to massage and bodywork therapy or to consult with a person licensed under subtitle 3 of this title.

3. Students enrolled in a program recognized by the board while completing a clinical requirement for graduation performed under the supervision of a person licensed under subtitle 3 of this title.

4. Persons giving massage and bodywork to members of their immediate family.
5. Persons practicing reflexology.
6. Persons engaged within the scope of practice of a profession with established standards and ethics utilizing touch, words, and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement, provided that the practices performed or services rendered are not designated or implied to be massage therapy. Such practices include, but are not limited to, the Feldenkrais method, the Trager approach, and mind-body centering.
7. Persons engaged within the scope of practice of a profession with established standards and ethics in which touch is limited to that which is essential for palpitation and affectation of the human energy system, provided that the practices performed or services rendered are not designated or implied to be massage therapy.
8. Persons incidentally present in this state to provide services as part of an emergency response team working in conjunction with disaster relief officials.

Approved April 13, 2004

CHAPTER 1066

ALTERNATIVE FORMS OF COUNTY AND CITY GOVERNMENT

H.F. 2404

AN ACT relating to certain alternative forms of county and city government by providing for county redistricting and representation, charter commission administration, application of various statutory requirements, the manner in which a charter may be proposed and adopted, amendment of a charter, the organization of the governing body, and inclusions in a charter, making technical changes relating to the administration and authority of a city-county consolidated government and a community commonwealth, making changes related to multicounty consolidation, and including effective and retroactive applicability date provisions.

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

Section 1. Section 331.210A, subsection 2, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. (1) Notwithstanding the provisions of this section to the contrary, for a county with a population of one hundred eighty thousand or more that has adopted a charter for a city-county consolidated form of government or a community commonwealth form of government and which charter provides for representation by districts, the legislative services agency, and not the temporary county redistricting commission, shall draw a representation plan as provided by paragraph "a" pursuant to a contract executed with the county. The plan drawn by the legislative services agency shall be based upon the precinct plan adopted for use by the county and shall be drawn in accordance with section 42.4, to the extent applicable. After the legislative services agency has drawn the plan, the legislative services agency shall at the earliest feasible time make available to the public all of the information required to be made public by paragraph "b".

(2) The legislative services agency shall submit the plan to the governing body, and the governing body shall comply with the duties required by paragraph "c", to the extent applicable.

(3) After the requirements of paragraphs "a" through "c" have been met, the governing body shall review the plan submitted by the legislative services agency and shall approve or reject the plan. If the plan is rejected, the governing body shall give written reasons for the rejection and shall direct the legislative services agency to prepare a second plan, as provided in paragraph "d". The second plan may be amended by the governing body in accordance with the provisions of paragraph "d". After receiving the second plan, the governing body shall approve either the first plan or the second plan.

(4) The governing body, after approving a plan, shall comply with the requirements of paragraph "e".

Sec. 2. Section 331.231, subsections 5 and 6, Code 2003, are amended to read as follows:

5. City-county consolidated form as provided in ~~section~~ sections 331.247 through 331.252.

6. Multicounty consolidated form as provided in ~~section~~ sections 331.253 through 331.259.

Sec. 3. Section 331.232, subsection 1, Code 2003, is amended to read as follows:

1. A charter to change a form of county government may be submitted to the electors of a county only by a commission established by resolution of the board upon petition of the number of eligible electors of the county equal to at least twenty-five percent of the votes cast in the county for the office of president of the United States or governor at the preceding general election or the signatures of at least ten thousand eligible electors of the county, whichever number is fewer. The board shall within ten days of the filing of a valid petition adopt such a resolution.

Sec. 4. Section 331.232, subsection 3, Code 2003, is amended to read as follows:

3. An alternative form of county government shall be submitted to the ~~county~~ electorate by the commission in the form of a charter ~~or charter amendment~~.

Sec. 5. Section 331.233A, subsections 1 and 2, Code 2003, are amended to read as follows:

1. The members of a commission created to study city-county consolidation or the community commonwealth form shall be appointed within ~~forty-five~~ thirty days after the adoption of a resolution creating the commission as follows:

a. One city council member shall be appointed by the city council of each city participating in the charter process.

b. ~~One member~~ Two members of the board of supervisors shall be appointed by the board of each county participating in the charter process. ~~The member~~ One supervisor must be a resident of the unincorporated area of the county for each participating county. However, if no supervisor resides in the unincorporated area, the board shall appoint a resident of the unincorporated area of the county in lieu of appointing a supervisor.

c. One member shall be appointed by each state legislator whose legislative district is located in the commission area if a majority of the constituents of that legislative district resides in the commission area. However, if a commission area does not have a state legislative district which has a majority of its constituents residing in the commission area, the legislative district having the largest plurality of constituents residing in the commission area shall appoint one member.

d. An additional member shall be appointed by each city council and each county board for every twenty-five thousand residents in the participating city or unincorporated area of the county, whichever is applicable. The member shall be a resident of the city or county, as applicable. The member shall be a person who is not holding elected office at the time of the appointment.

2. ~~The commission members shall be appointed in compliance with section 331.233, subsection 2.~~ A vacancy on the commission shall be filled by appointment in the same manner as the original appointment. The county auditor shall notify the appropriate appointing authority of a vacancy.

Sec. 6. Section 331.234, subsection 4, Code 2003, is amended to read as follows:

4. ~~The~~ Except as otherwise provided in subsection 5, the expenses of the commission may be paid from the general fund of the county ~~or~~. Expenses of the commission may also be paid from any combination of public or private funds available for that purpose. The commission's annual expenses may exceed the amount in subsection 3 only if the excess is paid from private funds. If a proposed charter is submitted to the electorate, private funds donated to the commission may be used to promote passage of the proposed charter.

Sec. 7. Section 331.234, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 5. In the case of a city-county consolidation charter commission or a community commonwealth charter commission, the expenses of the commission shall be paid by each city and county participating in the charter process pursuant to section 331.233A. Each participating city's share shall be its pro rata share of the expenses based upon the ratio that the population of the city bears to the total population in the county. The remainder shall be paid from the general fund of the county. The amount paid by each city and county participating in the charter process shall be deposited in a segregated account maintained by the county.

Sec. 8. Section 331.235, Code 2003, is amended to read as follows:

331.235 COMMISSION PROCEDURES AND REPORTS.

1. Within sixty days after its organization, the commission shall hold at least one public hearing for the purpose of receiving information and material which will assist in the drafting of a charter. Notice of the date, time, and place of the hearing shall be given as provided in chapter 21.

2. Within ~~nine~~ seven months after the organization of the commission, the commission shall submit a preliminary report to the board, which report may include the text of the proposed charter. If a proposed charter is included in the preliminary report, the report shall also include an analysis of the fiscal impact of the proposed charter. Sufficient copies of the report shall be made available for distribution to residents of the county who request a copy. The commission shall hold at least one public hearing after submission of the preliminary report to obtain public comment. Notice of the date, time, and place of the hearing shall be given as provided in chapter 21.

3. Within ~~twenty~~ twelve months after organization, the commission shall submit the final report to the board. However, a commission may adopt a motion granting itself a sixty-day extension of time for submission of its final report. If the commission recommends a charter including a form of government other than the existing form of government, the final report shall include the full text and an explanation of the proposed charter, an analysis of the fiscal impact of the proposed charter, any comments deemed desirable by the commission, and any minority reports. The final report may recommend no change to the existing form of government and that no charter be submitted to the electorate, in which case, the report shall state the reasons for and against a change in the existing form of government. The final report shall be made available to the residents of the county upon request. A summary of the final report shall be published by the commission in the official newspapers of the county and in a newspaper of general circulation in each participating city.

4. If a provision of this part is amended by enactment of the general assembly after a charter commission has submitted its final report to the board and before the proposed charter is submitted at an election, the commission may amend the proposed charter, only to the extent the charter amendment addresses the changes in the newly enacted law, and shall submit the amended proposed charter and an amended final report to the board in lieu of the original proposed charter. The amended proposed charter shall be placed on the ballot for the next general election if it is received by the board within the time set out in section 331.237, subsection 1. A summary of any amendments to the proposed charter shall be published by the commission as provided in subsection 3.

~~4.~~ 5. The commission is dissolved on the date of the general election at which the proposed

charter is submitted to the electorate. However, if a charter proposing the city-county consolidated form or the community commonwealth form is adopted, the commission is dissolved on the date that the terms of office of the members of the governing body for the alternative form of government commence. If a charter is not recommended, the commission is dissolved upon submission of its final report to the board.

Sec. 9. Section 331.237, subsection 1, Code 2003, is amended to read as follows:

1. If a proposed charter for county government is received not less than five working days before the filing deadline for candidates for county offices specified in section 44.4 for the next general election, the board shall direct the county commissioner of elections to submit to the registered voters of the county at the next general election the question of whether the proposed charter shall be adopted. A summary of the proposed charter or amendment shall be published in the official county newspapers and in a newspaper of general circulation in each participating city, if applicable, at least ten but not more than twenty days before the date of the election. ~~If~~ Except as otherwise provided in sections 331.247 and 331.260, if a majority of the votes cast on the question is in favor of the proposal, the proposal is adopted.

Sec. 10. Section 331.237, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Subsections 2 and 3 do not apply to the city-county consolidated form of government or the community commonwealth form of government.

Sec. 11. Section 331.238, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Subsections 1 and 2 do not apply to the city-county consolidated form of government or the community commonwealth form of government.

Sec. 12. Section 331.244, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 3. This section does not apply to the city-county consolidated form of government or the community commonwealth form of government.

Sec. 13. Section 331.245, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. This section does not apply to the city-county consolidated form of government or the community commonwealth form of government.

Sec. 14. Section 331.247, Code 2003, is amended to read as follows:

331.247 CITY-COUNTY CONSOLIDATION FORM.

1. ~~A county and one or more cities within the county may unite to form a single unit of local government in accordance with this part.~~ A commission appointed pursuant to section 331.233A may propose a charter under which a county and one or more cities within the county may unite to form a single unit of local government, or may propose a charter under which a county and one or more cities within the county may create a unified government empowered to govern a city and a county with each retaining the separate status and power of a city or a county for all purposes and constituting separate political subdivisions under combined governance. Either option proposed shall be referred to as a city-county consolidated form of government. If more than fifty percent of the population of a city resides within the affected county, it is a city within the county for the purposes of this section and may continue its status as a city within the county even if the population of such city falls below the more than fifty percent threshold in a future census.

2. ~~An alternative form of government, including a charter form, for a consolidated unit of government may be submitted to the voters only by a commission established under this chapter.~~ A majority vote by the charter commission is required for the submission to the electorate of ~~an alternative form of government for a consolidated unit of local government~~ a proposed charter for a city-county consolidated form of government. ~~The charter commission submitting a consolidated form shall issue a final report and proposal.~~

3. ~~An alternative form of government for a~~ A city-county consolidated ~~unit of local~~ form of government does not need to include more than one city. A city shall not be included unless the city participates in the commission process~~, and a majority of the electors of the affected city voting approves the proposed charter for the consolidated government~~.

4. ~~If an alternative form of government for a consolidated unit of local government is proposed, approval of the consolidation charter shall be a separate ballot issue from approval of the alternative form of government in those cities proposed to be included in the consolidation.~~ Adoption of the proposed consolidation charter requires the approval of a majority of the votes cast in the entire county and requires the approval of a majority of the votes cast in one or more cities named on the ballot. The consolidation charter shall be effective in regard to a city ~~government~~ named on the ballot only if a majority of the ~~voters of the city voting on the question voted for participation in the~~ votes cast in that city approves the consolidation charter.

5. An adopted charter takes effect July 1 following the general election at which it is approved unless the charter provides a later effective date. If the adopted charter calls for a change in the form of government, officers to fill elective offices created by the charter shall be elected in the general election in the even-numbered year following the adoption of the charter.

~~5.~~ 6. A city may request to join an existing city-county consolidated government by resolution of the city council or upon petition of eligible electors of the city equal in number to at least twenty-five percent of the persons who voted at the last ~~general election for the office of governor or president of the United States, whichever is fewer~~ regular city election. Within fifteen days after receiving a valid petition, the city council of the petitioning city shall adopt a resolution in favor of participation and shall ~~immediately~~, within ten days of adoption, forward the resolution to the ~~legislative~~ governing body of the city-county consolidated government. If a majority of the ~~city-county consolidated legislative~~ governing body of the city-county consolidated government approves the resolution, the question of joining the city-county consolidated government shall be submitted to the electorate of the petitioning city within sixty days after approval of the resolution.

7. a. If a charter is adopted, it may be amended at any time by one of the following methods:

(1) The governing body of the city-county consolidated government, by resolution, may submit a proposed amendment to the voters, and the proposed amendment becomes effective only upon approval by a majority of those voting on the proposed amendment within the city-county consolidated area.

(2) The governing body of the city-county consolidated government, by ordinance, may amend the charter. However, within thirty days following publication of the ordinance, if a petition valid under the provisions of section 331.306 is filed with the governing body of the city-county consolidated government, the governing body must submit the charter amendment to the voters and, in such event, the amendment becomes effective only upon approval of a majority of those voting on the proposed amendment within the city-county consolidated area.

(3) If a petition valid under the provisions of section 331.306 is filed with the governing body of the city-county consolidated government, proposing an amendment to the charter, the governing body must submit the proposed amendment to the voters and, in such an event, the amendment becomes effective only upon approval of a majority of those voting on the proposed amendment within the city-county consolidated area.

b. The proposed amendment shall be submitted at the general election. However, if the amendment is proposed pursuant to paragraph "a", subparagraph (1), the proposed amendment may be submitted at a special election if the resolution submitting the amendment to the voters is adopted by a two-thirds majority of the membership of the governing body.

c. If an election is held, the governing body shall submit the question of amending the charter to the electors in substantially the following form:

Should the amendment described below be adopted for the city-county consolidated charter of (insert name of county and of each consolidated city)?

The ballot must contain a brief description and summary of the proposed amendment.

d. An amendment shall not adopt an alternative form of county government.

e. Notwithstanding paragraph "b", if an amendment to a charter proposes to increase or decrease the number of members on the governing body, the amendment shall be submitted to the voters at a general election.

Sec. 15. Section 331.248, subsection 1, Code 2003, is amended to read as follows:

1. The charter commission proposing ~~consolidation~~ a city-county consolidated form of government shall prepare, adopt, and ~~submit~~ cause to be submitted to the voters ~~a consolidation~~ the charter ~~including an alternative form of government~~.

Sec. 16. Section 331.248, subsection 2, Code 2003, is amended to read as follows:

2. The ~~consolidation~~ charter for a city-county consolidated form of government shall:

a. Provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service.

b. Provide for establishment of service areas, except that formation of a city-county ~~consolidation government~~ consolidated form of government shall not affect the assignment of electric utility service territories pursuant to chapter 476, and shall not affect the rights of a city to grant a franchise under chapter 364.

c. Provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of ~~local governments~~ the county and each city consolidated under the alternative form.

d. Provide the official name of the city-county consolidated ~~unit of local~~ government.

e. Provide for the transfer, reorganization, abolition, absorption, and adjustment of boundaries of all existing boards, bureaus, commissions, agencies, special districts, and political subdivisions of the city-county consolidated government.

f. ~~Include other provisions which the county charter commission and the city charter commission elect to include and which are not inconsistent with state law.~~ Provide for the exercise of home rule power and authority not inconsistent with state law.

g. Provide for a governing body of an odd number of members, not less than five, but which may exceed the number of members specified in sections 331.201, 331.203, and 331.204. The titles of the members of the governing body shall be determined by the charter.

h. Provide for a representation plan for the governing body which representation plan may differ from the representation plans provided in section 331.206 and in chapter 372. If the plan calls for representation by districts and the charter has been approved in a county whose population is one hundred eighty thousand or more, the plan shall be drawn pursuant to section 331.210A, subsection 2, paragraph "f". The initial representation plan for such a county shall be drawn as provided in section 331.210A, subsection 2, paragraph "f", within one hundred twenty days after the election at which the charter is approved. For the initial representation plan, the charter commission shall assume the role of the governing body for purposes of this paragraph and section 331.210A, subsection 2, paragraphs "d" through "f".

i. Provide for the initial compensation for members of the governing body and for a method of changing the compensation.

Sec. 17. Section 331.248, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4. The consolidation charter may include other provisions which the commission elects to include and which are not irreconcilable with state law. These provisions may include but are not limited to the following:

a. Provide for a method of selecting officers of the governing body and fixing their terms of office which may differ from the requirements of sections 331.208 through 331.211 and the provisions of chapter 372.

b. Provide for meetings of the governing body and rules of procedure which may differ from the requirements of section 331.213, except that the meetings shall be scheduled and conducted in compliance with chapter 21.

c. Provide for combining the duties of elected officials of the county, for eliminating elected

offices and the assumption of the duties of those offices by appointed officials, and for adding to, deleting from, or otherwise changing the duties of officials, elected or otherwise, of the county and each consolidated city. If the charter provides that one or more elective offices are combined, the board of supervisors shall appoint one of the elective officers of the combined offices to serve until new officers have been elected at the general election in the even-numbered year and have qualified for office. If the charter calls for the elimination of an elective office, that elective officer's term of office shall expire on the date specified in the charter.

d. Provide for the organization of city and county departments, agencies, or boards. The organization plan may provide for the abolition or consolidation of a department, agency, board, or commission and the assumption of its powers and duties by the governing body or by another department, agency, board, or commission.

e. Provide for a method for the governing body or another office to exercise the powers and duties of the township trustees, in lieu of their election or appointment.

f. Provide for a chief executive officer, a method of selecting that officer, the compensation for that officer, a method of changing the compensation, and the powers and duties of that officer.

g. If the charter provides for a chief executive office, provide for the appointment of a chief executive officer pro tem, the compensation for that officer, a method of changing the compensation, and the manner in which that officer would exercise the powers and duties of the chief executive officer.

h. Provide for the appointment of a city manager, a method for determining and changing the compensation for the city manager, and the powers and duties of the city manager.

This subsection does not apply to the board of trustees of a county hospital or to the board of trustees of a city hospital.

Sec. 18. Section 331.249, Code 2003, is amended to read as follows:

331.249 EFFECT OF CONSOLIDATION.

1. a. ~~The consolidation of one or more cities and one or more counties shall create a unified government which includes a municipal corporation and a county.~~ A city-county consolidated form of government under which a county and one or more cities within the county unite to form a single unit of local government shall create a unified government which includes a municipal corporation and a county. The consolidated unit shall have the separate status of a county and a city for all purposes and shall constitute two political subdivisions, a consolidated city and a county, under combined governance. The consolidated unit shall retain one separate constitutional debt limitation with respect to its status as a city and a separate constitutional debt limitation with respect to its status as a county.

b. The governing body of a city-county consolidated form of government under which a county and one or more cities within the county create a unified government empowered to govern a city and a county shall have, with respect to the county, the power and authority of the board of supervisors of a county, and, with respect to each city, the power and authority of the city council of a city. Each consolidated city and the county constitute separate political subdivisions. Each consolidated city and the county shall each retain a separate constitutional debt limitation and shall each have the authority to issue bonds and incur financial obligations in accordance with the provisions of state law applicable to a city or a county, respectively.

2. ~~A~~ The city-county consolidated ~~unit of local~~ form of government may include an area which is located in another county, but which is within the corporate boundaries of one of the consolidated cities. ~~County services shall~~ Services may be provided in the extra-county area and taxes to fund those services ~~shall~~ may be collected in the extra-county area by the consolidated government, to the extent permitted by the Constitution of the State of Iowa. In addition to the right to vote in the county of residence, electors residing in the extra-county area shall have the right to vote on any matter related to the city-county consolidated ~~unit of local~~ government, including election of its ~~officials~~ governing body and its chief executive officer, if any.

If a city-county consolidation charter is proposed, within ninety days following the final report of the commission, a resident or property owner of the commission area proposed to be

consolidated may bring an action in district court for declaratory judgment to determine the legality of the proposed charter and to otherwise declare the effect of the charter. The court shall expedite its review and determination in this matter. The referendum on the proposed charter shall be stayed during pendency of the action and for such additional time during which the proposed charter or its enabling legislation does not conform to the Constitution or laws of the State of Iowa. If in its final judgment the court determines that the proposed charter fails to conform to the Constitution or laws of this state, the commission shall have a period of six months in which to revise and resubmit the proposed charter.

3. All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to counties and cities shall remain in full force with respect to each city and the county comprising a city-county consolidated ~~local~~ government.

4. The adoption of a charter for a city-county consolidated government does not alter any right or liability of the county or consolidated city in effect at the time of the election at which the charter was adopted.

5. All departments and agencies of the county and of each consolidated city shall continue to operate until their authority to operate is superseded by action of the governing body.

6. Upon the effective date of the adopted charter, the county and each participating city shall adopt the city-county consolidated form of government by ordinance, and shall file a copy with the secretary of state and maintain available copies for public inspection. The county shall provide each participating city with a copy of the county's ordinance. Each participating city shall provide a copy of that city's ordinance to the county and to the other participating cities.

7. Members of the governing body of the county shall continue in office after the effective date of the charter until the members of the governing body and the chief executive officer, if any, of the city-county consolidated government have been elected and qualified, at which time the offices of the former governing body of the county shall be abolished and the terms of the members of the former governing body shall be terminated. Members of the governing body and the mayor of each consolidated city shall continue in office after the effective date of the charter until the members of the governing body of the city-county consolidated government and the chief executive officer, if any, have been elected and qualified, at which time the office of mayor and of the former governing body of each consolidated city shall be abolished and the term of the members of each governing body and the term of each mayor shall be terminated.

During the period between the effective date of the charter and the election and qualification of the members of the governing body of the city-county consolidated government and the election and qualification of the chief executive officer, if any, the former governing bodies of the county and each city and the mayor of each city shall continue to exercise the power of, and to perform the duties for, their respective county and city. The charter shall provide that these incumbent officers assist in planning and carrying out the transition to the city-county consolidated form of government. The board of supervisors shall include in its budget for the fiscal year in which the charter becomes effective funds sufficient to provide for the operating expenses of a transition committee and for expenses incurred in initially establishing districts if the charter provides for representation by districts and for salaries for newly elected officers of the city-county consolidated government, after consultation with the transition committee.

8. If a city-county consolidation charter is submitted to the electorate but is not adopted, another charter shall not be submitted to the electorate for at least two years from the date of the election at which the charter was rejected. If a city-county consolidation charter is adopted, a proposed charter for another alternative form of county government shall not be submitted to the electorate for at least six years from the date of the election at which the charter was adopted.

Sec. 19. Section 331.250, Code 2003, is amended to read as follows:

331.250 GENERAL POWERS OF CONSOLIDATED LOCAL GOVERNMENTS.

The consolidation charter shall provide for the delivery of services to specified areas of the

~~consolidated local government~~ county and of each consolidated city. The governing body of the consolidated government shall ~~administer~~ supervise the administration of the provision of services in each of the designated service areas and shall have the authority to determine the boundaries of the service areas. For each service provided by the consolidated government, the consolidated government shall assume the same statutory rights, powers, and duties relating to the provision of the service as if the county or the member city were itself providing the service to its citizens.

Sec. 20. Section 331.251, Code 2003, is amended to read as follows:

331.251 RULES, ORDINANCES, AND RESOLUTIONS OF CONSOLIDATED ~~UNIT~~ GOVERNMENT.

~~Within two years after ratification of the consolidation, the governing body of the consolidated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county and cities at the time of consolidation.~~

1. Each rule, ordinance, or resolution in force ~~at the time of consolidation~~ within a county or within a city on the effective date of the charter shall remain in force within ~~the former geographic jurisdiction~~ that county or within that city until superseded by action of the new governing body, unless the rule, ordinance, or resolution is in conflict with a provision of the charter, in which case, the charter provision shall supersede the conflicting rule, ordinance, or resolution. The governing body of a participating city or county in office on the effective date of the charter shall retain its powers to adopt motions, resolutions, or ordinances provided that such motions, resolutions, or ordinances do not conflict with the provisions of the charter. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments shall remain in effect until paid in full.

2. If a charter creating a city-county consolidated form of government provides for a chief executive officer with the power to veto an ordinance, an amendment to an ordinance, or a resolution, the governing body shall adopt legislation in accordance with the provisions of chapter 380. If a charter creating a city-county consolidated form of government does not provide for a chief executive officer, the governing body shall adopt legislation in accordance with the provisions of section 331.302. However, a charter may provide that approval of certain ordinances, amendments, or resolutions shall require the affirmative vote of more than a majority of all members of the governing body.

Sec. 21. Section 331.252, Code 2003, is amended to read as follows:

331.252 FORM OF BALLOT — CITY-COUNTY CONSOLIDATION.

The question of city-county consolidation shall be submitted to the electors in substantially the following form:

Should the ~~corporate existence and governments of the county of . . . . . and the cities of . . . . . and . . . . . be consolidated into one joint city-county corporation government~~ charter described below be adopted for (insert name of county and each city proposing to consolidate)?

~~If section 331.247, subsection 4, applies, the following question shall be placed on the ballot of each participating city:~~

~~Should the (name of city or second county) participate in the consolidation charter?~~

The ballot must contain a brief description and summary of the proposed charter ~~or amendment~~.

Sec. 22. Section 331.254, unnumbered paragraph 1, Code 2003, is amended to read as follows:

When multicounty consolidation is recommended, ~~a petition must contain a~~ the consolidation charter ~~which provides~~ shall provide for all of the following:

Sec. 23. Section 331.254, subsection 6, Code 2003, is amended by striking the subsection.

Sec. 24. NEW SECTION. 331.257 RECOGNITION OF CHANGE IN BOUNDARIES BY GENERAL ASSEMBLY.

If a charter for multicounty consolidation is adopted pursuant to section 331.255 or if the question of joining a multicounty consolidated government is approved pursuant to section 331.256, the general assembly next convening following the election required by section 331.255 or 331.256 shall pass legislation recognizing the change in boundaries of the counties where the question of multicounty consolidation was approved. The boundaries recognized in the legislation shall conform to the boundaries contained in the consolidation charter. The legislation shall contain the official name of the consolidated county as that name is given in the consolidation charter.

Sec. 25. Section 331.260, subsection 2, Code 2003, is amended to read as follows:

2. A charter proposing a community commonwealth as an alternative form of government may be submitted to the voters only by a commission established under section 331.232. A majority vote by the commission is required for the submission of a charter proposing a community commonwealth as an alternative form of local government. The commission submitting a community commonwealth form of government shall issue a final report and proposal. ~~If an alternative form of government for a community commonwealth form of local government is proposed, approval of the commonwealth charter shall be a separate ballot issue from approval of the alternative form of government in those cities proposed to be included in the commonwealth. The commonwealth charter shall be effective in regard to a city government only if a majority of the voters of the city voting on the question voted for participation in the commonwealth charter.~~ Adoption of the proposed community commonwealth charter requires the approval of a majority of the votes cast in the entire county and requires the approval of a majority of the votes cast in one or more cities named on the ballot. A city named on the ballot is included in the community commonwealth only if the proposed community commonwealth charter is approved by a majority of the votes cast in the city.

The question of forming a community commonwealth shall be submitted to the electorate in substantially the same ~~form~~ manner as provided in section 331.247, subsection 4, and section 331.252. The effective date of the charter and election of new officers of the community commonwealth shall be as provided in section 331.247, subsection 5.

Sec. 26. Section 331.261, subsection 2, Code 2003, is amended to read as follows:

2. An elective legislative body established in the manner provided for county boards of supervisors under sections 331.201 through 331.216 and section ~~331.238~~ 331.248, subsection 2, the initial compensation for members of that body, and for a method of changing the compensation.

Sec. 27. Section 331.261, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The community commonwealth charter may include other provisions which the commission elects to include and which are not ~~inconsistent~~ irreconcilable with state law, including, but not limited to, those provisions in section 331.248, subsection 4.

Sec. 28. Section 331.262, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 1A. The adoption of the community commonwealth form of government does not alter any right or liability of the county or member city in effect at the time of the election at which the charter was adopted.

NEW SUBSECTION. 1B. All departments and agencies of the county and of each member city shall continue to operate until their authority to operate is superseded by action of the governing body.

NEW SUBSECTION. 1C. All ordinances or resolutions in effect remain effective until amended or repealed, unless they are irreconcilable with the adopted charter.

NEW SUBSECTION. 1D. Upon the effective date of the adopted charter, the county shall

adopt the community commonwealth form of government by ordinance, and shall file a copy with the secretary of state and maintain available copies for public inspection.

NEW SUBSECTION. 1E. Members of the governing body of the county and of each member city shall continue in office until the members of the governing body of the community commonwealth have been elected and sworn into office, at which time the offices of the former governing bodies shall be abolished, and the terms of the members of the former governing bodies shall be terminated. During the period between the effective date of the charter and the election and qualification of the elected members of the new governing body, the former governing bodies of each member city and of the county shall continue to perform their duties and shall assist in planning the transition to the community commonwealth form of government.

NEW SUBSECTION. 1F. If a community commonwealth charter is submitted to the electorate but is not adopted, another charter shall not be submitted to the electorate for at least two years from the date of the election at which the charter was rejected. If a community commonwealth charter is adopted, a proposed charter for another alternative form of county government shall not be submitted to the electorate for at least six years from the date of the election at which the charter was adopted.

NEW SUBSECTION. 1G. If a community commonwealth charter is adopted, the charter may be amended at any time. The charter shall be amended in the manner provided in section 331.247, subsection 7.

Sec. 29. Section 372.1, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 7. City-county consolidated form as provided in sections 331.247 through 331.252.

NEW SUBSECTION. 8. Community commonwealth as provided in sections 331.260 through 331.263.

Sec. 30. Section 372.2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

~~A~~ Unless otherwise provided by law, a city may adopt a different form of government not more often than once in a six-year period. A different form, other than a home rule charter, ~~or~~ special charter, city-county consolidated government, or community commonwealth must be adopted as follows:

Sec. 31. EFFECTIVE AND APPLICABILITY DATES. This Act, being deemed of immediate importance, takes effect upon enactment and applies as follows:

1. The sections of this Act amending sections 331.232 and 331.233A, and the portion of the section of this Act amending section 331.235, subsections 1 through 3, do not apply to a charter commission that has been established and is operating as of the effective date of this Act.

2. The remainder of this Act applies retroactively to charter commissions in existence before and on the effective date of this Act.

Approved April 13, 2004

CHAPTER 1067

UNIFORM ELECTRONIC TRANSACTIONS ACT — MISCELLANEOUS CHANGES

H.F. 2490

AN ACT relating to the uniform electronic transactions Act.

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

Section 1. Section 554D.101, Code 2003, is amended to read as follows:

554D.101 SHORT TITLE.

This section and sections 554D.102 through 554D.124 of this chapter ~~shall be known and~~ may be cited as the "Uniform Electronic Transactions Act".

Sec. 2. Section 554D.103, subsections 4, 5, and 7, Code 2003, are amended by striking the subsections.

Sec. 3. Section 554D.103, subsection 19, Code 2003, is amended to read as follows:

19. "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, ~~consumer,~~ commercial, or governmental affairs.

Sec. 4. Section 554D.104, subsection 2, Code Supplement 2003, is amended to read as follows:

2. ~~a. (1) This chapter does not apply to the following:~~

~~(a) An application which would involve construction of a rule of law that is clearly inconsistent with the manifest intent of the body imposing the requirement or repugnant to the context of the same rule of law. However, the mere requirement that information be in writing, written, or printed shall not by itself be sufficient to establish an intent which is inconsistent with the requirement of this section.~~

~~(b) With respect to a consumer transaction, a record that serves as a unique and transferable physical expression of rights and obligations including, without limitation, negotiable instruments and other instruments of title where possession of the instrument is deemed to confer title.~~

~~(c) An electronic transaction initiated at a satellite terminal, as defined in section 527.2, or the processing and routing of transaction data by a central routing unit or a data processing center, each as defined in section 527.2.~~

~~(2) Except as provided under paragraph "b", this~~ This chapter does not apply to a transaction to the extent it is governed by any of the following:

~~(a) A disclosure requirement associated with a consumer transaction, including, but not limited to, such disclosures required under chapter 13C, sections 321.69 and 321.71, chapters 516D, 523A, 523B, 523G, 533D, 537, 537B, 538A, 552, 552A, 555A, 557A, 557B, 558A, 562A, and 562B, section 714.16, and chapters 714B and 714D, or an administrative rule adopted pursuant to such sections or chapters.~~

~~(b)~~ a. A ~~rule of~~ law governing the creation or execution of ~~a will or trust, living will, a general, durable, or healthcare power of attorney, or a voluntary, involuntary, or standby guardianship or conservatorship~~ wills, codicils, or testamentary trusts.

~~(c)~~ b. Chapter 554 other than articles 2 and 13 and sections 554.1107 and 554.1206.

~~b. This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under paragraph "a" to the extent it is governed by a law other than those specified in paragraph "a", subparagraph (2).~~

Sec. 5. Section 554D.110, subsection 4, paragraph b, Code 2003, is amended to read as follows:

b. A requirement under a law other than this chapter to send, communicate, or transmit a

record by ~~delivery in person, by~~ first-class mail postage prepaid~~, or by courier~~ may be varied by agreement to the extent permitted by the other law.

Sec. 6. Section 554D.111, subsection 3, Code 2003, is amended by striking the subsection.

Sec. 7. Section 554D.114, subsection 7, Code 2003, is amended to read as follows:

7. This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

Sec. 8. Section 554D.120, subsection 5, Code Supplement 2003, is amended by striking the subsection.[1]

Sec. 9. NEW SECTION. 554D.124 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. 10. Sections 554D.102, 554D.105, 554D.109, 554D.122, and 554D.123, Code 2003, are repealed.

Sec. 11. CODE EDITOR DIRECTIVE. The Code editor is directed to renumber section 554D.104, subsection 4, as new section 554D.125, and to change any references to subsection 4 as necessary.

Approved April 13, 2004

CHAPTER 1068

PHYSICAL THERAPY — USE OF PROFESSIONAL TITLES AND OTHER DESIGNATIONS

H.F. 2496

AN ACT relating to the use of titles pertaining to physical therapy and providing a penalty.

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

Section 1. NEW SECTION. 148A.7 FALSE USE OF TITLES PROHIBITED.

A person or business entity, including the employees, agents, or representatives of the business entity, shall not use in connection with that person's or business entity's business activity the words "physical therapy", "physical therapist", "licensed physical therapist", "registered physical therapist", "doctor of physical therapy", "physical therapist assistant", "licensed physical therapist assistant", "registered physical therapist assistant", or the letters "P.T.", "L.P.T.", "R.P.T.", "D.P.T.", "P.T.A.", "L.P.T.A.", "R.P.T.A.", or any other words, abbreviations, or insignia indicating or implying that physical therapy is provided or supplied, unless such services are provided by or under the direction and supervision of a physical therapist licensed pursuant to this chapter. Notwithstanding section 147.74, a person or the owner, officer, or agent of an entity that violates this section is guilty of a serious misdemeanor, and a license to practice shall be revoked or suspended pursuant to section 147.55. This section shall not

[1] See chapter 1175, §273, 287 herein

apply to the use of the term "physiotherapy" by a provider licensed under this chapter, chapter 151, or by an individual under the direction and supervision of a provider licensed under this chapter or chapter 151.

Sec. 2. Section 148A.6, subsection 1, Code 2003, is amended by striking the subsection.

Approved April 13, 2004

CHAPTER 1069

RECORDING OF DOCUMENTS OR INSTRUMENTS
BY COUNTY RECORDER — FEES AND STANDARDS

S.F. 371

AN ACT relating to formatting standards for recording documents or instruments by a county recorder, specifying a recording fee for certain documents or instruments, and providing an effective date.

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

Section 1. NEW SECTION. 331.601A DEFINITIONS.

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

1. "Document" or "instrument" means a writing or drawing presented to the recorder for recording, consisting of one or more pages of text and attachments.

2. "File or submit" means the act of delivering a document or instrument to a recording office for recording into the public records.

3. "Grantor and grantee" means the names of the transferor and transferee in the transaction used to create the recording index.

4. "Legible" means capable of being read or deciphered without magnification regardless of the recording process.

5. "Page" means a writing, printing, or drawing, other than a plat or survey or a drawing related to a plat or survey, occurring on one side only and covering all or part of such side, and not larger than eight and one-half inches in width and fourteen inches in length.

6. "Record" means a process whether by manual, mechanical, electronic, optical, magnetic, microfilm, or other methods of storage, after filing or submission, to incorporate a document or instrument into the public record.

7. "Transaction" means a specific legal action in the form of or evidenced by one of the following:

a. A title or caption including, but not limited to, a deed, deed of trust, mortgage, or power of attorney.

b. A subsequent reference to an original document or instrument including, but not limited to, an assignment or release or satisfaction of mortgage.

Sec. 2. Section 331.602, subsection 1, Code Supplement 2003, is amended by striking the subsection and inserting in lieu thereof the following:

1. Record all documents or instruments presented to the recorder's office for recordation upon payment of the proper fees and compliance with other recording requirements as provided by law.

Sec. 3. NEW SECTION. 331.606B DOCUMENT OR DOCUMENT FORMATTING STANDARDS.

1. Except as otherwise provided in subsection 6, the county recorder shall refuse any document or instrument presented for recording that does not meet the following requirements:

a. Each document or instrument shall consist of one or more individual pages not permanently bound or in a continuous form. The document or instrument shall not have any attachment stapled or otherwise affixed to any page except as necessary to comply with statutory requirements. However, the individual pages of a document or instrument may be stapled together for presentation for recording. A label that is firmly attached with a bar code or return address may be accepted for recording.

b. All preprinted text shall be at least eight point in size and no more than twenty characters and spaces per inch. All other text typed or computer generated, including but not limited to all names of parties to an agreement, shall be at least ten point in size and no more than sixteen characters and spaces per inch. If a document or instrument other than a plat or survey or a drawing related to a plat or survey, presented for recording contains type smaller than eight point type for the preprinted text and ten point type for all other text, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the requirements of this section.

c. Each document shall be of sufficient legibility to produce a clear reproduction. If a document or instrument, other than a plat or survey or a drawing related to a plat or survey, is not sufficiently legible to produce a clear reproduction, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the type size requirements of paragraph "b" and shall be recorded contemporaneously as additional pages of the document or instrument.

d. Each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall be on white paper of not less than twenty-pound weight without watermarks or other visible inclusions. All text within the document or instrument shall be of sufficient color and clarity to ensure that the text is readable when reproduced from the record.

e. All signatures on a document or instrument shall be in black or dark blue ink and of sufficient color and clarity to ensure that the signatures are readable when the document or instrument is reproduced from the record. The corresponding name shall be typed, printed, or stamped beneath the original signature. The typing or printing of a name or the application of an embossed or inked stamp shall not cover or otherwise materially interfere with any part of the document or instrument except where provided by law. Failure to print or type signatures as provided in this paragraph does not invalidate the document or instrument.

f. The first page of each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall have a top margin of at least three inches of vertical space from left to right which shall be reserved for the recorder's use. All other margins on the document or instrument shall be a minimum of three-fourths of one inch. Nonessential information including but not limited to form numbers, page numbers, or customer notations may be placed in a margin except the top margin. The recorder shall not incur any liability for not showing a seal or information that extends beyond the margin of the permanent archival record.

2. Each document or instrument, other than a plat or survey or a drawing related to a plat or survey, that is presented for recording and that contains any of the following information shall have that information on the first page below the three-inch margin:

a. The name, address, and telephone number of the individual who prepared the document.

b. The name of the taxpayer and a complete mailing address for any document or instrument of conveyance.

c. A return address.

d. The title of the document or instrument.

e. All grantors' names.

f. All grantees' names.

g. Any address required by statute.

h. The legal description of the property and parcel identification number, if required.

i. A document or instrument number for statutory requirements, if applicable.

3. If insufficient space exists on the first page for all of the information described in subsection 2, the page reference of the document or instrument where the information is located shall be noted on the first page.

4. The recorder may record the following documents or instruments which are exempt from the format requirements of this section:

a. A document or instrument that was signed before July 1, 2004.[1]

b. A military separation document or instrument.

c. A document or instrument executed outside the United States.

d. A certified copy of a document or instrument issued by a governmental agency, including a vital record.

e. A document or instrument where one of the original parties is deceased or otherwise incapacitated.

f. A document or instrument formatted to meet court requirements.

g. A federal tax lien.

h. A filing under the uniform commercial code, chapter 554.

5. A document or instrument rejected for recording by a recorder shall be returned to the preparer or presenter accompanied by an explanation of the reason for rejection.

6. On and after July 1, 2005, a document or instrument that does not conform to the format standards specified in subsections 1 through 3 shall not be recorded except upon payment of an additional recording fee of ten dollars per document or instrument. The requirement applies only to documents or instruments dated on or after July 1, 2005, and does not apply to those documents or instruments specifically exempted in subsection 4.

Sec. 4. EFFECTIVE DATE. This Act takes effect July 1, 2004.

Approved April 14, 2004

CHAPTER 1070

FISHING AND HUNTING LICENSES —
CANCELLATION FOR NONPAYMENT OF LICENSE FEE

S.F. 2213

†**AN ACT** regarding the cancellation of fishing and hunting licenses by the department of natural resources for nonpayment of the license fee.

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

Section 1. Section 481A.134, Code 2003, is amended to read as follows:

481A.134 AUTHORITY TO <u>CANCEL,</u> SUSPEND<u>,</u> OR REVOKE LICENSE — POINT SYSTEM.

The department shall establish rules pursuant to chapter 17A providing for the suspension or revocation of licenses issued by the department. <u>The rules may include procedures for summary cancellation of a license based on documentation that the licensee failed to pay the applicable fee for the license.</u> For purposes of determining when to suspend or revoke a license issued by the department under this section, the department shall adopt a point system pursuant to chapter 17A for the purpose of weighing the seriousness of violations of the provisions

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[1] See chapter 1175, §372 herein

† Estimate of additional local revenue expenditures required by state mandate on file with the Secretary of State

of this chapter or chapter 481B, 482, 483A, 484A, or 484B. The weighted scale may be amended from time to time as experience dictates.

Approved April 14, 2004

CHAPTER 1071

ENVIRONMENTAL STATUS OF RENTAL PROPERTY
— LANDLORD DISCLOSURE

S.F. 2266

AN ACT relating to landlord disclosure requirements regarding the environmental status of rental property.

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

Section 1. Section 562A.13, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 6. The landlord or a person authorized to enter into a rental agreement on behalf of the landlord shall disclose to each tenant in writing before the commencement of the tenancy if the property is listed in the comprehensive environmental response compensation and liability information system maintained by the federal environmental protection agency.

Approved April 14, 2004

CHAPTER 1072

REGIONAL TRANSIT DISTRICTS

S.F. 2284

AN ACT relating to the establishment of a regional transit district within the unincorporated areas of certain counties and within certain cities, requiring creation of a regional transit district commission, authorizing the voluntary imposition of a regional transit property tax levy, and providing for the issuance of general obligation bonds and revenue bonds.

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

Section 1. NEW SECTION. 28M.1 REGIONAL TRANSIT DISTRICT DEFINED.

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

1. "Commission" means a regional transit district commission appointed pursuant to section 28M.4.

2. "Regional transit district" means a public transit district created by agreement pursuant

to chapter 28E by one or more counties and participating cities to provide support for transportation of passengers by one or more public transit systems which may be designated as a public transit system under chapter 324A.[1]

Sec. 2. NEW SECTION. 28M.2 REGIONAL TRANSIT DISTRICT CREATED.

1. A county with a population in excess of three hundred thousand and participating cities may create, by chapter 28E agreement, a regional transit district in the county pursuant to this chapter. Two or more contiguous counties and participating cities may create, by chapter 28E agreement, a regional transit district pursuant to this chapter if one of the counties has a population in excess of three hundred thousand. A district shall consist of the unincorporated area of any participating county and the incorporated area of any city in the county that does not have an urban transit system. However, a city without an urban transit system may decline, by resolution forwarded to the board of supervisors, to participate in a regional transit district.[2]

2. A city with an urban transit system may participate in a regional transit district if the city council, by resolution forwarded to the board of supervisors, notifies the county that the city wishes to participate.

3. A city that is located in a nonparticipating county that is contiguous to a county with a population in excess of three hundred thousand that is creating a regional transit district may notify that county, by resolution forwarded to the board of supervisors of that county, that the city wishes to participate.[3]

4. The chapter 28E agreement shall include a map showing the area and boundaries of the regional transit district.

Sec. 3. NEW SECTION. 28M.3 REGIONAL TRANSIT DISTRICT AUTHORITY — COUNTY ENTERPRISE — BONDING AUTHORITY.

A regional transit district shall have all the rights, powers, and duties of a county enterprise pursuant to sections 331.462 through 331.469 as they relate to the purpose for which the regional transit district is created, including the authority to issue revenue bonds for the establishment, construction, reconstruction, repair, equipping, remodeling, extension, maintenance, and operation of works, vehicles, and facilities of a regional transit district. In addition, a regional transit district, with the approval of the board of supervisors, may issue general obligation bonds as an essential county purpose pursuant to chapter 331, division IV, part 3, for the establishment, construction, reconstruction, repair, equipping, remodeling, extension, maintenance, operation of works, vehicles, and facilities of a regional transit district. Such general obligation bonds are payable from the property tax levy authorized in section 28M.5.

The commission appointed pursuant to section 28M.4 shall exercise all powers of the board of supervisors in management and administration of the regional transit district as if it were a board of supervisors under sections 331.462 through 331.469.

Sec. 4. NEW SECTION. 28M.4 REGIONAL TRANSIT DISTRICT COMMISSION — MEMBERSHIP — POWERS.

1. The governing bodies of counties and cities participating in a regional transit district shall appoint a commission to manage and administer the regional transit district. Commission members shall serve for staggered six-year terms. The agreement creating the regional transit district shall set the compensation of commission members.

2. The title to all property of a regional transit district shall be held in the name of the district, and the commission has all the powers and authorities of a board of supervisors with respect to the acquisition by purchase, condemnation or otherwise, lease, sale, or other disposition of the property, and the management, control, and operation of the property, subject to the requirements, terms, covenants, conditions, and provisions of any resolutions authorizing the issuance of revenue bonds, pledge orders, or other obligations which are payable from the revenues of the regional transit district, and which are then outstanding.

3. A commission shall adopt and certify an annual budget for the regional transit district. A commission in its budget shall allocate the revenue responsibilities of each county and city

[1] See chapter 1175, §325 herein

[2] See chapter 1175, §326 herein

[3] See chapter 1175, §326 herein

participating in the regional transit district. A commission shall be considered a municipality for purposes of adopting and certifying a budget pursuant to chapter 24.

4. A commission may establish a schedule of fares and collect fares for the transportation of passengers.

5. A commission shall levy for and control any tax revenues paid to the regional transit district the commission administers and all moneys derived from the operation of the regional transit district, the sale of its property, interest on investments, or from any other source related to the regional transit district.

6. All moneys received by the commission shall be held by the county treasurer in a separate fund. If more than one county is participating in the regional transit district, the moneys shall be paid to the county treasurer of the participating county with the largest population. Moneys may be paid out of the fund only at the direction of the commission.

7. A commission is subject to section 331.341, subsections 1, 2, 4, and 5, and section 331.342, in contracting for public improvements.

8. Immediately following a regular or special meeting of a commission, the secretary of the commission shall prepare a condensed statement of the proceedings of the commission and cause the statement to be published not more than twenty days following the meeting in one or more newspapers which meet the requirements of section 618.14. The statement shall include a list of all claims allowed, showing the name of the person or firm making the claim, the reason for the claim, and the amount of the claim. Salary claims must show the gross amount of the claim except that salaries paid to persons regularly employed by the commission, for services regularly performed by the persons shall be published once annually showing the gross amount of the salary.

9. A commission shall submit to the governing body of each participating county and city a detailed annual report, including a complete financial statement.

Sec. 5. NEW SECTION. 28M.5 REGIONAL TRANSIT DISTRICT LEVY.

1. The commission, with the approval of the board of supervisors of participating counties and the city council of participating cities, may levy annually a tax not to exceed ninety-five cents per thousand dollars of the assessed value of all taxable property in a regional transit district. However, for a city participating in a regional transit district, the total of all the tax levies imposed in the city pursuant to section 384.12, subsection 10, and this section shall not exceed the aggregate of ninety-five cents per thousand dollars of the assessed value of all taxable property in the participating city.

The amount of the regional transit district levy that is the responsibility of a participating county shall be deducted from the maximum rates of taxes authorized to be levied by the county pursuant to section 331.423, subsections 1 and 2, as applicable.[4]

The regional transit district tax levy imposed in a participating city located in a nonparticipating contiguous county shall, when collected, be paid to the county treasurer of the participating county.

2. The proceeds of the tax levy shall be used for the operation and maintenance of a regional transit district, for payment of debt obligations of the district, and for the creation of a reserve fund. The commission may divide the territory of a regional transit district outside the boundaries of a city into separate service areas and impose a regional transit district levy not to exceed the maximum rate authorized by this section in each service area.

Sec. 6. Section 331.441, subsection 2, paragraph b, Code 2003, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (15) The establishment, construction, reconstruction, repair, equipping, remodeling, extension, maintenance, and operation of works, vehicles, and facilities of a regional transit district.

Sec. 7. Section 331.461, subsection 2, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. h. A regional transit district but only as provided for in chapter 28M.

[4] See chapter 1175, §327 herein

Sec. 8. Section 384.12, subsection 10, Code 2003, is amended to read as follows:

10. A tax for the operation and maintenance of a municipal transit system or for operation and maintenance of a regional transit district, and for the creation of a reserve fund for the system or district, in an amount not to exceed ninety-five cents per thousand dollars of assessed value each year, when the revenues from the transit system or district are insufficient for such purposes~~, but proceeds of the tax may not be used to pay interest and principal on bonds issued for the purposes of the transit system~~.

Approved April 14, 2004

CHAPTER 1073

ADMINISTRATION OF TAX POLICY
AND RELATED INTERNAL REVENUE CODE REVISIONS

S.F. 2296

AN ACT relating to the policy administration of the tax and related laws by the department of revenue, including administration of and substantive changes to the state individual income, corporate income, sales, use, property, inheritance, motor fuel, special fuel, cigarette, and tobacco taxes and including penalties.

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

Section 1. Section 15.335, subsection 4, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

For purposes of this section, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, ~~2003~~ 2004.

Sec. 2. Section 15A.9, subsection 8, paragraph e, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

For purposes of this subsection, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, ~~2003~~ 2004.

Sec. 3. Section 421.1, subsection 4, Code Supplement 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Judicial review of the decisions or orders of the board resulting from the review of decisions or orders of the director of revenue for assessment and collection of taxes by the department may be sought by the taxpayer or the director of revenue in accordance with the terms of chapter 17A.

Sec. 4. Section 421.17, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 28. To place on the department's official website the official electronic state of Iowa voter registration form and a link to the Iowa secretary of state's official website.

Sec. 5. Section 421.17A, subsection 2, paragraph a, Code Supplement 2003, is amended to read as follows:

a. Notwithstanding other statutory provisions which provide for ~~the~~ execution, attachment,

garnishment, or levy against accounts, the facility may utilize the process established in this section to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or being collected by the state provided that any exemptions or exceptions which specifically apply to enforcement of such obligations also apply to this section. Administrative levy under this section is the equivalent of condemning funds under chapter 642. It is expressly provided that these remedies shall be cumulative and that no action taken by the director or attorney general shall be construed to be an election on the part of the state or any of its officers, employees, or representatives to pursue any other remedy provided by law.

Sec. 6. Section 421.17A, subsection 3, Code Supplement 2003, is amended to read as follows:

3. ~~INITIAL~~ NOTICE OF INTENT TO OBLIGOR. The facility may proceed under this section only if twenty days' notice has been provided ~~to the obligor~~ by regular mail to the last known address of the obligor, notifying the obligor that the obligor is subject to this section and of the facility's intention to use the levy process. ~~The facility shall give twenty days' notice of its intention to use the levy process.~~ The ~~twenty-day~~ twenty days' notice period shall not be required if the facility determines that the collection of past due amounts would be jeopardized.

Sec. 7. Section 421.17A, subsection 5, paragraph c, subparagraph (7), Code Supplement 2003, is amended to read as follows:

(7) ~~A~~ The telephone number~~, address, and contact name~~ of the agent for the facility initiating the action.

Sec. 8. Section 421.17A, subsection 6, Code Supplement 2003, is amended to read as follows:

6. ADMINISTRATIVE LEVY — NOTICE OF INITIATION OF ACTION TO OBLIGOR AND OTHER ACCOUNT HOLDERS.

a. The facility may administratively initiate an action to seize one or more accounts of an obligor who is subject to this section and section 421.17, subsection 27.

b. The facility shall notify an obligor subject to this section. The notice shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have an account at the financial institution.

(3) A statement that pursuant to the provisions of this section, the obligor's account is subject to seizure and the financial institution is authorized and required to forward moneys to the facility.

(4) The maximum amount to be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the state by the obligor.

(5) The prescribed time frames the financial institution must meet in forwarding any amounts.

(6) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the obligor.

(7) The address of the facility and the account number utilized by the facility for the obligor.

(8) ~~A~~ The telephone number~~, address, and contact name~~ of the agent for the facility initiating the action.

c. The facility shall forward the notice of initiation of action to the obligor by regular mail within two working days of sending the notice to the financial institution pursuant to subsection 5, paragraph "b".

d. The facility shall notify any other party known to have an interest in the account. The notice shall contain all of the following:

(1) The name of the obligor.

(2) The name of the financial institution.

(3) A statement that the account in which the other party is known to have an interest is subject to seizure.

(4) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the party known to have an interest.

(5) The address of the facility and the name of the obligor who also has an interest in the account.

(6) ~~A~~ The telephone number~~, address, and contact name~~ of the agent for the facility initiating the action.

e. The facility shall forward the notice to the other party known to have an interest by regular mail within two working days of sending the notice to the financial institution pursuant to subsection 5, paragraph "b".

Sec. 9. Section 421.17A, subsection 8, paragraphs b, c, and f, Code Supplement 2003, are amended to read as follows:

b. The person challenging the action shall submit a written challenge to the person identified as the ~~contact~~ agent for the facility in the notice, within ten days of the date of the notice of initiation of the levy.

c. The facility, upon receipt of a written challenge, shall review the facts of the ~~case~~ administrative levy with the challenging party within ten days of receipt of the challenge. If the challenging party is not available for the review on the scheduled date, the review shall take place without the challenging party being present. Information in favor of the challenging party shall be considered by the facility in the review. The facility may utilize additional information if such information is available. Only a mistake of fact, including, but not limited to, a mistake in the identity of the obligor or a mistake in the amount owed to or being collected by the state shall be considered as a reason to dismiss or modify the action.

f. The challenging party shall have the right to file an action for wrongful levy in district court within thirty days of the date of the notice in paragraph "e", either in the county where the obligor or the party known to have an interest in the account resides or in Polk county where the facility is located. Actions under this section are in equity and not actions at law.

Sec. 10. Section 421.17A, subsection 8, Code Supplement 2003, is amended by adding the following new paragraphs:

NEW PARAGRAPH. g. Recovery under this section is limited to restitution of the amount that has been wrongfully encumbered or obtained by the department.

NEW PARAGRAPH. h. A challenge to an administrative action under this subsection cannot be used to extend or reopen the statute of limitations to protest other departmental actions or to contest the amount or validity of the tax. Only issues involving the levy can be raised in a challenge to an administrative action under this subsection.

Sec. 11. Section 421.17B, subsection 2, paragraph a, Code Supplement 2003, is amended to read as follows:

a. Notwithstanding other statutory provisions which provide for the execution, attachment, garnishment, or levy against accounts, the facility may utilize the process established in this section to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the facility or being collected by the facility provided all administrative remedies have been waived or exhausted by the obligor. Any exemptions or exceptions which specifically apply to enforcement of such obligations also apply to this section. Administrative wage assignment under this section is the equivalent of condemning funds under chapter 642. It is expressly provided that these remedies shall be cumulative and that no action taken by the director or the attorney general shall be construed to be an election on the part of the state or any of its officers or representatives to pursue any other remedy provided by law.

~~Administrative wage assignment under this section is the equivalent of condemning funds under chapter 642.~~

~~The administrative wage assignment is to be considered an additional means of collection~~

~~by the facility and not an exclusive means of collection. If the use of an administrative wage assignment is not successful in collecting an outstanding debt due the facility, the facility may use the collection provisions set forth in chapters 626 and 642.~~

Sec. 12. Section 421.17B, subsection 3, Code Supplement 2003, is amended to read as follows:

3. NOTICE OF INTENT TO THE OBLIGOR.

a. The facility may proceed under this section only if ~~a ten-day~~ twenty days' notice has been provided ~~to the obligor. Notice by the facility may be~~ by regular mail to the last known address of the obligor, notifying the obligor that the obligor is subject to this section. If the facility determines that collection of the debt may be in jeopardy, the facility may request that the employer deliver notice of the wage assignment simultaneous with the remainder of or in lieu of the obligor's compensation due from the employer.

The facility may obtain one or more wage assignments of an obligor who is subject to this section. If the obligor has more than one employer, the facility may receive wage assignments from one or ~~all~~ more of the employers until the full debt obligation of the obligor is satisfied. If an obligor has more than one employer, the facility shall give notice to all employers ~~that the facility seeks to have an assignment of wages~~ from whom an assignment is sought.

b. The notice from the facility to the obligor shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have employment with the stated employer.

(3) A statement that pursuant to the provisions of this section, the obligor's wages will be assigned to the facility for payment of the specified debts and that the employer is authorized and required to forward moneys to the facility.

(4) The maximum amount to be forwarded by the employer, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the facility by the obligor.

(5) The prescribed time frames the employer must meet in forwarding any amounts.

(6) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the obligor.

(7) The address of the facility and the account number utilized by the facility for the obligor.

(8) ~~A~~ The telephone number~~, address, and contact name~~ of the agent for the facility initiating the action.

Sec. 13. Section 421.17B, subsection 6, paragraph c, subparagraph (7), Code Supplement 2003, is amended to read as follows:

(7) ~~A~~ The telephone number~~, address, and name of a contact person with the facility~~ of the agent for the facility initiating the action.

Sec. 14. Section 421.17B, subsection 8, paragraphs a, b, c, and f, Code Supplement 2003, are amended to read as follows:

a. Challenges under this section may be initiated only by an obligor. An administrative wage assignment only occurs after the obligor has waived or exhausted administrative remedies. Reviews by the facility of a challenge to an administrative wage assignment are not subject to chapter 17A ~~unless the challenge is regarding the validity of the assignment~~. ~~Actions under this section are in equity and not actions at law.~~

b. The obligor challenging the administrative wage assignment shall submit a written challenge to the person identified as the ~~contact~~ agent for the facility in the notice, within ten days of the date of the notice ~~to the obligor~~ of initiation of the assignment.

c. The facility, upon receipt of a written challenge, shall review the facts of the ~~case~~ administrative wage assignment with the obligor within ten days of receipt of the challenge. If the obligor is not available for the review on the scheduled date, the review shall take place without the obligor being present. Information in favor of the obligor shall be considered by the facility in the review. The facility may utilize additional information if such information is available. Only a mistake of fact, including, but not limited to, a mistake in the identity of the obligor or

a mistake in the amount owed to or being collected by the facility shall be considered as a reason to dismiss or modify the administrative wage assignment.

f. The obligor shall have the right to file an action for wrongful assignment in district court within thirty days of the date of the notice to the obligor, either in the county where the obligor is located or in Polk county where the facility is located. Actions under this section are in equity and not actions at law.

Sec. 15. Section 421.17B, subsection 8, Code Supplement 2003, is amended by adding the following new paragraphs:

NEW PARAGRAPH. g. Recovery under this subsection is limited to restitution of the amount that has been wrongfully encumbered or obtained by the department.

NEW PARAGRAPH. h. A challenge to an administrative action under this subsection cannot be used to extend or reopen the statute of limitations to protest other departmental actions or to contest the amount or validity of the tax. Only issues involving the assignment can be raised in a challenge to an administrative action under this subsection.

Sec. 16. Section 421.17B, subsection 9, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

~~Expiration~~ Cessation of the wage assignment does not affect the obligor's duties and liabilities respecting the wages already withheld pursuant to the wage assignment.

Sec. 17. Section 422.10, subsection 3, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

For purposes of this section, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, ~~2003~~ 2004.

Sec. 18. Section 422.33, subsection 5, paragraph d, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

For purposes of this subsection, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, ~~2003~~ 2004.

Sec. 19. Section 422.42, subsection 6, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. That trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of the manufacturer's, distributor's, or wholesaler's product or to promote the sale or recognition of the manufacturer's, distributor's, or wholesaler's product shall not be included if excessive sales tax is not collected from the purchaser. This paragraph does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers.

Sec. 20. Section 422A.1, unnumbered paragraph 8, Code Supplement 2003, is amended to read as follows:

The tax levied shall be in addition to any state sales tax imposed under section 422.43. Section 422.25, subsection 4, sections 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69, subsection 1, and sections 422.70 to 422.75, consistent with the provisions of this chapter, apply with respect to the taxes authorized under this chapter, in the same manner and with the same effect as if the hotel and motel taxes were retail sales taxes within the meaning of those statutes. Notwithstanding this paragraph, the director shall provide for quarterly filing of returns as prescribed in section 422.51 and for other than quarterly filing of returns as prescribed in section 422.51, subsection 2. The director may require all persons, as defined in section 422.42, who are engaged in the business of deriving gross receipts subject to tax under this chapter, to register with the department. All taxes collected under this chapter by a

retailer or any individual are deemed to be held in trust for the state of Iowa and the local jurisdictions imposing the taxes.

Sec. 21. Section 422B.9, subsection 3, paragraph a, Code Supplement 2003, is amended to read as follows:

a. The director, in consultation with local officials, shall collect and account for a local sales and services tax. The director shall certify each quarter the amount of local sales and services tax receipts and any interest and penalties to be credited to the "local sales and services tax fund" established in the office of the treasurer of state. All taxes collected under this chapter by a retailer or any individual are deemed to be held in trust for the state of Iowa and the local jurisdictions imposing the taxes.

Sec. 22. Section 423.1, subsection 47, paragraph b, as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 94, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (5) Trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of the manufacturer's, distributors, or wholesaler's product or to promote the sale or recognition of the manufacturer's, distributor's, or wholesaler's product. This subparagraph does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers.

Sec. 23. Section 423.1, subsection 47, as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 94, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. For purposes of this definition, the sales price from a rental or lease includes rent, royalties, and copyright and license fees.

Sec. 24. Section 423.2, subsection 6, unnumbered paragraph 2, as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 95, is amended to read as follows:

~~For the purposes of this subsection, the sales price of a lease or rental includes rents, royalties, and copyright and license fees.~~ For the 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.

Sec. 25. Section 423.2, as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 95, is amended by adding the following new subsection:

NEW SUBSECTION. 11. All taxes collected under this chapter by a retailer or any individual are deemed to be held in trust for the state of Iowa.

Sec. 26. Section 423.3, subsections 33 and 82, as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 96, are amended to read as follows:

33. a. The sales price of mementos and other items relating to Iowa history and historic sites, the general assembly, and the state capitol, sold by the legislative ~~service bureau~~ services agency and its legislative information office on the premises of property under the control of the legislative council, at the state capitol, and on other state property.

b. The legislative services agency is not a retailer under this chapter and the sale of items or provision of services by the legislative services agency is not a retail sale under this chapter and is exempt from the sales tax.

82. a. The sales price from the sale or rental of core ~~and~~ making, mold making, ~~equipment~~ and sand handling machinery and equipment, including replacement parts, directly and primarily used in the mold making process by a foundry.

b. The sales price from the sale of fuel used in creating heat, power, steam, or for generating electric current, or from the sale of electricity, consumed by core making, mold making, and sand handling machinery and equipment used directly and primarily in the mold-making process by a foundry.

c. The sales price from the furnishing of the design and installation, including electrical and electronic installation, of core making, mold making, and sand handling machinery and equipment used directly and primarily in the mold-making process by a foundry.

Sec. 27. Section 423.3, as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 96, is amended by adding the following new subsection:

NEW SUBSECTION. 43A. The sales price from the sale of wine which is shipped from outside Iowa and which meets the requirements for sales and use tax exemption pursuant to section 123.187.

Sec. 28. Section 424.3, subsection 1, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. All taxes or charges collected under this chapter by a depositor or any individual from a receiver or any other individual are considered to be held in trust on behalf of the state of Iowa.

Sec. 29. Section 441.21, subsection 2, Code Supplement 2003, is amended to read as follows:

2. In the event market value of the property being assessed cannot be readily established in the foregoing manner, then the assessor may determine the value of the property using the other uniform and recognized appraisal methods including its productive and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property but the actual value shall not be determined by use of only one such factor. The following shall not be taken into consideration: Special value or use value of the property to its present owner, and the good will or value of a business which uses the property as distinguished from the value of the property as property. However, in assessing property that is rented or leased to low-income individuals and families as authorized by section 42 of the Internal Revenue Code, as amended, and which section limits the amount that the individual or family pays for the rental or lease of units in the property, the assessor shall use the productive and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property. The assessor shall not consider any tax credit equity or other subsidized financing as income provided to the property in determining the assessed value. The property owner shall notify the assessor when property is withdrawn from section 42 eligibility under the Internal Revenue Code. The property shall not be subject to section 42 assessment procedures for the assessment year for which section 42 eligibility is withdrawn. This notification must be provided to the assessor no later than March 1 of the assessment year or the owner will be subject to a penalty of five hundred dollars for that assessment year. The penalty shall be collected at the same time and in the same manner as regular property taxes. Upon adoption of uniform rules by the revenue department or succeeding authority covering assessments and valuations of such properties, said valuation on such properties shall be determined in accordance therewith for assessment purposes to assure uniformity, but such rules shall not be inconsistent with or change the foregoing means of determining the actual, market, taxable and assessed values.

Sec. 30. Section 450.22, Code 2003, is amended to read as follows:

450.22 ADMINISTRATION AVOIDED — INHERITANCE TAX DUTIES REQUIRED.

1. When the heirs or persons entitled to inherit the property of an estate subject to tax under this chapter desire to avoid the appointment of a personal representative as provided in section

450.21, and in all instances where real estate is involved and there are no regular probate proceedings, they or one of them shall file under oath the inventories required by section 633.361 and the required reports, perform all the duties required by this chapter of the personal representative, and file the inheritance tax return.

2. However, this section does not apply and a return is not required to be filed even though real estate is part of the assets subject to tax under this chapter, if all of the assets are held in joint tenancy with right of survivorship between husband and wife alone, or if the estate exclusively consists of property held in joint tenancy with the right of survivorship solely by the decedent and ~~any~~ individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax and the estate does not have a federal estate tax obligation.

3. However, this section does not apply and a return is not required to be filed, even though real estate is involved, if the estate does not have a federal estate tax filing obligation and if all the estate's assets are described in any of the following categories:

a. Assets held in joint tenancy with right of survivorship between husband and wife alone.

b. Assets held in joint tenancy with right of survivorship solely between the decedent and individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax.

c. Assets passing by beneficiary designation, pursuant to a trust intended to pass the decedent's property at death or through any other nonprobate transfer solely to individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax.

This subsection does not apply to interests in an asset or assets that pass to both an individual listed in section 450.9 and to that individual's spouse.

4. If a return is not required to be filed pursuant to subsection 3, and if real estate is involved, one of the individuals with an interest in, or succeeding to an interest in, the real estate shall file an affidavit in the county in which the real estate is located setting forth the legal description of the real estate and the fact that an inheritance tax return is not required pursuant to subsection 3. If a false affidavit is filed, the affiant and the personal representative shall be jointly and severally liable for any tax, penalty, and interest that may have been due. Any otherwise applicable statute of limitations on the assessment and collection of the tax, penalty, and interest shall not apply.

5. When this section applies, proceedings for the collection of the tax when a personal representative is not appointed shall conform as nearly as possible to proceedings under this chapter in other cases.

Sec. 31. Section 450.37, subsection 2, paragraph a, Code Supplement 2003, is amended to read as follows:

a. If an agreement has not been reached on the fair market value of real property in the ordinary course of trade, the director of revenue has ~~thirty~~ sixty days after the return is filed to request an appraisal under section 450.27. If an appraisal request is not made within the ~~thirty-day~~ sixty-day period, the value listed on the return is the agreed value of the real property.

Sec. 32. Section 450.53, subsections 1 and 2, Code Supplement 2003, are amended to read as follows:

1. a. All personal representatives, except guardians and conservators, and other persons charged with the management or settlement of any estate or trust from which a tax is due under this chapter, shall file an inheritance tax return, within the time limits set by section 450.6, with a copy of any federal estate tax return and other documents required by the director which may reasonably tend to prove the amount of tax due, and at the time of filing, shall pay to the department of revenue the amount of the tax due from any devisee, grantee, donee, heir, or beneficiary of the decedent, except in cases where payment of the tax is deferred until the determination of a prior estate. The owner of the future interest shall file a supplemental inheritance tax return and pay to the department of revenue the tax due within the time limits set in this chapter. The inheritance tax returns shall be in the form prescribed by the director.

b. Notwithstanding paragraph "a", an inheritance tax return is not required to be filed if the estate does not have a federal estate tax filing obligation and if all the estate or trust assets pass solely to individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax. This paragraph is not applicable if interests in the asset passes[1] to both an individual listed in section 450.9 and to that individual's spouse.

2. a. A person in possession of assets to be reported for purposes of taxation, including a personal representative or trustee, who willfully makes a false or fraudulent return, or willfully fails to pay the tax, supply the information, make, sign, or file the required return within the time required by law, is guilty of a fraudulent practice. This paragraph does not apply if a return is not required to be filed pursuant to subsection 1, paragraph "b".

b. If a false affidavit is filed, the affiant and the personal representative shall be jointly and severally liable for any tax, penalty, and interest that may have been due. Any otherwise applicable statute of limitations on the assessment and collection of the tax, penalty, and interest shall not apply.

Sec. 33. Section 450.58, Code Supplement 2003, is amended to read as follows:

450.58 FINAL SETTLEMENT TO SHOW PAYMENT.

~~The~~ 1. Except as provided in subsection 2, the final settlement of the account of a personal representative shall not be accepted or allowed unless it shows, and the court finds, that all taxes imposed by this chapter upon any property or interest in property that are made payable by the personal representative and to be settled by the account, have been paid, and that the receipt of the department of revenue for the tax has been obtained as provided in section 450.64.

2. If an inheritance tax return is not required to be filed pursuant to section 450.53, subsection 1, paragraph "b", the personal representative's final settlement of account need not contain an inheritance tax receipt from the department, but shall, instead, contain the personal representative's statement, under oath, that an inheritance tax return is not required to be filed pursuant to section 450.53, subsection 1, paragraph "b". If a false affidavit is filed, the affiant and the personal representative shall be jointly and severally liable for any tax, penalty, and interest that may have been due. Any otherwise applicable statute of limitations on the assessment and collection of the tax, penalty, and interest shall not apply.

3. Any order contravening any provision of this section is void.

Sec. 34. Section 450.94, subsection 2, Code Supplement 2003, is amended to read as follows:

2. ~~The~~ Unless a return is not required to be filed pursuant to section 450.22, subsection 3, or section 450.53, subsection 1, paragraph "b", the taxpayer shall file an inheritance tax return on forms to be prescribed by the director of revenue on or before the last day of the ninth month after the death of the decedent. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department shall notify the taxpayer of the total amount due together with any penalty and interest which shall be a sum certain if paid on or before the last day of the month in which the notice is dated, or on or before the last day of the following month if the notice is dated after the twentieth day of a month and before the first day of the following month.

Sec. 35. Section 452A.3, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 7. All excise taxes collected under this chapter by a supplier, restrictive supplier, importer, dealer, blender, user, or any individual are deemed to be held in trust for the state or[2] Iowa.

Sec. 36. Section 453A.6, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 6. All excise taxes collected under this division by a distributor, manufacturer, or any individual are deemed to be held in trust for the state of Iowa.

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[1] According to enrolled Act

[2] According to enrolled Act

Sec. 37. Section 453A.11, Code 2003, is amended to read as follows:

453A.11 CANCELLATION OF STAMPS.

Stamps affixed to a package of cigarettes shall not be canceled by any letter, numeral, or other mark of identification or otherwise mutilated in any manner that will prevent or hinder the department in making an examination as to the genuineness of the stamp. However, the director may require such cancellation of the tax stamps affixed to packages of cigarettes which is necessary to carry out properly the provisions of this division. A person who cancels or causes the cancellation of stamps in violation of this section shall be considered in possession of unstamped cigarettes and is subject to the penalty provided in section 453A.31, subsection 1.

Sec. 38. Section 453A.15, subsection 1, Code 2003, is amended to read as follows:

1. The director may prescribe the forms necessary for the efficient administration of this division and may require uniform books and records to be used and kept by each permit holder or other person as deemed necessary. The director may also require each permit holder or other person to keep and retain in the director's possession evidence on prescribed forms of all transactions involving the purchase and sale of cigarettes or the purchase and use of stamps. The evidence shall be kept for a period of ~~two~~ three years from the date of each transaction, for the inspection at all times by the department.

Sec. 39. Section 453A.28, Code 2003, is amended to read as follows:

453A.28 ASSESSMENT OF TAX BY DEPARTMENT — INTEREST — PENALTY.

If after any audit, examination of records, or other investigation the department finds that any person has sold cigarettes without stamps affixed or that any person responsible for paying the tax has not done so as required by this division, the department shall fix and determine the amount of tax due, and shall assess the tax against the person, together with a penalty as provided in section 421.27. The taxpayer shall pay interest on the tax or additional tax at the rate determined under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due. If any person fails to furnish evidence satisfactory to the director showing purchases of sufficient stamps to stamp unstamped cigarettes purchased by the person, the presumption shall be that the cigarettes were sold without the proper stamps affixed. Within ~~two~~ three years after the report is filed or within ~~two~~ three years after the report became due, whichever is later, the department shall examine the report and determine the correct amount of tax. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent report made with the intent to evade tax, or in the case of a failure to file a report, or if a person purchases or is in possession of unstamped cigarettes.

The ~~two-year~~ three-year period of limitation may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies. The agreement must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

Sec. 40. Section 453A.31, subsection 1, paragraphs c, d, and e, Code 2003, are amended to read as follows:

c. A ~~one thousand~~ twenty-five dollar per pack penalty for the first violation if a person is in possession of more than two thousand unstamped cigarettes.

d. For a second violation within ~~two~~ three years of the first violation, the penalty is four hundred dollars if a person is in possession of more than forty but not more than four hundred unstamped cigarettes; one thousand dollars if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes; and ~~two thousand~~ thirty-five dollars per pack if a person is in possession of more than two thousand unstamped cigarettes.

e. For a third or subsequent violation within ~~two~~ three years of the first violation, the penalty is six hundred dollars if a person is in possession of more than forty but not more than four

hundred unstamped cigarettes; one thousand five hundred dollars if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes; and ~~three thousand~~ forty-five dollars per pack if a person is in possession of more than two thousand unstamped cigarettes.

Sec. 41. Section 453A.31, subsection 2, paragraphs b and c, Code 2003, are amended to read as follows:

b. A five hundred dollar penalty for a second violation within ~~two~~ three years of the first violation.

c. A thousand dollar penalty for a third or subsequent violation within ~~two~~ three years of the first violation.

Sec. 42. Section 453A.32, subsections 1, 4, and 5, Code 2003, are amended to read as follows:

1. All cigarettes on which taxes are imposed or required to be imposed by this division, which are found in the possession or custody, or within the control of any person, for the purpose of being sold, distributed, or removed by the person in violation of this division, and all cigarettes which are removed ~~or are~~, stored, transported, deposited, or concealed in any place ~~with intent to avoid payment of taxes~~ without the proper taxes paid, and any automobile, truck, boat, conveyance, or other vehicle whatsoever, used in the removal, storage, deposit, concealment, or transportation of cigarettes for ~~such~~ the purpose of avoiding the payment of the proper tax, and all equipment or other tangible personal property incident to and used for ~~such~~ the purpose of avoiding the payment of the proper tax, found in the place, building, or vehicle where cigarettes are found, and all counterfeit cigarettes may be seized by the department, with or without process and shall be from the time of the seizure forfeited to the state of Iowa. A proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain the seizure and declare and perfect the forfeiture. All cigarettes, counterfeit cigarettes, vehicles, and property seized, remaining in the possession or custody of the department, sheriff or other officer for forfeiture or other disposition as provided by law, are not subject to replevin.

4. In the event final judgment is rendered in the forfeiture proceedings aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the court shall order and decree the sale ~~thereof~~ of the seized property, other than the counterfeit cigarettes, to the highest bidder, by the sheriff at public auction in the county of seizure after notice is given in the manner provided in the case of the sale of personal property under execution, and the proceeds of such sale, less expense of seizure and court costs, shall be paid into the state treasury. Counterfeit cigarettes shall be destroyed or disposed of in a manner determined by the director.

5. In the event the cigarettes seized ~~hereunder~~ and sought to be sold upon forfeiture ~~shall be~~ are unstamped, the cigarettes shall be sold by the director or the director's designee to the highest bidder among the ~~licensed~~ permitted distributors in this state after written notice has been mailed to all ~~such~~ distributors. If there is no bidder, or in the opinion of the director the quantity of cigarettes to be sold is insufficient or for any other reason such disposition of the cigarettes is impractical, the cigarettes shall be destroyed or disposed of in a manner as determined by the director. The proceeds ~~of such~~ from the sales shall be paid into the state treasury.

Sec. 43. Section 453A.36, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 9. a. It is unlawful for a person to ship or import into this state or to offer for sale, sell, distribute, transport, or possess counterfeit cigarettes, knowing such cigarettes are counterfeit cigarettes or having reasonable cause to believe that such cigarettes are counterfeit cigarettes.

b. For purposes of this subsection and section 453A.32, "counterfeit cigarettes" means cigarettes, packages of cigarettes, cartons of cigarettes or other containers of cigarettes with a

label, trademark, service mark, trade name, device, design, or word adopted or used by a cigarette manufacturer to identify its product that is false or used without authority of the cigarette manufacturer.

Sec. 44. NEW SECTION. 453A.39 TOBACCO PRODUCT AND CIGARETTE SAMPLES — RESTRICTIONS — ADMINISTRATION.

1. A manufacturer, distributor, wholesaler, retailer, or distributing agent, or agent thereof, shall not give away cigarettes or tobacco products at any time in connection with the manufacturer's, distributor's, wholesaler's, retailer's, or distributing agent's business or for promotion of the business or product, except as provided in subsection 2.

2. a. All cigarette samples shall be shipped only to a distributor that has a permit to stamp cigarettes or little cigars with Iowa tax. All cigarette samples must have a cigarette stamp. The manufacturer shipping samples under this section shall send an affidavit to the director stating the shipment information, including the date shipped, quantity, and to whom the samples were shipped. The distributor receiving the shipment shall send an affidavit to the director stating the shipment information, including the date shipped, quantity, and from whom the samples were shipped. These affidavits shall be duly notarized and submitted to the director at the time of shipment and receipt of the samples. The distributor shall pay the tax on samples by separate remittance along with the affidavit.

b. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away any cigarettes or tobacco products to any person under eighteen years of age, or within five hundred feet of any playground, school, high school, or other facility when such facility is being used primarily by persons under age eighteen for recreational, educational, or other purposes.

c. Proof of age shall be required if a reasonable person could conclude on the basis of outward appearance that a prospective recipient of a sample may be under eighteen years of age.

Sec. 45. Section 453A.43, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 6. All excise taxes collected under this chapter by a distributor or any individual are deemed to be held in trust for the state of Iowa.

Sec. 46. Section 453A.45, subsection 1, unnumbered paragraph 2, Code 2003, is amended to read as follows:

When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, an invoice of those sales is not required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers and documents required by this subdivision to be kept shall be preserved for a period of at least ~~two~~ three years after the date of the documents or the date of the entries appearing in the records, unless the director, in writing, authorized their destruction or disposal at an earlier date. At any time during usual business hours, the director, or the director's duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this subdivision, and the tobacco products contained therein, to determine if all the provisions of this division are being fully complied with. If the director, or any such agent or employee, is denied free access or is hindered or interfered with in making the examination, the license of the distributor at that premises is subject to revocation by the director.

Sec. 47. Section 453A.45, subsections 2, 3, and 4, Code 2003, are amended to read as follows:

2. Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the

purchaser's name and address, the date of sale, and all prices and discounts. The person shall preserve legible copies of all ~~such~~ these invoices for ~~two~~ three years from the date of sale.

3. Every retailer and subjobber shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each ~~such~~ invoice for ~~two~~ three years from the date of purchase. Invoices shall be available for inspection by the director or the director's authorized agents or employees at the retailer's or subjobber's place of business.

4. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state which is subject to the provisions of and licensed under chapter 554 shall be kept by the warehouse and be available to the director for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the commissioner may require. These records shall be preserved for ~~two~~ three years from the date of delivery of the tobacco products.

Sec. 48. Section 453A.46, subsections 1 and 6, Code 2003, are amended to read as follows:

1. On or before the twentieth day of each calendar month every distributor with a place of business in this state shall file a return with the director showing the quantity and wholesale sales price of each tobacco product brought, or caused to be brought, into this state for sale; and made, manufactured, or fabricated in this state for sale in this state, during the preceding calendar month. Every licensed distributor outside this state shall in like manner file a return showing the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers, during the preceding calendar month. Returns shall be made upon forms furnished and prescribed by the director and shall contain other information as the director may require. Each return shall be accompanied by a remittance for the full tax liability shown on the return, less a discount as fixed by the director not to exceed five percent of the tax. Within ~~two~~ three years after the return is filed or within ~~two~~ three years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

The ~~two-year~~ three-year period of limitation may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies. The agreement must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

6. On or before the twentieth day of each calendar month, every consumer who, during the preceding calendar month, has acquired title to or possession of tobacco products for use or storage in this state, upon which tobacco products the tax imposed by section 453A.43 has not been paid, shall file a return with the director showing the quantity of tobacco products so acquired. The return shall be made upon a form furnished and prescribed by the director, and shall contain other information as the director may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it. Within ~~two~~ three years after the return is filed or within ~~two~~ three years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

Sec. 49. Section 453B.3, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. All excise taxes collected under this chapter by a dealer or any individual are deemed to be held in trust for the state of Iowa.

Sec. 50. Section 633.479, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

An order approving the final report and discharging the personal representative shall not be required if all distributees otherwise entitled to notice are adults, under no legal disability, have signed waivers of notice as provided in section 633.478, have signed statements of consent agreeing that the prayer of the final report shall constitute an order approving the final report and discharging the personal representative, and if the statements of consent are dated not more than thirty days prior to the date of the final report, and if compliance with sections 422.27 and 450.58 have been fulfilled and receipts, sworn statements, and certificates, as any of these that are required, are on file. In those instances final order shall not be required and the prayer of the final report shall be considered as granted and shall have the same force and effect as an order of discharge of the personal representative and an order approving the final report.

Sec. 51. Sections 2A.8 and 48A.24, Code Supplement 2003, are repealed.

Sec. 52. REFUNDS. Refunds of taxes, interest, or penalties which arise from claims resulting from the amendment to section 422.42, subsection 6, in this Act, for the noninclusion of trade discounts in computing gross receipts on sales occurring between January 1, 1997, and the effective date of the section amending section 422.42, subsection 6, in this Act, 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, 2004, notwithstanding any other provision of law. If the amount of claims totals more than twenty-five thousand dollars in the aggregate, the department of revenue shall prorate the twenty-five thousand dollars among all claimants in relation to the amounts of the claimants' valid claims.

Sec. 53. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY PROVISIONS.

1. The section amending section 422.42, subsection 6, in this Act, being deemed of immediate importance, takes effect upon enactment and applies retroactively to January 1, 1997.

2. The section amending section 422.42, subsection 6, in this Act is void on and after July 1, 2004.

3. The section providing for sales and use tax refunds in this Act ceases to apply to any refund claims filed after September 30, 2004.

Approved April 14, 2004

CHAPTER 1074

CITY PLANNING AND ZONING COMMISSION MEMBERSHIP

H.F. 2145

AN ACT relating to membership on certain city planning and zoning commissions.

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

Section 1. Section 414.23, unnumbered paragraph 2, Code 2003, is amended to read as follows:

A municipality, during the time its zoning jurisdiction is extended under this section, shall

increase the size of its planning and zoning commission and its board of adjustment each by two members. The planning and zoning commission shall include a member of the board of supervisors of the affected county, or the board's designee, and a resident of the area outside the city limits over which the zoning jurisdiction is extended. The board's designee, if any, shall be a resident of the county in which such extended area is located. The additional members of the board of adjustment shall be residents of the area outside the city limits over which the zoning jurisdiction is extended. The county supervisor, or the board's designee, and the residents shall be appointed by the board of supervisors of the county in which such extended area is located ~~and~~. The county supervisor, or the board's designee, and the residents shall serve for the same terms of office and have the same rights, privileges, and duties as other members of each of the bodies. However, if the extended zoning jurisdiction of a municipality extends into an adjacent county without a county zoning ordinance, the boards of supervisors of the affected counties, jointly, shall appoint one of their members, or a designee, to the planning and zoning commission.

Approved April 14, 2004

CHAPTER 1075

DRAINAGE AND LEVEE DISTRICTS — COUNTY AUTHORITY

H.F. 2225

AN ACT relating to the establishment of drainage and levee districts, and providing an effective date.

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

Section 1. Section 468.315, Code 2003, is amended to read as follows:

468.315 AUTHORITY TO INCLUDE CITY.

~~The~~ A county board of ~~any county shall have~~ supervisors has the same power to establish a drainage or levee district that includes the whole or any part of ~~any~~ a city as ~~they have~~ the county board does to establish ~~districts~~ a district located wholly outside ~~of such cities~~ a city, including providing for the assessment of damages and benefits within ~~such cities, but no~~ a city. However, a county board of supervisors shall ~~have power or authority to establish~~ not do any of the following:

1. Establish a drainage or levee district ~~which lies~~ located wholly within the corporate limits of ~~any~~ a city, ~~nor in any case to establish any~~ unless the city consents by resolution adopted by its city council.

2. Establish a district for sanitary sewer purposes.

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

Approved April 14, 2004

CHAPTER 1076

LOCAL GOVERNMENT ELECTIVE OFFICES
— VACANCY DUE TO MILITARY SERVICE

H.F. 2340

AN ACT relating to the temporary absence of an elected local government official on active military duty and the appointment of a temporary replacement and providing an effective date.

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

Section 1. NEW SECTION. 69.20 TEMPORARY VACANCY DUE TO MILITARY SERVICE.

1. A temporary vacancy in an elective office of a political subdivision, community college, and hospital board of trustees of this state occurs on the date when the person filling that office is placed on active state service or federal service, as those terms are defined in section 29A.1, and when such a person will not be able to attend to the duties of that person's elective position for a period greater than sixty consecutive days. The temporary vacancy terminates on the date when such person is released from such service, or the term of office expires.

2. A temporary vacancy on an elective board, council, or other multimember body of a political subdivision may be filled by appointment by a majority of the remaining members of the body. A temporary vacancy in any other elective office in a political subdivision, community college, or hospital board of trustees may be filled by the governing body of that political subdivision, community college, or hospital board of trustees.

3. Upon the termination of a temporary vacancy due to a person's release from active state service or federal service, the person who held the elective office just prior to the temporary vacancy shall immediately be deemed to have been reinstated to that position and the person who filled the temporary vacancy shall immediately be deemed to have been removed from that office.

4. A person filling a temporary vacancy or a person reinstated to office as described in this section shall qualify for that office as provided in chapter 63.

5. Upon the resignation or death of the person replaced under this section, a permanent vacancy occurs and shall be filled as otherwise provided by law.

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

Approved April 14, 2004

CHAPTER 1077

ACTIONS TO ABATE NUISANCES —
ELECTRIC UTILITIES — COMPARATIVE FAULT

H.F. 2397

AN ACT relating to the act or property of a public utility with respect to the definition of nuisance.

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

Section 1. Section 657.1, Code 2003, is amended to read as follows:

657.1 NUISANCE — WHAT CONSTITUTES — ACTION TO ABATE.

1. Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property, so as essentially to ~~unreasonably~~ interfere unreasonably with the comfortable enjoyment of life or property, is a nuisance, and a civil action by ordinary proceedings may be brought to enjoin and abate the ~~same~~ nuisance and to recover damages sustained on account ~~thereof~~ of the nuisance.

2. Notwithstanding subsection 1, in an action to abate a nuisance against an electric utility, an electric utility may assert a defense of comparative fault as set out in section 668.3 if the electric utility demonstrates that in the course of providing electric services to its customers that it has complied with engineering and safety standards as adopted by the utilities board of the department of commerce, and if the electric utility has secured all permits and approvals, as required by state law and local ordinances, necessary to perform activities alleged to constitute a nuisance.

Approved April 14, 2004

CHAPTER 1078

ENVIRONMENTAL REGULATION — RECYCLED OIL
AND REFUSE-DERIVED FUEL

H.F. 2517

AN ACT relating to environmental regulations administered by the department of natural resources regarding the use of recycled oil and the calculation of waste volume reduction measures.

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

Section 1. Section 455B.306, subsection 3, Code 2003, is amended to read as follows:

3. A city or county required to file with the director a comprehensive plan detailing the method by which the city or county will comply with the requirements of section 455B.302 to establish and implement a comprehensive solid waste reduction program for its residents and which seeks approval of the inclusion of refuse-derived fuel as a component of its percentage of waste reduction, shall file an annual report with the director regarding the percentage of reduction attributable to refuse-derived fuel and the justification for such inclusion. The director shall approve or reject the inclusion. The percentage of reduction attributable to refuse-

derived fuel and allowable for inclusion shall not exceed fifty percent ~~and only those products established as allowable pursuant to section 455D.20 shall be included in the calculation of the waste reduction goal~~.

Sec. 2. Section 455B.412, subsection 5, Code 2003, is amended by striking the subsection.

Sec. 3. Section 455D.20, Code 2003, is repealed.

Approved April 14, 2004

CHAPTER 1079

IOWA EDUCATIONAL SAVINGS PLAN TRUST REVISIONS

H.F. 2553

AN ACT relating to technical and substantive changes regarding the Iowa educational savings plan trust and the establishment of an additional optional program by a specified date, and providing an effective date.

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

Section 1. Section 12D.1, Code 2003, is amended to read as follows:

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. "Account balance limit" means the maximum allowable aggregate balance of accounts established for the same beneficiary. Account earnings, if any, are included in the account balance limit.

2. "Administrative fund" means the administrative fund established under section 12D.4.

3. "Beneficiary" means the individual designated by a participation agreement to benefit from advance payments of higher education costs on behalf of the beneficiary.

4. "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.

~~5. "Endowment fund" means the endowment fund established under section 12D.4.~~

~~6.~~ 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. In the case of a special needs beneficiary, expenses for special needs services incurred in connection with enrollment or attendance at an institution of higher education shall be included as a higher education cost.

~~7.~~ 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.

~~8.~~ 7. "Internal Revenue Code" means the same as defined in section 422.3.

~~9.~~ 8. "Iowa educational savings plan trust" or "trust" means the trust created under section 12D.2.

~~10.~~ 9. "Participant" means an individual, ~~or an~~ individual's legal representative, ~~who~~ trust, or estate that has entered into a participation agreement under this chapter for the advance payment of higher education costs on behalf of a beneficiary.

~~11.~~ 10. "Participation agreement" means an agreement between a participant and the trust entered into under this chapter.

~~12.~~ 11. "Program fund" means the program fund established under section 12D.4.

~~13. "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.~~

~~14.~~ 12. "Tuition and fees" means the quarter or semester charges imposed to attend an institution of higher education and required as a condition of enrollment.

Sec. 2. Section 12D.2, subsection 4, Code 2003, is amended to read as follows:

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.

Sec. 3. Section 12D.2, subsection 8, Code 2003, is amended by striking the subsection.

Sec. 4. Section 12D.2, subsection 10, Code 2003, is amended to read as follows:

10. Make payments to institutions of higher education, participants, or beneficiaries, pursuant to participation agreements on behalf of beneficiaries.

Sec. 5. Section 12D.2, subsection 11, Code 2003, is amended to read as follows:

11. Make refunds to participants upon the termination of participation agreements, and partial nonqualified distributions to participants, pursuant to the provisions, limitations, and restrictions set forth in this chapter.

Sec. 6. Section 12D.2, subsection 12, Code 2003, is amended to read as follows:

12. Invest moneys from ~~the endowment fund and~~ the program fund in any investments which are determined by the treasurer of state to be appropriate.

Sec. 7. Section 12D.3, subsection 1, paragraph a, Code 2003, is amended to read as follows:

a. Each participation agreement may 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 fifty dollars.~~ The maximum contribution that may be deducted for Iowa income tax purposes shall not exceed two thousand dollars per beneficiary per year adjusted annually to reflect increases in the consumer price index. The treasurer of state shall

set an account balance limit to maintain compliance with section 529 of the Internal Revenue Code. A contribution shall not be permitted to the extent it causes the aggregate balance of all accounts established for the same beneficiary to exceed the applicable account balance limit.

Sec. 8. Section 12D.3, subsections 2 and 3, Code 2003, are amended by striking the subsections.

Sec. 9. Section 12D.4, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

12D.4 PROGRAM AND ADMINISTRATIVE FUNDS — INVESTMENT AND PAYMENTS.

1. a. The treasurer of state shall segregate moneys received by the trust into two funds: the program 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. Contributions to the trust made by participants may only be made in the form of cash.

d. A participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust.

2. Moneys accrued by participants in the program fund of the trust may be used for payments to any institution of higher education. Payments can be made to the institution, the participant, or the beneficiary.

Sec. 10. Section 12D.5, Code Supplement 2003, is amended by striking the section and inserting in lieu thereof the following:

12D.5 CANCELLATION OF AGREEMENTS.

A participant may cancel a participation agreement at will. Upon cancellation of a participation agreement, a participant shall be entitled to the return of the participant's account balance.

Sec. 11. Section 12D.6, subsection 2, Code 2003, is amended to read as follows:

2. In the event the program is terminated prior to payment of higher education costs for the beneficiary, the participant is entitled to a refund of the participant's account balance.

~~No right to receive investment income shall exist in cases of voluntary participant cancellation except as provided in section 12D.5.~~

Sec. 12. Section 12D.6, subsection 3, Code 2003, is amended by striking the subsection.

Sec. 13. Section 12D.9, subsection 1, paragraphs d and e, Code Supplement 2003, are amended to read as follows:

d. Pursuant to section 12D.4, subsection 1, paragraph ~~"f"~~ "c", contributions may only be made in the form of cash.

e. Pursuant to section 12D.4, subsection 1, paragraph ~~"g"~~ "d", a participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust.

Sec. 14. Section 12D.9, subsection 1, paragraph f, Code Supplement 2003, is amended by striking the paragraph.

Sec. 15. Section 12D.10, subsection 1, Code 2003, is amended to read as follows:

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.

Sec. 16. LEGISLATIVE INTENT. It is the intent of the general assembly that the treasurer of state shall establish an additional educational savings plan option, to be marketed through

licensed securities agents, by December 31, 2005. Licensed securities agents marketing the optional program may be compensated from the product distributor, fund company, insurance company, or other distribution agent for their activities in marketing and advising investors regarding the program.

Sec. 17. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 15, 2004

CHAPTER 1080

BANK COLLATERAL PLEDGED
TO SECURE PUBLIC FUNDS DEPOSITS

S.F. 2119

AN ACT relating to obligations secured by collateral required to be pledged by banks to the treasurer of state in order to secure the deposit of public moneys, and providing an effective date.

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

Section 1. Section 12C.22, subsection 1, paragraph b, Code 2003, is amended by striking the paragraph.

Sec. 2. Section 12C.22, subsection 1, paragraph c, Code 2003, is amended to read as follows:

c. In the event an assessment is paid by a bank to the treasurer of state pursuant to section 12C.23A, ~~or in the event that collateral pledged by the bank is liquidated pursuant to section 12C.23A, subsection 3, paragraph "e", and the proceeds are used to pay the assessment,~~ the bank is subrogated to the claim of a public funds depositor to the extent the claim is paid from funds paid by the bank ~~or proceeds of collateral pledged by the bank are used to pay the assessment~~.

Sec. 3. Section 12C.22, subsection 5, paragraph d, Code 2003, is amended to read as follows:

d. Establish procedures for adding collateral, releasing collateral, and substituting different collateral for collateral pledged under this section.

Sec. 4. Section 12C.23A, subsection 3, paragraph e, Code Supplement 2003, is amended to read as follows:

e. If a bank fails to pay its assessment when due, the treasurer of state shall ~~satisfy the assessment by liquidating collateral pledged by the bank upon such notice as is required by chapter 554. If the collateral pledged by the bank is inadequate to pay the assessment, the treasurer of state shall~~ make additional assessments as may be necessary against other banks that hold uninsured public funds to satisfy any unpaid assessment. Any additional assessments shall be determined, collected, and satisfied in the same manner as the first assessment except that in calculating the amount of each such additional assessment, the amount of uninsured public funds held by the bank that fails to pay the assessment shall not be counted.

Sec. 5. Section 12C.23A, subsection 3, paragraph f, Code Supplement 2003, is amended by striking the paragraph.

Sec. 6. Section 12C.23A, subsection 3, paragraph g, Code Supplement 2003, is amended to read as follows:

g. If a bank fails to pay its assessment when due ~~and the proceeds from liquidation of the collateral pledged by the bank are not sufficient to pay the assessment against the bank~~, the treasurer of state shall notify the superintendent or the comptroller of the currency, as applicable, of the failure to pay the assessment. If the bank that has failed to pay the assessment is a nationally chartered financial institution, the superintendent shall immediately notify the bank's primary federal regulator. If the assessment is not paid within thirty days after the bank received the notice of assessment, the treasurer of state shall initiate a lawsuit to collect the amount of the assessment. If a bank is found to have failed to pay the assessment as required by this subsection and is ordered to pay the assessment, the court shall also order that the bank pay court costs and reasonable attorney fees based on the amount of time the attorney general's office spent preparing and bringing the action, and reasonable expenses incurred by the treasurer of state.

Sec. 7. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 16, 2004

CHAPTER 1081

PRIVATE SECTOR EMPLOYEE DRUG TESTING

S.F. 2173

AN ACT concerning private sector employee drug testing relating to authorized testing substances, confirmed positive test results, and testing procedures, and providing an effective date.

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

Section 1. Section 730.5, subsection 1, Code 2003, is amended by adding the following new paragraph after paragraph a:

NEW PARAGRAPH. aa. "Confirmed positive test result" means, except for alcohol testing conducted pursuant to subsection 7, paragraph "f", subparagraph (2), the results of a blood, urine, or oral fluid test in which the level of controlled substances or metabolites in the specimen analyzed meets or exceeds nationally accepted standards for determining detectable levels of controlled substances as adopted by the federal substance abuse and health services administration. If nationally accepted standards for oral fluid tests have not been adopted by the federal substance abuse and health services administration, the standards for determining detectable levels of controlled substances for purposes of determining a confirmed positive test result shall be the same standard that has been established by the federal food and drug administration for the measuring instrument used to perform the oral fluid test.

Sec. 2. Section 730.5, subsection 1, paragraph j, Code 2003, is amended to read as follows:

j. "Sample" means such sample from the human body capable of revealing the presence of

alcohol or other drugs, or their metabolites, which shall include only urine, saliva, breath, and blood. However, sample does not mean blood except as authorized pursuant to subsection 7, paragraph "l".

Sec. 3. Section 730.5, subsection 7, paragraph a, Code 2003, 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 urine sample and collection of the urine 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 urine sample is being collected.

Sec. 4. Section 730.5, subsection 7, paragraph b, Code 2003, is amended to read as follows:

b. ~~Sample collection~~ Collection of a urine sample for testing of current employees~~, except for the collection of a sample for alcohol testing conducted pursuant to paragraph "f", subparagraph (2),~~ 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~~ 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.

Sec. 5. Section 730.5, subsection 7, paragraph f, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Drug or alcohol testing shall include confirmation of any initial positive test results. An employer may take adverse employment action, including refusal to hire a prospective employee, based on a confirmed positive ~~drug or alcohol~~ test result for drugs or alcohol.

Sec. 6. Section 730.5, subsection 7, paragraph f, Code 2003, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (3) Notwithstanding any provision of this section to the contrary, collection of an oral fluid sample for testing shall be performed in the presence of the individual from whom the sample or specimen is collected. The specimen or sample shall be of sufficient quantity to permit a second, independent, confirmatory test as provided in paragraph "i". In addition to any requirement 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 unused 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 portion yielded a confirmed positive test result.

Sec. 7. Section 730.5, subsection 7, paragraph i, Code 2003, is amended to read as follows:

i. (1) If a confirmed positive ~~drug or alcohol~~ test result for drugs or alcohol 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 result for drugs or alcohol for purposes of taking disciplinary action pursuant to subsection 10.

(2) If a confirmed positive ~~drug or alcohol~~ test result for drugs or alcohol 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.

Sec. 8. Section 730.5, subsection 9, paragraph b, Code 2003, is amended to read as follows:

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 for drugs or alcohol 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.

Sec. 9. Section 730.5, subsection 10, paragraph a, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Upon receipt of a confirmed positive ~~drug or alcohol~~ test result for drugs or alcohol 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:

Sec. 10. Section 730.5, subsection 10, paragraph b, Code 2003, is amended to read as follows:

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 result for drugs or alcohol which indicates a violation of the employer's written policy.

Sec. 11. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 16, 2004

CHAPTER 1082

DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP
AND AGRICULTURAL REGULATION — MISCELLANEOUS CHANGES

S.F. 2208

AN ACT relating to the powers and duties of the department of agriculture and land stewardship, and making penalties applicable.

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

DIVISION I
GENERAL AUTHORITY OF THE DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

Section 1. Section 7A.4, subsection 2, Code 2003, is amended by striking the subsection.

Sec. 2. Section 159.11, Code Supplement 2003, is repealed.

Sec. 3. Section 159.13, Code 2003, is repealed.

DIVISION II
AGRICULTURAL ENERGY MANAGEMENT FUND

Sec. 4. Section 159.6, subsection 10, Code Supplement 2003, is amended to read as follows:
10. Soil and water conservation as set forth in chapters 161A, ~~161B,~~ 161C, 161E, and 161F.

Sec. 5. Section 455E.11, subsection 2, paragraph e, subparagraph (7), Code Supplement 2003, is amended by striking the subparagraph.

Sec. 6. Chapter 161B, Code 2003,[1] is repealed.

DIVISION III
SECRETARY'S DESIGNEE AS A MEMBER OF THE ECONOMIC DEVELOPMENT BOARD

Sec. 7. Section 15.103, unnumbered paragraph 1, Code 2003, is amended to read as follows:
The Iowa economic development board is created, consisting of eleven voting members appointed by the governor and seven ex officio nonvoting members. The ex officio nonvoting

[1] "Code Supplement 2003" probably intended

members are four legislative members; one president, or the president's designee, of the University of Northern Iowa, the University of Iowa, or Iowa State University of science and technology designated by the state board of regents on a rotating basis; and one president, or the president's designee, of a private college or university appointed by the Iowa association of independent colleges and universities; and one superintendent, or the superintendent's designee, of a community college, appointed by the Iowa association of community college presidents. The legislative members are two state senators, one appointed by the president of the senate, after consultation with the majority leader of the senate, and one appointed by the minority leader of the senate, after consultation with the president of the senate, from their respective parties; and two state representatives, one appointed by the speaker and one appointed by the minority leader of the house of representatives from their respective parties. Not more than six of the voting members shall be from the same political party. The secretary of agriculture or the secretary's designee shall be one of the voting members. The governor shall appoint the remaining ten voting members of the board for a term of four years beginning and ending as provided by section 69.19, subject to confirmation by the senate, and the governor's appointments shall include persons knowledgeable of the various elements of the department's responsibilities.

DIVISION IV
COMMERCIAL FEED

Sec. 8. Section 198.3, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 0A. "Advertise" means to present a commercial message in any medium, including but not limited to print, radio, television, sign, display, label, tag, or articulation.

Sec. 9. Section 198.3, subsection 3, Code 2003, is amended to read as follows:

3. "Commercial feed" means all materials 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~~ Except as otherwise provided in this chapter, unmixed whole seeds 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, are 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. 10. Section 198.10, subsection 1, Code 2003, is amended to read as follows:

1. The secretary may adopt rules for commercial feeds and pet foods as specifically authorized in this chapter and other reasonable rules necessary in order to carry out the purpose and intent of this chapter or to secure the efficient enforcement of this chapter.

1A. The secretary may adopt rules to do all of the following:

a. Regulate the movement of cottonseed into this state or within this state, even if the cottonseed would otherwise be exempt as whole seed under section 198.3. The secretary may adopt rules prescribing standards for cottonseed consistent with regulations prescribing the quality and uses of cottonseed as promulgated by the United States food and drug administration.

b. Regulating the advertisement of commercial feed, including but not limited to labeling commercial feed as specifically provided in this chapter.

1B. In the interest of uniformity the secretary shall adopt any rule based on regulations promulgated under the authority of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., provided the secretary has the authority under this chapter to adopt the rule. However, the secretary is not required to adopt such a rule, if the secretary determines that the rule

would be inconsistent with this chapter or not appropriate to conditions which exist in this state.

DIVISION V
ACCOUNTABLE GOVERNMENT ACT

Sec. 11. Section 8E.103, subsection 1, Code 2003, is amended to read as follows:

1. "Agency" means a principal central department enumerated in section 7E.5. ~~For~~ However, for purposes of this chapter, ~~each~~ all of the following apply:

a. The department of agriculture and land stewardship is not considered an agency.

b. Each division within the department of commerce ~~shall be~~ is considered an agency, and each bureau within a division of the department of commerce ~~shall be~~ is considered a division, as otherwise provided in chapter 7E.

DIVISION VI
MILK REGULATION

Sec. 12. Section 192.101A, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

As used in this chapter, all terms shall have the same meaning as defined in the "Grade 'A' Pasteurized Milk ~~Ordinance, 2001 Revision"~~ Ordinance" as provided in section 192.102. However, notwithstanding the ordinance, the following definitions shall apply:

Sec. 13. Section 192.102, Code Supplement 2003, is amended to read as follows:

192.102 GRADE "A" PASTEURIZED MILK ORDINANCE.

The department shall adopt, by rule, the "Grade 'A' Pasteurized Milk Ordinance, ~~2001~~ 2003 Revision", including a subsequent revision of the ordinance. If the ordinance specifies that compliance with a provision of the ordinance's appendices is mandatory, the department shall also adopt that provision. The department shall not amend the ordinance, unless the department explains each amendment and reasons for the amendment in the Iowa administrative bulletin when the rules are required to be published pursuant to chapter 17A. The department shall administer this chapter consistent with the provisions of the ordinance.

Sec. 14. Section 192.110, subsection 1, Code Supplement 2003, is amended to read as follows:

1. The person has a pasteurized milk and milk products sanitation compliance rating of ninety percent or more as calculated according to the rating system as contained in the federal public health service publications, "Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers ~~2001"~~ 2003" and "Method of Making Sanitation Ratings of Milk Supplies, ~~2001~~ 2003 Revision". The applicable provisions of these publications are incorporated into this section by this reference. A copy of each publication shall be on file with the department or in the office of the person subject to an inspection contract as provided in section 192.108.

Approved April 16, 2004

CHAPTER 1083

ELECTIONS AND VOTER REGISTRATION

S.F. 2269

AN ACT relating to elections and voter registration, including implementing requirements of federal law, adjusting language to reflect current practice, making changes related to voting machines, making changes related to absentee voting, providing penalties, and providing effective and applicability dates.

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

Section 1. Section 39A.4, subsection 1, paragraph c, Code 2003, is amended by adding the following new subparagraphs:

NEW SUBPARAGRAPH. (11) Returning a voted absentee ballot, by mail or in person, to the commissioner's office and the person returning the ballot is not the voter, an absentee ballot courier, a special precinct election official designated pursuant to section 53.22, subsection 1, or the designee of a voter described in section 53.22, subsection 5.

NEW SUBPARAGRAPH. (12) Making a false or untrue statement reporting that a voted absentee ballot was returned to the commissioner's office, by mail or in person, by a person other than the voter, an absentee ballot courier, a special precinct election official designated pursuant to section 53.22, subsection 1, or the designee of a voter described in section 53.22, subsection 5.

Sec. 2. Section 46.21, unnumbered paragraph 1, Code 2003, is amended to read as follows:

At least sixty-nine days before each judicial election, the state commissioner of elections shall certify to the county commissioner of elections of each county a list of the judges of the supreme court, court of appeals, and district court including district associate judges, full-time associate juvenile judges, and full-time associate probate judges, and clerks of the district court to be voted on in each county at that election. The county commissioner of elections shall place the names upon the ballot in the order in which they appear in the certificate~~, unless only one county is voting thereon~~. The state commissioner of elections shall rotate the names in the certificate by county~~, or the county commissioner of elections shall rotate them upon the ballot by precinct if only one county is voting thereon~~. The names of all judges and clerks to be voted on shall be placed upon one ballot, which shall be in substantially the following form:

Sec. 3. Section 47.1, Code Supplement 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The state commissioner shall adopt rules pursuant to chapter 17A, for the implementation of uniform and nondiscriminatory administrative complaint procedures for resolution of grievances relating to violations of Title III of Pub. L. No. 107-252. In complaint proceedings in which all of the respondents are local election officials, the presiding officer shall be the state commissioner of elections. In complaint proceedings in which one of the respondents is the state commissioner of elections, the presiding officer shall be a panel consisting of all members of the state voter registration commission appointed pursuant to section 47.8, except the state commissioner of elections or the state commissioner's designee.

Sec. 4. Section 47.7, subsections 2, 3, and 4, Code Supplement 2003, are amended by striking the subsections and inserting in lieu thereof the following:

2. a. On or before January 1, 2006, the state registrar of voters shall implement in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration file defined, maintained, and administered at the state level that contains the name and registration information of every legally registered voter in the

state and assigns a unique identifier to each legally registered voter in the state. The state voter registration system shall be coordinated with other agency databases within the state, including, but not limited to, the department of transportation driver's license records, judicial records of convicted felons and persons declared incompetent to vote, and department of public health records of deceased persons.

b. On or after January 1, 2006, a county shall not establish or maintain a voter registration system separate from the state voter registration system. Each county shall provide to the state registrar the names, voter registration information, and voting history of each registered voter in the county in the form required by the state registrar.

c. A state or local election official may obtain immediate electronic access to the information contained in the computerized voter registration file. All voter registration information obtained by a local election official shall be electronically entered into the computerized voter registration file on an expedited basis at the time the information is provided to the local election official. The state registrar shall provide such support as may be required to enable local election officials to electronically enter the information into the computerized voter registration file on an expedited basis. The list generated from the computerized file shall serve as the official voter registration list for the conduct of all elections for federal office in the state.

d. The state registrar shall prescribe by rule the procedures for access to the state voter registration file, security requirements, and access protocols for adding, changing, or deleting information from the state voter registration file.

Sec. 5. Section 47.8, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 5. In complaint proceedings held pursuant to section 47.1 in which one of the respondents is the state commissioner of elections, the presiding officer shall be a panel consisting of all members of the state voter registration commission, except the state commissioner of elections or the state commissioner's designee.

Sec. 6. Section 48A.8, Code 2003, is amended to read as follows:

48A.8 REGISTRATION BY MAIL.

1. An eligible elector may register to vote by completing a mail registration form. The form may be mailed or delivered by the registrant or the registrant's designee to the commissioner in the county where the person resides. A separate registration form shall be signed by each individual registrant.

2. An eligible elector who registers by mail and who has not previously voted in an election for federal office in the county of registration shall be required to provide identification documents when voting for the first time in the county, unless the registrant provided on the registration form the registrant's Iowa driver's license number, or the registrant's Iowa nonoperator's identification card number, or the last four numerals of the registrant's social security number and the driver's license, nonoperator's identification, or partial social security number matches an existing state or federal identification record with the same number, name, and date of birth. If the registrant under this subsection votes in person at the polls, or by absentee ballot at the commissioner's office or at a satellite voting station, the registrant shall provide a current and valid photo identification card, or shall present to the appropriate election official one of the following current documents that shows the name and address of the registrant:

a. Utility bill.

b. Bank statement.

c. Paycheck.

d. Government check.

e. Other government document.

3. If the registrant under subsection 2 votes an absentee ballot by mail, the registrant shall provide a photocopy of one of the documents listed in subsection 2 when returning the absentee ballot.

4. A registrant under subsection 2 who is required to present identification when casting a ballot in person shall be permitted to vote a provisional ballot if the voter does not provide the required identification documents. If a voter who is required to present identification when casting a ballot votes an absentee ballot by mail, the ballot returned by the voter shall be considered a provisional ballot pursuant to sections 49.81 and 53.31.

Sec. 7. Section 48A.11, subsection 1, paragraph b, Code 2003, is amended to read as follows:

b. The registrant's name, including first name and any family forename or surname.

Sec. 8. Section 48A.11, subsection 1, paragraph e, Code 2003, is amended by striking the paragraph and inserting in lieu thereof the following:

e. Iowa driver's license number if the registrant has a current and valid Iowa driver's license, Iowa nonoperator's identification card if the registrant has a current and valid Iowa nonoperator's identification card, or the last four numerals of the registrant's social security number. If the registrant does not have an Iowa driver's license number, an[1] nonoperator's identification card number, or a social security number, the form shall provide space for a number to be assigned as provided in subsection 7.

Sec. 9. Section 48A.11, subsection 1, paragraph f, Code 2003, is amended to read as follows:

f. Date of birth, including month, date, and year.

Sec. 10. Section 48A.11, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. The following questions and statement regarding eligibility shall be included on forms that may be used for registration by mail:

a. Are you a citizen of the United States of America?

b. Will you be eighteen years of age on or before election day?

c. If you checked "no" in response to either of these questions, do not complete this form.

Sec. 11. Section 48A.11, subsection 5, Code 2003, is amended to read as follows:

5. All forms for voter registration shall be prescribed ~~by rule adopted~~ by the state voter registration commission.

Sec. 12. Section 48A.11, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 7. A voter registration application lacking the registrant's name, sex, date of birth, or residence address or description shall not be processed. A voter registration application lacking the registrant's driver's license number, Iowa nonoperator's identification card number, or the last four digits of the registrant's social security number shall not be processed. A registrant whose registration is not processed pursuant to this subsection shall be notified pursuant to section 48A.26, subsection 3. A registrant who does not have an Iowa driver's license number, an Iowa nonoperator's identification number, or a social security number and who notifies the registrar of such shall be assigned a unique identifying number that shall serve to identify the registrant for voter registration purposes.

Sec. 13. NEW SECTION. 48A.25A VERIFICATION OF VOTER REGISTRATION INFORMATION.

Upon receipt of an application for voter registration by mail, the state registrar of voters shall compare the driver's license number, the Iowa nonoperator's identification card number, or the last four numerals of the social security number provided by the registrant with the records of the state department of transportation. To be verified, the voter registration record shall contain the same name, date of birth, and driver's license[2] or whole or partial social security number as the records of the department of transportation. If the information cannot be verified, the application shall be rejected and the registrant shall be notified of the reason for the

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[1] See chapter 1175, §355 herein

[2] See chapter 1175, §356 herein

rejection. If the information can be verified, a record shall be made of the verification and the application shall be accepted.

The voter registration commission shall adopt rules in accordance with chapter 17A to provide procedures for processing registration applications if the department of transportation does not, before the close of registration for an election for which the voter registration would be effective, if verified, provide a report that the information on the application has matched or not matched the records of the department.

This section does not apply to persons entitled to register to vote and to vote pursuant to section 48A.5, subsection 4.

Sec. 14. Section 48A.26, subsection 3, Code 2003, is amended to read as follows:

3. If the registration form is missing required information pursuant to section 48A.11, subsection 7, the acknowledgment shall advise the applicant what additional information is required. The commissioner shall enclose a new registration by mail form for the applicant to use. If the registration form has no address, the commissioner shall make a reasonable effort to determine where the acknowledgment should be sent. If the incomplete application is received during the twelve days before the close of registration for an election, the commissioner shall provide the registrant with an opportunity to complete the form before the close of registration.

Sec. 15. Section 48A.26, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 3A. If the registrant applied by mail to register to vote and did not answer either "yes" or "no" to the question in section 48A.11, subsection 2A, paragraph "a", the application shall be processed, but the registration shall be designated as valid only for elections that do not include candidates for federal offices on the ballot. The acknowledgment shall advise the applicant that the status of the registration is local and the reason for the registration being assigned local status. The commissioner shall enclose a new registration by mail form for the applicant to use. If the original application is received during the twelve days before the close of registration for an election that includes candidates for federal offices on the ballot, the commissioner shall provide the registrant with an opportunity to complete the form before the close of registration.

NEW SUBSECTION. 3B. If the registrant applied by mail to register to vote and answered "no" to the question in section 48A.11, subsection 2A, paragraph "a", the application shall not be processed. The acknowledgement shall advise the applicant that the registration has been rejected because the applicant indicated on the registration form that the applicant is not a citizen of the United States.

Sec. 16. Section 48A.28, subsection 2, unnumbered paragraph 2, Code 2003, is amended to read as follows:

A commissioner participating in the national change of address program, in the first quarter of each calendar year, shall send a notice and preaddressed, postage paid return card by forwardable mail to each registered voter whose name was not reported by the national change of address program and who has not voted~~,~~ in two or more consecutive general elections and has not registered again, or who has not reported a change to an existing registration, or who has not responded to a notice from the commissioner or registrar during the ~~preceding four calendar years~~ period between and following the previous two general elections. The form and language of the notice and return card shall be specified by the state voter registration commission by rule. A registered voter shall not be sent a notice and return card under this subsection more frequently than once in a four-year period.

Sec. 17. Section 48A.36, subsection 2, Code 2003, is amended to read as follows:

2. Upon receipt of electronic registration data under subsection 1, the state registrar of voters ~~may~~ shall cause the updating of registration records ~~for registrants in counties which have arranged for data processing services under section 47.7, subsection 2~~. The registrar shall notify the appropriate commissioner of the actions taken.

Sec. 18. Section 48A.37, subsection 2, Code 2003, is amended to read as follows:

2. Electronic records shall include a status code designating whether the records are active, ~~or~~ inactive, local, or pending. Inactive records are records of registered voters to whom notices have been sent pursuant to section 48A.28, subsection 3, and who have not returned the card or otherwise responded to the notice, and those records have been designated inactive pursuant to section 48A.29. Local records are records of applicants who did not answer either "yes" or "no" to the question in section 48A.11, subsection 2A, paragraph "a". Pending records are records of applicants whose applications have not been verified pursuant to section 48A.25A. All other records are active records. An inactive record shall be made active when the registered voter votes at an election, registers again, or reports a change of name, address, telephone number, or political party affiliation. A pending record shall be made active upon verification. A local record shall be valid for any election for which no candidates for federal office appear on the ballot, but the registrant[3] may not vote in a federal election unless the registrant submits a new voter registration application before election day indicating that the applicant is a citizen of the United States.

Sec. 19. Section 48A.38, subsection 1, paragraph f, Code 2003, is amended to read as follows:

f. The county commissioner of registration and the state registrar of voters shall remove a voter's social security number, driver's license number, or Iowa nonoperator's identification card number from a voter registration list prepared pursuant to this section.

Sec. 20. Section 49.81, Code 2003, is amended to read as follows:

49.81 PROCEDURE FOR CHALLENGED VOTER TO CAST PROVISIONAL BALLOT.

1. A prospective voter who is prohibited under section 48A.8, subsection 4, section 49.77, subsection 4, or section 49.80 from voting except under this section shall be ~~permitted to~~ notified by the appropriate precinct election official that the voter may cast a ~~paper~~ provisional ballot. If a booth meeting the requirement of section 49.25 is not available at that polling place, the precinct election officials shall make alternative arrangements to insure the challenged voter the opportunity to vote in secret. The marked ballot, folded as required by section 49.84, shall be delivered to a precinct election official who shall immediately seal it in an envelope of the type prescribed by subsection 4. The sealed envelope shall be deposited in ~~a special~~ an envelope marked ~~"ballots for special precinct"~~ "provisional ballots" and shall be considered as having been cast in the special precinct established by section 53.20 for purposes of the post-election canvass.

2. Each person who casts a ~~special~~ provisional ballot under this section shall receive a printed statement in substantially the following form:

Your qualifications as a registered voter have been challenged for the following reasons:

I. . . . . .

II. . . . . .

III. . . . . .

You must show identification before your ballot can be counted. Please bring or mail a copy of a current and valid photo identification card to the county commissioners[4] office or bring or mail a copy of one of the following current documents that show your name and address:

a. Utility bill.

b. Bank statement.

c. Paycheck.

d. Government check.

e. Other government document.

PARAGRAPH DIVIDED. Your right to vote will be reviewed by the special precinct counting board on . . . . . You have the right and are encouraged to make a written statement and submit additional written evidence to this board supporting your qualifications as a registered voter. This written statement and evidence may be given to an election official of this precinct

[3] See chapter 1175, §357 herein

[4] See chapter 1175, §358 herein

on election day or mailed or delivered to the county commissioner of elections, but must be received before .... a.m./p.m. on ..... at ..... If your ballot is not counted you will receive, by mail, notification of this fact and the reason that the ballot was not counted.

3. Any elector may present written statements or documents, supporting or opposing the counting of any ~~special~~ provisional ballot, to the precinct election officials on election day, until the hour for closing the polls. Any statements or documents so presented shall be delivered to the commissioner when the election supplies are returned.

4. The individual envelopes used for each ~~paper~~ provisional ballot cast pursuant to subsection 1 shall have printed on them ~~the format of the face of the registration form under section 48A.8 and~~ the following:

I believe I am a registered voter of this ~~precinct~~ county and I am eligible to vote in this election. I registered to vote in ..... county on or about ..... at ..... My name at that time was ..... I have not moved to a different county since that time. I am a United States citizen, at least eighteen years of age.

.....
(signature of voter) (date)

The following information is to be provided by the precinct election official:
Reason for challenge:
.....
.....
Did not present required identification form.

.....
(signature of precinct election official)

The precinct election official shall attach a completed voter registration form from each provisional voter unless the person's registration status is listed in the election register as pending.

Sec. 21. Section 49.98, Code 2003, is amended to read as follows:

49.98 COUNTING BALLOTS.

The ballots shall be counted according to the voters' marks on them as provided in sections 49.92 to 49.97, and not otherwise. If, for any reason, it is impossible to determine from a ballot, as marked, the choice of the voter for any office, the vote for that office shall not be counted. When there is a conflict between a straight party or organization vote for one political party or nonparty political organization and the vote cast by marking the voting target next to the name of a candidate for another political party or nonparty political organization on the ballot, the mark next to the name of the candidate shall be held to control, and the straight party or organization vote in that case shall not apply as to that office. ~~Any ballot shall be rejected if it is marked in any other manner than authorized in sections 49.92 to 49.97.~~ A ballot shall be rejected if the voter used a mark to identify the voter's ballot. For each voting system, the state commissioner shall, by rule adopted pursuant to chapter 17A, develop uniform definitions of what constitutes a vote.

Sec. 22. Section 50.20, Code 2003, is amended to read as follows:

50.20 NOTICE OF NUMBER OF ~~SPECIAL~~ PROVISIONAL BALLOTS.

The commissioner shall compile a list of the number of ~~special~~ provisional ballots cast under section 49.81 in each precinct. The list shall be made available to the public as soon as possible, but in no case later than nine o'clock a.m. on the second day following the election. Any elector may examine the list during normal office hours, and may also examine the affidavit envelopes bearing the ballots of challenged electors until the reconvening of the special precinct board as required by this chapter. Only those persons so permitted by section 53.23, subsection 4, shall have access to the affidavits while that board is in session. Any elector may present written statements or documents, supporting or opposing the counting of any special ballot, at the commissioner's office until the reconvening of the special precinct board.

Sec. 23. Section 50.21, unnumbered paragraph 2, Code 2003, is amended to read as follows:

If no ~~special~~ provisional ballots were cast in the county pursuant to section 49.81 at any election, the special precinct election board need not be so reconvened. If the number of ~~special~~ provisional ballots ~~so~~ cast at any election is not sufficient to require reconvening of the entire election board of the special precinct, the commissioner may reconvene only the number of members required. If the number of ~~special~~ provisional ballots cast at any election exceeds the number of absentee ballots cast, the size of the special precinct election board may be increased at the commissioner's discretion. The commissioner shall observe the requirements of sections 49.12 and 49.13 in making adjustments to the size of the special precinct election board.

Sec. 24. Section 52.1, subsection 2, paragraph h, Code 2003, is amended to read as follows:

h. "Voting machine" means a mechanical or electronic device, meeting the requirements of section 52.7, designated for use in casting, registering, recording, and counting votes at an election. "Voting machine" includes, but is not limited to, direct recording electronic devices.

Sec. 25. Section 52.2, Code 2003, is amended to read as follows:

52.2 PURCHASE.

The board of supervisors of ~~any~~ a county may, by a majority vote, authorize, purchase, and order the use of ~~either~~ voting machines or an electronic voting system in any one or more voting precincts within ~~said~~ the county until otherwise ordered by ~~said~~ the board of supervisors. Voting machines and an electronic voting system may be used concurrently ~~at different precincts within any county, but not~~ at the same precinct.

Sec. 26. Section 52.5, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The state commissioner shall formulate, with the advice and assistance of the examiners, and adopt rules governing the testing and examination of any voting machine or electronic voting system by the board of examiners. The rules shall prescribe the method to be used in determining whether the machine or system is suitable for use within the state and performance standards for voting equipment in use within the state. The rules shall provide that all electronic voting systems and voting machines approved for use by the examiners after April 9, 2003, shall meet voting systems performance and test standards, as adopted by the federal election commission on April 30, 2002, and as deemed adopted by Pub. L. No. 107-252, section 222. The rules shall include standards for determining when recertification is necessary following modifications to the equipment or to the programs used in tabulating votes, and a procedure for rescinding certification if a system or machine is found not to comply with performance standards adopted by the state commissioner.

Sec. 27. Section 52.7, unnumbered paragraphs 2 and 4, Code 2003, are amended to read as follows:

It must also be so constructed as to prevent voting for more than one person for the same office, except where the voter is lawfully entitled to vote for more than one person for that office; and it must afford the voter an opportunity to vote for any or all persons for that office as the voter is by law entitled to vote for and no more, at the same time preventing the voter from voting for the same person twice. The voting machine must be so constructed as to provide the voter with an opportunity to change a vote before the ballot is recorded and counted.

Such machine shall be so constructed as to accurately account for every vote cast upon it. The machine shall be so constructed as to remove information from the ballot identifying the voter before the ballot is recorded and counted. If the machine is a direct electronic recording[5] device, the machine shall be so constructed as to store each ballot cast separate from the ballot tabulation function, which ballot may be reproduced on paper in the case of a recount, manual audit, or machine malfunction.

[5] See chapter 1175, §359 herein

Sec. 28. Section 53.2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Any registered voter, under the circumstances specified in section 53.1, may on any day, except election day, and not more than seventy days prior to the date of the election, apply in person for an absentee ballot at the commissioner's office or at any location designated by the commissioner~~, or~~. A registered voter may make written application to the commissioner for an absentee ballot. A written application for an absentee ballot must be received by the commissioner no later than five p.m. on the Friday before the election. A written application for an absentee ballot delivered to the commissioner and received by the commissioner more than seventy days prior to the date of the election shall be retained by the commissioner and processed in the same manner as a written application received not more than seventy days before the date of the election.

PARAGRAPH DIVIDED. The state commissioner shall prescribe a form for absentee ballot applications. ~~However, if a registered voter submits an application that includes all of the information required in this section, the prescribed form is not required.~~ Absentee ballot applications may include instructions to send the application directly to the county commissioner of elections. However, no absentee ballot application shall be preaddressed or printed with instructions to send the applications to anyone other than the appropriate commissioner.

Sec. 29. Section 53.2, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. An application for an absentee ballot that is returned to the commissioner by a person acting as an actual or implied agent for a political party, candidate, or committee, all as defined by chapter 68A, shall be returned to the commissioner within seventy-two hours of the time the completed application was received from the applicant or no later than five p.m. on the Friday before the election, whichever is earlier.

Sec. 30. NEW SECTION. 53.3 RECEIPT REQUIRED FOR CERTAIN ABSENTEE BALLOT APPLICATIONS.

When an application for an absentee ballot is solicited by, and returned to the commissioner by, a person acting as an actual or implied agent for a political party, candidate, or committee, as defined by chapter 68A, the person shall issue to the applicant a receipt for the completed application.

The receipt shall contain the following information:

1. The name of the applicant.
2. The date and time the completed application was received from the applicant.
3. The name and date of the election for which the application is being completed.
4. The name of the political party, candidate, or committee for whom the person is soliciting and returning the application for the absentee ballot.
5. The name of the person acting as an actual or implied agent for the political party, candidate, or committee.
6. A statement that the application will be delivered to the appropriate commissioner within seventy-two hours of the date and time the completed application was received from the applicant or no later than five p.m. on the Friday before the election, whichever is earlier.
7. A statement that an absentee ballot will by[6] mailed to the applicant within twenty-four hours after the ballot for the election is available.

The commissioner shall make receipt forms required by this section available for photocopying at the expense of the political party, candidate, or committee.

Sec. 31. Section 53.8, subsection 1, Code 2003, is amended to read as follows:

1. Upon receipt of an application for an absentee ballot and immediately after the absentee ballots are printed, the commissioner shall mail an absentee ballot to the applicant within twenty-four hours, except as otherwise provided in subsection 3. The absentee ballot shall be enclosed in an unsealed envelope bearing a serial number and affidavit. The absentee ballot and unsealed envelope shall be enclosed in or with a carrier envelope marked postage paid

[6] See chapter 1175, §360 herein

which bears the same serial number as the unsealed envelope. The absentee ballot, unsealed envelope, and carrier envelope shall be enclosed in a third envelope to be sent to the registered voter. If the ballot cannot be folded so that all of the votes cast on the ballot will be hidden, the commissioner shall also enclose a secrecy envelope with the absentee ballot.

Sec. 32. Section 53.8, subsection 2, Code 2003, is amended to read as follows:

2. If an application is received so late that it is unlikely that the absentee ballot can be returned in time to be counted on election day, the commissioner shall enclose with the absentee ballot a statement to that effect. The statement shall also point out that it is possible for the applicant, or the applicant's designee if the absentee ballot is voted by a voter described in section 53.22, subsection 5, to personally deliver the completed absentee ballot to the office of the commissioner at any time before the closing of the polls on election day. The statement shall also point out that it is possible for an absentee ballot courier to personally deliver the completed absentee ballot to the office of the commissioner within seventy-two hours of retrieving the completed ballot or before the closing of the polls on election day, whichever is earlier.

Sec. 33. Section 53.17, Code 2003, is amended to read as follows:

53.17 MAILING OR DELIVERING BALLOT.

1. The sealed envelope containing the absentee ballot shall be enclosed in a carrier envelope which shall be securely sealed. The sealed carrier envelope shall be returned to the commissioner by one of the following methods:

~~1.~~ a. The sealed carrier envelope may be delivered by the registered voter, by the special precinct election officials designated pursuant to section 53.22, subsection 1, or by the voter's designee if the absentee ballot is voted by a voter described in section 53.22, subsection 5, to the commissioner's office no later than the time the polls are closed on election day, except as otherwise provided in subsection 4.[7]

~~2.~~ b. The sealed carrier envelope may be mailed to the commissioner by the registered voter, by an immediate family member of the voter, or by the voter's designee if the ballot is voted by a voter described in section 53.22, subsection 5. ~~The carrier envelope shall indicate that greater postage than ordinary first class mail may be required. The commissioner shall pay any insufficient postage due on a carrier envelope bearing ordinary first class postage and accept the ballot.~~

c. The sealed carrier envelope may be delivered to the commissioner by an absentee ballot courier, but only as provided in subsection 4.

2. In order for the ballot to be counted, the carrier envelope must be received in the commissioner's office before the polls close on election day or be clearly postmarked by an officially authorized postal service not later than the day before the election and received by the commissioner not later than noon on the Monday following the election.

3. If the law authorizing the election specifies that the supervisors canvass the votes earlier than the Monday following the election, absentee ballots returned through the mail must be received not later than the time established for the canvass by the board of supervisors for that election. The commissioner shall contact the post office serving the commissioner's office at the latest practicable hour before the canvass by the board of supervisors for that election, and shall arrange for absentee ballots received in that post office but not yet delivered to the commissioner's office to be brought to the commissioner's office before the canvass for that election by the board of supervisors.

4. a. A person who acts as an actual or implied agent of a political party, candidate, or committee, as defined by chapter 68A, shall be registered with the commissioner as an absentee ballot courier in order to deliver completed absentee ballots to the commissioner. A candidate whose name is on the ballot or an elected official shall not be registered as an absentee ballot courier.

b. Absentee ballot couriers shall be registered with the commissioner by the person providing the training required in paragraph "c". The registration shall include the courier's name and address and the best means for contacting the person or the political party, candidate, or

[7] See chapter 1175, §361 herein

committee for which the person is acting as an actual or implied agent. An absentee ballot courier must be registered with the commissioner prior to each election for which the person will be delivering completed absentee ballots to the commissioner. However, if a person has completed training as an absentee ballot courier and the trainer is unable to register the person because the commissioner's office is closed, the person may retrieve completed absentee ballots if the trainer registers the courier with the commissioner by facsimile transmission within twenty-four hours of completion of training or by personally delivering the registration information to the commissioner's office by the close of the next business day following completion of training or by mailing the registration information to the commissioner, in which case the mailing must be postmarked no later than the next business day following completion of training. For each election, the commissioner shall maintain a list of all persons who have been registered as absentee ballot couriers.

c. A person wishing to be registered as an absentee ballot courier must complete a training course in the laws, procedures, and penalties related to handling completed absentee ballots. The training course shall be conducted by the commissioner; the commissioner's designee; or, in the case of partisan elections, by the respective state or county central committees, or a member of the paid staff of such committees, or by the county party or the state party, or a member of the paid staff of such parties. The curriculum for the training course shall be established by the state commissioner by rule adopted pursuant to chapter 17A.

d. When an absentee ballot courier retrieves a completed absentee ballot from a voter, the courier shall fill out a receipt to be retained by the voter. The state commissioner shall prescribe a form for receipts required by this subsection. The receipt shall include all of the following:

(1) The name of the courier.

(2) The date and time the voted[8] absentee ballot was received from the voter.

(3) The name and date of the election for which the absentee ballot is being voted.

(4) The name of the political party, candidate, or committee for which the courier is acting as an actual or implied agent.

(5) A statement that the completed absentee ballot will be delivered to the commissioner's office within seventy-two hours or before the closing of the polls on election day, whichever is earlier.

(6) A statement informing the voter that the voter may verify that the person retrieving the completed ballot is a registered absentee ballot courier by contacting the county auditor's office.

e. An absentee ballot courier shall submit a cover sheet listing the names of persons whose ballots are being delivered each time the courier delivers ballots to the commissioner's office. A completed ballot and cover sheet shall only be delivered to the commissioner's office by the absentee ballot courier who retrieved the ballot or by one other absentee ballot courier designated by the political party, candidate, or committee for which the absentee ballot couriers are acting as actual or implied agents. The cover sheet shall include space for the name and signature of the absentee ballot courier who retrieved the ballot and the name and signature of any second absentee ballot courier designated to deliver the ballot and cover sheet to the commissioner's office.

f. A violation of any part of this subsection is election misconduct in the first degree, pursuant to section 39A.2, subsection 1, paragraph "b", subparagraph (1).

5. For purposes of this section, "immediate family member" means the spouse, adult child or stepchild, adult grandchild, parent or stepparent, grandparent, or adult sibling of the voter.

Sec. 34. NEW SECTION. 53.37A STATE COMMISSIONER DUTIES.

The state commissioner of elections shall provide information regarding voter registration procedures and absentee ballot procedures to be used by members of the armed forces of the United States. The state commissioner shall accept valid voter registration applications and absentee ballot applications and shall forward the applications to the appropriate county commissioner of elections in a timely manner.

[8] See chapter 1175, §362 herein

Sec. 35. Section 53.40, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A request in writing for a ballot may be made by any member of the armed forces of the United States who is or will be a qualified voter on the day of the election at which the ballot is to be cast, at any time before the election. Any member of the armed forces of the United States may request ballots for all elections to be held ~~within a calendar year~~ through the next two general elections. The request may be made by using the federal postcard application form and indicating that the applicant wishes to receive ballots for all elections as permitted by state law. The county commissioner shall send the applicant a ballot for each election held ~~during the calendar year in which~~ after the application is received and through the next two general elections. The commissioner shall forward a copy of the absentee ballot request to other commissioners who are responsible under section 47.2, subsection 2, for conducting elections in which the applicant is eligible to vote.

Sec. 36. Section 53.53, Code 2003, is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. A federal write-in ballot received by the state commissioner of elections shall be forwarded immediately to the appropriate county commissioner. However, if the state commissioner receives a federal write-in ballot after election day and before noon on the Monday following an election, the state commissioner shall at once verify that the voter has complied with the requirements of this section and that the voter's federal write-in ballot is eligible to be counted. If the ballot is eligible to be counted, the state commissioner shall notify the appropriate county commissioner and make arrangements for the ballot to be transmitted to the county for counting. If the ballot is not eligible to be counted, the state commissioner shall mail the ballot to the appropriate commissioner along with notification that the ballot is ineligible to be counted. The county commissioner shall keep the ballot with the other records of the election.

NEW UNNUMBERED PARAGRAPH. The county commissioner shall notify a voter when the voter's federal write-in ballot was not counted and shall give the voter the reason the ballot was not counted.

Sec. 37. IMMEDIATE EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment and applies to elections held on or after September 15, 2004.

Approved April 16, 2004

CHAPTER 1084

CONFINEMENT OF DANGEROUS
OR MENTALLY INCOMPETENT PERSONS

S.F. 2272

AN ACT relating to detaining or the placement of criminal defendants who are mentally incompetent or dangerous.

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

Section 1. Section 13B.4, subsection 1, Code 2003,[1] is amended to read as follows:

1. The state public defender shall coordinate the provision of legal representation of all

[1] "Code Supplement 2003" probably intended

indigents under arrest or charged with a crime, seeking postconviction relief, against whom a contempt action is pending, in proceedings under section 811.1A or chapter 229A or 812, in juvenile proceedings, on appeal in criminal cases, on appeal in proceedings to obtain postconviction relief when ordered to do so by the district court in which the judgment or order was issued, and on a reopening of a sentence proceeding, and may provide for the representation of indigents in proceedings instituted pursuant to section 908.11. The state public defender shall not engage in the private practice of law.

Sec. 2. Section 229A.7, subsection 1, Code 2003, is amended to read as follows:

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~~ chapter 812, 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.

Sec. 3. Section 331.653, subsection 63, Code 2003,[2] is amended to read as follows:

63. Carry out duties relating to the confinement of persons ~~with mental illness or~~ who are considered dangerous persons under section 811.1A or persons with a mental disorder as provided in ~~section 812.5~~ chapter 812.

Sec. 4. NEW SECTION. 811.1A DETENTION HEARING.

1. When a defendant is awaiting sentencing after conviction for a felony or is pursuing an appeal in such a case following sentencing, and the defendant would otherwise be eligible to be admitted to bail under this chapter, but it appears by clear and convincing evidence that if released the defendant is likely to pose a danger to another person or to the property of others, the defendant may be detained under the authority of this section and in the manner provided in subsection 2.

2. The following procedures shall apply to a detention hearing:

a. The prosecuting attorney may initiate a detention hearing by a verified ex parte written motion. Upon such motion, the district court may issue a warrant for the immediate arrest of the defendant, if the defendant is not in custody.

b. The defendant shall be brought before the district court within twenty-four hours after arrest, or if the defendant is in custody, the defendant shall be brought before the district court within twenty-four hours of the prosecuting attorney's filing of the motion. The detention hearing shall be held within seventy-two hours of the defendant's arrest, or if the defendant is in custody, the detention hearing shall be held within seventy-two hours of the filing of the motion.

c. The defendant shall be entitled to representation by counsel, including appointed counsel if indigent, and shall be entitled to the right of cross-examination and to present information, to testify, and to present witnesses in the defendant's own behalf, but shall not be entitled to being admitted to bail.

d. Testimony of the defendant given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, except that such testimony shall be admissible

[2] "Code Supplement 2003" probably intended

in proceedings under section 811.2, subsection 8, and section 811.8, and in perjury proceedings.

e. Appeals from orders of detention may be taken in the manner provided under section 811.2, subsection 7.

f. If the trial court issues an order of detention, the order shall be accompanied by a written finding of fact and the reasons for the detention order.

g. For the purposes of such proceedings, the trial court is not divested of jurisdiction by the filing of a notice of appeal.

Sec. 5. Section 812.3, Code 2003, is amended to read as follows:

812.3 MENTAL INCOMPETENCY OF ACCUSED.

1. If at any stage of a criminal proceeding ~~it reasonably appears~~ the defendant or the defendant's attorney, upon application to the court, alleges specific facts showing that the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, the court shall suspend further proceedings ~~must be suspended~~ and ~~a hearing upon that question~~ determine if probable cause exists to sustain the allegations. The applicant has the burden of establishing probable cause. The court may on its own motion schedule a hearing to determine probable cause if the defendant or defendant's attorney has failed or refused to make an application under this section and the court finds that there are specific facts showing that a hearing should be held on that question. The defendant shall not be compelled to testify at the hearing and any testimony of the defendant given during the hearing shall not be admissible on the issue of guilt, except such testimony shall be admissible in proceedings under section 811.2, subsection 8, and section 811.8, and in perjury proceedings.

2. Upon a finding of probable cause sustaining the allegations, the court shall suspend further criminal proceedings and order the defendant to undergo a psychiatric evaluation to determine whether the defendant is suffering a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense. The order shall also authorize the evaluator to provide treatment necessary and appropriate to facilitate the evaluation. If an evaluation has been conducted within thirty days of the probable cause finding, the court is not required to order a new evaluation and may use the recent evaluation during a hearing under this chapter. Any party is entitled to a separate psychiatric evaluation by a psychiatrist or licensed, doctorate-level psychologist of their own choosing.

Sec. 6. Section 812.4, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

812.4 HEARING.

1. A hearing shall be held within fourteen days of the filing of the order for an evaluation, or within five days of the court's motion or the filing of an application, if the defendant has had a psychiatric evaluation within thirty days of the probable cause finding, and upon which the court decides to rely. Pending the hearing, no further proceedings shall be taken under the complaint or indictment and the defendant's right to a speedy indictment and speedy trial shall be tolled until the court finds the defendant competent to stand trial.

2. The defendant shall be entitled to representation by counsel, including appointed counsel if indigent, and shall be entitled to the right of cross-examination and to present evidence.

3. Testimony of the defendant given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, except that such testimony shall be admissible in proceedings under section 811.2, subsection 8, and section 811.8, and in perjury proceedings.

Sec. 7. Section 812.5, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

812.5 COMPETENCY HEARING — FINDINGS.

The court shall receive all relevant and material evidence offered at the hearing and shall

not be bound by the formal rules of evidence. The evidence shall include the psychiatric evaluation ordered under section 812.3 or conducted within thirty days of the probable cause finding.

1. If the court finds the defendant is competent to stand trial, the court shall reinstate the criminal proceedings suspended under section 812.3.

2. If the court, by a preponderance of the evidence, finds the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, the court shall suspend the criminal proceedings indefinitely and order the defendant to be placed in a treatment program pursuant to section 812.6 and shall make further findings of record as necessary under section 812.6.

Sec. 8. NEW SECTION. 812.6 PLACEMENT AND TREATMENT.

1. If the court finds the defendant does not pose a danger to the public peace and safety, is otherwise qualified for pretrial release, and is willing to cooperate with treatment, the court shall order, as a condition of pretrial release, that the defendant obtain mental health treatment designed to restore the defendant to competency.

2. If the court finds by clear and convincing evidence that the defendant poses a danger to the public peace or safety, or that the defendant is otherwise not qualified for pretrial release, or the defendant refuses to cooperate with treatment, the court shall commit the defendant to an appropriate inpatient treatment facility as provided in paragraphs "a" and "b".[3] The defendant shall receive mental health treatment designed to restore the defendant to competency.

a. A defendant who poses a danger to the public peace or safety, or who is otherwise not qualified for pretrial release, shall be committed as a safekeeper to the custody of the director of the department of corrections at the Iowa medical and classification center, or other appropriate treatment facility as designated by the director, for treatment designed to restore the defendant to competency.

b. A defendant who does not pose a danger to the public peace or safety, but is otherwise being held in custody, or who refuses to cooperate with treatment, shall be committed to the custody of the director of human services at a department of human services facility for treatment designed to restore the defendant to competency.

3. A defendant ordered to obtain treatment or committed to a facility under this section may refuse treatment by chemotherapy or other somatic treatment. The defendant's right to refuse chemotherapy treatment or other somatic treatment shall not apply if in the judgment of the director or the director's designee of the facility where the defendant has been committed determines such treatment is necessary to preserve the life of the defendant or to appropriately control behavior of the defendant which is likely to result in physical injury to the defendant or others. If in the judgment of the director of the facility or the director's designee where the defendant has been committed, chemotherapy or other somatic treatments are necessary and appropriate to restore the defendant to competency and the defendant refuses to consent to the use of these treatment modalities, the director of the facility or the director's designee shall request from the district court which ordered the commitment of the defendant an order authorizing treatment by chemotherapy or other somatic treatments.

Sec. 9. NEW SECTION. 812.8 MENTAL STATUS REPORTS.

The psychiatrist or licensed doctorate-level psychologist providing outpatient treatment to the defendant, or the director of the facility where the defendant is being held and treated pursuant to a court order, shall provide a written status report to the court regarding the defendant's mental disorder within thirty days of the defendant's placement pursuant to section 812.6. The report shall also state whether it appears that the defendant can be restored to competency in a reasonable amount of time. Progress reports shall be provided to the court every sixty days or less thereafter until the defendant's competency is restored or the placement of the defendant is terminated.

[3] See chapter 1175, §392 herein

Sec. 10. NEW SECTION. 812.9 RESTORATION OF MENTAL COMPETENCY.

1. At any time, upon a finding by a psychiatrist or licensed doctorate-level psychologist that there is a substantial probability that the defendant has acquired the ability to appreciate the charge, understand the proceedings, and effectively assist in the defendant's defense, the psychiatrist or licensed doctorate-level psychologist providing outpatient treatment to the defendant or the director of the inpatient facility shall immediately notify the court. After receiving notice the court shall proceed as provided in subsection 4.

2. At any time, a treating psychiatrist or licensed doctorate-level psychologist may notify the court that the defendant receiving outpatient treatment will require inpatient services to continue benefiting from treatment or that it is appropriate for a defendant receiving inpatient treatment services to receive outpatient treatment services. Upon receiving notification, the court shall proceed as provided under subsection 4.

3. At any time upon a finding by a treating psychiatrist or licensed doctorate-level psychologist that there is no substantial probability that the defendant will be restored to competency in a reasonable amount of time, the psychiatrist or licensed doctorate-level psychologist providing outpatient treatment to the defendant or the director of the inpatient facility shall immediately notify the court. Upon receiving notification, the court shall proceed as provided under subsection 4.

4. Upon receiving a notification under this section, the court shall schedule a hearing to be held within fourteen days. The court shall also issue an order to transport the defendant to the hearing if the defendant is in custody or is being held in an inpatient facility. The defendant shall be transported by the sheriff of the county where the court's motion or the application pursuant to section 812.3 was filed.

5. If the court finds by a preponderance of the evidence that the defendant's competency has been restored, the court shall terminate the placement pursuant to section 812.6, and reinstate the criminal proceedings against the defendant, and may order continued treatment to maintain the competency of the defendant.

6. If the court finds by a preponderance of the evidence that the defendant remains incompetent to stand trial but is making progress in regaining competency, the court shall continue the placement ordered pursuant to section 812.6.

7. The court may change the placement of a defendant and the placement may be more restrictive if necessary for the continued progress of the defendant's treatment as shown by clear and convincing evidence.

8. If the court finds by a preponderance of the evidence that there is no substantial probability the defendant's competency will be restored in a reasonable amount of time, the court shall terminate the commitment under section 812.6 in accordance with the provisions of section 812.10.

Sec. 11. NEW SECTION. 812.10 LENGTH OF PLACEMENT — OTHER COMMITMENT PROCEEDINGS — CRIMINAL PROCEEDINGS AFTER TERMINATION OF PLACEMENT.

1. Notwithstanding section 812.9, the defendant shall not remain under placement pursuant to section 812.6 beyond the expiration of the maximum term of confinement for the criminal offense of which the defendant is accused, or eighteen months from the date of the original adjudication of incompetence to stand trial, including time in jail, or the time when the court finds by a preponderance of the evidence that there is no substantial probability that the defendant will be restored to competency in a reasonable amount of time under section 812.9, subsection 8, whichever occurs first. When the defendant's placement in an inpatient facility equals the length of the maximum term of confinement, the complaint for the criminal offense of which the defendant is accused shall be dismissed with prejudice.

2. When the defendant's commitment equals eighteen months, the court shall schedule a hearing to determine whether the defendant is competent to stand trial pursuant to section 812.9, subsection 5. If the defendant is not competent to stand trial after eighteen months, the court shall terminate the placement under section 812.6 in accordance with the provisions of subsection 1.

3. Upon the termination of the defendant's placement pursuant to subsection 1, or pursuant

to section 812.9, subsection 8, the state may commence civil commitment proceedings or any other appropriate commitment proceedings.

4. If upon termination of the defendant's placement pursuant to subsection 2 or pursuant to section 812.9, subsection 8, and it appears thereafter that the defendant has regained competency, the state may make application to reinstate the prosecution of the defendant and hearing shall be held on the matter in the same manner as if the court has received notice under section 812.9, subsection 4.

Sec. 12. Section 815.7, Code 2003, is amended to read as follows:

815.7 FEES TO ATTORNEYS.

An attorney who has not entered into a contract authorized under section 13B.4 and who is appointed by the court to represent any person charged with a crime in this state, seeking postconviction relief, against whom a contempt action is pending, appealing a criminal conviction, appealing a denial of postconviction relief, or subject to a proceeding under section 811.1A or chapter 229A or 812, or to serve as counsel for any person or guardian ad litem for any child in juvenile court, shall be entitled to reasonable compensation and expenses. For appointments made on or after July 1, 1999, the reasonable compensation shall be calculated on the basis of sixty dollars per hour for class "A" felonies, fifty-five dollars per hour for class "B" felonies, and fifty dollars per hour for all other cases. The expenses shall include any sums as are necessary for investigations in the interest of justice, and the cost of obtaining the transcript of the trial record and briefs if an appeal is filed. The attorney need not follow the case into another county or into the appellate court unless so directed by the court. If the attorney follows the case into another county or into the appellate court, the attorney shall be entitled to compensation as provided in this section. Only one attorney fee shall be so awarded in any one case except that in class "A" felony cases, two may be authorized.

Sec. 13. Section 815.9, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

For purposes of this chapter, ~~chapter~~ chapters 13B, ~~chapter~~ 229A, ~~chapter~~ 232, ~~chapter~~ 665, ~~chapter~~ 812, 814, ~~chapter~~ and 822, and section 811.1A, and the rules of criminal procedure, a person is indigent if the person is entitled to an attorney appointed by the court as follows:

Sec. 14. Section 815.10, subsection 1, Code 2003, is amended to read as follows:

1. The court, for cause and upon its own motion or upon application by an indigent person or a public defender, shall appoint the state public defender's designee pursuant to section 13B.4, to represent an indigent person at any stage of the criminal, postconviction, contempt, commitment under chapter 229A, detention under section 811.1A, competency under chapter 812, or juvenile proceedings or on appeal of any criminal, postconviction, contempt, commitment under chapter 229A, detention under section 811.1A, competency under chapter 812, or juvenile action in which the indigent person is entitled to legal assistance at public expense. However, in juvenile cases, the court may directly appoint an existing nonprofit corporation established for and engaged in the provision of legal services for juveniles. An appointment shall not be made unless the person is determined to be indigent under section 815.9. Only one attorney shall be appointed in all cases, except that in class "A" felony cases the court may appoint two attorneys.

Sec. 15. Section 904.201, subsection 3, paragraph b, Code 2003, is amended to read as follows:

b. Persons committed by the courts as mentally incompetent to stand trial ~~under section 812.4~~ pursuant to section 812.6.

Sec. 16. Sections 812.1 and 812.2, Code 2003, are repealed.

Approved April 16, 2004

CHAPTER 1085

MEDICAL ASSISTANCE AND
STATE SUPPLEMENTARY ASSISTANCE PROGRAMS
— MISCELLANEOUS CHANGES

H.F. 2134

AN ACT relating to the medical assistance and state supplementary assistance programs, providing an effective date, and providing for retroactive applicability.

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

Section 1. Section 135C.1, subsection 17, Code Supplement 2003, is amended to read as follows:

17. "Residential care facility" means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, personal assistance and other essential daily living activities to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves but who do not require the services of a registered or licensed practical nurse except on an emergency basis or who by reason of illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves but who do not require the services of a registered or licensed practical nurse except on an emergency basis if home and community-based services, other than nursing care, as defined by this chapter and departmental rule, are provided. For the purposes of this definition, the home and community-based services to be provided are limited to the type included under the medical assistance program provided pursuant to chapter 249A, are subject to cost limitations established by the department of human services under the medical assistance program, and except as otherwise provided by the department of inspections and appeals with the concurrence of the department of human services are limited in capacity to the number of licensed residential care facilities and the number of licensed residential care facility beds in the state as of December 1, 2003.

Sec. 2. Section 135C.4, Code 2003, is amended to read as follows:

135C.4 RESIDENTIAL CARE FACILITIES.

Each facility licensed as a residential care facility shall provide an organized continuous twenty-four-hour program of care commensurate with the needs of the residents of the home and under the immediate direction of a person approved and certified by the department whose combined training and supervised experience is such as to ensure adequate and competent care. All admissions to residential care facilities shall be based on an order written by a physician certifying that the individual being admitted does not require nursing services or that the individual's need for nursing services can be avoided if home and community-based services, other than nursing care, as defined by this chapter and departmental rule, are provided. For the purposes of this section, the home and community-based services to be provided shall be limited to the type included under the medical assistance program provided pursuant to chapter 249A, shall be subject to cost limitations established by the department of human services under the medical assistance program, and except as otherwise provided by the department of inspections and appeals with the concurrence of the department of human services shall be limited in capacity to the number of licensed residential care facilities and the number of licensed residential care facility beds in the state as of December 1, 2003.

Sec. 3. NEW SECTION. 222.60A COST OF ASSESSMENT.

Notwithstanding any provision of this chapter to the contrary, any amount attributable to any fee assessed pursuant to section 249A.21 that would otherwise be the liability of any county shall be paid by the state. The department may transfer funds from the appropriation

for medical assistance to pay any amount attributable to any fee assessed pursuant to section 249A.21 that is a liability of the state.

Sec. 4. Section 249.3, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4. At the discretion of the department, persons who meet the criteria listed in all of the following paragraphs:

a. Are either of the following:

(1) Sixty-five years of age or older.

(2) Disabled as defined by 42 U.S.C. § 1382c(a)(3), except that being engaged in substantial gainful activity shall not preclude a determination of disability for the purpose of this subparagraph.

b. Live in one of the following:

(1) The individual's own home.

(2) The home of another individual.

(3) A group living arrangement.

(4) A medical facility.

c. Would be eligible for supplemental security income benefits but for having excess income or but for being engaged in substantial gainful activity and having excess income.

d. Are not eligible for another state supplementary assistance group.

e. Receive medical assistance under chapter 249A and are not required to meet a spenddown or pay a premium to be eligible for such benefits.

f. Is currently eligible for Medicare part B.

g. Have income exceeding one hundred thirty-five percent of the federal poverty level but not exceeding the medical assistance income limit for the eligibility group for the individual person's living arrangement.

Sec. 5. Section 249.4, Code 2003, is amended to read as follows:

249.4 APPLICATION — AMOUNT OF GRANT.

1. Applications for state supplementary assistance shall be made in the form and manner prescribed by the director or the director's designee, with the approval of the council on human services, pursuant to chapter 17A. Each person who so applies and is found eligible under section 249.3 shall, so long as the person's eligibility continues, receive state supplementary assistance on a monthly basis, from funds appropriated to the department for the purpose.

2. Any person who applies within fifteen months from the date of implementation of eligibility pursuant to section 249.3, subsection 4, and who would have been eligible under that subsection for any period on or after October 1, 2003, may be granted benefits retroactive to October 1, 2003.

Sec. 6. Section 249A.21, subsection 1, Code 2003, is amended to read as follows:

1. The department may assess intermediate care facilities for persons with mental retardation, as defined in section 135C.1, ~~that are not operated by the state,~~ a fee in an amount not to exceed six percent of the total annual revenue of the facility for the preceding fiscal year.

Sec. 7. Section 249A.21, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 6. The department may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement this section, and any fee assessed pursuant to this section against an intermediate care facility for persons with mental retardation that is operated by the state may be made retroactive to October 1, 2003.

Sec. 8. 2003 Iowa Acts, chapter 112, section 4, subsection 9, is amended to read as follows:

9. The department may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement this section, and any assessment made pursuant to this section may be made retroactive to October 1, 2003.

Sec. 9. WAIVER PAYMENT SLOTS. The department of human services shall provide an opportunity for counties to request an expansion of the county's home and community-based waiver[1] payment slots under the medical assistance program in order to add slots to address the changes in the definition of "residential care facility" under chapter 135C made by this Act. Any expansion in the number of waiver payment slots as described in this section shall be implemented on July 1, 2004, or the date authorized in the federal approval of the expansion of the waiver slots, whichever is later.

Sec. 10. RETROACTIVE APPLICABILITY. The following provisions of this Act are retroactively applicable to October 1, 2003:

1. The provision creating section 222.60A, relating to the costs of the assessment for intermediate care facilities for persons with mental retardation.
2. The provision creating section 249.3, subsection 4, relating to state supplementary assistance eligibility.
3. The provision amending section 249.4, relating to applications and amounts of grants for state supplementary assistance.
4. The provision amending section 249A.21, subsection 1, and the provision creating section 249A.21, subsection 6, relating to the nursing facility[2] quality assurance assessment.
5. The provision amending 2003 Iowa Acts, chapter 112, section 4, subsection 9, relating to the adoption of administrative rules relating to the nursing facility quality assurance assessment.

Sec. 11. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 16, 2004

CHAPTER 1086

NONSUBSTANTIVE CODE CORRECTIONS

H.F. 2208

AN ACT relating to nonsubstantive Code corrections and including effective and retroactive applicability date provisions.

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

Section 1. Section 2B.10, Code Supplement 2003, is amended to read as follows:

2B.10 ~~SESSION LAWS~~ IOWA ACTS.

1. The arrangement of the Acts and resolutions, and the size, style, type, binding, general arrangement, and tables of the ~~session laws~~ Iowa Acts shall be printed and published in the manner determined by the Iowa Code editor in accordance with the policies set by the legislative council as provided in section 2.42.
2. Chapters of the first regular session shall be numbered from one and chapters of the second regular session shall be numbered from one thousand one.
3. A list of elective state officers and deputies, supreme court justices, judges of the court of appeals, and members of the general assembly shall be published annually with the ~~session laws~~ Iowa Acts.
4. A statement of the condition of the state treasury shall be included, as provided by the

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[1] The phrase "home and community-based services waiver" probably intended

[2] The phrase "intermediate care facilities for persons with mental retardation" probably intended

Constitution of the State of Iowa. The statement shall be furnished by the director of the department of administrative services.

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

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

Sec. 2. Section 2B.17, subsection 2, Code Supplement 2003, is amended to read as follows:

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

Sec. 3. Section 3.3, Code 2003, is amended to read as follows:

3.3 HEADNOTES AND HISTORICAL REFERENCES.

Proper headnotes may be placed at the beginning of a section of a bill, and at the end of the section there may be placed a reference to the section number of the Code, or any ~~session law~~ Iowa Act from which the matter of the bill was taken, but, except as provided in the Uniform Commercial Code, section 554.1109, neither said headnotes nor said historical references shall be considered as a part of the law as enacted.

Sec. 4. Section 7J.1, subsection 1, Code Supplement 2003, is amended to read as follows:

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

Sec. 5. Section 8.59, Code Supplement 2003, is amended to read as follows:

8.59 APPROPRIATIONS FREEZE.

Notwithstanding contrary provisions of the Code, the amounts appropriated under the applicable sections of the Code for fiscal years commencing on or after July 1, 1993, are limited to those amounts expended under those sections for the fiscal year commencing July 1, 1992. If an applicable section appropriates moneys to be distributed to different recipients and the operation of this section reduces the total amount to be distributed under the applicable section, the moneys shall be prorated among the recipients. As used in this section, "applicable sections" means ~~the following~~ sections~~:~~ 53.50, 229.35, 230.8, 230.11, 411.20, and 663.44.

Sec. 6. Section 8A.124, Code Supplement 2003, is amended to read as follows:

8A.124 ADDITIONAL PERSONNEL.

The department may employ, upon the approval of the department of management, ~~such~~ additional personnel in excess of the number of full-time equivalent positions authorized by the general assembly if such additional personnel are reasonable and necessary to perform such duties as required to meet the needs of the department to provide services to other governmental entities and as authorized by this chapter. The director shall notify in writing the department of management, the legislative fiscal committee, and the legislative services agency of any additional personnel employed pursuant to this section.

Sec. 7. Section 8A.402, subsection 2, paragraph c, Code Supplement 2003, is amended to read as follows:

c. Encourage and exercise leadership in the development of effective personnel administra-

tion within the several state agencies, and ~~to~~ make available the facilities of the department to this end.

Sec. 8. Section 8A.502, subsection 14, paragraph b, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

Modify the centralized statewide accounting system and develop, or require to be developed by the appropriate departments of state government, the ~~necessary~~ reports and procedures necessary to complete the managerial and financial reports required to comply with the federal law.

Sec. 9. Section 11.27, subsection 2, Code 2003, is amended to read as follows:

2. The results of an audit of the documents and the records of the department of management created in ~~the budget and financial control Act~~ chapter 8, which records shall be audited by the auditor; and, the results of the auditor's audit of all taxes and other revenue collected and paid into the treasury, and the sources thereof.

Sec. 10. Section 15.269, subsection 2, paragraph b, subparagraph (1), subparagraph subdivision (a), Code Supplement 2003, is amended to read as follows:

(a) Each cogeneration pilot project facility must involve two hundred megawatts or less of electricity, in combination with one or more other cogeneration pilot project facilities.

Sec. 11. Section 28.4, subsection 12, paragraph d, subparagraph (1), Code Supplement 2003, is amended to read as follows:

(1) Moneys for the healthy opportunities for parents to experience success – healthy families Iowa program under section 135.106 by the fiscal year beginning July 1, 2000, and ending June 30, 2001.

Sec. 12. Section 29A.1, subsection 1, Code 2003, is amended to read as follows:

1. ~~"Active state~~ "State military service" means training or operational duty or other service authorized and performed under the provisions of 32 U.S.C. or other federal law or regulation as part of the Iowa army national guard or Iowa air national guard and paid for with federal funds.

Sec. 13. Section 29A.8A, Code 2003, is amended to read as follows:

29A.8A ~~ACTIVE STATE~~ STATE MILITARY SERVICE.

If federal funding and authorization exist for this purpose, the governor may order to ~~active~~ state military service the military forces of the Iowa army national guard or Iowa air national guard as the governor may deem appropriate for the purposes of homeland security, homeland defense, or other duty. A state employee shall take either a full day's leave or eight hours of compensatory time on a day in which the state employee receives a full day's pay from federal funds for national guard duty.

Sec. 14. Section 29A.28, subsections 1 and 3, Code Supplement 2003, are amended to read as follows:

1. All officers and employees of the state, or a subdivision thereof, or a municipality other than employees employed temporarily for six months or less, who are members of the national guard, organized reserves or any component part of the military, naval, or air forces or nurse corps of this state or nation, or who are or may be otherwise inducted into the military service of this state or of the United States, shall, when ordered by proper authority to state active duty, ~~active~~ state military service, or federal service, be entitled to a leave of absence from such civil employment for the period of state active duty, ~~active~~ state military service, or federal service, without loss of status or efficiency rating, and without loss of pay during the first thirty days of such leave of absence. Where state active duty, ~~active~~ state military service, or federal service is for a period less than thirty days, a leave of absence under this section shall only be

required for those days that the civil employee would normally perform services for the state, subdivision of the state, or a municipality.

3. Upon returning from a leave of absence under this section, an employee shall be entitled to return to the same position and classification held by the employee at the time of entry into state active duty, ~~active~~ state military service, or federal service or to the position and classification that the employee would have been entitled to if the continuous civil service of the employee had not been interrupted by state active duty, ~~active~~ state military service, or federal service. Under this subsection, "position" includes the geographical location of the position.

Sec. 15. Section 29A.90, subsection 3, Code Supplement 2003, is amended to read as follows:

3. "Military service" means full-time ~~active~~ state military service or state active duty, as defined in section 29A.1, for a period of at least ninety consecutive days, commencing on or after April 22, 2002.

Sec. 16. Section 29B.13, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Under regulations as may be prescribed under this code a person subject to this code who is on ~~active~~ state military service or state active duty who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

Sec. 17. Section 72.5, subsection 2, Code 2003, is amended to read as follows:

2. In connection with development of a statewide building energy efficiency rating system, pursuant to section 473.40, the director of the department of natural resources in consultation with the department of management, state building code ~~director~~ commissioner, and state fire marshal, shall develop standards and methods to evaluate design development documents and construction documents based upon the energy efficiency rating system for public buildings, and other life cycle cost factors, to facilitate fair and uniform comparisons between design proposals and informed decision making by public bodies.

Sec. 18. Section 80.35, Code Supplement 2003, is amended to read as follows:

80.35 TRANSITION.

Persons employed by the department of ~~administrative~~ general services as capitol security force officers shall be transferred to the division of capitol security of the department of public safety on July 1, 1976. Persons transferred pursuant to this section shall retain their positions as capitol police officers, shall not be subject to the requirements and conditions of section 80.15, and shall remain under the Iowa public employees' retirement system. Persons employed after July 1, 1976, by the department of public safety as capitol police officers within the division of capitol police shall be subject to the requirements and conditions of section 80.15, except those requirements relating to age, and shall be subject to the Iowa public employees' retirement system. The minimum age for persons employed by the division of capitol police shall be eighteen.

Sec. 19. Section 80B.5, Code 2003, is amended to read as follows:

80B.5 ADMINISTRATION.

The administration of ~~the Iowa law enforcement academy and council Act~~ this chapter shall be vested in the office of the governor. A director of the academy and such staff as may be necessary for it to function shall be employed pursuant to the Iowa merit system.

Sec. 20. Section 80B.11E, subsection 4, Code Supplement 2003, is amended to read as follows:

4. An individual who has not been hired by a law enforcement agency must be hired by a law enforcement agency within eighteen months of completing the appropriate coursework at the law enforcement academy in order to obtain certification pursuant to this ~~section~~ chapter.

Sec. 21. Section 96.7, subsection 12, paragraph a, Code Supplement 2003, is amended to read as follows:

a. An employer other than a governmental entity or a nonprofit organization, subject to this chapter, shall pay an administrative contribution surcharge equal in amount to one-tenth of one percent of federal taxable wages, as defined in section 96.19, subsection 37, paragraph "b", subject to the surcharge formula to be developed by the department under this paragraph. The department shall develop a surcharge formula that provides a target revenue level of no greater than six million five hundred twenty-five thousand dollars for calendar years 2003, 2004, and 2005 and a target revenue level of no greater than three million two hundred sixty-two thousand five hundred dollars for calendar year 2006 and each subsequent calendar year. The department shall reduce the administrative contribution surcharge established for any calendar year proportionate to any federal government funding that provides an increased allocation of moneys for workforce development offices, under the federal employment services financing reform legislation. Any administrative contribution surcharge revenue that is collected in calendar year 2003, 2004, or 2005 in excess of six million five hundred twenty-five thousand dollars or in calendar year 2006 or a subsequent calendar year in excess of three million two hundred sixty-two thousand five hundred dollars shall be deducted from the amount to be collected in the subsequent calendar year ~~2003~~ before the department establishes the administrative contribution surcharge. The department shall recompute the amount as a percentage of taxable wages, as defined in section 96.19, subsection 37, and shall add the percentage surcharge to the employer's contribution rate determined under this section. The percentage surcharge shall be capped at a maximum of seven dollars per employee. The department shall adopt rules prescribing the manner in which the surcharge will be collected. Interest shall accrue on all unpaid surcharges under this subsection at the same rate as on regular contributions and shall be collectible in the same manner. Interest accrued and collected under this paragraph and interest earned and credited to the fund under paragraph "b" shall be used by the department only for the purposes set forth in paragraph "c".

Sec. 22. Section 97B.66, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

The contributions paid by the vested or retired member shall be equal to the accumulated contributions as defined in section 97B.1A, subsection 2, by the member for the applicable period of service, and the employer contribution for the applicable period of service under the ~~teachers insurance and annuity association college retirement equities fund~~ teachers insurance and annuity association-college retirement equities fund (TIAA-CREF), that would have been or had been contributed by the vested or retired member and the employer, if applicable, plus interest on the contributions that would have accrued for the applicable period from the date the previous applicable period of service commenced under this retirement system or from the date the service of the member in the teachers insurance and annuity association-college retirement equities fund (TIAA-CREF) commenced to the date of payment of the contributions by the member as provided in section 97B.70.

Sec. 23. Section 99B.9, subsection 1, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

Except as otherwise permitted by section 99B.3, 99B.5, 99B.6, 99B.7, 99B.8, 99B.11, or 99B.12A, it is unlawful to permit gambling on any premises owned, leased, rented, or otherwise occupied by a person other than a government, governmental agency, or governmental subdivision, unless all of the following are complied with:

Sec. 24. Section 99D.24, subsection 4, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A person commits a class "D" felony and, in addition, shall be barred for life from racetracks under the ~~jursidiction~~ jurisdiction of the commission, if the person does any of the following:

Sec. 25. Section 99G.8, subsection 9, Code Supplement 2003, is amended to read as follows:

9. Board members shall be considered to hold public office and shall give bond ~~as such~~ as required in chapter 64.

Sec. 26. Section 99G.10, subsection 8, Code Supplement 2003, is amended to read as follows:

8. A background investigation shall be conducted by the department of public safety, division of criminal investigation, on each applicant who has reached the final selection process prior to employment by the authority. For positions not designated as sensitive by the board, the investigation may consist of a state criminal history background check, work history, and financial review. The board shall identify those sensitive positions of the authority which require full background investigations, which positions shall include, at a minimum, any officer of the authority, and any employee with operational management responsibilities, security duties, or system maintenance or programming responsibilities related to the authority's data processing or network hardware, software, communication, or related systems. In addition to a work history and financial review, a full background investigation may include a national criminal history ~~record~~ check through the federal bureau of investigation. The screening of employees through the federal bureau of investigation shall be conducted by submission of fingerprints through the state criminal history ~~record~~ repository to the federal bureau of investigation. The results of background investigations conducted pursuant to this section shall not be considered public records under chapter 22.

Sec. 27. Section 99G.33, Code Supplement 2003, is amended to read as follows:

99G.33 LAW ENFORCEMENT INVESTIGATIONS.

The department of public safety, division of criminal investigation, shall be the primary state agency responsible for investigating criminal violations under this chapter. The chief executive officer shall contract with the department of public safety for investigative services, including the employment of special agents and support personnel, and procurement of necessary equipment to carry out the responsibilities of the division of criminal investigation under the terms of the ~~agreement~~ contract and this chapter.

Sec. 28. Section 100.35, unnumbered paragraph 2, Code 2003, is amended to read as follows:

Rules by the fire marshal affecting the construction of new buildings, additions to buildings or rehabilitation of existing buildings and related to fire protection, shall be substantially in accord with the provisions of the nationally recognized building and related codes adopted as the state building code pursuant to section 103A.7 or with codes adopted by a local subdivision which are in substantial accord with the codes comprising the state building code.

Sec. 29. Section 100.38, Code 2003, is amended to read as follows:

100.38 CONFLICTING STATUTES.

Provisions of this chapter in conflict with the state building code, as adopted pursuant to section 103A.7, shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

Sec. 30. Section 100.39, unnumbered paragraph 3, Code 2003, is amended to read as follows:

Plans and installation of systems shall be approved by the state fire marshal, a designee of the state fire marshal, or local authorities having jurisdiction. Except where local fire protection regulations are more stringent, the provisions of this section shall be applicable to all buildings, whether privately or publicly owned. The definition of terms shall be in conformity, insofar as possible, with definitions found in the state building code adopted pursuant to section 103A.7.

Sec. 31. Section 100B.8, Code Supplement 2003, is amended to read as follows:

100B.8 EMPLOYEES.

Employees of the fire service institute at Iowa state university on July 1, 2000, may elect to transfer to the department of public safety in a position and at a pay range commensurate with their duties as determined by the department of ~~administrative services~~ personnel, the department of public safety, and the employee's certified collective bargaining representative.

Sec. 32. Section 124.401, subsection 1, paragraph b, subparagraph (8), Code Supplement 2003, is amended to read as follows:

(8) More than five grams but not more than five kilograms of amphetamine, its salts, isomers, or salts of isomers, or any compound, mixture, or preparation which contains any quantity ~~of~~ or detectable amount of amphetamine, its salts, isomers, and salts of isomers.

Sec. 33. Section 135.18, Code 2003, is amended to read as follows:

135.18 CONFLICTING STATUTES.

Provisions of this chapter in conflict with the state building code, as adopted pursuant to section 103A.7, shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

Sec. 34. Section 135.142, subsection 2, Code Supplement 2003, is amended to read as follows:

2. If a public health disaster exists or there is reasonable cause to believe that a public health disaster is imminent and if the public health disaster or belief that a public health disaster is imminent results in a statewide or regional shortage or threatened shortage of any product described under subsection 1, whether or not such product has been purchased by the department, the department may control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation, or other means, the use, sale, dispensing, distribution, or transportation of the relevant product necessary to protect the public health, safety, and welfare of the people of this state. The department shall collaborate with persons who have control of the products when reasonably possible.

Sec. 35. Section 135.106, Code 2003, is amended to read as follows:

135.106 HEALTHY FAMILIES ~~IOWA PROGRAM~~ PROGRAMS — ESTABLISHED.

1. The Iowa department of public health shall establish a healthy opportunities for parents to experience success (HOPES) – healthy families Iowa (HFI) program to provide services to families and children during the prenatal through preschool years. The program shall be designed to do all of the following:

a. Promote optimal child health and development.

b. Improve family coping skills and functioning.

c. Promote positive parenting skills and intrafamilial interaction.

d. Prevent child abuse and neglect and infant mortality and morbidity.

2. The ~~HOPES~~ HOPES-HFI program shall be developed by the Iowa department of public health, and may be implemented, in whole or in part, by contracting with a nonprofit child abuse prevention organization, local nonprofit certified home health program or other local nonprofit organizations, and shall include, but is not limited to, all of the following components:

a. Identification of barriers to positive birth outcomes, encouragement of collaboration and cooperation among providers of health care, social and human services, and other services to pregnant women and infants, and encouragement of pregnant women and women of childbearing age to seek health care and other services which promote positive birth outcomes.

b. Provision of community-based home-visiting family support to pregnant women and new parents who are identified through a standardized screening process to be at high risk for problems with successfully parenting their child.

c. Provision by family support workers of individual guidance, information, and access to

health care and other services through care coordination and community outreach, including transportation.

d. Provision of systematic screening, prenatally or upon the birth of a child, to identify high-risk families.

e. Interviewing by a ~~HOPES~~ HOPES-HFI program worker or hospital social worker of families identified as high risk and encouragement of acceptance of family support services.

f. Provision of services including, but not limited to, home visits, support services, and instruction in child care and development.

g. Individualization of the intensity and scope of services based upon the family's needs, goals, and level of risk.

h. Assistance by a family support worker to participating families in creating a link to a "medical home" in order to promote preventive health care.

i. Evaluation and reporting on the program, including an evaluation of the program's success in reducing participants' risk factors and provision of services and recommendations for changes in or expansion of the program.

j. Provision of continuous follow-up contact with a family served by the program until identified children reach age three or age four in cases of continued high need or until the family attains its individualized goals for health, functioning, and self-sufficiency.

k. Provision or employment of family support workers who have experience as a parent, knowledge of health care services, social and human services, or related community services and have participated in a structured training program.

l. Provision of a training program that meets established standards for the education of family support workers. The structured training program shall include at a minimum the fundamentals of child health and development, dynamics of child abuse and neglect, and principles of effective parenting and parenting education.

m. Provision of crisis child care through utilization of existing child care services to participants in the program.

n. Program criteria shall include a required match of one dollar provided by the organization contracting to deliver services for each two dollars provided by the state grant. This requirement shall not restrict the department from providing unmatched grant funds to communities to plan new or expanded programs for ~~HOPES~~ HOPES-HFI. The department shall establish a limit on the amount of administrative costs that can be supported with state funds.

o. Involvement with the community assessment and planning process in the community served by ~~HOPES~~ HOPES-HFI programs to enhance collaboration and integration of family support programs.

p. Collaboration, to the greatest extent possible, with other family support programs funded or operated by the state.

q. Utilization of private party, third party, and medical assistance for reimbursement to defray the costs of services provided by the program to the extent possible.

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 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 zone principles established in section 8A.2, Code 1997.

Sec. 36. Section 135B.17, unnumbered paragraph 2, Code 2003, is amended to read as follows:

Provisions of this chapter in conflict with the state building code, as adopted pursuant to section 103A.7, shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

Sec. 37. Section 135C.28, Code 2003, is amended to read as follows:

135C.28 CONFLICTING STATUTES.

Provisions of this chapter in conflict with the state building code, as adopted pursuant to section 103A.7, shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

Sec. 38. Section 137C.31, Code 2003, is amended to read as follows:

137C.31 CONFLICTS WITH STATE BUILDING CODE.

Provisions of the Iowa hotel sanitation code in conflict with the state building code, as adopted pursuant to section 103A.7, shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

Sec. 39. Section 137D.6, Code 2003, is amended to read as follows:

137D.6 CONFLICTS WITH STATE BUILDING CODE.

Provisions of this chapter, including standards for home food establishments adopted by the department, in conflict with the state building code, as adopted pursuant to section 103A.7, shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

Sec. 40. Section 137F.16, Code 2003, is amended to read as follows:

137F.16 CONFLICTS WITH STATE BUILDING CODE.

Provisions of this chapter in conflict with the state building code, as adopted pursuant to section 103A.7, shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

Sec. 41. Section 145A.16, subsection 4, Code 2003, is amended to read as follows:

4. Donations and gifts which may be accepted by the hospital trustees and expended in accordance with the terms of the gift without compliance with the local budget law, chapter 24.

Sec. 42. Section 167.11, unnumbered paragraph 2, Code 2003, is amended to read as follows:

This section shall not apply where the state building code, as adopted pursuant to section 103A.7, has been adopted or when the state building code applies throughout the state.

Sec. 43. Section 232.71D, subsection 3, paragraph i, subparagraph (5), Code 2003, is amended to read as follows:

(5) Medical assistance home and community-based services waiver for persons with mental retardation residential program regulated by the department of human services and the department of inspections and appeals.

Sec. 44. Section 237A.29, subsection 3, paragraph a, Code Supplement 2003, is amended to read as follows:

a. If a child care provider is subject to sanctions under subsection 2, within five business days of the date the sanctions ~~were~~ are imposed, the provider shall submit to the department the names and addresses of children receiving child care from the provider. The department shall send information to the parents of the children regarding the provider's actions leading to the imposition of the sanctions and the nature of the sanctions imposed.

Sec. 45. Section 249A.12, subsection 2, Code Supplement 2003, is amended to read as follows:

2. A county shall reimburse the department on a monthly basis for that portion of the cost of assistance provided under this section to a recipient with legal settlement in the county, which is not paid from federal funds, if the recipient's placement has been approved by the appropriate review organization as medically necessary and appropriate. The department's goal for the maximum time period for submission of a claim to a county is not more than sixty days following the submission of the claim by the provider of the service to the department. The department's goal for completion and crediting of a county for cost settlement for the actual costs of a service under a home and community-based services waiver ~~service~~ is within two hundred seventy days of the close of a fiscal year for which cost reports are due from providers. The department shall place all reimbursements from counties in the appropriation for medical assistance, and may use the reimbursed funds in the same manner and for any purpose for which the appropriation for medical assistance may be used.

Sec. 46. Section 249A.12, subsection 5, paragraph a, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

The mental health and developmental disabilities commission shall recommend to the department the actions necessary to assist in the transition of individuals being served in an intermediate care facility for persons with mental retardation, who are appropriate for the transition, to services funded under a medical assistance ~~waiver for~~ home and community-based services waiver for persons with mental retardation in a manner which maximizes the use of existing public and private facilities. The actions may include but are not limited to submitting any of the following or a combination of any of the following as a request for a revision of the medical assistance ~~waiver for~~ home and community-based services waiver for persons with mental retardation in effect as of June 30, 1996:

Sec. 47. Section 249A.12, subsection 5, paragraph a, subparagraph (1), Code Supplement 2003, is amended to read as follows:

(1) Allow for the transition of intermediate care facilities for persons with mental retardation licensed under chapter 135C as of June 30, 1996, to services funded under the medical assistance ~~waiver for~~ home and community-based services waiver for persons with mental retardation. The request shall be for inclusion of additional persons under the waiver associated with the transition.

Sec. 48. Section 249A.30, Code 2003, is amended to read as follows:

249A.30 HOME AND COMMUNITY-BASED SERVICES WAIVER ~~SERVICES~~ ~~—~~ SERVICE PROVIDER REIMBURSEMENT.

1. The base reimbursement rate for a provider of services under a medical assistance program home and community-based services waiver for persons with mental retardation shall be recalculated at least every three years to adjust for the changes in costs during the immediately preceding three-year period.

2. The annual inflation factor used to adjust such a provider's reimbursement rate for a fiscal year shall not exceed the percentage increase in the employment cost index for private industry compensation issued by the federal department of labor, bureau of labor statistics, for the most recently completed calendar year.

Sec. 49. Section 249H.3, subsections 1 and 4, Code 2003, are amended to read as follows:

1. "Affordable" means rates for payment of services which do not exceed the rates established for providers of medical and health services under the medical assistance program with eligibility for an individual equal to the eligibility for medical assistance pursuant to section 249A.3. In relation to services provided by a provider of services under a home and community-based services waiver, "affordable" means that the total monthly cost of the services provided under the home and community-based services waiver ~~services provided~~ does

not exceed the cost for that level of care as established by rule by the department of human services, pursuant to chapter 17A, in consultation with the department of elder affairs.

4. "Long-term care alternatives" means those services specified as services under the medical assistance ~~program as~~ home and community-based services waiver ~~services~~ for elder persons or adults with disabilities, elder group homes certified under chapter 231B, assisted-living programs certified under chapter 231C, and the PACE program.

Sec. 50. Section 249H.5, subsection 2, paragraph c, subparagraphs (2) and (3), Code 2003, are amended to read as follows:

(2) Expenses incurred in administration of medical assistance home and community-based services waivers and the PACE program due to implementation of the senior living trust fund.

(3) Expenses incurred due to increased service delivery provided under medical assistance home and community-based services waivers as a result of nursing facility conversions and long-term care service development, for the fiscal period beginning July 1, 2000, and ending on or before June 30, 2005.

Sec. 51. Section 249H.5, subsection 2, paragraph e, Code 2003, is amended to read as follows:

e. To the department of human services an amount necessary, annually, for additional expenses incurred relative to implementation of the senior living program in assisting home and community-based services waiver consumers with rent expenses pursuant to the state supplementary assistance program.

Sec. 52. Section 255.13, Code Supplement 2003, is amended to read as follows:

255.13 ATTENDANT — PHYSICIAN — COMPENSATION.

If the physician appointed to examine the patient certifies that an attendant is needed to accompany the patient to the hospital ~~is necessary~~, and the university hospital attendant and ambulance service is not available, the county general assistance director may appoint an attendant who shall receive not exceeding two dollars per day for the time thus necessarily employed and actual necessary ~~traveling~~ expenses for travel by the most feasible route to the hospital whether by ambulance, train, or automobile; but if such appointee is a relative of the patient or a member of the patient's immediate family, or receives a salary or other compensation from the public for the appointee's services, no such per diem compensation shall be paid. The physician appointed to make the examination and report shall receive three dollars for each examination and report so made and the physician's actual necessary expenses incurred in making such examination, but if the physician receives a salary or other compensation from the public for the physician's full-time services, no such examination fee shall be paid. The actual, necessary expenses of transporting and caring for the patient shall be paid as provided in this chapter.

Sec. 53. Section 256A.3, subsection 7, Code Supplement 2003, is amended to read as follows:

7. Encourage the establishment of regional councils designed to facilitate the development on a regional basis of programs for at-risk ~~three-year-~~ three-year-old and at-risk four-year-old children.

Sec. 54. Section 260C.14, subsection 20, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

Adopt a policy to offer not less than the following options to a student who is a member of the Iowa national guard or reserve forces of the United States and who is ordered to ~~active~~ state military service or federal service or duty:

Sec. 55. Section 260C.18, subsection 6, Code 2003, is amended to read as follows:

6. Donations and gifts which may be accepted by the governing board and expended in accordance with the terms of the gift without compliance with the local budget law, chapter 24.

Sec. 56. Section 261.9, subsection 1, paragraph g, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

Adopts a policy to offer not less than the following options to a student who is a member of the Iowa national guard or reserve forces of the United States and who is ordered to ~~active~~ state military service or federal service or duty:

Sec. 57. Section 262.9, subsection 29, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

Direct the institutions of higher education under its control to adopt a policy to offer not less than the following options to a student who is a member of the Iowa national guard or reserve forces of the United States and who is ordered to ~~active~~ state military service or federal service or duty:

Sec. 58. Section 285.10, subsection 7, paragraph b, Code Supplement 2003, is amended to read as follows:

b. ~~May purchase~~ By purchasing buses and ~~enter~~ entering into contracts to pay for such buses over a five-year period as follows: one-fourth of the cost when the bus is delivered and the balance in equal annual installments, plus simple interest due. The interest rate shall be the lowest rate available and shall not exceed the rate in effect under section 74A.2. The bus shall serve as security for balance due. Competitive bids on comparable equipment shall be requested on all school bus purchases and shall be based upon minimum construction standards established by the department of education. Bids shall be requested unless the bus is a used or demonstrator bus.

Sec. 59. Section 292.4, Code Supplement 2003, is amended to read as follows:

292.4 APPROPRIATION.

There is appropriated from the general fund of the state from moneys credited to the general fund of the state as a result of the state entering into the streamlined sales and use tax agreement to the secure an advanced vision for education fund created in section 422E.3A, the sum of five million dollars for each fiscal year of the fiscal period beginning July 1, 2004, and ending June 30, 2014. The appropriation in this section shall be made after the appropriation from the same source to the grow Iowa values fund created in ~~2003 Iowa Acts, First Extraordinary Session, chapter 1, or another Act~~ section 15G.108. For purposes of this section, "moneys credited to the general fund of the state as a result of entering into the streamlined sales and use tax agreement" means the amount of sales and use tax receipts credited to the general fund of the state during a fiscal year that exceeds by two percent or more the total sales and use tax receipts credited to the general fund of the state during the previous fiscal year.

Sec. 60. Section 305.9, subsection 1, paragraph k, Code Supplement 2003, is amended to read as follows:

k. Manage the state archives and develop operating procedures for the transfer, ~~accessioning~~ accession, arrangement, description, preservation, protection, and public access of those records the commission identifies as having permanent value.

Sec. 61. Section 322B.2, subsection 8, Code 2003, is amended to read as follows:

8. "Modular home" means a factory-built structure which is manufactured to be used as a place of human habitation, is constructed to comply with the Iowa state building code for modular factory-built structures, as adopted pursuant to section 103A.7, and displays a seal issued by the state building code commissioner.

Sec. 62. Section 322F.1, subsection 1, Code Supplement 2003, is amended to read as follows:

1. "Agricultural equipment" means a device, part of a device, or an attachment ~~of~~ to a device designed to be principally used for an agricultural purpose. "Agricultural equipment" includes

but is not limited to equipment associated with livestock or crop production, horticulture, or floriculture. "Agricultural equipment" includes but is not limited to tractors; trailers; combines; tillage, planting, and cultivating implements; ~~bailers~~ balers; irrigation implements; and all-terrain vehicles.

Sec. 63. Section 322F.7, subsection 7, paragraph a, subparagraph (1), Code Supplement 2003, is amended to read as follows:

(1) For a dealership agreement governing equipment other than outdoor power equipment, takes action terminating, canceling, or failing to renew the dealership agreement, or substantially changes the competitive circumstances intended by the dealership agreement, due to the results of conditions beyond the dealer's control, including drought, flood, labor disputes, or economic recession.

Sec. 64. Section 331.440A, subsection 6, paragraph c, subparagraph (1), Code 2003, is amended to read as follows:

(1) State and federal medical assistance funding for services under a home and community-based ~~waiver~~ services waiver to persons with mental retardation.

Sec. 65. Section 384.38, subsection 2, Code 2003, is amended to read as follows:

2. Upon petition as provided in section 384.41, subsection 1, a city may assess to private property affected by public improvements within three miles of the city's boundaries the cost of construction and repair of public improvements within that area. The right-of-way of a railway company shall not be assessed unless the company joins as a petitioner for said improvements. In the petition the property owners shall waive the limitation provided in section 384.62 that an assessment ~~may~~ shall not exceed twenty-five percent of the value of the lot. The petition shall contain a statement that the owners agree to pay the city an amount equal to five percent of the cost of the improvements, to cover administrative expenses incurred by the city. This amount may be added to the cost of the improvements. Before the council may adopt the resolution of necessity, the preliminary resolution, preliminary plans and specifications, plat, schedule, and estimate of cost must be submitted to, and receive written approval from, the board of supervisors of any county which contains part of the property, and the city development board established in section 368.9.

Sec. 66. Section 422.7, subsection 38, Code Supplement 2003, is amended to read as follows:

38. Subtract, to the extent not otherwise excluded, the amount of withdrawals from qualified retirement plan accounts made during the tax year if the taxpayer or taxpayer's spouse is a member of the Iowa national guard or reserve forces of the United States who is ordered to ~~active~~ state military service or federal service or duty. In addition, a penalty for such withdrawals shall not be assessed by the state.

Sec. 67. Section 422.42, subsection 4, Code 2003, is amended to read as follows:

4. "Farm deer" means the same as defined in section ~~189A.2~~ 170.1.

Sec. 68. Section 422E.3A, subsection 2, paragraph b, subparagraph (3), Code Supplement 2003, is amended to read as follows:

(3) A school district that is located in whole or in part in a county that voted on and approved the continuation of the local sales and services tax for school infrastructure purposes on or after April 1, 2003, ~~the local sales and services tax for school infrastructure purposes~~ shall receive an amount equal to its pro rata share of the local sales and services tax receipts as provided in section 422E.3, subsection 5, paragraph "d", not to exceed its guaranteed school infrastructure amount. However, if the school district's pro rata share is less than its guaranteed school infrastructure amount, the district shall receive an additional amount equal to its supplemental school infrastructure amount.

Sec. 69. Section 422E.5, subsection 3, Code 2003, is amended to read as follows:

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, as adopted pursuant to section 103A.7, 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.

Sec. 70. Section 426A.7, Code Supplement 2003, is amended to read as follows:

426A.7 FORMS — RULES.

The director of revenue shall prescribe the form for the making of a verified statement and designation of property eligible for military service tax exemption, and the form for the supporting affidavits required herein, and such other forms as may be necessary for the proper administration of this chapter. ~~As soon as practicable after the effective date of this chapter, and from~~ From time to time ~~thereafter~~ as necessary, the department of revenue shall forward to the county auditors of the several counties of the state, such prescribed sample forms. The director of revenue shall have the power and authority to prescribe rules, not inconsistent with the provisions of this chapter, necessary to carry out and effectuate its purposes.

Sec. 71. Section 435.1, subsection 7, Code 2003, is amended to read as follows:

7. "Modular home" means a factory-built structure which is manufactured to be used as a place of human habitation, is constructed to comply with the Iowa state building code for modular factory-built structures, as adopted pursuant to section 103A.7, and must display the seal issued by the state building code commissioner. If a modular home is placed in a manufactured home community or mobile home park, the home is subject to the annual tax as required by section 435.22. If a modular home is placed outside a manufactured home community or a mobile home park, the home shall be considered real property and is to be assessed and taxed as real estate.

Sec. 72. Section 441.23, Code Supplement 2003, is amended to read as follows:

441.23 NOTICE OF VALUATION.

If there has been an increase or decrease in the valuation of the property, or upon the written request of the person assessed, the assessor shall, at the time of making the assessment, inform the person assessed, in writing, of the valuation put upon the taxpayer's property, and notify the person, that if the person feels aggrieved, to appear before the board of review and show why the assessment should be changed. However, if the valuation of a class of property is uniformly decreased, the assessor may notify the affected property owners by publication in the official newspapers of the county. The owners of real property shall be notified not later than April 15 of any adjustment of the real property assessment.

Sec. 73. Section 453D.5, subsection 3, Code Supplement 2003, is amended to read as follows:

3. The attorney general may require at any time from a nonparticipating manufacturer proof from the financial institution in which the ~~nonparticipatory~~ nonparticipating manufacturer has established a qualified escrow fund for the purpose of compliance with chapter 453C,

of the amount of money in the qualified escrow fund, exclusive of interest, the amount and date of each deposit into the qualified escrow fund, and the amount and date of each withdrawal from the qualified escrow fund.

Sec. 74. Section 455B.172, subsection 5, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The department shall by rule adopt standards for the commercial cleaning of private sewage disposal facilities, including but not limited to septic tanks and pits used to collect waste in livestock confinement structures, and for the disposal of waste from the facilities. The standards shall not be in conflict with the state building code adopted pursuant to section 103A.7. A person shall not commercially clean such facilities or dispose of waste from such facilities unless the person has been issued a license by the department. The department shall be exclusively responsible for adopting the standards and issuing licenses. However, county boards of health shall enforce the standards and licensing requirements established by the department. Application for the license shall be made in the manner provided by the department. Licenses expire one year from the date of issue unless revoked and may be renewed in the manner provided by the department. The license or license renewal fee is twenty-five dollars. A person violating this section or the rules adopted pursuant to this section, is subject to a civil penalty of not more than twenty-five dollars. Each day that a violation continues constitutes a separate offense. However, the total civil penalty shall not exceed five hundred dollars per year. The penalty shall be assessed for a violation occurring ten days following written notice of the violation delivered to the person by the department or a county board of health. Moneys collected by the department or a county board of health from the imposition of civil penalties shall be deposited in the general fund of the state.

Sec. 75. Section 455D.19, subsection 4, unnumbered paragraph 2, Code 2003, is amended to read as follows:

Concentration levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using ASTM (American ~~standard of~~ society for testing and materials) international test methods, as revised, or United States environmental protection agency test methods for evaluating solid waste, S-W 846, as revised.

Sec. 76. Section 455H.204, subsection 2, paragraph d, Code 2003, is amended to read as follows:

d. Risk-based corrective action assessment principles which identify risks presented to the public health and safety or the environment by each released hazardous substance in a manner that will protect the public health and safety or the environment using a tiered procedure consistent with the ASTM (American society for testing ~~of materials'~~ and materials) international standards applied to nonpetroleum and petroleum hazardous substances.

Sec. 77. Section 459.102, subsection 12, paragraph a, Code Supplement 2003, is amended to read as follows:

a. A manager of a commercial manure service. As used in this paragraph a "manager" is a person who is actively involved in the operation of a commercial manure service and takes an important part in making management decisions substantially contributing to or affecting the success of the commercial manure service.

Sec. 78. Section 459.401, subsection 2, paragraph a, subparagraph (3), Code Supplement 2003, is amended to read as follows:

(3) Educational program fees required to be paid by commercial manure service representatives or confinement site manure applicators pursuant to section 459.400.

Sec. 79. Section 496C.16, Code Supplement 2003, is amended to read as follows:

496C.16 MANAGEMENT.

All directors of a professional corporation and all officers of a professional corporation,

except assistant officers, shall at all times be individuals who are licensed to practice in this state a profession which the corporation is authorized to practice. However, upon the occurrence of any event that requires the corporation either to be dissolved or to elect to adopt the provisions of the Iowa business corporation Act, chapter 490, as provided in section 496C.19, provided the corporation ceases to practice the profession that the corporation is authorized to practice, as provided in section 496C.19, then individuals who are not licensed to practice in this state a profession that the corporation is authorized to practice may be appointed as officers and directors for the sole purpose of carrying out the dissolution of the corporation or, if applicable, the voluntary election of the corporation to adopt the provisions of the Iowa business corporation Act, as provided in section 496C.19.

Sec. 80. Section 497.33, Code Supplement 2003, is amended to read as follows:

497.33 PERSONAL LIABILITY.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the corporation is not liable on the corporation's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon any action taken, or any failure to take action in the discharge of the person's duties, except for the amount of a financial benefit received by the person to which the person is not entitled, an intentional infliction of harm on the ~~association~~ corporation or its members, or an intentional violation of criminal law.

Sec. 81. Section 499B.3, unnumbered paragraph 2, Code 2003, is amended to read as follows:

If the declaration is to convert an existing structure, the declarant shall file the declaration of the horizontal property regime with the city in which the regime is located or with the county if not located within a city at least sixty days before being recorded in the office of the county recorder to enable the city or county, as applicable, to establish that the converted structure meets appropriate building code requirements as provided in section 499B.20. However, if the city or county, as applicable, does not have a building code, the declarant shall file the declaration with the state building code commissioner instead of the applicable city or county at least sixty days before the recording of the declaration to enable the commissioner to establish that the converted structure meets the state building code, as adopted pursuant to section 103A.7.

Sec. 82. Section 499B.20, Code 2003, is amended to read as follows:

499B.20 CONVERSIONS TO MEET BUILDING CODES.

After April 25, 2000, an existing structure shall not be converted to a horizontal property regime unless the converted structure meets local city or county, as applicable, building code requirements in effect on the date of conversion or the state building code requirements, as adopted pursuant to section 103A.7, if the local city or county does not have a building code. For purposes of this section, if the structure is located in a city, the city building code applies and if the structure is located in the unincorporated area of the county, the county building code applies.

Sec. 83. Section 504A.29, subsection 1, Code 2003, is amended to read as follows:

1. The name of the corporation and the chapter of the Code or ~~session laws~~ Iowa Acts under which incorporated.

Sec. 84. Section 504A.39, subsection 4, paragraph e, Code 2003, is amended to read as follows:

e. Any other provisions, not inconsistent with law or the purposes which the corporation is authorized to pursue, which are to be set forth in articles of incorporation; except that it shall not be necessary to set forth in the restated articles of incorporation any of the corporate powers enumerated in this chapter nor any statement with respect to the chapter of the Code or ~~session laws~~ Iowa Acts under which the corporation was incorporated, its registered office,

registered agent, directors, or incorporators, or the date on which its corporate existence began.

Sec. 85. Section 504C.1, subsection 3, paragraph a, Code 2003, is amended to read as follows:

a. Design, modify, or construct a specific housing facility to provide appropriate services and support to the residents of the specific housing facility. Local requirements shall not be more restrictive than the rules adopted for a family home, as defined in section 335.25 or 414.22, and the state building code requirements for single-family or multiple-family housing, as adopted pursuant to section 103A.7.

Sec. 86. Section 508.31A, subsection 2, paragraph a, subparagraph (2), subparagraph subdivision (b), Code Supplement 2003, is amended to read as follows:

(b) Activities of an organization exempt from taxation pursuant to section ~~501c~~ 501(c) of the Internal Revenue Code, or any similar organization in any foreign country.

Sec. 87. Section 514.2, Code Supplement 2003, is amended to read as follows:

514.2 INCORPORATION.

Persons desiring to form a nonprofit hospital service corporation, or a nonprofit medical service corporation, or a nonprofit pharmaceutical or optometric service corporation shall ~~incorporate~~ have been incorporated under the provisions of chapter 504, Code 1989, or shall incorporate under the provisions of chapter 504A, as supplemented and amended herein and any acts amendatory thereof.

Sec. 88. Section 533C.202, subsection 2, paragraph e, Code Supplement 2003, is amended to read as follows:

e. A list of other states in which the applicant is licensed to engage in money transmission or provide other money services and of any license revocations, suspensions, or other disciplinary action taken against the applicant in another state.

Sec. 89. Section 533C.301, subsection 1, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

A person shall not engage in currency exchange or advertise, solicit, or hold itself out as providing currency exchange for which the person receives revenues equal to or greater than five percent of total revenues unless the person:

Sec. 90. Section 544A.28, unnumbered paragraph 4, Code 2003, is amended to read as follows:

A public official charged with the enforcement of the state building code, as adopted pursuant to section 103A.7, or a municipal or county building code, shall not accept or approve any technical submissions involving the practice of architecture unless the technical submissions have been stamped with the architect's seal as required by this section or unless the applicant has certified on the technical submission to the applicability of a specific exception under section 544A.18 permitting the preparation of technical submissions by a person not registered under this chapter. A building permit issued with respect to technical submissions which do not conform to the requirements of this section is invalid.

Sec. 91. Section 554.10105, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The secretary of state, the secretary's employees or agents, are hereby exempted from all personal liability as a result of errors or omissions in the performance of any duty required by the Uniform Commercial Code, as provided in this chapter ~~554~~, except in cases of willful negligence.

Sec. 92. Section 570A.5, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

Except as provided in this section, an agricultural supply ~~dealer's~~ dealer lien that is effective or perfected as provided in section 570A.4 shall be subject to the rules of priority as provided in section 554.9322. For an agricultural supply ~~dealer's~~ dealer lien that is perfected under section 570A.4, all of the following shall apply:

Sec. 93. Section 570A.5, subsections 1 and 2, Code Supplement 2003, are amended to read as follows:

1. The lien shall have priority over a lien or security interest that applies subsequent to the time that the agricultural supply ~~dealer's~~ dealer lien is perfected.

2. Except as provided in section 570A.2, subsection 3, the lien shall have equal priority to a lien or security interest which is perfected prior to the time that the agricultural supply ~~dealer's~~ dealer lien is perfected. However, a landlord's lien that is perfected pursuant to section 570.1 shall have priority over a conflicting agricultural supply ~~dealer's~~ dealer lien as provided in section 570.1, and a harvester's lien that is perfected pursuant to section 571.3 shall have priority over a conflicting agricultural supply ~~dealer's~~ dealer lien as provided in section 571.3A.

Sec. 94. Section 570A.6, Code Supplement 2003, is amended to read as follows:

570A.6 ENFORCEMENT OF LIEN.

An agricultural supply dealer may enforce an agricultural supply ~~dealer's~~ dealer lien in the manner provided for agricultural liens pursuant to chapter 554, article 9, part 6.

Sec. 95. Section 591.17, unnumbered paragraph 1, Code 2003, is amended to read as follows:

In all instances where corporations not for pecuniary profit have heretofore adopted renewal articles of incorporation or articles of reincorporation and there has been a failure to set forth therein the time of the annual meeting or the time of the annual meeting of the trustees or directors and such renewal articles of incorporation or articles of reincorporation are otherwise complete and in compliance with the law as set forth in section 504.1, Code 1989, such renewal articles of incorporation or articles of reincorporation are hereby legalized and validated and shall be held to have the same force and effect as though all of such provisions had been complied with in all respects.

Sec. 96. Section 598B.106, Code 2003, is amended to read as follows:

598B.106 EFFECT OF CHILD-CUSTODY DETERMINATION.

A child-custody determination made by a court of this state that had ~~jursidiction~~ jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state, or notified in accordance with section 598B.108, or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

Sec. 97. Section 602.11112, Code 2003, is amended to read as follows:

602.11112 FIFTH JUDICIAL ELECTION DISTRICT.

The provisions of section 602.6109, Code 2003, relating to the division of the fifth judicial district into judicial election districts 5A, 5B, and 5C take effect January 1, 1985.

Sec. 98. Section 602.11115, subsection 3, Code Supplement 2003, is amended to read as follows:

3. To commence coverage under the judicial retirement system pursuant to article 9, part 1, retroactive to the date the district associate judge became a district associate judge or a full-time judicial magistrate, whichever was earlier, and to cease to be a member of the Iowa public employees' retirement system, effective July 1, 1984. The department of ~~administrative~~

~~services~~ personnel shall transmit by January 1, 1985, to the state court administrator for deposit in the judicial retirement fund the district associate judge's accumulated contributions as defined in section 97B.1A, subsection 2 for the judge's period of membership service as a district associate judge or full-time judicial magistrate, or both. Before July 1, 1986, or at retirement previous to that date, a district associate 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 district associate judge's total basic salary for the entire period of service before July 1, 1984, as a district associate judge or judicial magistrate, or both, and the district associate judge's accumulated contributions transmitted by the department of ~~administrative services~~ personnel to the state court administrator pursuant to this subsection. The district associate judge's contribution shall not be limited to the amount specified in section 602.9104, subsection 1. The state court administrator shall credit a district associate judge with service under the judicial retirement system for the period of service for which contributions at the four percent level are made.

Sec. 99. Section 633.707, subsection 3, Code 2003, is amended to read as follows:

3. "Institutionalized individual" means an individual receiving nursing facility services, a level of care in any institution equivalent to nursing facility services, or home and community-based services under the medical assistance home and community-based services waiver program.

Sec. 100. Section 633.709, subsection 3, paragraphs a, b, c, and e, Code 2003, are amended to read as follows:

a. For a beneficiary who meets the medical assistance level of care requirements for services in an intermediate care facility for persons with mental retardation and who either resides in an intermediate care facility for persons with mental retardation or is eligible for services under the medical assistance home and community-based services waiver ~~services~~ except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the maximum monthly medical assistance payment rate for services in an intermediate care facility for persons with mental retardation.

b. For a beneficiary who meets the medical assistance level of care requirements for hospital-based, ~~medicare-certified~~ Medicare-certified, skilled nursing facility care and who either resides in a hospital-based, ~~medicare-certified~~ Medicare-certified, skilled nursing facility or is eligible for services under the medical assistance home and community-based services waiver ~~services~~ except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the statewide average charge to private-pay patients for hospital-based, ~~MEDICARE-certified~~ Medicare-certified, skilled nursing facility care.

c. For a beneficiary who meets the medical assistance level of care requirements for nonhospital-based, Medicare-certified, skilled nursing facility care and who either resides in a nonhospital-based, Medicare-certified, skilled nursing facility or is eligible for services under the medical assistance home and community-based services waiver ~~services~~ except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the statewide average charge to private-pay patients for nonhospital-based, Medicare-certified, skilled nursing facility care.

e. For a beneficiary who meets the medical assistance level of care requirements for services in a state mental health institute and who either resides in a state mental health institute or is eligible for services under a medical assistance home and community-based services waiver ~~services~~ except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the statewide average charge for state mental health institute care.

Sec. 101. Section 669.14, subsection 5, Code Supplement 2003, is amended to read as follows:

5. Any claim by an employee of the state which is covered by the Iowa workers' compensation law or the Iowa occupational disease law, chapter 85A.

Sec. 102. Section 709.15, subsection 1, paragraph g, Code Supplement 2003, is amended to read as follows:

g. "Student" means a person who is currently enrolled in or attending a public or nonpublic elementary or secondary school, or who was a student enrolled in or who attended a public or nonpublic elementary or secondary school within thirty days of any violation of subsection 3.

Sec. 103. 2003 Iowa Acts, chapter 91, section 10, the portion of which amends section 508.38, subsection 11, Code 2003, is amended to read as follows:

11. After the effective date of this section of this Act, a company may elect either to apply the provisions of this section as it existed prior to the effective date of this section of this Act or to apply the provisions of this section as enacted by this Act to annuity contracts on a contract form-by-form basis before the second anniversary of the effective date of this section of this Act. In all other instances, this section shall become operative with respect to annuity contracts issued by the company two years after the effective date of this section of this Act.

Sec. 104. 2003 Iowa Acts, chapter 143, section 17, subsection 2, is amended to read as follows:

2. The section of this Act amending section 123.183 and relating to the deposit of revenue collected from the wine gallonage tax in the grape and wine development fund is retroactively applicable to July 1, 2002. The revenue collected during the fiscal year beginning on July 1, 2002, and ending on June 30, 2003, from the wine gallonage tax on wine imported into this state at wholesale and sold in this state at wholesale as provided in section 123.183 that is in excess of the revenue collected from such tax during the fiscal year beginning July 1, 2001, and ending on June 30, 2002, shall be deposited in the grape and wine development fund as created in section ~~175.5~~ 175A.5. However, not more than seventy-five thousand dollars from such tax shall be deposited into the fund.

Sec. 105. Section 423.3, subsection 33, as enacted by 2003 Iowa Acts, 1st Extraordinary Session, chapter 2, section 96, is amended to read as follows:

33. The sales price of mementos and other items relating to Iowa history and historic sites, the general assembly, and the state capitol, sold by the legislative ~~service bureau~~ services agency and its legislative information office on the premises of property under the control of the legislative council, at the state capitol, and on other state property.

Sec. 106. CODE EDITOR DIRECTIVE — ASTM INTERNATIONAL. The Code editor is directed to change references to the American society for testing and materials to references to ASTM international in the following Code and Code supplement sections, and in any other Code sections amended or enacted during the 80th General Assembly, second session, or during prior sessions of the General Assembly, consistent with the reference changes made relating to the same organization in this Act: 159A.2, 214A.1, 214A.2, 359A.18, 452A.2, 455B.173, 455B.474, 455D.19, and 459.307.

Sec. 107. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY. The section of this Act amending 2003 Iowa Acts, chapter 91, section 10, being deemed of immediate importance, takes effect upon enactment and applies retroactively to July 1, 2003.

Approved April 16, 2004

CHAPTER 1087

THEFT — MULTIPLE ACTS AND LOCATIONS

H.F. 2399

AN ACT allowing a modified criminal penalty for certain thefts from different locations within a thirty-day period.

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

Section 1. Section 714.3, unnumbered paragraph 2, Code 2003, is amended to read as follows:

If money or property is stolen from the same person or location by two or more acts, or from different persons by two or more acts which occur in approximately the same location or time period, or from different locations by two or more acts within a thirty-day period, so that the thefts are attributable to a single scheme, plan, or conspiracy, these acts may be considered a single theft and the value may be the total value of all the property stolen.

Approved April 16, 2004

CHAPTER 1088

SCHOOL BOARD ELECTIONS —
NOMINATION PETITIONS — SIGNATURES

H.F. 2419

AN ACT relating to the number of signatures required on nomination petitions for school board elections.

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

Section 1. Section 277.4, unnumbered paragraph 2, Code 2003, is amended to read as follows:

Each candidate shall be nominated by petition. If the candidate is running for a seat in the district which is voted for at-large, the petition must be signed by the greater of at least ten eligible electors~~,~~ or a number of eligible electors equal in number to not less than one percent of the registered voters of the school district, ~~whichever is more~~ which number need not be more than fifty. If the candidate is running for a seat which is voted for only by the voters of a director district, the petition must be signed by the greater of at least ten eligible electors of the director district or a number of eligible electors equal in number to not less than one percent of the registered voters in the director district, ~~whichever is more~~ which number need not be more than fifty. ~~A petition filed under this section shall not be required to have more than one hundred signatures.~~

Approved April 16, 2004

CHAPTER 1089

COMMUNICABLE DISEASES AFFECTING POULTRY
— PATHOGENIC VIRUSES

H.F. 2476

AN ACT regulating transmissible viruses afflicting poultry, making an appropriation, and providing penalties.

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

Section 1. Section 163.2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

For the purpose of this chapter, infectious and contagious diseases shall be deemed to ~~embrace~~ include glanders, farcy, maladie du coit (dourine), anthrax, foot and mouth disease, scabies, hog cholera, swine dysentery, tuberculosis, brucellosis, vesicular exanthema, scrapie, rinderpest, ovine foot rot, avian influenza or Newcastle disease as provided in chapter 165B, or any other communicable disease so designated by the department.

Sec. 2. NEW SECTION. 165B.1 DEFINITIONS.

1. "Concentration point" means a location or facility where poultry originating from the same or different sources are assembled for any purpose. However, a concentration point does not include an animal feeding operation as defined in section 459.102 if the poultry are provided care and feeding for purposes of egg production or slaughter.

2. "Department" means the department of agriculture and land stewardship.

3. "Law enforcement officer" means an Iowa state patrol officer or a regularly employed member of a police force of a city or county, including but not limited to a sheriff's office, who is responsible for the prevention and detection of a crime and the enforcement of the criminal laws of this state.

4. "Manure" means the same as defined in section 459.102.

5. "Pathogenic virus" means any of the following:

a. A recognized serotype of the virus avian paramyxovirus which is classified as a velogenic or mesogenic strain of that virus and which may be transmitted to poultry.

b. A recognized serotype of the virus commonly referred to as avian influenza which may be transmitted to poultry.

6. "Poultry" means domesticated fowl which are chickens, ducks, or turkeys.

7. "Separate and apart" means to hold poultry so that neither the poultry nor organic material originating from the poultry has physical contact with other animals.

8. "Slaughtering establishment" means a slaughtering establishment operated under the provisions of the federal Meat Inspection Act, 21 U.S.C. § 601 et seq., or a slaughtering establishment that has been inspected by the state.

Sec. 3. NEW SECTION. 165B.2 ADMINISTRATION AND ENFORCEMENT.

1. a. The provisions of this chapter, including departmental rules adopted pursuant to this chapter, shall be administered and enforced by the department. The department shall establish, by rule, civil penalties which may be administratively or judicially assessed. The department may impose, assess, and collect the civil penalties. The attorney general or county attorney may bring a judicial action or prosecution necessary to enforce the provisions of this chapter.

b. The department shall retain moneys from civil penalties that it collects under this chapter. The moneys are appropriated to the department for the administration and enforcement of this chapter. Notwithstanding section 8.33, such moneys shall not revert, but shall be retained by the department for the purposes described in this paragraph. The department shall

submit a report to the chairpersons of the joint appropriations subcommittee on agriculture and natural resources by January 5 of each year. The report shall state, at a minimum, the total amount of moneys collected during the past calendar year and describe how these moneys were expended.

2. The provisions of this chapter do not limit the authority of the department, another state agency, or a political subdivision to regulate or bring an enforcement action against a person based on another provision of law, including but not limited to provisions in chapter 163, 717B, or 717D.

Sec. 4. NEW SECTION. 165B.3 DETERMINATION OF INFECTION.

The department may adopt rules if necessary to provide methods and procedures to determine whether poultry are infected with a pathogenic virus, which may include detection and analysis of the disease using techniques approved by the United States department of agriculture.

Sec. 5. NEW SECTION. 165B.4 INFECTED AND EXPOSED POULTRY — CIVIL PENALTY — INJUNCTIVE RELIEF.

1. A person who is the owner or custodian of poultry infected with or exposed to a pathogenic virus shall keep the poultry separate and apart, and shall dispose of infected or exposed poultry in accordance with requirements of the department. The person shall ensure the premises where such poultry are kept are sanitized as required by the department. The person shall dispose of the poultry carcasses, eggs, or manure as provided by the department.

2. A person who violates this section is subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars, as determined by the department. In the case of a continuing violation, each day of the continuing violation is a separate violation. However, a person shall not be subject to a civil penalty totaling more than twenty-five thousand dollars.

3. The department may seek injunctive relief as provided in section 163.62.

Sec. 6. NEW SECTION. 165B.5 RESTRICTED CONCENTRATION POINTS — CIVIL PENALTIES.

1. A person shall not operate a restricted concentration point. A restricted concentration point includes, but is not limited to, all of the following:

a. A concentration point where poultry are sold, bartered, or offered for sale or barter, if the concentration point is part of a market where poultry are sold, bartered, or offered for sale or barter to the general public.

b. A concentration point where poultry are placed together as part of a contest, including but not limited to an event conducted for purposes of producing violent contact between the poultry.

2. Subsection 1 does not apply to any of the following:

a. A slaughtering establishment, public stockyard, livestock auction market, state or federal market, livestock buying station, or a livestock dealer's yard, truck, or facility.

b. A fair conducted pursuant to chapter 173 or 174.

c. An event sanctioned by the department.

d. A 4-H function.

e. An event sponsored or sanctioned by the Iowa turkey marketing council, the Iowa turkey federation, the national turkey federation, the Iowa poultry association, the Iowa egg council, the American egg board, or the American poultry association.

3. a. A person who owns or operates a restricted concentration point is subject to a civil penalty of not less than five thousand dollars for the first violation and not less than twenty-five thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

b. A person who has a legal interest in infected poultry or has custody of infected poultry which are located at a restricted concentration point is subject to a civil penalty of not less than five thousand dollars for the first violation and not less than twenty-five thousand dollars for

each subsequent violation. Each day that a violation continues constitutes a separate violation.

c. A person who transports poultry to or from a restricted concentration point is subject to a civil penalty of not less than one thousand dollars for the first violation and not less than five thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

d. A person who purchases, offers to purchase, barters, or offers to barter for poultry at a restricted concentration point is subject to a civil penalty of not less than one hundred dollars for the first violation and not less than one thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

e. A person who charges admission for entry into a restricted concentration point where a contest occurs or otherwise holds, advertises, or conducts the contest is subject to a civil penalty of not less than one thousand dollars for the first violation and not less than five thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

f. A person who attends or participates in a contest at a restricted concentration point where a contest occurs is subject to a civil penalty of not less than one hundred dollars for the first violation and not less than one thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.[1]

4. This subsection applies to poultry maintained at a restricted concentration point, or poultry transported to or from a restricted concentration point.

a. The department or a law enforcement officer may confiscate poultry before a contested case proceeding or judicial hearing is conducted to determine whether this section has been violated. If the department or a court determines that a violation of this section has occurred, the poultry are conclusively deemed to be infected with a pathogenic virus. The poultry shall be kept separate and apart until destroyed by euthanasia as defined in section 162.2.

b. The department shall provide that real or personal property that is exposed to the poultry shall be sanitized as required to eliminate the source of the pathogenic virus. As part of the sanitation, the department shall provide for the disposal of poultry carcasses, eggs, or manure. Upon inspection, the department shall certify that the sanitization has been performed as required by this paragraph.

c. The department may utilize the procedures provided in section 17A.18A in order to enforce the provisions of this section. The attorney general or county attorney may petition the district court for an expedited hearing.

d. The department shall be reimbursed by the owner of the poultry or property for costs required to carry out this subsection. However, if the enforcement action is brought due to the activity of a law enforcement officer of a political subdivision, the political subdivision shall be reimbursed by the owner of the poultry or property for those costs. The department or political subdivision shall certify the amount to the county auditor of any county in which the owner is a titleholder of real property. The amount shall be placed upon the tax books which shall be a lien upon the real property, and collected with interest and penalties after due, in the same manner as other unpaid property taxes.

Approved April 16, 2004

[1] See chapter 1175, §329 herein

CHAPTER 1090

MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL DISABILITY, AND BRAIN INJURY SERVICES AND SUPPORT

H.F. 2537

AN ACT addressing redesign of the system for services and other support provided for persons with mental illness, mental retardation or other developmental disabilities, or brain injury.

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

DIVISION I
COMMISSION — SINGLE ENTRY POINT PROCESS NAME CHANGES

Section 1. Section 135C.23, subsection 2, unnumbered paragraph 2, Code 2003, is amended to read as follows:

This section does not prohibit the admission of a patient with a history of dangerous or disturbing behavior to an intermediate care facility for persons with mental illness, intermediate care facility for persons with mental retardation, nursing facility, or county care facility when the intermediate care facility for persons with mental illness, intermediate care facility for persons with mental retardation, nursing facility, or county care facility has a program which has received prior approval from the department to properly care for and manage the patient. An intermediate care facility for persons with mental illness, intermediate care facility for persons with mental retardation, nursing facility, or county care facility is required to transfer or discharge a resident with dangerous or disturbing behavior when the intermediate care facility for persons with mental illness, intermediate care facility for persons with mental retardation, nursing facility, or county care facility cannot control the resident's dangerous or disturbing behavior. The department, in coordination with the state mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission created in section 225C.5, shall adopt rules pursuant to chapter 17A for programs to be required in intermediate care facilities for persons with mental illness, intermediate care facilities for persons with mental retardation, nursing facilities, and county care facilities that admit patients or have residents with histories of dangerous or disturbing behavior.

Sec. 2. Section 154D.2, subsection 1, paragraph b, Code 2003, is amended to read as follows:

b. Has at least two years of supervised clinical experience or its equivalent as approved by the board in consultation with the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission created in section 225C.5.

Sec. 3. Section 154D.2, subsection 2, paragraph b, Code 2003, is amended to read as follows:

b. Has at least two years of clinical experience, supervised by a licensee, in assessing mental health needs and problems and in providing appropriate mental health services as approved by the board of behavioral science examiners in consultation with the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission created in section 225C.5.

Sec. 4. Section 225C.2, subsection 2, Code 2003, is amended to read as follows:

2. "Commission" means the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission.

Sec. 5. Section 225C.5, subsection 1, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

A mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission is created as the state policy-making body for the provision of services to persons with mental illness, mental retardation or other developmental disabilities, or brain injury. The commission shall consist of sixteen voting members appointed to three-year staggered terms by the governor and subject to confirmation by the senate. Commission members shall be appointed on the basis of interest and experience in the fields of mental health, mental retardation or other developmental disabilities, and brain injury, in a manner so as to ensure adequate representation from persons with disabilities and individuals knowledgeable concerning disability services. The department shall provide staff support to the commission, and the commission may utilize staff support and other assistance provided to the commission by other persons. The commission shall meet at least four times per year. Members of the commission shall include the following persons who, at the time of appointment to the commission, are active members of the indicated groups:

Sec. 6. Section 225C.7, subsection 3, Code 2003, is amended to read as follows:

3. If a county has not established or is not affiliated with a community mental health center under chapter 230A, the county shall expend a portion of the money received under this appropriation to contract with a community mental health center to provide mental health services to the county's residents. If such a contractual relationship is unworkable or undesirable, the ~~mental health and developmental disabilities~~ commission may waive the expenditure requirement. However, if the commission waives the requirement, the commission shall address the specific concerns of the county and shall attempt to facilitate the provision of mental health services to the county's residents through an affiliation agreement or other means.

Sec. 7. Section 227.4, Code 2003, is amended to read as follows:

227.4 STANDARDS FOR CARE OF PERSONS WITH MENTAL ILLNESS OR ~~MENTAL RETARDATION~~ DEVELOPMENTAL DISABILITIES IN COUNTY CARE FACILITIES.

The administrator, in cooperation with the department of inspections and appeals, shall recommend, and the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission created in section 225C.5 shall adopt standards for the care of and services to persons with mental illness or ~~mental retardation~~ developmental disabilities residing in county care facilities. The standards shall be enforced by the department of inspections and appeals as a part of the licensure inspection conducted pursuant to chapter 135C. The objective of the standards is to ensure that persons with mental illness or ~~mental retardation~~ developmental disabilities who are residents of county care facilities are not only adequately fed, clothed, and housed, but are also offered reasonable opportunities for productive work and recreational activities suited to their physical and mental abilities and offering both a constructive outlet for their energies and, if possible, therapeutic benefit. When recommending standards under this section, the administrator shall designate an advisory committee representing administrators of county care facilities, county mental health and developmental disabilities regional planning councils, and county care facility resident advocate committees to assist in the establishment of standards.

Sec. 8. Section 229.24, subsection 3, unnumbered paragraph 1, Code 2003, is amended to read as follows:

If all or part of the costs associated with hospitalization of an individual under this chapter are chargeable to a county of legal settlement, the clerk of the district court shall provide to the county of legal settlement and to the county in which the hospitalization order is entered, in a form prescribed by the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission, the following information pertaining to the individual which would be confidential under subsection 1:

Sec. 9. Section 230A.2, Code 2003, is amended to read as follows:

230A.2 SERVICES OFFERED.

A community mental health center established or operating as authorized by section 230A.1 may offer to residents of the county or counties it serves any or all of the mental health services defined by the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission in the state mental health plan.

Sec. 10. Section 230A.16, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The administrator of the division of mental health and developmental disabilities of the department of human services shall recommend and the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission shall adopt standards for community mental health centers and comprehensive community mental health programs, with the overall objective of ensuring that each center and each affiliate providing services under contract with a center furnishes high quality mental health services within a framework of accountability to the community it serves. The standards shall be in substantial conformity with those of the psychiatric committee of the joint commission on accreditation of health care organizations and other recognized national standards for evaluation of psychiatric facilities unless in the judgment of the administrator of the division of mental health and developmental disabilities, with approval of the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission, there are sound reasons for departing from the standards. When recommending standards under this section, the administrator of the division shall designate an advisory committee representing boards of directors and professional staff of community mental health centers to assist in the formulation or revision of standards. At least a simple majority of the members of the advisory committee shall be lay representatives of community mental health center boards of directors. At least one member of the advisory committee shall be a member of a county board of supervisors. The standards recommended under this section shall include requirements that each community mental health center established or operating as authorized by section 230A.1 shall:

Sec. 11. Section 230A.17, Code 2003, is amended to read as follows:

230A.17 REVIEW AND EVALUATION.

The administrator of the division of mental health and developmental disabilities of the department of human services may review and evaluate any community mental health center upon the recommendation of the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission, and shall do so upon the written request of the center's board of directors, its chief medical or administrative officer, or the board of supervisors of any county from which the center receives public funds. The cost of the review shall be paid by the division.

Sec. 12. Section 230A.18, Code 2003, is amended to read as follows:

230A.18 REPORT OF REVIEW AND EVALUATION.

Upon completion of a review made pursuant to section 230A.17, the review shall be submitted to the board of directors and chief medical or administrative officer of the center. If the review concludes that the center fails to meet any of the standards established pursuant to section 230A.16, subsection 1, and that the response of the center to this finding is unsatisfactory, these conclusions shall be reported to the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission which may forward the conclusions to the board of directors of the center and request an appropriate response within thirty days. If no response is received within thirty days, or if the response is unsatisfactory, the commission may call this fact to the attention of the board of supervisors of the county or counties served by the center, and in doing so shall indicate what corrective steps have been recommended to the center's board of directors.

Sec. 13. Section 231.44, subsection 2, Code Supplement 2003, is amended to read as follows:

2. The responsibilities of the resident advocate committee are in accordance with the rules adopted by the commission pursuant to chapter 17A. When adopting the rules, the commission shall consider the needs of residents of elder group homes as defined in section 231B.1 and each category of licensed health care facility as defined in section 135C.1, subsection 6, and the services each facility may render. The commission shall coordinate the development of rules with the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission created in section 225C.5 to the extent the rules would apply to a facility primarily serving persons with mental illness, mental retardation~~,~~ or ~~a~~ other developmental disability, or brain injury. The commission shall coordinate the development of appropriate rules with other state agencies.

Sec. 14. Section 249A.4, subsection 15, Code Supplement 2003, is amended to read as follows:

15. Establish appropriate reimbursement rates for community mental health centers that are accredited by the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission. ~~The reimbursement rates shall be phased in over the three-year period beginning July 1, 1998, and ending June 30, 2001.~~

Sec. 15. Section 249A.12, subsection 5, paragraph a, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

The mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission shall recommend to the department the actions necessary to assist in the transition of individuals being served in an intermediate care facility for persons with mental retardation, who are appropriate for the transition, to services funded under a medical assistance waiver for home and community-based services for persons with mental retardation in a manner which maximizes the use of existing public and private facilities. The actions may include but are not limited to submitting any of the following or a combination of any of the following as a request for a revision of the medical assistance waiver for home and community-based services for persons with mental retardation in effect as of June 30, 1996:

Sec. 16. Section 249A.12, subsection 5, paragraph b, Code Supplement 2003, is amended to read as follows:

b. In implementing the provisions of this subsection, the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission shall consult with other states. The waiver revision request or other action necessary to assist in the transition of service provision from intermediate care facilities for persons with mental retardation to alternative programs shall be implemented by the department in a manner that can appropriately meet the needs of individuals at an overall lower cost to counties, the federal government, and the state. In addition, the department shall take into consideration significant federal changes to the medical assistance program in formulating the department's actions under this subsection. The department shall consult with the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission in adopting rules for oversight of facilities converted pursuant to this subsection. A transition approach described in paragraph "a" may be modified as necessary to obtain federal waiver approval.

Sec. 17. Section 249A.31, subsection 1, Code 2003, is amended to read as follows:

1. Providers of individual case management services for persons with mental retardation, a developmental disability, or chronic mental illness in accordance with standards adopted by the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission pursuant to section 225C.6.

Sec. 18. Section 331.424A, subsection 1, Code Supplement 2003, is amended to read as follows:

1. For the purposes of this chapter, unless the context otherwise requires, "services fund" means the county mental health, mental retardation, and developmental disabilities services fund created in subsection 2. The county finance committee created in section 333A.2 shall consult with the ~~mental health and developmental disabilities~~ state commission in adopting rules and prescribing forms for administering the services fund.

Sec. 19. Section 331.438, subsection 1, paragraph c, Code 2003, is amended to read as follows:

c. "Qualified mental health, mental retardation, and developmental disabilities services" means the services specified on forms issued by the county finance committee following consultation with the ~~mental health and developmental disabilities~~ state commission.

Sec. 20. Section 331.438, subsection 1, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. cc. "State commission" means the mental health, mental retardation, developmental disabilities, and brain injury commission created in section 225C.5.

Sec. 21. Section 331.438, subsection 4, paragraph a, Code 2003, is amended to read as follows:

a. The ~~mental health and developmental disabilities~~ state commission shall make recommendations and take actions for joint state and county planning, implementing, and funding of mental health, mental retardation~~, and~~ or other developmental disabilities, and brain injury services, including but not limited to developing and implementing fiscal and accountability controls, establishing management plans, and ensuring that eligible persons have access to appropriate and cost-effective services.

Sec. 22. Section 331.438, subsection 4, paragraph b, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The ~~mental health and developmental disabilities~~ state commission shall do all of the following:

Sec. 23. Section 331.438, subsection 4, paragraph b, subparagraphs (6) and (9), Code 2003, are amended to read as follows:

(6) Consider provisions and adopt rules for counties to implement a ~~single~~ central point of ~~accountability~~ coordination to plan, budget, and monitor county expenditures for the service system. The provisions shall provide options for counties to implement the ~~single~~ central point of coordination in collaboration with other counties.

(9) Adopt rules for the county ~~single entry~~ central point of coordination and clinical assessment processes required under section 331.440 and other rules necessary for the implementation of county management plans and expenditure reports required for state payment pursuant to section 331.439.

Sec. 24. Section 331.439, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The state payment to eligible counties under this section shall be made as provided in sections 331.438 and 426B.2. A county is eligible for the state payment, as defined in section 331.438, for ~~the~~ a fiscal year ~~beginning July 1, 1996, and for subsequent fiscal years~~ if the director of human services, in consultation with the ~~mental health and developmental disabilities~~ state commission, determines for a specific fiscal year that all of the following conditions are met:

Sec. 25. Section 331.439, subsection 1, paragraph b, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The county developed and implemented a county management plan for the county's mental health, mental retardation, and developmental disabilities services in accordance with the provisions of this paragraph "b". The plan shall comply with the administrative rules adopted for this purpose by the ~~mental health and developmental disabilities~~ state commission and is subject to the approval of the director of human services in consultation with the commission. The plan shall include a description of the county's service management provision for mental health, mental retardation, and developmental disabilities services. For mental retardation and developmental disabilities service management, the plan shall describe the county's development and implementation of a managed system of cost-effective individualized services and shall comply with the provisions of paragraph "d". The goal of this part of the plan shall be to assist the individuals served to be as independent, productive, and integrated into the community as possible. The service management provisions for mental health shall comply with the provisions of paragraph "c". A county is subject to all of the following provisions in regard to the county's management plan and planning process:

Sec. 26. Section 331.439, subsection 1, paragraph b, subparagraph (1), Code 2003, is amended to read as follows:

(1) The county shall have in effect an approved policies and procedures manual for the county's services fund. The county management plan shall be defined in the manual. The manual submitted by the county as part of the county's management plan for the fiscal year beginning July 1, 2000, as approved by the director of human services, shall remain in effect, subject to amendment. An amendment to the manual shall be submitted to the department of human services at least forty-five days prior to the date of implementation. Prior to implementation of any amendment to the manual, the amendment must be approved by the director of human services in consultation with the ~~mental health and developmental disabilities~~ state commission.

Sec. 27. Section 331.439, subsection 1, paragraph c, subparagraph (2), unnumbered paragraph 1, Code 2003, is amended to read as follows:

A managed care system for mental health proposed by a county shall include but is not limited to all of the following elements which shall be specified in administrative rules adopted by the ~~mental health and developmental disabilities~~ state commission:

Sec. 28. Section 331.439, subsection 1, paragraph d, Code 2003, is amended to read as follows:

d. For mental retardation and developmental disabilities services management, the county must either develop and implement a managed system of care which addresses a full array of appropriate services and cost-effective delivery of services or contract with a state-approved managed care contractor or contractors. Any system or contract implemented under this paragraph shall incorporate a ~~single entry~~ central point of coordination and clinical assessment process developed in accordance with the provisions of section 331.440. The elements of the county managed system of care shall be specified in rules developed by the department of human services in consultation with and adopted by the ~~mental health and developmental disabilities~~ state commission.

Sec. 29. Section 331.439, subsection 3, paragraph b, Code 2003, is amended to read as follows:

b. Based upon information contained in county management plans and budgets and proposals made by representatives of counties, the ~~mental health and developmental disabilities~~ state commission 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 state commission shall consider the cost trends indicated by the gross expenditure amount reported in the expenditure reports submitted by counties pursuant to subsection 1, paragraph "a". The governor shall consider the state commission'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. 30. Section 331.440, Code 2003, is amended to read as follows:

331.440 MENTAL HEALTH, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES SERVICES — ~~SINGLE ENTRY~~ CENTRAL POINT OF COORDINATION PROCESS.

1. a. For the purposes of this section, unless the context otherwise requires, "~~single entry~~ "central point of coordination process" means a ~~single entry~~ central point of coordination process established by a county or consortium of counties for the delivery of mental health, mental retardation, and developmental disabilities services which are paid for in whole or in part by county funds. The ~~single entry~~ central point of coordination process may include but is not limited to reviewing a person's eligibility for services, determining the appropriateness of the type, level, and duration of services, and performing periodic review of the person's continuing eligibility and need for services. Any recommendations developed concerning a person's plan of services shall be consistent with the person's unique strengths, circumstances, priorities, concerns, abilities, and capabilities. For those services funded under the medical assistance program, the ~~single entry~~ central point of coordination process shall be used to assure that the person is aware of the appropriate service options available to the person.

b. The ~~single entry~~ central point of coordination process may include a clinical assessment process to identify a person's service needs and to make recommendations regarding the person's plan for services. The clinical assessment process shall utilize qualified mental health professionals and qualified mental retardation professionals.

c. The ~~single entry~~ central point of coordination and clinical assessment process shall include provision for the county's participation in a management information system developed in accordance with rules adopted pursuant to subsection 3.

2. The department of human services shall seek federal approval as necessary for the ~~single entry~~ central point of coordination and clinical assessment processes to be eligible for federal financial participation under the medical assistance program. A county may implement the ~~single entry~~ central point of coordination process as part of a consortium of counties and may implement the process beginning with the fiscal year ending June 30, 1995.

3. An application for services may be made through the ~~single entry~~ central point of coordination process of a person's county of residence. However, if a person who is subject to a ~~single entry~~ central point of coordination process has legal settlement in another county or the costs of services or other support provided to the person are the financial responsibility of the state, an authorization through the ~~single entry~~ central point of coordination process shall be coordinated with the person's county of legal settlement or with the state, as applicable. The county of residence and county of legal settlement of a person subject to a ~~single entry~~ central point of coordination process may mutually agree that the ~~single entry~~ central point of coordination process functions shall be performed by the ~~single entry~~ central point of coordination process of the person's county of legal settlement.

4. The ~~mental health and developmental disabilities~~ state commission shall consider the recommendations of county representatives in adopting rules outlining standards and requirements for implementation of the ~~single entry~~ central point of coordination and clinical assessment processes on the date required by subsection 2. The rules shall permit counties options in implementing the process based upon a county's consumer population and available service delivery system.

Sec. 31. Section 426B.4, Code 2003, is amended to read as follows:

426B.4 RULES.

The mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission shall consult with county representatives and the director of human services in prescribing forms and adopting rules pursuant to chapter 17A to administer this chapter.

Sec. 32. Section 426B.5, subsection 2, paragraph c, Code Supplement 2003, is amended to read as follows:

c. A risk pool board is created. The board shall consist of two county supervisors, two county auditors, a member of the mental health ~~and~~, mental retardation, developmental disabilities, and brain injury commission who is not a member of a county board of supervisors, a member of the county finance committee created in chapter 333A who is not an elected official, a representative of a provider of mental health or developmental disabilities services selected from nominees submitted by the Iowa association of community providers, and two ~~single entry~~ central point of coordination 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.

Sec. 33. SINGLE ENTRY POINT PROCESS AND COMMISSION TERMINOLOGY CHANGES — CODE EDITOR'S DIRECTIVE.

1. Sections 218.99, 222.2, 222.13, 222.13A, 222.28, 222.59, 222.60, 222.61, 222.62, 222.64, 222.73, 225.11, 225.15, 225.17, 225C.2, 225C.14, 225C.16, 227.10, 229.1, 229.1B, 229.11, 229.13, 229.14, 229.14A, 229.42, 230.1, 230A.13, 249A.26, 331.439, and 331.440A, Code 2003, and sections 225C.5, 232.2, and 235.7, Code Supplement 2003, are amended by striking the term "single entry point process" and inserting in lieu thereof the term "central point of coordination process".

2. In addition to the name change for the single entry point process, this division of this Act changes the name of the mental health and developmental disabilities commission to the mental health, mental retardation, developmental disabilities, and brain injury commission. The Code editor shall correct any references to the term "single entry point process" or the term "mental health and developmental disabilities commission" anywhere else in the Iowa Code, in any bills awaiting codification, in this Act, and in any bills enacted by the Eightieth General Assembly, 2004 Regular Session or any extraordinary session.

DIVISION II
LEGAL SETTLEMENT DISPUTE RESOLUTION

Sec. 34. NEW SECTION. 225C.6A MENTAL HEALTH, DEVELOPMENTAL DISABILITY, AND BRAIN INJURY SERVICE SYSTEM REDESIGN IMPLEMENTATION.

1. PURPOSE. It is the intent of the general assembly to implement a redesign of the mental health, developmental disability, and brain injury service system over a period of years in order to transition to a coordinated system for Iowans with mental illness, mental retardation or other developmental disabilities, or brain injury. Because of the significance of the redesign to the persons who may be affected by it and the degree of uncertainty regarding the extent of funding changes necessary for implementation, the department and the commission shall not implement a redesign provision through rulemaking or other means unless specific statutory authority provides for the provision's implementation.

2. INITIAL ACTIVITIES. For the fiscal years beginning July 1, 2004, and July 1, 2005, the commission shall do the following:

a. Identify sources of revenue to support statewide delivery of core disability services to eligible disability populations.

b. Further develop adult disability services system redesign proposals and propose a redesign of the children's disability service system. The redesign of the children's system shall address issues associated with an individual's transition between the two systems.

c. Plan, collect, and analyze data as necessary to issue cost estimates for serving additional populations and providing core disability services statewide.

d. With consumer input, identify and propose standardized functional assessment tools and processes for use in the eligibility determination process when eligibility for a particular disability population group is implemented. The tools and processes shall be integrated with those utilized for the medical assistance program under chapter 249A. For the initial diagnostic criteria, the commission shall consider identifying a qualifying functional assessment score and any of the following diagnoses: mental illness, chronic mental illness, mental retardation, developmental disability, or brain injury.

e. The commission shall adopt a multiyear plan for developing and providing the data, cost projections, revenue requirements, and other information needed to support decision making concerning redesign provisions. The information shall be provided as part of the commission's regular reports to the governor and general assembly or more often as determined to be appropriate by the commission.

f. Propose case rates for disability services.

g. Work with county representatives and other qualified persons to develop an implementation plan for replacing the county of legal settlement approach to determining service system funding responsibilities with an approach based upon residency. The plan shall address a statewide standard for proof of residency, outline a plan for establishing a data system for identifying residency of eligible individuals, address residency issues for individuals who began residing in a county due to a court order or criminal sentence or to obtain services in that county, recommend an approach for contesting a residency determination, and address other implementation issues.

Sec. 35. OTHER REDESIGN ACTIVITIES.

1. The department of human services and the mental health, developmental disabilities, and brain injury commission shall report on the actions taken and proposals made to implement the provisions of section 225C.6A, as enacted by this Act, in the commission's annual report to the governor and general assembly submitted pursuant to section 225C.6 for consideration by the general assemblies meeting in 2005, 2006, and 2007. In addition, the department and commission shall submit a progress report to the governor and general assembly in July 2004, July 2005, and July 2006, on the implementation of the provisions. Any proposal shall include data needed to address the proposal, including the potential impact on counties bordering other states.

2. Subject to funding availability, the department and commission shall address all of the following state-level adult disability service system redesign activities during the fiscal year beginning July 1, 2004, and ending June 30, 2005:

a. Propose a new disability services information technology system.

b. Improve state administration of disability services by consolidating disability services into a new departmental division or other appropriate strategy.

c. Improve the interfaces between departmental administrative units and other state agencies directly or indirectly involved with persons with mental illness, developmental disabilities, or brain injury.

d. Solicit and incorporate input regarding the service system and service system funding from persons receiving services, service providers, and county central point of coordination process administrators.

e. Provide information to the public regarding the service system.

DIVISION III
LEGAL SETTLEMENT DISPUTE RESOLUTION

Sec. 36. NEW SECTION. 225C.8 LEGAL SETTLEMENT DISPUTE RESOLUTION.

1. a. The dispute resolution process implemented in accordance with this section applies to legal settlement disputes and is not applicable to disputes involving persons committed to a state facility pursuant to chapter 812 or rule of criminal procedure 2.22, Iowa court rules, or to disputes of service authorization decisions made through the county single entry point process.

b. If a county receives a billing for services provided to a person under chapter 222, 230, or 249A, or objects to a legal settlement determination certified by the department or another county and asserts either that the person has legal settlement in another county or that the person has no legal settlement or the legal settlement is unknown so that the person is deemed to be a state case, the person's legal settlement status shall be determined as provided in this section. The county shall notify the department of the county's assertion within one hundred twenty days of receiving the billing. If the county asserts that the person has legal settlement in another county, that county shall be notified at the same time as the department. If the department disputes a legal settlement determination certification made by a county, the department shall notify the affected counties of the department's assertion.

2. The department or the county that received the notification, as applicable, shall respond to the party that provided the notification within forty-five days of receiving the notification. If the parties cannot agree to a settlement as to the person's legal settlement status within ninety days of the date of notification, on motion of any of the parties, the matter shall be referred to the department of inspections and appeals for a contested case hearing under chapter 17A before an administrative law judge assigned in accordance with section 10A.801 to determine the person's legal settlement status.

3. a. The administrative law judge's determination of the person's legal settlement status is a final agency action, notwithstanding contrary provisions of section 17A.15. The party that does not prevail in the determination or subsequent judicial review is liable for costs associated with the proceeding, including reimbursement of the department of inspections and appeals' actual costs associated with the administrative proceeding. Judicial review of the determination may be sought in accordance with section 17A.19.

b. If following the determination of a person's legal settlement status in accordance with this section, additional evidence becomes available that merits a change in that determination, the parties affected may change the determination by mutual agreement. Otherwise, a party may move that the matter be reconsidered.

4. Unless a petition is filed for judicial review, the administrative law judge's determination of the person's legal settlement status shall result in one of the following:

a. If a county is determined to be the person's county of legal settlement, the county shall pay the amounts due and shall reimburse any other amounts paid for services provided under chapter 222, 230, or 249A by the county or the department on the person's behalf prior to issuance of the decision. The payment or reimbursement shall be remitted within forty-five days of the date the decision was issued. After the forty-five-day period, a penalty may be applied as authorized under section 222.68, 222.75, or 230.22.

b. If it is determined that the person has no legal settlement or the legal settlement is unknown so that the person is deemed to be a state case, the department shall credit the county for any payment made on behalf of the person by the county prior to issuance of the decision. The credit shall be applied by the department on a county billing no later than the end of the quarter immediately following the date of the decision's issuance.

Sec. 37. Section 222.61, unnumbered paragraph 1, Code 2003, is amended to read as follows:

When a county receives an application on behalf of any person for admission to a resource center or a special unit or when ~~any~~ a court issues an order committing any person to a

resource center or a special unit, the board of supervisors shall utilize the single entry point process to determine ~~or the court shall determine~~ and ~~enter as a matter of record whether~~ certify that the legal settlement of the person is in one of the following:

Sec. 38. Section 222.62, Code 2003, is amended to read as follows:

222.62 SETTLEMENT IN ANOTHER COUNTY.

~~Whenever~~ When the board of supervisors ~~utilizes a~~ determines through the single entry point process ~~to determine or the court determines~~ that the legal settlement of the person is other than in the county in which the application is received ~~or the court is located, the board or court shall, as soon as determination is made~~, ~~certify such finding~~ the determination shall be certified to the superintendent of the resource center or the special unit where the person is a patient. The certification shall be accompanied by a copy of the evidence supporting the determination. The superintendent shall charge the expenses already incurred and unadjusted, and all future expenses of the patient, to the county ~~so~~ certified ~~until the patient's~~ to be the county of legal settlement ~~shall be otherwise determined as provided by this chapter~~.

Sec. 39. Section 222.63, Code 2003, is amended to read as follows:

222.63 FINDING OF SETTLEMENT — OBJECTION.

~~Said finding of~~ A board of supervisors' certification utilizing the single entry point process that a person's legal settlement is in another county shall ~~also~~ be ~~certified~~ sent by the board of supervisors ~~or the court~~ to the ~~county~~ auditor of the county of legal settlement. The certification shall be accompanied by a copy of the evidence supporting the determination. ~~Such~~ The auditor of the county of legal settlement shall ~~lay such notification before~~ submit the certification to the board of supervisors of the auditor's county ~~whereupon~~ and it shall be conclusively presumed that the patient has a legal settlement in ~~said~~ that county unless ~~the~~ that county ~~shall, within six months, in writing filed with the board of supervisors or the court giving such notice, dispute said legal settlement~~ disputes the determination of legal settlement as provided in section 225C.8.

Sec. 40. Section 222.64, Code 2003, is amended to read as follows:

222.64 FOREIGN STATE OR COUNTRY OR UNKNOWN LEGAL SETTLEMENT.

If the legal settlement of the person is ~~found~~ determined by the board of supervisors through ~~a~~ the single entry point process ~~or the court~~ to be in a foreign state or country or is ~~found~~ determined to be unknown, the board of supervisors ~~or the court~~ shall ~~immediately notify~~ certify the determination to the administrator ~~of the finding and shall furnish the administrator with a copy of the evidence taken on the question of legal settlement~~. The certification shall be accompanied by a copy of the evidence supporting the determination. The care of the person shall be as arranged by the board of supervisors or by an order as the court may enter. Application for admission or order of commitment may be made pending investigation by the administrator.

Sec. 41. Section 222.65, Code 2003, is amended to read as follows:

222.65 INVESTIGATION.

~~The~~ If an application is made for placement of a person in a state resource center or special unit, the administrator shall immediately investigate the legal settlement of the person and proceed as follows:

1. If the administrator ~~finds that the decision of the board of supervisors or the court~~ concurs with a certified determination as to legal settlement of the person ~~is correct~~ so that the person is deemed a state case, the administrator shall cause the person either to be transferred to a resource center or a special unit ~~and there maintained at the expense of the state~~ or to be transferred to the place of foreign settlement.

2. If the administrator ~~finds that the decision of the board of supervisors or the court is not correct~~ disputes a certified determination of legal settlement, the administrator shall order the

person transferred to a state resource center or a special unit ~~and there maintained at the expense of the county of legal settlement in this state~~ until the dispute is resolved.

3. If the administrator disputes a certified determination of legal settlement, the administrator shall utilize the procedure provided in section 225C.8 to resolve the dispute. A determination of the person's legal settlement status made pursuant to section 225C.8 is conclusive.

Sec. 42. Section 222.67, Code 2003, is amended to read as follows:

222.67 CHARGE ON FINDING OF SETTLEMENT.

~~Where~~ If a person has been received into a resource center or a special unit as a patient whose legal settlement is supposedly outside the state or is unknown and the administrator ~~finds~~ determines that the legal settlement of the patient was at the time of admission or commitment in a county of this state, the administrator shall certify the determination and charge all legal costs and expenses pertaining to the admission or commitment and support of the patient to the county of ~~such~~ legal settlement. The certification shall be sent to the county of legal settlement. The certification shall be accompanied by a copy of the evidence supporting the determination. If the person's legal settlement status has been determined in accordance with section 225C.8, the legal costs and expenses shall be charged to the county or as a state case in accordance with that determination. The costs and expenses shall be collected as provided by law in other cases.

Sec. 43. Section 222.70, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

222.70 LEGAL SETTLEMENT DISPUTES.

If a dispute arises between counties or between the department and a county as to the legal settlement of a person admitted or committed to a resource center, a special unit, or a community-based service, the dispute shall be resolved as provided in section 225C.8.

Sec. 44. Section 230.2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

~~The~~ If a person's legal settlement status is disputed, legal settlement shall be determined in accordance with section 225C.8. Otherwise, the district court ~~shall~~ may, when ~~a~~ the person is ordered placed in a hospital for psychiatric examination and appropriate treatment, or as soon thereafter as ~~it~~ the court obtains the proper information, determine and enter of record whether the legal settlement of ~~said~~ the person is one of the following:

Sec. 45. Section 230.3, Code 2003, is amended to read as follows:

230.3 CERTIFICATION OF SETTLEMENT.

If ~~such~~ a person's legal settlement is ~~found~~ determined through the county's single entry point process to be in another county of this state, ~~the court shall, as soon as said determination is made,~~ the county making the determination shall certify ~~such finding~~ the determination to the superintendent of the hospital to which ~~said patient~~ the person is admitted or committed~~, and thereupon said~~. The certification shall be accompanied by a copy of the evidence supporting the determination. Upon receiving the certification, the superintendent shall charge the expenses already incurred and unadjusted, and all future expenses of ~~such patient,~~ the person to the county ~~so certified until said~~ determined to be the county of legal settlement ~~shall be otherwise determined as hereinafter provided~~.

Sec. 46. Section 230.4, Code 2003, is amended to read as follows:

230.4 CERTIFICATION TO DEBTOR COUNTY.

~~Said finding~~ A determination of a person's legal settlement made in accordance with section 230.2 or 230.3 shall ~~also~~ be ~~certified~~ sent by the court or the county to the county auditor of the county of ~~such~~ legal settlement. The certification shall be accompanied by a copy of the evidence supporting the determination. ~~Such~~ The auditor shall ~~lay such notification before~~ provide the certification to the board of supervisors of the auditor's county, and it shall be

conclusively presumed that ~~such~~ the person has a legal settlement in ~~said~~ the notified county unless ~~said~~ that county ~~shall within sixty days give notice in writing to the court that the county~~ disputes the finding of legal settlement as provided in section 225C.8.

Sec. 47. Section 230.5, Code 2003, is amended to read as follows:

230.5 NONRESIDENTS.

If ~~such~~ a person's legal settlement is ~~found by the court~~ determined in accordance with section 230.2 or 230.3 to be in ~~some~~ a foreign state or country, or is unknown, the court or the county shall immediately ~~notify the~~ certify the determination to the administrator ~~of the finding and furnish the administrator with a copy of the evidence taken on the question of legal settlement, and shall in its.~~ The certification shall be accompanied by a copy of the evidence supporting the determination. A court order issued pursuant to section 229.13 shall direct that the patient be hospitalized at the appropriate state hospital for persons with mental illness.

Sec. 48. Section 230.6, Code 2003, is amended to read as follows:

230.6 ~~DETERMINATION~~ INVESTIGATION BY ADMINISTRATOR.

The administrator shall immediately investigate the legal settlement of ~~said~~ a patient and proceed as follows:

1. If the administrator ~~finds that the decision of the court as to~~ concurs with a certified determination of legal settlement ~~is correct~~ concerning the patient, the administrator shall cause ~~said~~ the patient either to be transferred to a state hospital for persons with mental illness at the expense of the state, or to be transferred, with approval of the court as required by chapter 229 to the place of foreign settlement.

2. If the administrator ~~finds that the decision of the court is not correct~~ disputes a certified legal settlement determination, the administrator shall order ~~said~~ the patient to be maintained at a state hospital for persons with mental illness at the expense of the state~~, and shall at once inform the court of such finding and request that the court's order be modified accordingly~~ until the dispute is resolved.

3. If the administrator disputes a legal settlement determination, the administrator shall utilize the procedure provided in section 225C.8 to resolve the dispute. A determination of the person's legal settlement status made pursuant to section 225C.8 is conclusive.

Sec. 49. Section 230.9, Code 2003, is amended to read as follows:

230.9 SUBSEQUENT DISCOVERY OF RESIDENCE.

If, after a ~~patient~~ person has been received ~~into~~ by a state hospital for persons with mental illness as a state case patient whose legal settlement is supposed to be outside this state or unknown, the administrator ~~finds~~ determines that the legal settlement of ~~said patient~~ the person was, at the time of admission or commitment, in a county of this state, ~~said~~ the administrator shall certify the determination and charge all legal costs and expenses pertaining to the admission or commitment and support of ~~said patient~~ the person to the county of ~~such~~ legal settlement~~, and the same~~. The certification shall be sent to the county of legal settlement. The certification shall be accompanied by a copy of the evidence supporting the determination. The costs and expenses shall be collected as provided by law in other cases. If the person's legal settlement status has been determined in accordance with section 225C.8, the legal costs and expenses shall be charged to the county or as a state case in accordance with that determination.

Sec. 50. Section 230.12, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

230.12 LEGAL SETTLEMENT DISPUTES.

If a dispute arises between different counties or between the administrator and a county as to the legal settlement of a person admitted or committed to a state hospital for persons with mental illness, the dispute shall be resolved as provided in section 225C.8.

Sec. 51. Section 232.141, subsection 8, Code 2003, is amended to read as follows:

8. This subsection applies only to placements in a juvenile shelter care home which is publicly owned, operated as a county or multicounty shelter care home, organized under a chapter 28E agreement, or operated by a private juvenile shelter care home. If the actual and allowable costs of a child's shelter care placement exceed the amount the department is authorized to pay in accordance with law and administrative rule, the unpaid costs may be recovered from the child's county of legal settlement. However, the maximum amount of the unpaid costs which may be recovered under this subsection is limited to the difference between the amount the department is authorized to pay and the statewide average of the actual and allowable rates in effect in May of the preceding fiscal year for reimbursement of juvenile shelter care homes. In no case shall the home be reimbursed for more than the home's actual and allowable costs. The unpaid costs are payable pursuant to filing of verified claims against the county of legal settlement. A detailed statement of the facts upon which a claim is based shall accompany the claim. Any dispute between counties arising from filings of claims pursuant to this subsection shall be settled in the manner provided to determine legal settlement in section ~~230.12~~ 225C.8.

Sec. 52. Section 249A.26, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 5. If a dispute arises between different counties or between the department and a county as to the legal settlement of a person who receives medical assistance for which the nonfederal share is payable in whole or in part by a county of legal settlement, and cannot be resolved by the parties, the dispute shall be resolved as provided in section 225C.8.

Sec. 53. Section 252.23, Code 2003, is amended to read as follows:

252.23 TRIAL.

If the alleged settlement is disputed, then, within thirty days after notice as provided in section 252.22, a copy of the notices sent and received shall be filed in the office of the clerk of the district court of the county against which claim is made, and a cause docketed without other pleadings, and tried as an ordinary action, in which the county granting the assistance shall be plaintiff, and the other defendant, and the burden of proof shall be upon the county granting the assistance. However, a legal settlement dispute initiated under chapter 222, 230, or 249A shall be resolved as provided in section 225C.8.

Sec. 54. APPLICABILITY.

1. The timeframes specified in section 225C.8, as enacted by this division of this Act, are applicable to legal settlement disputes involving billings for services provided on or after July 1, 2004.

2. For legal settlement disputes involving billings for services provided prior to July 1, 2004, unless the county disputed the billing prior to July 1, 2004, the person's legal settlement shall be deemed to be in the county that was billed for services provided to the person. However, if a county disputed the billing for a service provided prior to July 1, 2004, and the matter cannot be resolved with the department of human services or with the other county, in lieu of the forty-five-day period specified in section 225C.8, subsection 2, a party may move for the matter to be resolved in the manner provided in section 225C.8, at any time prior to January 1, 2005. If a party has not made such a motion, effective January 1, 2005, the matter shall be closed and the person's legal settlement shall be in the county that was billed for services provided to the person.

Sec. 55. Sections 222.71, 222.72, 230.13, and 230.14, Code 2003, are repealed.

Approved April 19, 2004

CHAPTER 1091

REGULATION OF GOVERNMENT ETHICS AND LOBBYING

S.F. 2179

AN ACT relating to ethics laws and the Iowa ethics and campaign disclosure board.

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

Section 1. Section 13.2, Code 2003, is amended by adding the following new unnumbered paragraph after subsection 14:

NEW UNNUMBERED PARAGRAPH. Executing the duties of this section shall not be deemed a violation of section 68B.6.

Sec. 2. Section 13B.4, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 9. Executing the duties of this section shall not be deemed a violation of section 68B.6.

Sec. 3. Section 22.7, subsection 29, Code Supplement 2003, is amended to read as follows:

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

Sec. 4. Section 68B.2, subsection 23, Code Supplement 2003, is amended to read as follows:

23. "Regulatory agency" means the department of agriculture and land stewardship, department of workforce development, department of commerce, Iowa department of public health, department of public safety, department of education, state board of regents, department of human services, department of revenue, department of inspections and appeals, department of administrative services, public employment relations board, state department of transportation, civil rights commission, department of public defense, Iowa ethics and campaign disclosure board, and department of natural resources.

Sec. 5. Section 68B.4, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

The ~~department of administrative services~~ board shall adopt rules specifying the method by which employees may obtain agency consent under this section. Each regulatory agency shall adopt rules specifying the method by which officials may obtain agency consent under this section. A regulatory agency granting consent under this section shall file a copy of the consent with the board within twenty days of the consent being granted.

Sec. 6. Section 68B.4B, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A permanent full-time member of the office of the governor shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations which employ persons who are registered lobbyists before the general assembly or the executive branch, except when the member of the office of the governor has met all of the following conditions:

Sec. 7. Section 68B.4B, subsection 1, Code 2003, is amended to read as follows:

1. The consent of the person or persons responsible for hiring or approving the hiring of the member of the office of the governor is obtained. A copy of the consent shall be filed with the board within twenty days of the consent being granted.

Sec. 8. Section 68B.6, subsection 1, Code 2003, is amended to read as follows:

1. ~~All statewide elected officials, the executive or administrative head or heads of an agency of state government, the deputy executive or administrative head or heads of an agency of state government, the heads of the major subunits of departments or independent state agencies whose positions involve a substantial exercise of administrative discretion or the expenditure of public funds as defined under rules of the board, in consultation with the department or agency, under chapter 17A, state employees, or~~ Officials, except for members of boards or commissions as defined under section 7E.4, state employees, and legislative employees shall not receive, directly or indirectly, or enter into any express or implied agreement for, any compensation, in whatever form, for the appearance or rendition of services by that person or another against the interest of the state in relation to any case, proceeding, application, or other matter before any state agency, any court of the state of Iowa, any federal court, or any federal bureau, agency, commission or department.

Sec. 9. NEW SECTION. 68B.31A INVESTIGATION BY INDEPENDENT SPECIAL COUNSEL — PROBABLE CAUSE.

The purpose of an investigation by the independent special counsel is to determine whether there is probable cause to proceed with an adjudicatory hearing on the matter. In conducting investigations and holding hearings, the independent special counsel may require by subpoena the attendance and testimony of witnesses and may subpoena books, papers, records, and any other real evidence relating to the matter before the independent special counsel. The independent special counsel shall have the additional authority provided in section 17A.13. If the independent special counsel determines at any stage in the proceedings that take place prior to hearing that the complaint is without merit, the independent special counsel shall report that determination to the appropriate ethics committee and the complaint shall be dismissed and the complainant and the party charged shall be notified. If, after investigation, the independent special counsel determines evidence exists which, if proven, would support a finding of a violation of this chapter, a finding of probable cause shall be made and reported to the ethics committee, and a hearing shall be ordered by the ethics committee as provided in section 68B.31. Independent special counsel investigations are not meetings of a governmental body within the meaning of chapter 21, and records and information obtained by independent special counsel during investigations are confidential until disclosed to a legislative ethics committee under section 68B.31.

Sec. 10. Section 68B.32A, subsection 11, Code Supplement 2003, is amended to read as follows:

11. Establish a procedure for requesting and issuing ~~formal and informal~~ board advisory opinions to ~~local officials and employees and to~~ persons subject to the authority of the board under this chapter or chapter 68A. Local officials and local employees may also seek an advisory opinion concerning the application of the applicable provisions of this chapter. Advice contained in ~~formal~~ board advisory opinions shall, if followed, constitute a defense to a complaint filed with the board alleging a violation of this chapter, chapter 68A, or rules of the board that is based on the same facts and circumstances.

Sec. 11. Section 68B.35, subsection 2, paragraph e, Code Supplement 2003, is amended to read as follows:

e. Members of the banking board, the ethics and campaign disclosure board, the credit union review board, the economic development board, the employment appeal board, the environmental protection commission, the health facilities council, the Iowa finance authority, the Iowa public employees' retirement system investment board, the board of the Iowa lottery authority, the natural resource commission, the board of parole, the petroleum underground storage tank fund board, the public employment relations board, the state racing and gaming commission, the state board of regents, the tax review board, the transportation commission,

the office of consumer advocate, the utilities board, the Iowa telecommunications and technology commission, and any full-time members of other boards and commissions as defined under section 7E.4 who receive an annual salary for their service on the board or commission. The Iowa ethics and campaign disclosure board shall conduct an annual review to determine if members of any other board, commission, or authority should file a statement and shall require the filing of a statement pursuant to rules adopted pursuant to chapter 17A.

Sec. 12. Section 68B.35A, Code 2003, is amended to read as follows:

68B.35A PERSONAL FINANCIAL DISCLOSURE STATEMENTS OF STATE OFFICIALS AND EMPLOYEES — ~~PUBLIC~~ INTERNET ACCESS.

Personal financial disclosure statements filed with ~~the board and~~ the chief clerk of the house~~,~~ or the secretary of the senate~~, or other appropriate person or body~~ shall be recorded on the legislative internet website or copies of the personal financial disclosure statements shall be forwarded to the secretary of state for the recording of the information ~~through electronic means~~ on an internet website. ~~The board and the general assembly shall execute agreements with the secretary of state which provide for public access to and copying of the information, and include a site in the board offices for public viewing and copying of information, contained in personal financial disclosure statements filed with the board and the chief clerk of the house, secretary of the senate, or other appropriate person or body.~~ The board shall record personal financial disclosure statements filed with the board on an internet website.

Sec. 13. Section 68B.38, Code Supplement 2003, is amended to read as follows:

68B.38 LOBBYIST'S CLIENT REPORTING.

1. ~~a.~~ On or before July ~~1~~ 31 of each year, a lobbyist's client shall file with the general assembly or board a report that contains information on all salaries, fees, ~~and~~ retainers, and reimbursement of expenses paid or anticipated to be paid by the lobbyist's client to the lobbyist for lobbying purposes during the preceding twelve calendar months, concluding on June 30 of each year.

~~b.~~ 2. Reports by a lobbyist's clients shall be filed with the same entity with which the lobbyist filed the lobbyist's registration.

~~2. a. The report shall include a cumulative total of all salaries, fees, retainers, and reimbursements of expenses paid to the lobbyist for lobbying activities during the preceding calendar year.~~

~~b.~~ 3. The secretary of the senate, chief clerk of the house, and the board shall develop forms to implement this section.

Sec. 14. Section 68B.34, Code 2003, is repealed.

Approved April 20, 2004

CHAPTER 1092

RECORDS AND FEES ADMINISTERED BY COUNTY TREASURER

S.F. 2289

AN ACT relating to various duties of the county treasurer and to certain fees collected by the county treasurer.

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

Section 1. NEW SECTION. 321.23A AFFIDAVIT OF CORRECTION.

When information is printed incorrectly on a certificate of title, application for certificate of title, damage disclosure statement, or other document required for a title transfer or when these documents contain an alteration or erasure, the county treasurer may accept a notarized affidavit of correction. This subsection does not apply to an odometer certification statement. The department shall consult with a representative of the Iowa state county treasurer's association and shall promulgate rules and adopt a standard affidavit form or forms to administer this section.

Sec. 2. Section 321.47, unnumbered paragraph 1, Code 2003, is amended to read as follows:

If ownership of a vehicle is transferred by operation of law upon inheritance, devise or bequest, dissolution decree, order in bankruptcy, insolvency, replevin, foreclosure or execution sale, abandoned vehicle sale, or when the engine of a motor vehicle is replaced by another engine, or a vehicle is sold or transferred to satisfy an artisan's lien as provided in chapter 577, a landlord's lien as provided in chapter 570, a storage lien as provided in chapter 579, a judgment in an action for abandonment of a manufactured or mobile home as provided in chapter 555B, upon presentation of an affidavit relating to the disposition of a valueless mobile, modular, or manufactured home as provided in chapter 555C, or repossession is had upon default in performance of the terms of a security agreement, the county treasurer in the transferee's county of residence, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof to the county treasurer of ownership and right of possession to the vehicle and upon payment of a fee of ten dollars and the presentation of an application for registration and certificate of title, may issue to the applicant a registration card for the vehicle and a certificate of title to the vehicle. A person entitled to ownership of a vehicle under a decree of dissolution shall surrender a reproduction of a certified copy of the dissolution and upon fulfilling the other requirements of this chapter is entitled to a certificate of title and registration receipt issued in the person's name.

Sec. 3. Section 321.50, subsection 1, Code Supplement 2003, is amended to read as follows:

1. A security interest in a vehicle subject to registration under the laws of this state or a mobile home or manufactured home, except trailers whose empty weight is two thousand pounds or less, and except new or used vehicles held by a dealer or manufacturer as inventory for sale, is perfected by the delivery to the county treasurer of the county where the certificate of title was issued or, in the case of a new certificate, to the county treasurer where the certificate will be issued, of an application for certificate of title which lists the security interest, or an application for notation of security interest signed by the owner, or by one owner of a vehicle owned jointly by more than one person, or a certificate of title from another jurisdiction which shows the security interest, and a fee of ~~five~~ ten dollars for each security interest shown. Up to three security interests may be perfected against a vehicle and shown on an Iowa certificate of title. If the owner or secured party is in possession of the certificate of title, it must also be delivered at this time in order to perfect the security interest. If a vehicle is subject to a security interest when brought into this state, the validity of the security interest and the date of perfection is

determined by section 554.9303. Delivery as provided in this subsection is an indication of a security interest on a certificate of title for purposes of chapter 554.

Sec. 4. Section 321.134, subsection 1, Code 2003, is amended to read as follows:

1. On the first day of the second month following the beginning of each registration year a penalty of five percent of the annual registration fee shall be added to the registration fees not paid by that date and an additional penalty of five percent shall be added the first day of each succeeding month, until the fee is paid. A penalty shall not be less than five dollars. If the owner of a vehicle surrenders the registration plates for a vehicle prior to the plates becoming delinquent, to the county treasurer of the county where the vehicle is registered, or to the department if the vehicle is registered under chapter 326, the owner may register the vehicle any time thereafter upon payment of the registration fee for the registration year without penalty. The penalty on vehicles registered under chapter 326 shall accrue February 1 of each year. To avoid a penalty or an additional penalty in the case of a delinquent registration, if the last calendar day of a month falls on Saturday, Sunday, or a holiday, the payment deadline is extended to include the first business day of the following month. For payments made through a county treasurer's authorized website only, if the last day of the month falls on a Saturday, Sunday, or a holiday, the electronic payment must be initiated by midnight on the first business day of the next month. ~~However, an~~ All other electronic ~~payment~~ payments must be initiated by midnight on the last day of the month preceding the delinquent date.

Sec. 5. Section 331.552, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 35. Destroy special assessment records required by section 445.11 within the county system after ten years have elapsed from the end of the fiscal year in which the special assessment was paid in full. The county treasurer shall also destroy the resolution of necessity, plat, and schedule of assessments required by section 384.51 after ten years have elapsed from the end of the fiscal year in which the entire schedule was paid in full.

Sec. 6. Section 331.553, subsection 4, Code Supplement 2003, is amended to read as follows:

4. Charge five dollars, as an administrative expense, for every rate, charge, rental, or special assessment certified as a lien to the treasurer for collection. This amount shall be added to the amount of the lien, collected at the time of payment from the payor, and credited to the county general fund. If the amount of the lien is paid in annual installments, an administrative expense charge shall be added to each annual installment.

Sec. 7. Section 445.37, unnumbered paragraph 4, Code 2003, is amended to read as follows:

To avoid interest on current or delinquent taxes, ~~an~~ for payments made through a county treasurer's authorized website only, if the last day of the month falls on a Saturday, Sunday, or a holiday, the electronic payment must be initiated by midnight on the first business day of the next month. All other electronic ~~payment~~ payments must be initiated by midnight on the last day of the month preceding the delinquent date.

Sec. 8. Section 446.16, subsection 2, Code 2003, is amended to read as follows:

2. The treasurer may establish and collect a reasonable registration fee from each ~~purchaser~~ registered bidder at the tax sale. The fee shall not be assessed against a county or municipality ~~as a purchaser~~. The total of the fees collected shall not exceed the total costs of the tax sale. Registration fees collected shall be deposited in the general fund of the county.

Sec. 9. Section 555C.3, Code 2003, is amended to read as follows:

555C.3 NEW TITLE — THIRD PARTY.

If a new title to a valueless home is to be issued to a third party, the county treasurer shall issue a new title, upon receipt of the affidavit required in section 555C.2~~, a new title upon~~ and

payment of a fee ~~equal to the fee specified in section 321.42 for replacement certificates of title for vehicles~~ pursuant to section 321.47. Any tax lien levied pursuant to chapter 435 is canceled and the ownership interest of the previous owner or occupant of the valueless home is terminated as of the date of issuance of the new title. The new title owner shall take the title free of all rights and interests even though the manufactured home community or mobile home park owner fails to comply with the requirements of this chapter or any judicial proceedings, if the new title owner acts in good faith.

Approved April 20, 2004

CHAPTER 1093

CIVIL ACTIONS — APPEAL BONDS

S.F. 2306

AN ACT relating to civil action appeal bonds and including monetary limits, and including an effective and applicability date provision.

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

Section 1. Section 625A.9, subsection 2, Code Supplement 2003, is amended to read as follows:[1]

2. a. ~~If~~ Except as provided in paragraph "b", if the judgment or order appealed from is for money, such bond shall not exceed one hundred ten percent of the amount of the money judgment.

The court may set a bond in an amount in excess of one hundred ten percent of the amount of the money judgment upon making specific findings justifying such an amount, and in doing so, shall consider, but shall not be limited to consideration of, the following criteria:

(1) The availability and cost of the bond or other form of adequate security.

(2) The assets of the judgment debtor and of the judgment debtor's insurer or indemnitor, if any.

(3) The potential adverse effects of the bond on the judgment debtor, including, but not limited to, the potential adverse effects on the judgment debtor's employees, financial stability, and business operations.

(4) The potential adverse effects of the bond on the judgment creditor and third parties, including public entities.

(5) In a class action suit, the adequacy of the bond to compensate all members of the class.

b. Notwithstanding paragraph "a", in no case shall a bond exceed one hundred million dollars, regardless of the value of the money judgment. This limitation shall not apply in cases where the court finds that the defendant intentionally dissipated the defendant's assets outside the ordinary course of business for the purpose of evading payment of the judgment.

Sec. 2. EFFECTIVE AND APPLICABILITY DATES. This Act, being deemed of immediate importance, takes effect upon enactment and applies to cases pending and filed on or after the effective date of this Act.[2]

Approved April 20, 2004

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[1] See 2004 Iowa Acts, First Extraordinary Session, chapter 1001, §7, 8 herein

[2] See 2004 Iowa Acts, First Extraordinary Session, chapter 1001, §7, 8 herein

CHAPTER 1094

PETROLEUM STORAGE TANKS —
CLOSURES AND UPGRADES — REIMBURSEMENT

H.F. 2401

AN ACT relating to the comprehensive petroleum underground storage tank fund and providing an effective date.

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

Section 1. Section 455G.2, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 0A. "Aboveground petroleum storage tank" means the same as defined in section 101.21.

NEW SUBSECTION. 0B. "Aboveground petroleum storage tank site" means the same as "tank site" as defined in section 101.21, subsection 8.

Sec. 2. Section 455G.3, subsection 3, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. To establish an aboveground petroleum storage tank fund as provided in section 455G.23.

Sec. 3. Section 455G.9, subsection 1, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. l. Costs for the permanent closure of an underground storage tank system that was in place on the date an eligible claim was submitted under paragraph "a". Reimbursement is limited to costs approved by the board prior to the closure activities and the closure activities must be completed not later than December 31, 2005.

Sec. 4. NEW SECTION. 455G.23 ABOVEGROUND PETROLEUM STORAGE TANK FUND.

1. An aboveground petroleum storage tank fund is created as a separate fund in the state treasury under the control of the board. The board shall administer the aboveground petroleum storage tank fund. Notwithstanding section 8.33, moneys remaining in the aboveground petroleum storage tank fund at the end of each fiscal year shall not revert to the general fund but shall remain in the aboveground petroleum storage tank fund. The aboveground petroleum storage tank fund shall include, notwithstanding section 12C.7, interest earned by the aboveground petroleum storage tank fund or other income specifically allocated to the aboveground petroleum storage tank fund.

2. The board may reimburse the owner of an aboveground petroleum storage tank site up to twenty-five thousand dollars per site, but not more than a total of one hundred thousand dollars per owner, for the upgrade or permanent closure of the aboveground petroleum storage tank site provided all of the following criteria are met:

a. By January 1, 2004, the aboveground petroleum storage tank site was registered with the state fire marshal pursuant to section 101.22.

b. The aboveground petroleum storage tank contains petroleum as defined in section 455B.471.

c. Not later than February 18, 2005, the owner shall submit an application for reimbursement, on a form provided by the board.

d. Upgrade expenses must be incurred after January 1, 2004, and not later than February 18, 2005. Upgrade activities are limited to the installation or improvement of equipment or systems required to comply with 40 C.F.R. § 112, specifically:

(1) Secondary containment.
(2) Corrosion protection.
(3) Loss prevention.
(4) Security.
(5) Drainage.
(6) Removal of noncompliant tanks.

e. Permanent closure activities, including tank system removal, decommission, and disposal, must occur after January 1, 2004, and not later than February 18, 2005, unless the owner is a party to an agreement entered into pursuant to subsection 3 and the tanks meet one of the following criteria:

(1) All tanks are empty by February 18, 2005.

(2) All tanks containing petroleum on or after February 18, 2005, meet the requirements of 40 C.F.R. § 112 et seq. and any applicable provisions of chapter 101 and the administrative rules adopted pursuant to chapter 101.

3. The board, or a contractor approved under subsection 6, may enter into contracts with qualified businesses to provide permanent closure services at eligible aboveground petroleum storage tank sites. The board or a contractor may limit reimbursement to those activities approved under the terms of the contracts. The board or a contractor may allow permanent closure activities to occur and be reimbursed after February 18, 2005, at those tank sites where the owner timely applied for reimbursement and agreed to allow the board or a contractor to complete the permanent closure at a time determined to be convenient to the board. All activities conducted under this subsection must be completed by December 31, 2006.

4. The board may enter into an agreement authorized under chapter 28E with the state fire marshal for the development and maintenance of a database to track registration, technical information, and other information determined necessary to evaluate the operation and safety of aboveground petroleum storage tank sites in Iowa.

5. The board may limit reimbursement to those activities that receive prior budget approval from the board.

6. The board may enter into a contract with a qualified business to provide for administration of this section.

7. This section is repealed December 31, 2006.

Sec. 5. Sections 1, 2, and 3 of this Act are repealed December 31, 2006.

Sec. 6. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 20, 2004

CHAPTER 1095

REGULATION OF SWINE AND FEEDER PIG DEALERS

H.F. 2475

AN ACT relating to persons doing business as swine dealers and persons engaged in the business of buying or selling feeder pigs and providing an effective date.

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

Section 1. Section 163.61, subsections 2 and 3, Code 2003, are amended to read as follows:

2. ~~a.~~ Except as provided in ~~paragraph "b"~~ subsection 3, a person violating a provision of this chapter, or a rule adopted pursuant to this chapter, shall be subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars. In the case of a continuing violation, each day of the continuing violation is a separate violation. However, a person shall not be subject to a civil penalty totaling more than twenty-five thousand dollars.

~~b.~~ 3. Notwithstanding the provisions of ~~paragraph "a"~~ subsection 2, ~~a~~ all of the following apply:

a. A person who falsifies a health certificate, veterinarian inspection certificate, or certificate of inspection shall be subject to a civil penalty of not more than five thousand dollars for each reference to an animal falsified on the certificate. However, a person who falsifies a certificate of inspection issued pursuant to chapter 166D shall be subject to a civil penalty as provided in this section or section 166D.16, but not both. A person shall not be subject to a civil penalty totaling more than twenty-five thousand dollars for falsifying a certificate, regardless of the number of animals falsified on the certificate.

b. A person required to be licensed as a dealer pursuant to section 163.30 and who is not issued a license by the department pursuant to that section, but does business as a dealer, shall be subject to a civil penalty of at least one thousand dollars but not more than five thousand dollars. Each day that the person does business as a dealer without being issued a license constitutes a separate offense. A person shall not be subject to a civil penalty totaling more than twenty-five thousand dollars during any one year.

~~3.~~ 4. Moneys collected from civil penalties shall be deposited into the general fund of the state.

Sec. 2. Section 202C.1, subsection 4, Code Supplement 2003, is amended to read as follows:

4. "Financial institution" means a bank or savings and loan association authorized by this state or by the laws of the United States, which is a member of the federal deposit insurance corporation, ~~or~~ the federal savings and loan insurance corporation, or the national bank for cooperatives established in the Agricultural Credit Act, Pub. L. No. 100-233.

Sec. 3. Section 202C.2, subsection 3, Code Supplement 2003, is amended to read as follows:

3. The amount of the evidence of financial responsibility shall be established by rules which shall be adopted by the department. Unless the department otherwise has good cause, the rules shall be based upon the volume of sales reported by the dealer to the United States department of agriculture grain inspection, packers and stockyards administration. However, the evidence of financial responsibility shall not be for less than ~~fifty~~ five thousand dollars or for more than ~~three hundred~~ twenty-five thousand dollars. The department may increase the amount of the evidence of financial responsibility for a dealer upon a showing of good cause.

Sec. 4. Section 202C.3, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 3. A legal action brought by a purchaser against the surety on the

bond or the issuer of the irrevocable letter of credit shall be brought not later than one hundred eighty days after the date that the dealer delivers the feeder pigs to the purchaser pursuant to the sales agreement.

Sec. 5. IMPLEMENTATION. In implementing this Act, the department may adopt rules pursuant to section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b".

Sec. 6. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 20, 2004

CHAPTER 1096

UTILITY REPLACEMENT TAXES

H.F. 2541

AN ACT relating to utility replacement taxes by redefining major additions for purposes of allocating replacement taxes to taxing districts, requiring certain taxpayers to report estimated replacement taxes, and changing or establishing certain reporting dates and including effective and retroactive applicability date provisions.

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

Section 1. Section 437A.3, subsection 18, Code Supplement 2003, is amended to read as follows:

18. "Major addition" means ~~any~~ either of the following:

a. 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.~~ (1) A building in this state where the acquisition cost of all interests acquired exceeds ten million dollars.

~~b.~~ (2) An electric power generating plant where the acquisition cost of all interests acquired exceeds ten million dollars. For purposes of this paragraph, "electric power generating plant" means each nameplate rated electric power generating plant owned solely or jointly by any person or electric power facility financed under the provisions of chapter 28F or 476A in which electrical energy is produced from other forms of energy, including all equipment used in the production of such energy through its step-up transformer.

~~c.~~ (3) Natural gas operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.

~~d.~~ (4) Any property described in section 437A.16 in this state acquired by a person not previously subject to taxation under this chapter.

b. Any acquisition on or after January 1, 2004, by a taxpayer, by transfer of ownership, self-construction, or capital lease of any interest in electric transmission operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.

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.

Sec. 2. Section 437A.15, subsection 3, paragraph e, Code Supplement 2003, is amended to read as follows:

e. Notwithstanding the provisions of this section, if during the tax year a person who was not a taxpayer during the prior tax year acquires a new major addition, as defined in section 437A.3, subsection 18, paragraph ~~"d"~~ "a", subparagraph (4), the replacement tax associated with that major addition shall be allocated, for that tax year, under this section in accordance with the general allocating formula on the basis of the general property tax equivalents established under section 437A.15, except that the levy rates established and reported to the department of management on or before June 30 following the tax year in which the major addition was acquired shall be applied to the prorated assessed value of the major addition and provided that section 437A.19, subsection 2, paragraph "b", subparagraph (2), is in any event applicable. For purposes of this paragraph, "prorated assessed value of the major addition" means the assessed value of the major addition as of January 1 of the year following the tax year in which the major addition was acquired multiplied by the percentage derived by dividing the number of months that the major addition existed during the tax year by twelve, counting any portion of a month as a full month.

Sec. 3. Section 437A.19, subsection 2, paragraph f, unnumbered paragraph 5, Code Supplement 2003, is amended to read as follows:

In addition to reporting the assessed values as described in this subsection, the director, on or before October 31~~, 2003, in the case of January 1, 2003, values, and on or before August 31~~ of each ~~subsequent~~ assessment year, shall also report to the department of management and to the auditor of each county the taxable value of taxpayer property as of January 1 of such assessment year for each local taxing district. For purposes of this chapter, "taxable value" means the value for all property subject to the replacement tax annually determined by the director, by dividing the estimated annual replacement tax liability for that property by the prior year's consolidated taxing district rate for the taxing district where that property is located, then multiplying the quotient by one thousand. ~~The prior year's replacement tax amounts for that property shall be used to estimate the current tax year's taxable value for that property. If property not subject to any threshold recalculation is generating replacement tax for the first time, or if a taxpayer's replacement tax will not be changed by any threshold recalculation and the taxpayer believes that the replacement tax will vary more than ten percent from the previous tax year, the taxpayer shall report to the director by July 15 of the current calendar year, on forms prescribed by the director, the estimated replacement tax liability that will be attributable to that property for the current tax year.~~ A taxpayer who paid more than five hundred thousand dollars in replacement tax in the previous tax year or who believes their replacement tax liability will vary more than ten percent from the previous tax year shall report to the director by October 1 of the current calendar year, on forms prescribed by the director, the estimated replacement tax liability that will be attributable to all of the taxpayer's property subject to replacement tax for the current tax year. The department shall utilize the estimated replacement tax liability as reported by the taxpayer or the taxpayer's prior year's replacement tax amounts to estimate the current tax year's taxable value for that property. Furthermore, a taxpayer who has a new major addition of operating property which is put into service for the first time in the current calendar year shall report to the director by October 1 of the current calendar year, or at the time the major addition is put into service, whichever time is later, on forms prescribed by the director, the cost of the major addition and, if not previously reported, shall report the estimated replacement taxes which that asset will generate in the current calendar year. For the purposes of computing the taxable value of property in a taxing district, the taxing district's share of the estimated replacement tax liability shall be the taxing district's percentage share of the "assessed value allocated by property tax equivalent" multiplied by the total estimated replacement tax. "Assessed value allocated by property tax equivalent" shall be determined by dividing the taxpayer's current year assessed valuation in a taxing district by one thousand, and then multiplying by the prior year's consolidated tax rate.

Sec. 4. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES. This Act, being deemed of immediate importance, takes effect upon enactment and applies retroactively to January 1, 2004.

Approved April 20, 2004

CHAPTER 1097

PUBLIC HEALTH EMERGENCIES OR DISASTERS
— FINANCIAL ASSISTANCE

S.F. 2153

AN ACT relating to the funding of efforts to alleviate a public health emergency or disaster.

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

Section 1. Section 135.144, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 11. If a public health disaster or other public health emergency situation exists which poses an imminent threat to the public health, safety, and welfare, the department, in conjunction with the governor, may provide financial assistance, from funds appropriated to the department that are not otherwise encumbered, to political subdivisions as needed to alleviate the disaster or the emergency. If the department does not have sufficient encumbered[1] funds, the governor may request that the executive council, pursuant to the authority of section 7D.29, commit sufficient funds, up to one million dollars, that are not otherwise encumbered from the general fund, as needed and available, for the disaster or the emergency. If additional financial assistance is required in excess of one million dollars, approval by the legislative council is also required.

Approved April 26, 2004

CHAPTER 1098

OPERATING WHILE INTOXICATED —
WITHDRAWAL OF BODILY SPECIMENS

H.F. 265

AN ACT relating to the withdrawal of blood without a warrant from a person under arrest for an operating-while-intoxicated offense when the arrest results from a traffic accident resulting in death or personal injury reasonably likely to cause death.

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

Section 1. NEW SECTION. 321J.10A BLOOD WITHDRAWAL WITHOUT A WARRANT.
1. Notwithstanding section 321J.10, if a person is under arrest for an offense arising out of

[1] The word "unencumbered" probably intended

acts alleged to have been committed while the person was operating a motor vehicle in violation of section 321J.2 or 321J.2A, and that arrest results from an accident that causes a death or personal injury reasonably likely to cause death, a chemical test of blood may be administered without the consent of the person arrested to determine the amount of alcohol or a controlled substance in that person's blood if all of the following circumstances exist:

a. The peace officer reasonably believes the blood drawn will produce evidence of intoxication.

b. The method used to take the blood sample is reasonable and performed in a reasonable manner by medical personnel under section 321J.11.

c. The peace officer reasonably believes the officer is confronted with an emergency situation in which the delay necessary to obtain a warrant under section 321J.10 threatens the destruction of the evidence.

2. If the person from whom a specimen of blood is to be withdrawn objects to the withdrawal, a breath or urine sample may be taken under the following circumstances:

a. If the person is capable of giving a specimen of breath, and a direct breath testing instrument is readily available, the withdrawal of a specimen of the person's breath may be taken 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.

b. 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 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.

Approved April 26, 2004

CHAPTER 1099

INVASION OF PRIVACY

H.F. 561

AN ACT creating the crime of invasion of privacy, and providing a penalty.

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

Section 1. NEW SECTION. 709.19A INVASION OF PRIVACY — NUDITY.

1. A person who knowingly views, photographs, or films another person, for the purpose of arousing or gratifying the sexual desire of any person, commits invasion of privacy if all of the following apply:

a. The other person does not have knowledge about and does not consent or is unable to consent to being viewed, photographed, or filmed.

b. The other person is in a state of full or partial nudity.

c. The other person has a reasonable expectation of privacy while in a state of full or partial nudity.

2. As used in this section:

a. "Full or partial nudity" means the showing of any part of the human genitals or pubic area or buttocks, or any part of the nipple of the breast of a female, with less than fully opaque covering.

b. "Photographs or films" means the making of any photograph, motion picture film, videotape, or any other recording or transmission of the image of a person.

3. A person who violates this section commits a serious misdemeanor.

Approved April 26, 2004

CHAPTER 1100

COSMETOLOGY LICENSURE — TRAINING REQUIREMENTS

H.F. 2193

AN ACT relating to determining compliance with course of study requirements regarding cosmetology licensure.

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

Section 1. Section 157.5A, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The department shall issue a license to practice manicuring to any person who submits proof of successful completion of a course of at least forty clock hours of training, or one and three-quarters semester credit hours or the equivalent thereof as determined pursuant to administrative rule and regulations promulgated by the United States department of education, relating to manicuring in a licensed school of cosmetology arts and sciences or licensed barber school. The board shall adopt rules defining the course of study for a manicurist and the practices which a licensed manicurist may perform.

Sec. 2. Section 157.10, subsection 1, Code 2003, is amended to read as follows:

1. The course of study required for licensure for the practice of cosmetology shall be two thousand one hundred clock hours, or seventy semester credit hours or the equivalent thereof as determined pursuant to administrative rule and regulations promulgated by the United States department of education. The clock hours, and equivalent number of semester credit hours or the equivalent thereof as determined pursuant to administrative rule and regulations promulgated by the United States department of education, of a course of study required for licensure for the practices of electrology, esthetics, and nail technology shall be established by the board. The board shall adopt rules to define the course and content of study for each practice of cosmetology arts and sciences.

Approved April 26, 2004

CHAPTER 1101

SUBSTANTIVE CODE CORRECTIONS

H.F. 2207

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 including effective and retroactive applicability date provisions.

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

Section 1. Section 2A.8, Code Supplement 2003, is amended to read as follows:

2A.8 SALES ~~— TAX EXEMPTION~~ AUTHORIZED.

~~1.~~ The legislative services agency and its legislative information office may sell mementos and other items relating to Iowa history and historic sites, the general assembly, and the state capitol, on the premises of property under the control of the legislative council, at the state capitol, and on other state property.

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

Sec. 2. Section 3.1, subsection 3, Code Supplement 2003, is amended to read as follows:

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

Sec. 3. Section 8A.221, subsection 3, paragraph b, Code Supplement 2003, is amended to read as follows:

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

Sec. 4. Section 8A.302, subsection 2, Code Supplement 2003, is amended to read as follows:

2. Providing for the proper maintenance of the state laboratories facility in Ankeny and of the state capitol, grounds, and equipment, and all other state buildings, ~~and~~ grounds, and equipment at the seat of government, ~~and of the state laboratories facility in Ankeny,~~ except those referred to in section 216B.3, subsection 6.

Sec. 5. Section 8A.311, subsection 17, Code Supplement 2003, is amended by striking the subsection.

Sec. 6. Section 8A.315, subsection 1, paragraph c, Code Supplement 2003, is amended to read as follows:

c. 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~~ made by the department shall be plastic garbage can liners with recycled content.

Sec. 7. Section 8A.321, subsection 1, Code Supplement 2003, is amended to read as follows:

1. Provide for supervision over the custodians and other employees of the department in

and about the state laboratories facility in Ankeny and in and about the capitol and other state buildings~~, and the state laboratories facility in Ankeny~~ at the seat of government, except the buildings and grounds referred to in section 216B.3, subsection 6~~, at the seat of government~~.

Sec. 8. Section 8A.322, subsection 1, Code Supplement 2003, is amended to read as follows:

1. The director shall provide necessary lighting, fuel, and water services for the state laboratories facility in Ankeny and for the state buildings and grounds located at the seat of government, ~~and for the state laboratories facility in Ankeny,~~ except the buildings and grounds referred to in section 216B.3, subsection 6.

Sec. 9. Section 8A.412, subsection 5, Code Supplement 2003, is amended to read as follows:

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

Sec. 10. Section 10C.1, subsections 2 and 8, Code Supplement 2003, are amended to read as follows:

2. "Agricultural commodity" ~~means the same as defined in section 190C.1~~ 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.

8. "Life science by-product" means ~~a~~ an agricultural commodity, other than a life science product, if the agricultural commodity derives from the production of a life science product and the agricultural commodity is not intended or used for human consumption.

Sec. 11. Section 12B.3, Code Supplement 2003, is amended to read as follows:

12B.3 DISCOUNTING WARRANTS.

If the treasurer of state or any county treasurer, personally or through another, discounts the director of ~~revenue's~~ the department of administrative services' or auditor's warrants, either directly or indirectly, the treasurer shall be guilty of a serious misdemeanor.

Sec. 12. Section 15.313, subsection 1, paragraph b, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

All unencumbered and unobligated funds from the targeted small business financial assistance program, the ~~microenterprise development revolving fund,~~ financing rural economic development or successor loan program, and the value-added agricultural products and processes financial assistance fund remaining on June 30, 1992, and all repayments of loans or other awards or recaptures of awards made under these programs.

Sec. 13. Section 23A.2, subsection 10, paragraph p, Code Supplement 2003, is amended by striking the paragraph.

Sec. 14. Section 68A.602, Code Supplement 2003, is amended to read as follows:

68A.602 FUND CREATED.

The "Iowa election campaign fund" is created within the office of the treasurer of state. The fund shall consist of funds paid by persons as provided in section 68A.601. The treasurer of state shall maintain within the fund a separate account for each political party as defined in section 43.2. The director of revenue shall remit funds collected as provided in section 68A.601

to the treasurer of state who shall deposit such funds in the appropriate account within the Iowa election campaign fund. All contributions directed to the Iowa election campaign fund by taxpayers who do not designate any one political party to receive their contributions shall be divided by the director of revenue equally among each account currently maintained in the fund. However, at any time when more than two accounts are being maintained within the fund contributions to the fund by taxpayers who do not designate any one political party to receive their contributions shall be divided among the accounts in the same proportion as the number of registered voters declaring affiliation with each political party for which an account is maintained bears to the total number of registered voters who have declared an affiliation with a political party. Any interest income received by the treasurer of state from investment of moneys deposited in the fund shall be deposited in the Iowa election campaign fund. Such funds shall be subject to payment to the chairperson of the specified political party as authorized by the director of revenue on warrants issued by the director of ~~revenue~~ the department of administrative services in the manner provided by section 68A.605.

Sec. 15. Section 97A.8, subsection 1, paragraph i, subparagraph (1), Code Supplement 2003, is amended to read as follows:

(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~~ administrative services. The department of ~~revenue~~ administrative services shall forward the amount of the contributions picked up to the board of trustees for recording and deposit in the pension accumulation fund.

Sec. 16. Section 97B.50, subsection 2, paragraph c, Code Supplement 2003, is amended to read as follows:

c. A vested member who terminated service due to a disability, who has been issued payment for a refund pursuant to section 97B.53, and who subsequently commences receiving disability benefits as a result of that disability pursuant to the federal Social Security Act, 42 U.S.C. § 423 et seq. or the federal Railroad Retirement Act, 45 U.S.C. § 231 et seq., may receive credit for membership service for the period covered by the refund payment, upon repayment to the system of the actuarial cost of receiving service credit for the period covered by the refund payment, as determined by the system. For purposes of this paragraph, the actuarial cost of the service purchase shall be determined as provided in section 97B.74. The payment to the system as provided in this paragraph shall be made within ninety days after July 1, 2000, or the date federal disability payments commenced, whichever occurs later. For purposes of this paragraph, the date federal disability payments commence shall be the date that the member actually receives the first such payment, regardless of any retroactive payments included in that payment. A member who repurchases service credit under this paragraph and applies for retirement benefits shall have the member's monthly allowance, including retroactive adjustment payments, determined in the same manner as provided in paragraph "a" or "b", as applicable. ~~This paragraph shall not be implemented until the system has received a determination letter from the federal internal revenue service approving the system's plan's qualified status under Internal Revenue Code section 401(a).~~

Sec. 17. Section 97B.50A, subsection 10, paragraph a, subparagraphs (1) and (2), Code Supplement 2003, are amended to read as follows:

(1) The system shall be indemnified out of the recovery of damages to the extent of benefit

payments made by the retirement 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 retirement 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.

Sec. 18. Section 97B.50A, subsection 10, paragraph b, subparagraphs (1) and (2), Code Supplement 2003, are amended to read as follows:

(1) A sum sufficient to repay the system for the amount of such benefits actually paid by the retirement 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 retirement system is liable, but the sum is not a final adjudication of the future payment which the member is entitled to receive.

Sec. 19. Section 99G.8, subsection 11, Code Supplement 2003, is amended to read as follows:

11. The board shall meet at least quarterly and at such other times upon call of the chairperson or the ~~president~~ chief executive officer. Notice of the time and place of each board meeting shall be given to each member. The board shall also meet upon call of three or more of the board members. The board shall keep accurate and complete records of all its meetings.

Sec. 20. Section 99G.31, subsection 1, Code Supplement 2003, is amended to read as follows:

1. The chief executive officer shall award the designated prize to the holder of the ticket or ~~shareholder~~ share upon presentation of the winning ticket or confirmation of a winning share. The prize shall be given to only one person as provided in this section; however, a prize shall be divided between holders of winning tickets if there is more than one winning ticket.

Sec. 21. Section 99G.34, subsection 8, Code Supplement 2003, is amended to read as follows:

8. Information that is otherwise confidential obtained pursuant to investigations as provided in section 99G.35.

Sec. 22. Section 147.107, subsection 7, Code Supplement 2003, is amended by striking the subsection.

Sec. 23. Section 148C.1, subsection 4, Code Supplement 2003, is amended to read as follows:

4. "Licensed physician assistant" means a person who is licensed by the board to practice as a physician assistant under the supervision of one or more physicians ~~specified in the license~~. "Supervision" does not require the personal presence of the supervising physician at the place where medical services are rendered except insofar as the personal presence is expressly required by this chapter or required by rules of the board adopted pursuant to this chapter.

Sec. 24. Section 148C.3, subsection 2, Code Supplement 2003, is amended to read as follows:

2. Rules shall be adopted by the board pursuant to this chapter requiring a licensed physician assistant to be supervised by physicians. The rules shall provide that not more than two physician assistants shall be supervised by a physician at one time. The rules shall also provide that a physician assistant shall notify the board of the identity of ~~their~~ the physician assistant's supervising physician, and of any change in the status of the supervisory relationship.

Sec. 25. Section 159.34, subsection 1, Code Supplement 2003, is amended to read as follows:

1. A contract executed under this subchapter may require that a depositary provide for the receipt, acceptance, and storage of filing documents that are sent in an electronic format to the depositary by persons who would otherwise be required to submit filing documents to the department under other provisions of this title. The contract shall be governed under the same provisions as provided in section ~~14B.202~~ 8A.106.

Sec. 26. Section 161C.7, subsection 1, Code Supplement 2003, is amended by striking the subsection.

Sec. 27. Section 163.30, subsection 2, paragraph a, Code Supplement 2003, is amended to read as follows:

a. "Dealer" means any person who is engaged in the business of buying for resale, or selling, or exchanging swine as a principal or agent or who claims to be so engaged, but does not include the owner or operator of a farm who does not claim to be so engaged~~,~~ and who sells or exchanges only those swine which have been kept by the person solely for feeding or breeding purposes.

Sec. 28. Section 232.95, subsection 2, Code 2003, is amended by adding the following new paragraphs:

NEW PARAGRAPH. b. Release the child to the child's parent, guardian, or custodian pending a final order of disposition.

NEW PARAGRAPH. c. Authorize a physician or hospital to provide medical or surgical procedures if such procedures are necessary to safeguard the child's life or health.

Sec. 29. Section 232B.10, subsection 1, Code Supplement 2003, is amended to read as follows:

1. For the purposes of this ~~section~~ chapter, unless the context otherwise requires, a "qualified expert witness" may include, but is not limited to, a social worker, sociologist, physician, psychologist, traditional tribal therapist and healer, spiritual leader, historian, or elder.

Sec. 30. Section 257.26, Code Supplement 2003, is amended to read as follows:

257.26 INSTRUCTIONAL SUPPORT INCOME SURTAX DISTRIBUTION.

The director of ~~revenue~~ the department of administrative services shall draw warrants in payment of the amount of instructional support surtax in the manner provided in section 298.14.

Sec. 31. Section 260G.4B, subsection 1, Code Supplement 2003, is amended to read as follows:

1. The total amount of program job credits from all employers which shall be allocated for all accelerated career education programs in the state in any one fiscal year shall not exceed the sum of three million dollars in the fiscal year beginning July 1, 2000, three million dollars in the fiscal year beginning July 1, 2001, three million dollars in the fiscal year beginning July 1, 2002, four million dollars in the fiscal year beginning July 1, 2003, and six million dollars in the fiscal year beginning July 1, 2004, and every fiscal year thereafter. Any increase in program job credits above the six-million-dollar limitation per fiscal year shall be developed, based on recommendations in a study ~~which shall be~~ conducted by the department of economic development, pursuant to this section, Code Supplement 2003, of the needs and performance of approved programs in the fiscal years beginning July 1, 2000, and July 1, 2001. ~~The study's findings and recommendations shall be submitted to the general assembly by the department by December 31, 2002. The study shall include but not be limited to an examination of the quality of the programs, the number of program participant placements, the wages and benefits in program jobs, the level of employer contributions, the size of participating employers, and employer locations.~~ A community college shall file a copy of each agreement with the

department of economic development. The department shall maintain an annual record of the proposed program job credits under each agreement for each fiscal year. Upon receiving a copy of an agreement, the department shall allocate any available amount of program job credits to the community college according to the agreement sufficient for the fiscal year and for the term of the agreement. When the total available program job credits are allocated for a fiscal year, the department shall notify all community colleges that the maximum amount has been allocated and that further program job credits will not be available for the remainder of the fiscal year. Once program job credits have been allocated to a community college, the full allocation shall be received by the community college throughout the fiscal year and for the term of the agreement even if the statewide program job credit maximum amount is subsequently allocated and used.

Sec. 32. Section 282.33, subsection 1, Code Supplement 2003, is amended to read as follows:

1. A child who resides in an institution for children under the jurisdiction of the director of human services referred to in section 218.1, subsection 3, 5, 7, or 8, and who is not enrolled in the educational program of the district of residence of the child, shall receive appropriate educational services. The institution in which the child resides shall submit a proposed program and budget based on the average daily attendance of the children residing in the institution to the department of education and the department of human services by January 1 for the next succeeding school year. The department of education shall review and approve or modify the proposed program and budget and shall notify the department of ~~revenue~~ administrative services of its action by February 1. The department of ~~revenue~~ administrative services shall pay the approved budget amount to the department of human services in monthly installments beginning September 15 and ending June 15 of the next succeeding school year. The installments shall be as nearly equal as possible as determined by the department of ~~revenue~~ administrative services, taking into consideration the relative budget and cash position of the state's resources. The department of ~~revenue~~ administrative services shall pay the approved budget amount for the department of human services from the moneys appropriated under section 257.16 and the department of human services shall distribute the payment to the institution. The institution shall submit an accounting for the actual cost of the program to the department of education by August 1 of the following school year. The department shall review and approve or modify all expenditures incurred in compliance with the guidelines adopted pursuant to section 256.7, subsection 10, and shall notify the department of ~~revenue~~ administrative services of the approved accounting amount. The approved accounting amount shall be compared with any amounts paid by the department of ~~revenue~~ administrative services to the department of human services and any differences added to or subtracted from the October payment made under this subsection for the next school year. Any amount paid by the department of ~~revenue~~ administrative services shall be deducted monthly from the state foundation aid paid under section 257.16 to all school districts in the state during the subsequent fiscal year. The portion of the total amount of the approved budget that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for that budget year in which the deduction is made.

Sec. 33. Section 301.1, subsection 2, Code Supplement 2003, is amended to read as follows:

2. Textbooks adopted and purchased by a school district shall, to the extent funds are appropriated by the general assembly, be made available to pupils attending accredited nonpublic schools upon request of the pupil or the pupil's parent under comparable terms as made available to pupils attending public schools. If the general assembly appropriates moneys for purposes of making textbooks available to accredited nonpublic school pupils, the department of education shall ascertain the amount available to a school district for the purchase of nonsectarian, nonreligious textbooks for pupils attending accredited nonpublic schools. The amount shall be in the proportion that the basic enrollment of a participating accredited

nonpublic school bears to the sum of the basic enrollments of all participating accredited nonpublic schools in the state for the budget year. For purposes of this section, a "participating accredited nonpublic school" means an accredited nonpublic school that submits a written request on behalf of the school's pupils in accordance with this subsection, and that certifies its actual enrollment to the department of education by October 1, annually. By October 15, annually, the department of education shall certify to the director of ~~revenue~~ the department of administrative services the annual amount to be paid to each school district, and the director of ~~revenue~~ the department of administrative services shall draw warrants payable to school districts in accordance with this subsection. For purposes of this subsection, an accredited nonpublic school's enrollment count shall include only students who are residents of Iowa. The costs of providing textbooks to accredited nonpublic school pupils as provided in this subsection shall not be included in the computation of district cost under chapter 257, but shall be shown in the budget as an expense from miscellaneous income. Textbook expenditures made in accordance with this subsection shall be kept on file in the school district.

Sec. 34. Section 304A.29, Code Supplement 2003, is amended to read as follows:

304A.29 CLAIMS.

1. Claims for losses covered by indemnity agreements under this division shall be submitted to the department of administrative services which shall review the claims. If the department determines that the loss is covered by the agreement, the department shall certify the validity of the claim, ~~and~~ authorize payment of the amount of loss, less any deductible portion, to the lender, and issue a warrant for payment of the claim from the state general fund out of any funds not otherwise appropriated.

2. The department shall prescribe rules providing for prompt adjustment of valid claims. The rules shall include provisions for the employment of consultants and for the arbitration of issues relating to the dollar value of damages involving less than total loss or destruction of covered items.

~~3. The authorization for payment shall be forwarded to the director of the department of administrative services, who shall issue a warrant for payment of the claim from the state general fund out of any funds not otherwise appropriated.~~

Sec. 35. Section 321.91, subsection 2, Code 2003, is amended to read as follows:

2. A person ~~convicted of a violation of this section~~ who abandons a vehicle is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 14, paragraph "b".

Sec. 36. Section 321.210B, Code Supplement 2003, is amended to read as follows:

321.210B NONRENEWAL OR SUSPENSION FOR FAILURE TO PAY INDEBTEDNESS OWED TO THE STATE.

The department shall suspend or refuse to renew the driver's license of a person who has a delinquent account owed to the state according to records provided by the department of revenue pursuant to section 421.17. A license shall be suspended or shall not be renewed until such time as the department of ~~administrative services~~ revenue notifies the state department of transportation that the licensee has made arrangements for payment of the debt with the agency which is owed or is collecting the debt. This section is only applicable to those persons residing in a county which is participating in the driver's license indebtedness clearance pilot project.

Sec. 37. Section 331.304, subsection 10, Code 2003, is amended to read as follows:

10. A county shall not adopt or enforce any ordinance imposing any registration or licensing system or registration or license fees for owner-occupied manufactured or mobile homes including the lots or lands upon which they are located. A county shall not adopt or enforce any ordinance imposing any registration or licensing system, or registration or license fees, or safety or sanitary standards for rental manufactured or mobile homes unless similar registration or licensing system, or registration or license fees, or safety or sanitary standards are

required for other rental properties intended for human habitation. This subsection does not preclude the investigation and abatement of a nuisance or the enforcement of a tiedown system, or the enforcement of any regulations of the state or local board of health if those regulations apply to other rental properties or to owner-occupied housing intended for human habitation.

Sec. 38. Section 331.559, subsection 1, Code Supplement 2003, is amended to read as follows:

1. Determine and collect taxes on mobile homes and manufactured homes as provided in sections 435.22 to 435.26.

Sec. 39. Section 331.602, subsection 29, Code Supplement 2003, is amended to read as follows:

29. ~~Register~~ Record the name and description of a farm as provided in sections 557.22 to 557.26.

Sec. 40. Section 331.756, subsection 63, Code Supplement 2003, is amended to read as follows:

63. Present to the grand jury at its next session a copy of the report filed by the ~~division~~ department of corrections ~~of the department of human services~~ of its inspection of the jails in the county as provided in section 356.43.

Sec. 41. Section 356.7, subsection 1, Code Supplement 2003, is amended to read as follows:

1. The county sheriff, or a municipality operating a temporary municipal holding facility or jail, 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 actual administrative costs relating to the arrest and booking of that prisoner, and for room and board provided to the prisoner while in the custody of the county sheriff or municipality. Moneys collected by the sheriff or municipality under this section shall be credited respectively to the county general fund or the city 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 administrative costs and the room and board, the sheriff or municipality may file a ~~room and board~~ reimbursement claim with the district court as provided in subsection 2. The county attorney may file the reimbursement claim on behalf of the sheriff and the county or the municipality. The attorney for the municipality may also file a reimbursement claim on behalf of the municipality. 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. 42. Section 368.4, Code Supplement 2003, is amended to read as follows:

368.4 ANNEXING MORATORIUM.

A city, following notice and hearing, may by resolution agree with another city or cities to refrain from annexing specifically described territory for a period not to exceed ten years and, following notice and hearing, may by resolution extend the agreement for subsequent periods not to exceed ten years each. Notice of a hearing shall be served by regular mail at least thirty days before the hearing on the city development board and on the board of supervisors of the county in which the territory is located and shall be published in an official county newspaper in each county containing a city conducting a hearing regarding the agreement, in an official county newspaper in any county within two miles of any such city, and in an official newspaper of each city conducting a hearing regarding the agreement. The notice shall include the time and place of the hearing, describe the territory subject to the proposed agreement, and the general terms of the agreement. After passage of a resolution by the cities approving the agreements, a copy of the agreement and a copy of any resolution extending an agreement shall be filed with the city development board within ten days of enactment. If such an agreement is in force, the board shall dismiss a petition or plan which violates the terms of the agreement.

Sec. 43. Section 368.26, unnumbered paragraph 3, Code Supplement 2003, is amended to read as follows:

For the purposes of this section, "protected farmland" means land that is part of a century farm as that term is defined in section 403.17, subsection 10. ~~"County~~ For the purposes of this section, "county legislation" means any ordinance, motion, resolution, or amendment adopted by a county pursuant to section 331.302.

Sec. 44. Section 372.4, subsection 3, Code Supplement 2003, is amended to read as follows:

3. In a city having a population of ~~between~~ five hundred ~~and~~ or more, but not more than five thousand, the city council may, or shall upon petition of the electorate meeting the numerical requirements of section 372.2, subsection 1, submit a proposal at the next regular or special city election to reduce the number of council members to three. If a majority of the voters voting on the proposal approves it, the proposal is adopted. If the proposal is adopted, the new council shall be elected at the next regular or special city election. The council shall determine by ordinance whether the three council members are elected at large or by ward.

Sec. 45. Section 422.12D, subsection 4, Code Supplement 2003, is amended to read as follows:

4. The department shall adopt rules to implement this section. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of ~~revenue~~ administrative services and accounts identified as owing under section ~~421.17~~ 8A.504 and the political contribution allowed under section 68A.601 shall be satisfied.

Sec. 46. Section 422.16, subsection 9, Code Supplement 2003, is amended to read as follows:

9. The amount of any overpayment of the individual income tax liability of the employee taxpayer, nonresident, or other person which may result from the withholding and payment of withheld tax by the employer or withholding agent to the department under subsections 1 and 12, as compared to the individual income tax liability of the employee taxpayer, nonresident, or other person properly and correctly determined under the provisions of section 422.4, to and including section 422.25, may be credited against any income tax or installment thereof then due the state of Iowa and any balance of one dollar or more shall be refunded to the employee taxpayer, nonresident or other person with interest at the rate in effect under section 421.7 for each month or fraction of a month, the interest to begin to accrue on the first day of the second calendar month following the date the return was due to be filed or was filed, whichever is the later date. Amounts less than one dollar shall be refunded to the taxpayer, nonresident, or other person only upon written application, in accordance with section 422.73, and only if the application is filed within twelve months after the due date of the return. Refunds in the amount of one dollar or more provided for by this subsection shall be paid by the treasurer of state by warrants drawn by the director of ~~revenue~~ the department of administrative services, or an authorized employee of the department, and the taxpayer's return of income shall constitute a claim for refund for this purpose, except in respect to amounts of less than one dollar. There is appropriated, out of any funds in the state treasury not otherwise appropriated, a sum sufficient to carry out the provisions of this subsection.

Sec. 47. Section 422.35, subsection 18, Code Supplement 2003, is amended to read as follows:

18. Add, to the extent not already included, income from the sale of obligations of the state and its political ~~divisions~~ subdivisions. Income from the sale of these obligations is exempt from the taxes imposed by this division only if the law authorizing these obligations specifically exempts the income from the sale from the state corporate income tax.

Sec. 48. Section 422.70, subsection 3, Code 2003, is amended to read as follows:

3. The fees and mileage to be paid witnesses and charged as costs shall be the same as

prescribed by law in proceedings in the district court of this state in civil cases. All costs shall be charged in the manner provided by law in proceedings in civil cases. If the costs are charged to the taxpayer they shall be added to the taxes assessed against the taxpayer and shall be collected in the same manner. Costs charged to the state shall be certified by the director ~~who~~ and the department of administrative services shall issue warrants on the state treasurer for the amount of the costs, to be paid out of the proceeds of the taxes collected under this chapter.

Sec. 49. Section 425.23, subsection 3, paragraph a, Code Supplement 2003, 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 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 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 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 certified by the director of revenue and paid by the director of ~~revenue~~ the department of administrative services 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 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. 50. Section 425A.6, Code Supplement 2003, is amended to read as follows:

425A.6 WARRANTS ~~DRAWN~~ AUTHORIZED BY DIRECTOR — PRORATION.

After receiving from the county auditors the certifications provided for in section 425A.5, and during the following fiscal year, the director of revenue shall authorize the department of administrative services to draw warrants on the family farm tax credit fund created in section 425A.1, payable to the county treasurers in the amount certified by the county auditors of the respective counties and mail the warrants to the county auditors on June 1 of each year taking into consideration the relative budget and cash position of the state resources. However, if the family farm tax credit fund is insufficient to pay in full the total of the amounts certified to the director of revenue, the director shall prorate the fund to the county treasurers and shall notify the county auditors of the pro rata percentage on or before June 1.

Sec. 51. Section 425A.7, Code Supplement 2003, is amended to read as follows:

425A.7 APPORTIONMENT BY AUDITOR.

Upon receiving the pro rata percentage from the director of revenue, the county auditor shall determine the amount to be credited to each tract of agricultural land, and shall enter upon tax lists as a credit against the tax levied on each tract of agricultural land on which there has been made an allowance of credit before delivering the tax lists to the county treasurer. Upon receipt of the ~~director's~~ warrant by the county auditor, the auditor shall deliver the warrant to the county treasurer for apportionment. The county treasurer shall show on each tax receipt the amount of tax credit for each tract of agricultural land. In case of change of ownership the credit shall follow the title.

Sec. 52. Section 426.7, Code Supplement 2003, is amended to read as follows:

426.7 WARRANTS ~~DRAWN~~ AUTHORIZED BY DIRECTOR.

After receiving from the county auditors the certifications provided for in section 426.6, and during the following fiscal year, the director of revenue shall authorize the department of administrative services to draw warrants on the agricultural land credit fund created in section 426.1, payable to the county treasurers in the amount certified by the county auditors of the respective counties and mail the warrants to the county auditors on July 15 of each year taking into consideration the relative budget and cash position of the state resources. However, if the agricultural land credit fund is insufficient to pay in full the total of the amounts certified to the director of revenue, the director shall prorate the fund to the county treasurers and notify the county auditors of the pro rata percentage on or before June 15.

Sec. 53. Section 426.8, Code Supplement 2003, is amended to read as follows:

426.8 APPORTIONMENT BY AUDITOR.

Upon receiving the pro rata percentage from the director of revenue, the county auditor shall determine the amount to be credited to each tract of agricultural land, and shall enter upon tax lists as a credit against the tax levied on each tract of agricultural land on which there has been made an allowance of credit before delivering said tax lists to the county treasurer. Upon receipt of the ~~director's~~ warrant by the county auditor, the auditor shall deliver said warrant to the county treasurer for apportionment. The county treasurer shall show on each tax receipt the amount of tax credit for each tract of agricultural land. In case of change of ownership the credit shall follow the title.

Sec. 54. Section 426A.4, Code Supplement 2003, is amended to read as follows:

426A.4 CERTIFICATION BY DIRECTOR OF REVENUE.

Sums distributable from the general fund of the state shall be allocated annually to the counties of the state. On September 15 annually the director of revenue shall certify and the department of administrative services shall draw warrants to the treasurer of each county payable from the general fund of the state in the amount claimed. Payments shall be made to the treasurer of each county not later than September 30 of each year.

Sec. 55. Section 434.22, Code Supplement 2003, is amended to read as follows:

434.22 LEVY AND COLLECTION OF TAX.

At the first meeting of the board of supervisors held after said statement is received by the county auditor, ~~it~~ the board shall cause the same to be entered on its minute book, and make and enter ~~therein~~ in the minute book an order stating the length of the main track and the assessed value of each railway lying in each city, township, or lesser taxing district in its county, through or into which ~~said~~ the railway extends, as fixed by the director of revenue, which shall constitute the taxable value of ~~said~~ the property for taxing purposes; and the taxes on ~~said~~ the property, when collected by the county treasurer, shall be disposed of as other taxes. The county auditor shall transmit a copy of ~~said~~ the order to the council or trustees of the city or township.

Sec. 56. Section 437.10, Code Supplement 2003, is amended to read as follows:

437.10 ENTRY OF CERTIFICATE.

At the first meeting of the board of supervisors held after said statements are received by the county auditor, ~~it~~ the board shall cause such statement to be entered in its minute book and make and enter ~~therein~~ in the minute book an order stating the length of the lines and the assessed value of the property of each of ~~said~~ the companies situated in each township or lesser taxing district in each county outside cities, as fixed by the director of revenue, which shall constitute the taxable value of ~~said~~ the property for taxing purposes. The county auditor shall transmit a copy of ~~said~~ the order to the trustees of each township and to the proper taxing boards in lesser taxing districts into which the line or lines of ~~said~~ the company extend in the

county. The taxes on ~~said~~ the property when collected by the county treasurer shall be disposed of as other taxes on real estate.

Sec. 57. Section 438.15, Code Supplement 2003, is amended to read as follows:

438.15 ASSESSED VALUE IN EACH TAXING DISTRICT — RECORD.

At the first meeting of the board of supervisors held after said statement is received by the county auditor, ~~it~~ the board shall cause the same to be entered on its minute book, and make and enter ~~therein~~ in the minute book an order describing and stating the assessed value of each pipeline lying in each city, township, or lesser taxing district in its county, through or into which ~~said~~ the pipeline extends, as fixed by the director of revenue, which shall constitute the assessed value of ~~said~~ the property for taxing purposes; and the taxes on ~~said~~ the property, when collected by the county treasurer, shall be disposed of as other taxes. The county auditor shall transmit a copy of ~~said~~ the order to the council of the city, or the trustees of the township, as the case may be.

Sec. 58. Section 441.26, unnumbered paragraph 4, Code Supplement 2003, is amended to read as follows:

The assessment rolls shall be used in listing the property and showing the values affixed to the property of all persons assessed. The rolls shall be made in duplicate. The duplicate roll shall be signed by the assessor, detached from the original and delivered to the person assessed if there has been an increase or decrease in the valuation of the property. If there has been no change in the ~~evaluation~~ valuation, the information on the roll may be printed on computer stock paper and preserved as required by this chapter. If the person assessed requests in writing a copy of the roll, the copy shall be provided to the person. The pages of the assessor's assessment book shall contain columns ruled and headed for the information required by this chapter and that which the director of revenue deems essential in the equalization work of the director. The assessor shall return all assessment rolls and schedules to the county auditor, along with the completed assessment book, as provided in this chapter, and the county auditor shall carefully keep and preserve the rolls, schedules and book for a period of five years from the time of its filing in the county auditor's office.

Sec. 59. Section 453A.3, subsection 1, paragraph c, Code 2003, is amended by striking the paragraph.

Sec. 60. Section 453A.8, subsection 3, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The department may make refunds on unused stamps to the person who purchased the stamps at a price equal to the amount paid for the stamps when proof satisfactory to the department is furnished that any stamps upon which a refund is requested were properly purchased from the department and paid for by the person requesting the refund. In making the refund, the department shall prepare a voucher showing the amount of refund due and to whom payable and shall authorize the department of administrative services to issue a warrant upon order of the director to pay the refund out of any funds in the state treasury not otherwise appropriated.

Sec. 61. Section 455B.105, subsections 6 and 8, Code Supplement 2003, are amended to read as follows:

6. Approve all contracts and agreements under this chapter and chapter 459~~, subchapters I, II, III, IV, and VI,~~ between the department and other public or private persons or agencies.

8. Hold public hearings, except when the evidence to be received is confidential pursuant to this chapter, chapter 22, or chapter 459~~, subchapters I, II, III, IV, and VI,~~ necessary to carry out its powers and duties. The commission may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as provided in civil actions.

Sec. 62. Section 455B.107, Code Supplement 2003, is amended to read as follows:

455B.107 WARRANTS BY DIRECTOR OF DEPARTMENT OF ADMINISTRATIVE SERVICES.

The director of the department of administrative services shall draw warrants on the treasurer of state for all disbursements authorized by the provisions of this chapter and chapter 459, ~~subchapters I, II, III, IV, and VI,~~ upon itemized and verified vouchers bearing the approval of the director of the department of natural resources.

Sec. 63. Section 455B.423, subsection 1, Code 2003, is amended to read as follows:

1. A hazardous substance remedial fund is created within the state treasury. Moneys received from fees, penalties, general revenue, federal funds, gifts, bequests, donations, or other moneys so designated shall be deposited in the state treasury to the credit of the fund. Any unexpended balance in the remedial fund at the end of each fiscal year shall be retained in the fund. ~~However, any unexpended balance shall be transferred to the general fund to replace funds appropriated from the general fund during fiscal year 1985 and fiscal year 1986 for the purposes for which expenditures from the remedial fund are allowed.~~

Sec. 64. Section 455E.11, subsection 2, paragraph e, Code Supplement 2003, is amended to read as follows:

e. An oil overcharge account. The oil overcharge moneys distributed by the United States department of energy, and approved for the energy related components of the groundwater protection strategy available through the energy conservation trust created in section 473.11, shall be deposited in the oil overcharge account as appropriated by the general assembly. ~~The oil overcharge account shall be used for the following purposes:~~

~~(1) The following amounts are appropriated to the department of natural resources to implement its responsibilities pursuant to section 455E.8:~~

~~(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, eight hundred sixty thousand dollars is appropriated.~~

~~(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, six hundred fifty thousand dollars is appropriated.~~

~~(c) For the fiscal year beginning July 1, 1989 and ending June 30, 1990, six hundred thousand dollars is appropriated.~~

~~(d) For the fiscal year beginning July 1, 1990 and ending June 30, 1991, five hundred thousand dollars is appropriated.~~

~~(e) For the fiscal year beginning July 1, 1991 and ending June 30, 1992, five hundred thousand dollars is appropriated.~~

~~(2) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, five hundred sixty thousand dollars is appropriated to the department of natural resources for assessing rural, private water supply quality.~~

~~(3) For the fiscal period beginning July 1, 1987 and ending June 30, 1989, one hundred thousand dollars is appropriated annually to the department of natural resources for the administration of a groundwater monitoring program at sanitary landfills.~~

~~(4) The following amounts are appropriated to the Iowa state water resources research institute to provide competitive grants to colleges, universities, and private institutions within the state for the development of research and education programs regarding alternative disposal methods and groundwater protection:~~

~~(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, one hundred twenty thousand dollars is appropriated.~~

~~(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, one hundred thousand dollars is appropriated.~~

~~(c) For the fiscal year beginning July 1, 1989 and ending June 30, 1990, one hundred thousand dollars is appropriated.~~

~~(5) The following amounts are appropriated to the department of natural resources to develop and implement demonstration projects for landfill alternatives to solid waste disposal, including recycling programs:~~

~~(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, seven hundred sixty thousand dollars is appropriated.~~

~~(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, eight hundred fifty thousand dollars is appropriated.~~

~~(6) For the fiscal period beginning July 1, 1987 and ending June 30, 1988, eight hundred thousand dollars is appropriated to the Leopold center for sustainable agriculture.~~

~~(7) Seven million five hundred thousand dollars is appropriated to the agriculture energy management fund created under chapter 161B for the fiscal period beginning July 1, 1987 and ending June 30, 1992, to develop nonregulatory programs to implement integrated farm management of farm chemicals for environmental protection, energy conservation, and farm profitability; interactive public and farmer education; and applied studies on best management practices and best appropriate technology for chemical use efficiency and reduction.~~

~~(8) The following amounts are appropriated to the department of natural resources to continue the Big Spring demonstration project in Clayton county.~~

~~(a) For the fiscal period beginning July 1, 1987 and ending June 30, 1990, seven hundred thousand dollars is appropriated annually.~~

~~(b) For the fiscal period beginning July 1, 1990 and ending June 30, 1992, five hundred thousand dollars is appropriated annually.~~

~~(9) For the fiscal period beginning July 1, 1987 and ending June 30, 1990, one hundred thousand dollars is appropriated annually to the department of agriculture and land stewardship to implement a targeted education program on best management practices and technologies for the mitigation of groundwater contamination from or closure of agricultural drainage wells, abandoned wells, and sinkholes.~~

Sec. 65. Section 455G.5, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

The board may enter into a contract or an agreement authorized under chapter 28E with a private agency or person, the department of natural resources, the Iowa finance authority, the department of administrative services, the department of revenue, other departments, agencies, or governmental subdivisions of this state, another state, or the United States, in connection with its administration and implementation of this chapter or chapter 424 or 455B.

Sec. 66. Section 456A.16, unnumbered paragraph 7, Code Supplement 2003, is amended to read as follows:

The department shall adopt rules to implement this section. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of ~~revenue~~ administrative services and accounts identified as owing under section ~~421.17~~ 8A.504 and the political contribution allowed under section 68A.601 shall be satisfied.

Sec. 67. Section 476.53, subsection 4, paragraph b, Code Supplement 2003, is amended to read as follows:

b. In determining the applicable ratemaking principles, the board shall not be limited to traditional ratemaking principles or traditional cost recovery mechanisms. Among the principles and mechanisms the board may consider, the board has the authority to approve ratemaking principles proposed by a rate-regulated public utility that provide for reasonable restrictions upon the ability of the public utility to seek a general increase in electric rates under section 476.6 for at least three years after the ~~generation~~ generating facility begins providing service to Iowa customers.

Sec. 68. Section 483A.24A, subsection 2, paragraph c, Code Supplement 2003, is amended to read as follows:

c. "Public institution" means a state institution listed under section 904.102, ~~subsections 1 through 10,~~ that is administered by the department of corrections.

Sec. 69. Section 501.407, subsection 2, paragraph b, Code Supplement 2003, is amended to read as follows:

b. An intentional infliction of harm on the ~~corporation~~ cooperative or its ~~shareholders~~ members.

Sec. 70. Section 508.38, subsection 11, Code Supplement 2003, is amended to read as follows:

11. After July 1, 2003, a company may elect either to apply the provisions of this section as it existed prior to July 1, 2003, or to apply the provisions of this section as ~~enacted~~ amended by 2003 Acts, ch 91, § 8 – 10, to annuity contracts on a contract form-by-form basis before ~~the second anniversary of the effective date of 2003 Acts, ch 91, § 8 – 10~~ July 1, 2005. In all other instances, this section shall become operative with respect to annuity contracts issued by the company two years after July 1, 2003.

Sec. 71. Section 510.6, subsections 6 and 7, Code 2003, are amended to read as follows:

6. An insurer shall review its books and records each quarter and determine if any insurance producer, as defined by section 510A.2, has become, by operation of section 510.1B, subsection 4, a managing general agent as defined in that section. If the insurer determines that ~~a~~ an insurance producer has become a managing general agent by operation of section 510.1B, subsection 4, the insurer shall promptly notify the insurance producer and the commissioner of such determination and the insurer and insurance producer shall fully comply with the provisions of this chapter within thirty days.

7. An insurer shall not appoint to its board of directors an officer, director, employee, insurance producer, or controlling shareholder of a managing general agent of the insurer. This subsection shall not apply to relationships governed by chapter 521A relating to the regulation of insurance company holding systems, or, if applicable, by chapter 510A relating to the regulation of insurance producer controlled property and casualty insurers.

Sec. 72. Section 510A.4, subsection 1, paragraph b, subparagraph (2), Code Supplement 2003, is amended to read as follows:

(2) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from the controlling producer, ~~a~~ an insurance producer controlled by the controlled insurer, or an insurance producer that is a subsidiary of the controlled insurer.

Sec. 73. Section 514B.12, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

A health maintenance organization shall annually on or before the first day of March file with the commissioner or a depository designated by the commissioner a report verified by at least two of ~~its~~ the principal officers of the health maintenance organization and covering the preceding calendar year. The report shall be on forms prescribed by the commissioner and shall include:

Sec. 74. Section 515F.32, subsection 3, Code Supplement 2003, is amended to read as follows:

3. ~~"Plan"~~ "FAIR plan" means the ~~FAIR~~ plan to assure fair access to insurance requirements established pursuant to section 515F.33.

Sec. 75. Section 515F.36, subsection 1, Code Supplement 2003, is amended to read as follows:

1. A governing committee shall administer the FAIR plan, subject to the supervision of the commissioner~~, and~~. The FAIR plan shall be operated by a manager appointed by the committee.

Sec. 76. Section 533C.103, subsection 4, Code Supplement 2003, is amended to read as follows:

4. ~~A~~ The following entities whether chartered or organized under the laws of a state or of the United States: a bank, bank holding company, savings and loan association, savings bank, credit union, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the federal Bank Service Company Act, 12 U.S.C. § 1861 – 1867, or corporation organized under the federal Edge Act, 12 U.S.C. § 611 – 633~~, under the laws of a state or the United States~~.

Sec. 77. Section 533C.201, subsection 1, Code Supplement 2003, is amended to read as follows:

1. A person shall not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person:

a. Is licensed under this article~~.~~; or

b. Is an authorized delegate of a person licensed under this article.

Sec. 78. Section 533C.303, subsection 4, Code Supplement 2003, is amended to read as follows:

4. An applicant ~~whose application~~ who is denied a license by the superintendent under this article may appeal, within thirty days after receipt of the notice of the denial, from the denial and request a hearing. The denial of a license shall not be deemed a contested case under chapter 17A.

Sec. 79. Section 533C.503, subsection 3, paragraphs e and f, Code Supplement 2003, are amended to read as follows:

e. A charge filed against or conviction of the licensee or of an executive officer, manager, or director of, or person in control of, the licensee for a felony.

f. A charge filed against or conviction of an authorized delegate for a felony.

Sec. 80. Section 533C.505, subsection 3, Code Supplement 2003, is amended to read as follows:

3. Records may be maintained outside this state if they are made accessible ~~to~~ within seven business days of receipt of a written request from the superintendent ~~on seven business-days' notice that is sent in a record~~.

Sec. 81. Section 533C.703, subsection 3, Code Supplement 2003, is amended to read as follows:

3. ~~An~~ Once the superintendent has commenced an administrative proceeding pursuant to section 533C.701 or 533C.702, an order to cease and desist remains effective and enforceable pending the completion of ~~an administrative~~ the proceeding ~~pursuant to section 533C.701 or 533C.702~~.

Sec. 82. Section 562B.25, subsection 3, Code 2003, is amended to read as follows:

3. Except as otherwise provided in this chapter, the landlord may recover damages, obtain injunctive relief or recover possession of the mobile home space pursuant to an action in forcible entry and detainer under chapter 648 for any material noncompliance by the tenant with the rental agreement or with section 562B.18.

Sec. 83. Section 602.6305, subsection 1, Code Supplement 2003, is amended to read as follows:

1. District associate judges shall serve initial terms and shall stand for retention in office within the judicial election districts of their residences at the judicial election ~~in 1982 and every six years thereafter,~~ under sections ~~46.17 to~~ 46.16 through 46.24.

Sec. 84. Section 602.8107, subsection 4, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

This subsection does not apply to amounts collected for victim restitution, the victim compensation fund, criminal penalty surcharge, law enforcement initiative surcharge, amounts collected as a result of procedures initiated under subsection 5 or under section 8A.504, or ~~sheriff's room and board~~ fees charged pursuant to section 356.7.

Sec. 85. Section 631.4, subsection 2, paragraphs a and d, Code 2003, are amended to read as follows:

a. In an action for ~~the~~ forcible entry ~~or detention of real property~~ and detainer under chapter 648, the clerk shall set a date, time and place for hearing, and shall cause service as provided in this subsection.

d. If personal service cannot be made upon each defendant in an action for forcible entry ~~or detention of real property~~ and detainer joined with an action for rent or recovery pursuant to section 648.19, service may be made pursuant to paragraph "c".

Sec. 86. Section 631.5, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

This section applies to all small claims except actions for forcible entry ~~or detention of real property~~ and detainer pursuant to chapter 648 and actions for abandonment of mobile homes or personal property pursuant to chapter 555B.

Sec. 87. Section 648.1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A summary remedy for forcible entry ~~or detention of real property~~ and detainer is allowable:

Sec. 88. Section 648.5, Code 2003, is amended to read as follows:

648.5 JURISDICTION — HEARING — PERSONAL SERVICE.

The court within the county shall have jurisdiction of actions for ~~the~~ forcible entry ~~or detention of real property~~ and detainer. They shall be tried as equitable actions. Unless commenced as a small claim, a petition shall be presented to a district court judge. Upon receipt of the petition, the court shall order a hearing which shall not be later than seven days from the date of the order. Personal service shall be made upon the defendant not less than three days prior to the hearing. In the event that personal service cannot be completed in time to give the defendant the minimum notice required by this section, the court may set a new hearing date. A default cannot be made upon a defendant unless the three days' notice has been given.

Sec. 89. Section 648.10, Code 2003, is amended to read as follows:

648.10 SERVICE BY PUBLICATION.

Notwithstanding the requirements of section 648.5, service may be made by publishing such notice for one week in a newspaper of general circulation published in the county where the petition is filed, provided the petitioner files with the court an affidavit stating that an attempt at personal service made by the sheriff was unsuccessful because the defendant is avoiding service by concealment or otherwise, and that a copy of the petition and notice of hearing has been mailed to the defendant at the defendant's last known address or that the defendant's last known address is not known to the petitioner. Service under this section is complete seven days after publication. The court shall set a new hearing date if necessary to allow the defendant the ~~five-day~~ three-day minimum notice required under section 648.5.

Sec. 90. Section 669.14, subsection 11, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

Any claim for financial loss based upon an act or omission in financial regulation, including but not limited to examinations, inspections, audits, or other financial oversight responsibilities, pursuant to chapter 486, Code 1999, and chapters 87, 203, 203C, 203D, 421B, ~~486,~~ 486A,

487, and 490 through 553, excluding chapters 540A, 542, 542B, 543B, 543C, 543D, 544A, and 544B.

Sec. 91. Section 805.8A, subsection 12, paragraphs b and c, Code Supplement 2003, are amended to read as follows:

b. For ~~height, weight, length, width, load violations, and towed vehicle~~ violations under section 321.437, the scheduled fine is twenty-five dollars.

c. For height, length, width, and load violations under sections 321.454, 321.455, 321.456, 321.457, and 321.458, the scheduled fine is one hundred dollars.

Sec. 92. Section 901.4, Code Supplement 2003, 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. Pursuant to section 904.602, the presentence investigation report may also be released by the department of corrections or a judicial district department of correctional services to another jurisdiction for the purpose of providing interstate probation and parole compact or interstate compact for adult offender supervision services or evaluations, or to a substance abuse or mental health services provider when referring a defendant for services. 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.13A for performing the assessment of risk.

Sec. 93. Section 901.5, subsection 7A, paragraph d, Code Supplement 2003, is amended to read as follows:

d. Violation of a no-contact order issued under this ~~section~~ subsection is punishable by summary contempt proceedings. A hearing in a contempt proceeding brought pursuant to this subsection shall be held not less than five days and not more than fifteen days after the issuance of a rule to show cause, as set by the court, unless the defendant is already in custody at the time of the alleged violation in which case the hearing shall be held not less than five days and not more than forty-five days after the issuance of the rule to show cause.

Sec. 94. Section 904.117, Code Supplement 2003, is amended to read as follows:

904.117 INTERSTATE COMPACT FUND.

An interstate compact fund is established under the control of the department. All interstate compact fees collected by the department pursuant to section ~~907B.5~~ 907B.4 shall be deposited into the fund and the moneys shall be used by the department to offset the costs of complying with the interstate compact for adult offender supervision in chapter 907B. Notwithstanding section 8.33, moneys remaining in the fund at the end of a fiscal year shall not revert to the general fund of the state. Notwithstanding section 12C.7, interest and earnings deposited in the fund shall be credited to the fund.

Sec. 95. Sections 335.31, 414.29,[1] and 455B.151, Code 2003, are repealed.

Sec. 96. 2003 Iowa Acts, chapter 180, section 24, enacting section 273.22, subsection 4A, is amended to read as follows:

4A. Not later than fifteen days after the state board notifies an area education agency of its approval of the area education agency's reorganization plan or dissolution proposal, the area education agency shall notify, by certified mail, the school districts located within the area education agency boundaries, the school districts and area education agencies that are contiguous to its boundaries, and any other school district under contract with the area education agency, of the state board's approval of the plan or proposal, and shall provide the department of education with a copy of any notice sent in accordance with this subsection. A petition to join an area education agency or for release from a contract with an area education agency, in accordance with subsections 4, ~~6~~ 5, and ~~7~~ 6, shall be filed not later than forty-five days after the state board approves a reorganization plan or dissolution proposal in accordance with this chapter.

Sec. 97. 2003 Iowa Acts, chapter 180, section 28, amending section 273.23, subsection 11, Code 2003, is amended to read as follows:

11. Unless the reorganization of an area education agency takes effect less than two years before the taking of the next federal decennial census, a newly formed area education agency shall, within one year of the effective date of the reorganization, redraw the boundary lines of director districts in the area education agency if a petition filed by a school district to join the newly formed area education agency, or for release from the newly formed area education agency, in accordance with section 273.22, subsections 4, 5, and 6, ~~and 7,~~ was approved. Until the boundaries are redrawn, the boundaries for the newly formed area education agency shall be as provided in the reorganization plan approved by the state board in accordance with section 273.21.

Sec. 98. 2003 Iowa Acts, chapter 145, section 286, subsection 3, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. Notwithstanding the provisions of this subsection to the contrary, section 12.8, Code 2003, is amended by striking from the section the words "division of the department of personnel".

Sec. 99. 2003 Iowa Acts, chapter 151, section 65, is amended to read as follows:

SEC. 65. RETENTION OF JUDGES. The amendments in this Act to section 46.16, subsections 2 and 3, and section 602.6305, subsection 1, apply to elections for retaining a judge occurring after the effective date of this Act.

Sec. 100. 2003 Iowa Acts, chapter 179, is amended by adding the following new section:

NEW SECTION. SEC. 47A. DELAYED EFFECTIVE DATE. Section 31 of this division of this Act takes effect July 1, 2004.

Sec. 101. 2003 Iowa Acts, First Extraordinary Session, chapter 1, section 114, is amended to read as follows:

SEC. 114. The divisions of this Act designated the grow Iowa values board and fund, the value-added agricultural products and processes financial assistance program, the endow Iowa grants, ~~the technology transfer advisors,~~ the Iowa economic development loan and credit guarantee fund, the economic development assistance and data collection, the cultural and entertainment districts, ~~the workforce issues,~~ and the university-based research utilization program, are repealed effective June 30, 2010.

Sec. 102. EFFECTIVE DATES AND APPLICABILITY.

1. The sections of this Act amending sections 273.22 and 273.23, as enacted by 2003 Iowa

[1] Sections 335.31 and 414.29 appeared in Code Supplement 2003

Acts, chapter 180, sections 24 and 28, being deemed of immediate importance, take effect upon enactment and apply retroactively to July 1, 2003.

2. The section of this Act amending 2003 Iowa Acts, chapter 145, section 286, being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to July 1, 2003, and is applicable on and after that date.

3. The section of this Act amending 2003 Iowa Acts, chapter 151, section 65, being deemed of immediate importance, takes effect upon enactment.

4. The section of this Act adding a new section to 2003 Iowa Acts, chapter 179, being deemed of immediate importance, takes effect upon enactment.

Approved April 26, 2004

CHAPTER 1102

SAFE DEPOSIT BOX ACCESS BY TRUSTEES

H.F. 2230

AN ACT relating to safe deposit box access by a trustee of a trust created by the deceased owner or lessee of the safe deposit box.

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

Section 1. Section 524.810A, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A bank shall permit a person named in and authorized by a court order to open, examine, and remove the contents of a safe deposit box located at the bank. If a court order has not been delivered to the bank, the following persons may access and remove any or all contents of a safe deposit box located at a state bank ~~and~~ which box is described in an ownership or rental agreement or lease between the state bank and a deceased owner or lessee:

Sec. 2. Section 524.810A, subsection 1, paragraph e, Code 2003, is amended to read as follows:

e. A trustee of a trust created by the deceased owner or lessee upon delivery to the state bank of ~~a copy of the trust together with an affidavit by the trustee~~ either of the following:

(1) A certification of trust pursuant to section 633.4604 which certifies that the trust property is reasonably believed to include property in the safe deposit box.

(2) A copy of the trust with an affidavit by the trustee which certifies that a copy of the trust delivered to the state bank with the affidavit is an accurate and complete copy of the trust, that the trustee is the duly authorized and acting trustee under the trust, that the trust property ~~includes~~ is reasonably believed to include property in the safe deposit box, and that, to the knowledge of the trustee, the trust has not been revoked.

Sec. 3. Section 533.49E, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A credit union shall permit a person named in and authorized by a court order to open, examine, and remove the contents of a safe deposit box located at the credit union. If a court order has not been delivered to the credit union, the following persons may access and remove any or all contents of a safe deposit box located at a state credit union ~~and~~ which box is

described in an ownership or rental agreement or lease between the state credit union and a deceased owner or lessee:

Sec. 4. Section 533.49E, subsection 1, paragraph e, Code 2003, is amended to read as follows:

e. A trustee of a trust created by the deceased owner or lessee upon delivery to the state credit union of ~~a copy of the trust together with an affidavit by the trustee~~ either of the following:

(1) A certification of trust pursuant to section 633.4604 which certifies that the trust property is reasonably believed to include property in the safe deposit box.

(2) A copy of the trust with an affidavit by the trustee which certifies that a copy of the trust delivered to the state credit union with the affidavit is an accurate and complete copy of the trust, that the trustee is the duly authorized and acting trustee under the trust, that the trust property ~~includes~~ is reasonably believed to include property in the safe deposit box, and that to the knowledge of the trustee the trust has not been revoked.

Approved April 26, 2004

CHAPTER 1103

PUBLIC EMPLOYEE RETIREMENT SYSTEMS
AND OTHER BENEFITS — MISCELLANEOUS CHANGES

H.F. 2262

AN ACT relating to public retirement systems and other employee benefit related matters, including the public safety peace officers' retirement, accident, and disability system, the Iowa public employees' retirement system, the statewide fire and police retirement system, and the judicial retirement system, and providing effective and retroactive 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.17, subsection 1, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. "Refund liability" means the amount the member may elect to withdraw from the former system under section 411.23.

Sec. 2. Section 97A.17, subsection 2, Code 2003, is amended to read as follows:

2. Commencing July 1, 1996, a vested member of an eligible retirement system who terminates employment covered by one eligible retirement system and, within one year, commences employment covered by the other eligible retirement system may elect to transfer the greater of the average accrued benefit or the refund liability earned from the former system to the current system. The member shall file an application with the current system for transfer of the greater of the average accrued benefit or the refund liability within ninety days of the commencement of employment with the current system.

Sec. 3. Section 97A.17, subsection 4, Code 2003, is amended to read as follows:

4. Upon receipt of an application for transfer ~~of the average accrued benefit~~ as provided in this section, the current system shall calculate the average accrued benefit and the refund liability and the former system shall transfer to the current system assets in an amount equal to the greater of the average accrued benefit or the refund liability. Once the transfer ~~of the average accrued benefit~~ is completed, the member's service under the former system shall be treated as membership service under the current system for purposes of this chapter and chapter 411.

DIVISION II
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)

Sec. 4. Section 97B.1A, subsection 11, paragraphs a, b, and c, Code Supplement 2003, are amended to read as follows:

a. Has attained the minimum age for receipt of a retirement allowance under this chapter.

b. If the member has not attained seventy years of age, has terminated all employment covered under the chapter or formerly covered under the chapter pursuant to section 97B.42 in the month prior to the member's first month of entitlement.

c. Has filed a completed application for benefits with the system setting forth the member's intended first month of entitlement.

Sec. 5. Section 97B.1A, subsection 20, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. Employment with an employer prior to January 1, 1946, if the member is not receiving a retirement allowance based upon that employment.

Sec. 6. Section 97B.1A, subsection 20, Code Supplement 2003, is amended by adding the following new unnumbered paragraph after paragraph d:

NEW UNNUMBERED PARAGRAPH. However, effective July 1, 2004, "service" does not mean service for which an employee receives remuneration from an employer for temporary employment during any quarter in which the employee is on an otherwise unpaid leave of absence that is not authorized under the federal Family and Medical Leave Act of 1993 or other similar leave. Remuneration paid by the employer for the temporary employment shall not be treated by the system as covered wages.

Sec. 7. Section 97B.1A, subsection 22, Code Supplement 2003, is amended to read as follows:

22. "Special service" means service for an employer while employed in a protection occupation as provided in section 97B.49B, and as a county sheriff~~,~~ or deputy sheriff~~, or airport fire fighter~~ as provided in section 97B.49C.

Sec. 8. Section 97B.1A, subsection 24, paragraphs a and c, Code Supplement 2003, are amended to read as follows:

a. "Three-year average covered wage" means, for a member who retires prior to July 1, ~~2005~~ 2008, 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 system 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 system 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.

c. "Three-year average covered wage" means, for a member who retires on or after July 1, ~~2005~~ 2008, the greater of the member's covered wages averaged for a member's highest twelve consecutive quarters of service or the member's covered wages averaged for a member's highest three calendar years of service. The system shall adopt rules to implement this paragraph in accordance with the requirements of this chapter and the federal Internal Revenue Code.

Sec. 9. Section 97B.1A, subsection 25, paragraph a, subparagraph (4), Code Supplement 2003, is amended to read as follows:

(4) Has attained the age of fifty-five. However, an inactive member who has not attained sufficient years of service eligibility to become vested and who has not attained the age of fifty-five as of July 1, 2005, shall not become vested upon the attainment of the age of fifty-five while an inactive member.

Sec. 10. Section 97B.1A, subsection 26, paragraph a, subparagraph (2), subparagraph subdivision (j), Code Supplement 2003, is amended to read as follows:

(j) Payments of damages, attorney fees, interest, and penalties made to satisfy a grievance, ~~or~~ wage claim, or employment dispute.

Sec. 11. Section 97B.1A, subsection 26, paragraph a, subparagraph (2), subparagraph subdivision (n), Code Supplement 2003, is amended by striking the subparagraph subdivision.

Sec. 12. Section 97B.1A, subsection 26, paragraph b, unnumbered paragraph 3, Code Supplement 2003, is amended to read as follows:

Effective July 1, 1992, "covered wages" does not include wages to a member on or after the effective date of the member's retirement, except as otherwise permitted by the system's administrative rules, unless the member is reemployed, as provided under section 97B.48A.

Sec. 13. NEW SECTION. 97B.9A COLLECTIONS — WAIVER.

Notwithstanding any provision of this chapter to the contrary, the system may, in its sole discretion, waive the collection of benefits overpayments, contribution underpayments, or any other debts owed the system, that occur more than three years prior to the date of discovery of the overpayment, underpayment, or debt by the system, for cases in which there is no evidence of fraud or other misconduct on the part of the affected employer or the affected member or beneficiary in providing or failing to provide information necessary to the proper determination of a debt owed the system, calculation of contributions and payments, or calculation of benefits under this chapter.

Sec. 14. Section 97B.14A, Code Supplement 2003, is amended to read as follows:

97B.14A WAGE REPORTING.

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

a. "Change in the schedule of wage payments" means the formal or informal deferral of wages earned in one calendar year to a later calendar year or the acceleration of the wages payable under a contract of employment to the prior calendar year by changing the period over which the contractual compensation is paid, by shortening the period of employment over which contract wages are to be paid, or similar arrangements altering the timing of wage payments.

b. "Distortion of the normal wage progression pattern" means an increase of ten percent or more between the covered wages reported for any two consecutive years.

2. An employer shall report wages of employees covered by this chapter to the system in a manner and form as prescribed by the system. If the wages reported by an employer appear to be a distortion of the normal wage progression pattern for an employee, the system may request that the employer provide documentation ~~indicating that the wages were not misreported for the purposes of causing an increase in the retirement allowance or other payments authorized to be made by this chapter~~ explaining the reason for the distortion. ~~If the system determines that the wages of an employee were misreported, the employer shall prepare and file wage adjustments allocating the wages to the proper wage reporting period.~~ If the distortion of the normal wage progression pattern results from covering compensation that is excluded from the definition of covered wages, or from a change in the schedule of wage payments for an individual, the system shall remove wages that should not be covered from its records, and shall, in cases involving increases caused by a change in the schedule of wage payments, reallocate covered wages to the calendar quarters in which the covered wages would have been reported but for the change in the schedule of wage payments.

Sec. 15. Section 97B.17, subsection 1, Code Supplement 2003, is amended to read as follows:

1. The system shall establish and maintain records of each member, including but not limited to the amount of wages of each member, the ~~contribution~~ contributions made on behalf of each member with interest, ~~and~~ interest dividends credited, beneficiary designations, and applications for benefits of any type. The records may be maintained in paper, magnetic, or electronic form, including optical disk storage, as set forth in chapter 554D. The system may accept, but shall not require, electronic records and electronic signatures to the extent permitted under chapter 554D. These records are the basis for the compilation of the retirement benefits provided under this chapter.

Sec. 16. Section 97B.38, Code Supplement 2003, is amended to read as follows:

97B.38 FEES FOR SERVICES.

The system may, by rule, prescribe ~~the maximum~~ reasonable fees which may be charged for ~~services performed in connection with any claim before the system under this chapter, and any agreement in violation of such rules shall be void~~ production costs, including staff time and materials, associated with performing its duties under this chapter for active, inactive, and retired members, beneficiaries, and the general public, where such production costs are more than de minimis, as determined by the system. ~~Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this chapter by word, circular, letter or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the system, shall be deemed guilty of a fraudulent practice.~~

Sec. 17. Section 97B.40, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. If the system determines that a person may have engaged in a fraudulent practice as described under this section, the system may, in addition to any statutory or equitable remedies provided by law, refer the matter to the auditor of state and to the appropriate law enforcement authorities for possible investigation and prosecution.

Sec. 18. Section 97B.42, unnumbered paragraph 8, Code Supplement 2003, is amended by striking the unnumbered paragraph and inserting in lieu thereof the following:

Except as otherwise provided in this section, an employer shall not sponsor and a member shall not participate in another retirement system in this state supported in whole or in part by public contributions or payments where such retirement system is in lieu of the retirement system established by this chapter. However, in addition to the retirement system established by this chapter, an employer may sponsor and a member may participate in a supplemental

defined contribution plan qualified under Internal Revenue Code section 401(a), a tax-deferred annuity qualified under Internal Revenue Code section 403(b), or an eligible deferred compensation plan qualified under Internal Revenue Code section 457, regardless of whether contributions to such supplemental plans are characterized as employer contributions or employee contributions, and subject to the applicable limits set forth in the Internal Revenue Code for such plans. A defined benefit plan that supplements the retirement system established by this chapter shall not be offered by public employers covered under this chapter.

Sec. 19. Section 97B.42A, subsection 4, Code Supplement 2003, is amended to read as follows:

4. A person who becomes a member of the retirement system pursuant to subsection 3, or who is a member of the retirement system, and who has one or more years of covered wages, may purchase credit, pursuant to section 97B.73, Code 2003, 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 retirement system.

Sec. 20. Section 97B.42A, subsection 5, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

A person who becomes a member of the Iowa public employees' retirement system pursuant to this subsection, and who has one or more years of covered wages, may purchase credit, pursuant to section 97B.73, Code 2003, for one or more quarters of service prior to August 1, 2000, in which the person was employed in a position as described by section 97B.1A, subsection 8, paragraph "a", subparagraph (11), but was not a member of the retirement system.

Sec. 21. Section 97B.43, unnumbered paragraph 3, Code Supplement 2003, is amended to read as follows:

Each individual who on or after July 1, 1978, was an active, vested, or retired member and who (1) made application for and received a refund of contributions made under the abolished system or (2) has on deposit with the retirement fund contributions made under the abolished system shall be entitled to credit for years of prior service in the determination of retirement allowance payments by filing a written election with the system on or after July 1, 1978, and by redepositing any withdrawn contributions under the abolished system together with interest as stated in this paragraph. Any individual who on or after July 1, 1978, is a retired member and who made application for and received a refund of contributions made under the abolished system may, by filing a written election with the system on or after July 1, 1978, have the system retain fifty percent of the monthly increase in retiree benefits that will accrue to the individual because of prior service. If the monthly increase in retirement benefits is less than ten dollars, the system shall retain five dollars of the scheduled increase, and if the monthly increase is less than five dollars, the provisions of this paragraph shall not apply. The system shall continue to retain such funds until the withdrawn contributions, together with interest accrued to the month in which the written election is filed, have been repaid. Due notice of this provision shall be sent to all retired members on or after July 1, 1978. However, this paragraph shall not apply to any person who received a refund of any membership service contributions unless the person repaid the membership service contributions pursuant to section ~~97B.74~~ 97B.80C; but a refund of contributions remitted for the calendar quarter ending September 30, 1953 which was based entirely upon employment which terminated prior to July 4, 1953 shall not be considered as a refund of membership service contributions. The interest to be paid into the fund shall be compounded at the rates credited to member accounts from the date of payment of the refund of contributions under the abolished system to the date the member redeposits the refunded amount. The provisions of the first paragraph of this section relating to the consideration given to credited amounts shall apply to the redeposited amounts or to amounts left on deposit. Effective July 1, 1978, the provisions of this paragraph shall apply to each individual who on or after July 1, 1978, was an active, vested, or retired member, but who was not in service on July 4, 1953. The period for filing the written election with the

system and redepositing any withdrawn contributions together with interest accrued shall commence July 1, 1978. A member who is a retired member on or after July 1, 1978, may file written election with the system on or after July 1, 1978, to have the system retain fifty percent of the monthly increase as provided in this paragraph.

Sec. 22. Section 97B.43, unnumbered paragraph 4, Code Supplement 2003, is amended to read as follows:

Effective July 1, ~~1988~~ 2004, a member eligible for an increased retirement allowance because of the repayment of contributions under this section is entitled to receipt of ~~retroactive~~ adjustment payments ~~for no more than six months immediately preceding~~ beginning with the month in which ~~written notice~~ payment was ~~submitted to~~ received by the system.

Sec. 23. Section 97B.45, unnumbered paragraph 2, Code Supplement 2003, is amended by striking the unnumbered paragraph.

Sec. 24. Section 97B.46, subsection 2, Code Supplement 2003, is amended to read as follows:

2. A member remaining in service after attaining the age of seventy years is entitled to receive a retirement allowance under sections 97B.49A through 97B.49H, as applicable, ~~commencing with payment for the calendar month within which the written notice is submitted to the system, 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~~ without terminating employment.

Sec. 25. Section 97B.47, Code Supplement 2003, is amended to read as follows:

97B.47 EARLY RETIREMENT DATE.

A member's early retirement date shall be the first of the month in which a member attains the age of fifty-five years or the first of any month after attaining the age of fifty-five years prior to the member's normal retirement date, provided such date shall be after the last day of service. ~~A member may retire on the member's early retirement date by submitting written notice to the system setting forth the early retirement date which shall not be before the first day of the sixth calendar month preceding the month in which such notice is filed.~~

Sec. 26. Section 97B.48, subsections 1 and 2, Code Supplement 2003, are amended to read as follows:

1. Retirement allowances shall be paid monthly, except that, if an allowance of less than six hundred dollars a year ~~may, at the member's option~~ is payable pursuant to section 97B.51, subsection 1, paragraph "b", the member's retirement benefit shall be paid as a lump sum in an amount equal to the sum of the member's and employer's accumulated contributions and the retirement dividends standing to the member's credit before December 31, 1966. Receipt of the lump sum payment by a member shall terminate any and all entitlement for the period of service covered of the member under this chapter and the member shall not be eligible to buy back the period of service.

2. The first monthly payment of a ~~normal~~ retirement allowance shall be paid as of the ~~normal retirement effective date, which date shall be the later of the normal retirement date or the first day of the sixth calendar month preceding the month in which written notice of normal retirement is submitted to the system~~ member's first month of entitlement. ~~Written notice under this section may consist of submission of a completed estimate request form, a completed application for retirement form, or a letter from the member requesting information on retirement benefits, whichever is received first by the system. However, a letter requesting information on benefits or submission of a completed estimate request form is only valid for six months following the date of its receipt by the system, unless during that six-month period the system receives a completed application for retirement form from the member. A retirement allowance may only be provided retroactively for a single six-month period. Payment of an early~~

~~retirement allowance or an allowance for retirement after the normal retirement date shall be paid as of the effective date of retirement subject to section 97B.45, 97B.46, or 97B.47.~~ The payments shall be continued thereafter for the lifetime of the retired member except as provided in section 97B.48A.

Sec. 27. Section 97B.48, subsection 5, Code Supplement 2003, is amended by striking the subsection.

Sec. 28. Section 97B.48, Code Supplement 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 6. Effective on such date as the system determines by rule, but in no event later than July 1, 2006, if the system determines that the accumulated contributions of a member, payable to a living member who has had a break in service or to a beneficiary of a deceased member, are less than three thousand dollars, the lump sum amount payable under this chapter shall be paid to the living member or beneficiary in full satisfaction of all rights of the member or beneficiary to receive any payments under the system. For purposes of this section, a "break in service" means twenty consecutive calendar quarters in which no wages are reported to the system. The lump sum payment shall be made within one hundred eighty days after the calendar quarter in which the member completes a break in service or dies, whichever is applicable. A member or beneficiary who receives a mandatory distribution under this subsection shall have sixty days to return the distribution to the system and restore the member's or beneficiary's account.

NEW SUBSECTION. 7. Effective July 1, 2005, monthly retirement allowance payments shall be directly deposited without charge to a retired member's account via electronic funds transfer. A retired member may elect to receive monthly allowance payments as paper warrants in lieu of electronic funds transfers, but the system shall charge an administrative fee for processing such paper warrants. However, the system may, for good cause shown, waive the administrative fee. The fee may be automatically deducted from the monthly retirement allowance before the warrant is issued to the retired member.

Sec. 29. Section 97B.48A, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 5. If a retired reemployed member incurs a break in service, as defined in this subsection, and the member has failed to request an increase in the member's monthly allowance or a distribution of the member's and employer's accumulated contributions prior to the break in service, and if the amount of the increase in the member's monthly retirement allowance would be less than six hundred dollars per year, the system shall distribute the lump sum amount payable under subsection 4. For purposes of this subsection, a "break in service" means four consecutive calendar quarters in which no wages are reported to the system. The lump sum payment shall be made within one hundred eighty days after the calendar quarter in which the member has a break in service. A member who receives a mandatory distribution under this subsection shall have sixty days to return the distribution to the system and request an increase in the member's monthly allowance.

Sec. 30. NEW SECTION. 97B.49 DORMANT ACCOUNTS.

1. In the event that all, or any portion, of a retirement allowance, death benefit, or other distribution payable to a member or a member's designated beneficiary, heirs at law, or estate, remains unpaid solely by reason of the inability of the system to locate the appropriate payee, the amount payable shall not be forfeited but shall be treated as a dormant account after the time for making a claim has run.

2. A dormant account shall revert to the retirement fund created in section 97B.7. A dormant account shall be non-interest-bearing, and except for keeping a record of such account, the system shall not maintain the account. A member who has a dormant account and returns to covered employment shall have their dormant account reactivated as of the quarter they

return to covered employment. If the appropriate payee contacts the system after the amount payable is treated as a dormant account, the appropriate payee may claim such amounts by filing a withdrawal application provided by the system. The system shall have rulemaking authority to adopt rules necessary to implement this section in a just and equitable manner.

3. The system shall ensure that the payment of a dormant account as provided in this section meets the requirements of section 401(a)(9) of the federal Internal Revenue Code.

Sec. 31. Section 97B.49B, subsection 1, paragraph c, Code Supplement 2003, is amended to read as follows:

c. "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 "e", subparagraph (2), eligible service includes membership and prior service as a sheriff~~,~~ or deputy sheriff~~, or airport fire fighter~~ as defined in section 97B.49C.

Sec. 32. Section 97B.49B, subsection 1, paragraph e, Code Supplement 2003, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (8) An airport fire fighter employed by the military division of the department of public defense.

Sec. 33. Section 97B.49B, subsection 3, paragraph b, Code Supplement 2003, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (7) For the fiscal year commencing July 1, 2004, and each succeeding fiscal year, there is appropriated from the general fund of the state to the system, 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. 34. Section 97B.49C, subsection 1, paragraph a, Code Supplement 2003, is amended by striking the paragraph.

Sec. 35. Section 97B.49C, subsection 1, paragraph d, Code Supplement 2003, is amended to read as follows:

d. "Eligible service" means membership and prior service as ~~an airport fire fighter,~~ a 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.

Sec. 36. Section 97B.49C, subsection 2, Code Supplement 2003, is amended to read as follows:

2. CALCULATION OF MONTHLY ALLOWANCE.

a. 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 before July 1, 2004, 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.

b. Notwithstanding other provisions of this chapter, a member who retires from employment as a sheriff or deputy sheriff on or after July 1, 2004, and at the time of retirement is either at least fifty-five years of age or is at least the applicable early retirement age with at least twenty-two years of eligible service 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.

c. For purposes of this subsection, "applicable early retirement age" means the following:

(1) For each active or inactive vested member retiring on or after July 1, 2004, and before July 1, 2005, fifty-four years of age.

(2) For each active or inactive vested member retiring on or after July 1, 2005, and before July 1, 2006, fifty-three years of age.

(3) For each active or inactive vested member retiring on or after July 1, 2006, and before July 1, 2007, fifty-two years of age.

(4) For each active or inactive vested member retiring on or after July 1, 2007, and before July 1, 2008, fifty-one years of age.

(5) For each active or inactive vested member retiring on or after July 1, 2008, fifty years of age.

Sec. 37. Section 97B.49C, subsection 3, paragraph a, Code Supplement 2003, is amended to read as follows:

a. Annually, the system 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~~ Fifty percent of the cost shall be paid by the employers of employees covered under this section and ~~forty~~ fifty percent of the cost shall be paid by the employees. The employer and employee contributions required under this paragraph are in ~~addition to~~ lieu of 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.~~

Sec. 38. Section 97B.49C, subsection 3, paragraph b, Code Supplement 2003, is amended to read as follows:

b. ~~(1)~~ Annually, during each fiscal year commencing with the fiscal year beginning July 1, 1988, each county shall pay to the system 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 system, 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. 39. Section 97B.50, subsection 2, Code Supplement 2003, is amended to read as follows:

2. a. A vested member who retires from the retirement 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 as selected under section 97B.51, 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 retirement system at any time after July 4, 1953. Eligible members retiring on or after July 1, 2000, are entitled to the receipt of retroactive adjustment payments for no more than thirty-six months immediately preceding the month in which written ~~notice of~~ application for retirement due to disability was ~~submitted to~~ received by the system~~, notwithstanding the requirements of subsection 4~~.

b. A vested member who retires from the retirement 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 as

selected under section 97B.51, 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 retirement system at any time since July 4, 1953. Eligible members retiring on or after July 1, 2000, are entitled to the receipt of retroactive adjustment payments for no more than thirty-six months immediately preceding the month in which written ~~notice of~~ application for retirement due to disability was ~~submitted to~~ received by the system~~, notwithstanding the requirements of subsection 4~~.

c. A vested member who terminated service due to a disability, who has been issued payment for a refund pursuant to section 97B.53, and who subsequently commences receiving disability benefits as a result of that disability pursuant to the federal Social Security Act, 42 U.S.C. § 423 et seq. or the federal Railroad Retirement Act, 45 U.S.C. § 231 et seq., may receive credit for membership service for the period covered by the refund payment, upon repayment to the system of the actuarial cost of receiving service credit for the period covered by the refund payment, as determined by the system. For purposes of this paragraph, the actuarial cost of the service purchase shall be determined as provided in section ~~97B.74~~ 97B.80C. The payment to the system as provided in this paragraph shall be made within ninety days after July 1, 2000, or the date federal disability payments commenced, whichever occurs later. For purposes of this paragraph, the date federal disability payments commence shall be the date that the member actually receives the first such payment, regardless of any retroactive payments included in that payment. A member who repurchases service credit under this paragraph and applies for retirement benefits shall have the member's monthly allowance, including retroactive adjustment payments, determined in the same manner as provided in paragraph "a" or "b", as applicable. ~~This paragraph shall not be implemented until the system has received a determination letter from the federal internal revenue service approving the system's plan's qualified status under Internal Revenue Code section 401(a).~~

Sec. 40. Section 97B.50, subsection 4, Code Supplement 2003, is amended by striking the subsection.

Sec. 41. Section 97B.50A, subsection 5, Code Supplement 2003, is amended to read as follows:

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 any workers' compensation, unemployment compensation, employer-paid disability plan, program, or policy, 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.

Sec. 42. Section 97B.52, subsection 1, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

If ~~a~~ an inactive member, with at least sixteen calendar quarters of service credit, or any active member dies prior to the member's first month of entitlement, the member's beneficiary shall be entitled to receive a death benefit equal to the greater of the amount provided in paragraph "a" or "b". If an inactive member with less than sixteen calendar quarters of service credit dies prior to the member's first month of entitlement, the member's beneficiary shall only be entitled to receive a death benefit, as a lump sum, equal to the amount provided in paragraph "a".

Sec. 43. Section 97B.52, subsection 1, paragraph a, subparagraph (3), Code Supplement 2003, is amended to read as follows:

(3) For service as a sheriff~~,~~ or deputy sheriff~~, or airport fire fighter~~, as provided in section 97B.49C, the applicable denominator is twenty-two.

Sec. 44. Section 97B.52, subsection 5, unnumbered paragraph 3, Code Supplement 2003, is amended by striking the unnumbered paragraph.

Sec. 45. Section 97B.52, subsection 7, Code Supplement 2003, is amended to read as follows:

7. If a member has not filed a designation of beneficiary with the system, the death benefit is payable to the member's estate. If no designation has been filed and an estate is not probated, the death benefit shall be paid to the surviving spouse, if any. If no designation has been filed, no estate has been probated, and there is no surviving spouse, the death benefit shall be paid to the heirs as provided in this subsection. The system shall pay the full amount of a member's death benefits to those heirs who have presented a claim for such benefits within five years after the member's date of death. The system is not liable for the payment of any claims by heirs who make themselves known to the system more than five years after the date of death of the member. ~~Otherwise~~ If a death benefit is not paid as provided by this subsection, the death benefit shall remain in the fund.

Sec. 46. Section 97B.52A, subsection 1, paragraph c, Code Supplement 2003, is amended to read as follows:

c. For a member whose first month of entitlement is July 2000 or later, the member does not return to any employment with a covered employer until the member has qualified for at least one calendar month of retirement benefits, and the member does not return to covered employment until the member has qualified for no fewer than four calendar months of retirement benefits. For purposes of this paragraph, effective July 1, 2000, any employment with a covered employer does not include employment as an elective official or member of the general assembly if the member is not covered under this chapter for that employment. For purposes of determining a bona fide retirement under this paragraph and for a member whose first month of entitlement is July 2004 or later, but before July 2006, covered employment does not include employment as a licensed health care professional by a public hospital as defined in section 249I.3.

Sec. 47. Section 97B.53, subsection 4, Code Supplement 2003, is amended to read as follows:

4. A member has not terminated employment for purposes of this section if the member ~~accepts~~ commences other covered employment within thirty days after ~~receiving the last payment of wages for~~ the date employment was terminated with a covered ~~employment~~ employer, or if the member begins covered employment prior to filing a request for a refund with the system.

Sec. 48. Section 97B.53B, subsection 1, paragraph c, subparagraph (2), subparagraph subdivision (c), Code Supplement 2003, is amended to read as follows:

(c) ~~The~~ Prior to January 1, 2002, the portion of any distribution that is not includible in the gross income of the distributee, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.

Sec. 49. Section 97B.73B, subsection 2, paragraph b, Code Supplement 2003, is amended to read as follows:

b. For a purchase of membership service on or after July 1, 2002, the actuarial cost of the service purchase in a manner as provided in section ~~97B.73~~ 97B.80C.

Sec. 50. Section 97B.73B, subsection 2, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. Effective July 1, 2004, a member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to adjusted payments beginning with the month in which the member pays contributions under this section.

Sec. 51. Section 97B.80, subsection 3, Code Supplement 2003, is amended to read as follows:

3. ~~The system 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 system. 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 system documenting time periods covered under retired pay for nonregular service.

Sec. 52. Section 97B.80, subsection 4, Code Supplement 2003, is amended by striking the subsection and inserting in lieu thereof the following:

4. Effective July 1, 2004, a member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to adjusted payments beginning with the month in which the member pays contributions under this section.

Sec. 53. Section 97B.80C, subsection 1, paragraph a, Code Supplement 2003, is amended to read as follows:

a. "Nonqualified service" means service that is not qualified service~~.~~ and includes, but is not limited to, any of the following:

(1) Full-time volunteer public service in the federal peace corps program.

(2) Public employment comparable to employment covered under this chapter in a qualified Canadian governmental entity that is an elementary school, secondary school, college, or university that is organized, administered, and primarily supported by the provincial, territorial, or federal governments of Canada, or any combination of the same.

Sec. 54. Section 97B.80C, subsection 1, paragraph c, subparagraph (1), Code Supplement 2003, is amended by adding the following new subparagraph subdivisions:

NEW SUBPARAGRAPH SUBDIVISION. (e) Service as a member of the general assembly.

NEW SUBPARAGRAPH SUBDIVISION. (f) Previous service as a county attorney by a part-time county attorney.

NEW SUBPARAGRAPH SUBDIVISION. (g) Service in public employment comparable to employment covered under this chapter in another state or in the federal government, or service as a member of another public retirement system in this state, including but not limited to the teachers insurance and annuity association-college retirement equities fund (TIAA-CREF), if the member was not retired under that system and has no further claim upon a retirement benefit from that other public system.

NEW SUBPARAGRAPH SUBDIVISION. (h) Service as a member of the retirement system at any time on or after July 4, 1953, if the member received a refund of the member's accumulated contributions for that period of membership service.

NEW SUBPARAGRAPH SUBDIVISION. (i) An approved leave of absence which does not constitute service as defined in section 97B.1A, which is granted on or after July 1, 1998.

NEW SUBPARAGRAPH SUBDIVISION. (j) Employment of a person who at the time of the employment was not covered by this chapter, was employed by a covered employer under this chapter, and did not opt out of coverage under this chapter.

NEW SUBPARAGRAPH SUBDIVISION. (k) Employment of a person as an adjunct instructor as defined in section 97B.1A, subsection 8.

Sec. 55. Section 97B.80C, subsection 3, Code Supplement 2003, is amended to read as follows:

3. a. A member making contributions for a purchase of permissive service credit under this

section, except as otherwise provided by this subsection, shall make contributions in an amount equal to the actuarial cost of the permissive service credit purchase. ~~For purposes of this subsection, the actuarial cost of the service purchase is an amount determined by the system in accordance with actuarial tables, as reported to the system by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of permissive service credit.~~

b. For a member making contributions for a purchase of permissive service credit for qualified service as described in subsection 1, paragraph "c", subparagraph (1), subparagraph subdivision (e), under this section, the member shall make contributions in an amount equal to forty percent of the actuarial cost of the service purchase. There is appropriated from the general fund of the state to the system an amount sufficient to pay sixty percent of the actuarial cost of the service purchase by a member pursuant to this paragraph.

c. For a member making contributions for a purchase of permissive service credit for qualified service as described in subsection 1, paragraph "c", subparagraph (1), subparagraph subdivision (f), under this section, 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 system an amount sufficient to pay sixty percent of the actuarial cost of the service purchase by a member pursuant to this paragraph.

d. For purposes of this subsection, the actuarial cost of the service purchase is an amount determined by the system in accordance with actuarial tables, as reported to the system by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of permissive service credit.

Sec. 56. Section 97B.80C, Code Supplement 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 3A. Effective July 1, 2004, a member eligible for an increased retirement allowance because of the payment of contributions under this or any other section providing for the purchase of service credit is entitled to adjusted payments beginning with the month in which the member pays contributions under the applicable section.

NEW SUBSECTION. 3B. Effective July 1, 2004, a purchase of service made in accordance with this or any other section providing for the purchase of service credit by a retired reemployed member shall be applied to the member's original retirement allowance. The member is eligible to receive adjustment payments beginning with the month of the purchase.

NEW SUBSECTION. 3C. A member who is entitled to a benefit from another public retirement system and wishes to purchase the service covered by that public retirement system must waive, on a form provided by the Iowa public employees' retirement system, all rights to a retirement benefit under that other public system before purchasing credit in this system for the period of service covered by that other public system. The waiver must be accepted by the other public system. If the waiver is not obtained, a member may buy up to twenty quarters of such service credit. In no event can a member receive more than one service credit for any given calendar quarter.

Sec. 57. Section 411.6, subsection 7, paragraph c, Code 2003, is amended to read as follows:

c. Should a disability beneficiary under age fifty-five be employed in a public safety occupation, the disability beneficiary's retirement allowance shall cease. Notwithstanding any provision of this chapter to the contrary, if a disability beneficiary is employed in a public safety occupation that would otherwise constitute membership service, the disability beneficiary shall not become a member of the system. For purposes of this paragraph, "public safety occupation" means a peace officer, as defined in section 97A.1; a protection occupation, as defined in section 97B.49B; a sheriff~~,~~ or deputy sheriff~~, or airport fire fighter,~~ as defined in section 97B.49C; and a police officer or fire fighter as defined in section 411.1, who was not restored to active service as provided by this subsection.

Sec. 58. Section 724.6, subsection 2, Code 2003, 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.49C~~ 97B.49B, 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. 59. 2002 Iowa Acts, chapter 1135, section 36, subsections 1 and 3, are amended to read as follows:

1. a. Notwithstanding any provision of chapter 97B to the contrary, a member of the Iowa public employees' retirement system who has an employer-mandated reduction in hours or an employee-exercised reduction in pay but remains on the employer's payroll, and who would receive a reduction in the member's three-year average covered wage as a result of the reduction in hours or pay, may have the member's retirement allowance calculated based on the three-year average covered wage the member would have received, based on reasonable assumptions, if the member had not been subject to the employer-mandated reduction in hours or employee-exercised reduction in pay, upon payment by the member of the applicable contribution amount.

b. For purposes of this section, ~~the applicable~~ unless the context otherwise requires:

(1) "Applicable contribution ~~amount~~ amount" is an amount equal to the employee and employer contributions that would have been paid to the system based on the wages that the member would have received but for the employer-mandated reduction in hours or employee-exercised reduction in pay and would have been included in the member's three-year average covered wage.

(2) "Employee-exercised reduction in pay" means a reduction in pay of a member who has exercised bumping rights by accepting a lower-paid position in order to avoid being laid off by the employer.

3. This section shall apply to employer-mandated reductions in hours or employee-exercised reductions in pay during the period of time beginning on or after January 1, 2002, and ending no later than June 30, ~~2003~~ 2005. The system is authorized to adopt such rules, including emergency rules, as it deems necessary or prudent to implement this section.

Sec. 60. Sections 97B.72, 97B.72A, 97B.73, 97B.73A, 97B.74, 97B.75, 97B.80A, 97B.80B, and 97B.81, Code Supplement 2003, are repealed.

Sec. 61. EFFECTIVE DATE — RETROACTIVE APPLICABILITY.

1. The section of this Act amending section 97B.53B, subsection 1, paragraph "c", being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to January 1, 2002, and is applicable on and after that date.

2. The section of this Act amending 2002 Iowa Acts, chapter 1135, section 36, being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to January 1, 2002, and is applicable on and after that date.

Sec. 62. LICENSED HEALTH CARE PROFESSIONALS — BONA FIDE RETIREMENT REPORT. The Iowa public employees' retirement system and the Iowa hospital association shall each submit a report to the general assembly by December 1, 2006, concerning the costs and effectiveness of the provision of this Act amending section 97B.52A that provides that covered employment, for purposes of establishing a bona fide retirement, does not include employment as a licensed health care professional by a public hospital as defined in section 249I.3. Each report shall provide statistics concerning the number of members taking advantage of this provision, the costs and financial benefits, if any, associated with this provision, and recommendations for further action.

DIVISION III
STATEWIDE FIRE AND POLICE RETIREMENT SYSTEM

Sec. 63. Section 400.8, subsection 1, Code 2003, is amended to read as follows:

400.8 ORIGINAL ENTRANCE EXAMINATION — APPOINTMENTS.

1. The commission, when necessary under the rules, including minimum and maximum age limits, which shall be prescribed and published in advance by the commission and posted in the city hall, shall hold examinations for the purpose of determining the qualifications of applicants for positions under civil service, other than promotions, which examinations shall be practical in character and shall relate to matters which will fairly test the mental and physical ability of the applicant to discharge the duties of the position to which the applicant seeks appointment. The physical examination of applicants for appointment to the positions of police officer, police matron, or fire fighter shall be held in accordance with medical protocols established by the board of trustees of the fire and police retirement system established by section 411.5 and shall be conducted in accordance with the directives of the board of trustees. However, the prohibitions of section 216.6, subsection 1, paragraph "d", regarding tests for the presence of the antibody to the human immunodeficiency virus shall not apply to such examinations. The board of trustees may change the medical protocols at any time the board so determines. The physical examination of an applicant for the position of police officer, police matron, or fire fighter shall be conducted after a conditional offer of employment has been made to the applicant. An applicant shall not be discriminated against on the basis of height, weight, sex, or race in determining physical or mental ability of the applicant. Reasonable rules relating to strength, agility, and general health of applicants shall be prescribed. The costs of the physical examination required under this subsection shall be paid from the trust and agency fund of the city.

Sec. 64. Section 411.5, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 14. MEDICAL RECORDS. A physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records to the system in connection with the application by a member for disability retirement under this chapter shall be entitled to charge a fee for production of the records. The fee for copies of any records shall not exceed the reasonable cost of production.

Sec. 65. Section 411.6, subsection 7, unnumbered paragraph 1, Code 2003, is amended to read as follows:

~~Re-examination~~ Reexamination of beneficiaries retired on account of disability. ~~Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the~~ The system may, and upon the member's application shall, require any disability beneficiary who has not yet attained age fifty-five to undergo a medical examination at a place designated by the medical board. The examination shall be made by the medical board or in special cases, by an additional physician or physicians designated by such board. If any disability beneficiary who has not attained the age of fifty-five refuses to submit to the medical examination, the member's allowance may be discontinued until withdrawal of such refusal, and if the refusal continues for one year all rights in and to the member's pension may be revoked by the system. For a disability beneficiary who has not attained the age of fifty-five and whose entitlement to a disability retirement commenced on or after July 1, 2000, the medical board may, as part of the examination required by this subsection, suggest appropriate medical treatment or rehabilitation if, in the opinion of the medical board, the recommended treatment or rehabilitation would likely restore the disability beneficiary to duty.

Sec. 66. Section 411.6, subsection 7, paragraph a, unnumbered paragraph 2, Code 2003, is amended to read as follows:

A beneficiary retired under this lettered paragraph, in order to be eligible for continued

receipt of retirement benefits, shall no later than May 15 of each year submit to the system a copy of the beneficiary's federal individual income tax return for the preceding year. The beneficiary shall also submit, within a reasonable period of time, any documentation requested by the system that is determined to be necessary by the system to determine the beneficiary's gross wages.

Sec. 67. Section 411.6B, subsection 1, Code 2003, is amended to read as follows:

1. As used in this section, unless the context otherwise requires, and to the extent permitted by the internal revenue service:

a. "Direct rollover" means a payment by the system to the eligible retirement plan specified by the member or the member's surviving spouse, or the member's alternate payee under a marital property order who is the member's spouse or former spouse.

b. "Eligible retirement plan" means ~~either~~ any of the following that accepts an eligible rollover distribution from a member, ~~or~~ a member's surviving spouse, or a member's alternate payee:

(1) An individual retirement account in accordance with section 408(a) of the federal Internal Revenue Code.

(2) An individual retirement annuity in accordance with section 408(b) of the federal Internal Revenue Code.

In addition, an "eligible retirement plan" includes an annuity plan in accordance with section 403(a) of the federal Internal Revenue Code, or a qualified trust in accordance with section 401(a) of the federal Internal Revenue Code, that accepts an eligible rollover distribution from a member. Effective January 1, 2002, the term "eligible retirement plan" also includes an annuity contract described in section 403(b) of the federal Internal Revenue Code, and an eligible plan under section 457(b) of the federal Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that chooses to separately account for amounts rolled over into such eligible retirement plan from the system.

c. "Eligible rollover distribution" means all or any portion of a member's account, except that an eligible rollover distribution does not include any of the following:

(1) A distribution that is one of a series of substantially equal periodic payments, which occur annually or more frequently, made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary, or made for a specified period of ten years or more.

(2) A distribution to the extent that the distribution is required pursuant to section 401(a)(9) of the federal Internal Revenue Code.

(3) The portion of any distribution that is not includible in the gross income of the distributee, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities. Provided, however, that effective January 1, 2002, such distributions may be directly rolled over to an individual retirement account described in federal Internal Revenue Code section 408(a) or 408(b), a qualified defined contribution plan described in federal Internal Revenue Code section 401(a), or a qualified annuity plan described in federal Internal Revenue Code section 403(a), if such plan agrees to separately account for the after-tax amount so rolled over.

(4) A distribution of less than two hundred dollars of taxable income.

Sec. 68. Section 411.22, subsection 1, paragraph b, Code 2003, is amended to read as follows:

b. A sum sufficient to pay the retirement system the present worth, computed at the interest rate ~~provided in section 535.3 for court judgments and decrees~~ assumption adopted by the system pursuant to section 411.5, subsection 9, of the future payments of such benefits, for which the retirement system is liable, but the sum is not a final adjudication of the future payments which the member is entitled to receive.

Sec. 69. Section 411.31, subsection 1, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. "Refund liability" means the amount the member may elect to withdraw from the former system under section 97A.16.

Sec. 70. Section 411.31, subsection 2, Code 2003, is amended to read as follows:

2. Commencing July 1, 1996, a vested member of an eligible retirement system who terminates employment covered by one eligible retirement system and, within one year, commences employment covered by the other eligible retirement system may elect to transfer the greater of the average accrued benefit or refund liability earned from the former system to the current system. The member shall file an application with the current system for transfer of the greater of the average accrued benefit or refund liability within ninety days of the commencement of employment with the current system.

Sec. 71. Section 411.31, subsection 4, Code 2003, is amended to read as follows:

4. Upon receipt of an application for transfer ~~of the average accrued benefit~~ as provided in this section, the current system shall calculate the average accrued benefit and the refund liability and the former system shall transfer to the current system assets in an amount equal to the greater of the average accrued benefit or refund liability. Once the transfer ~~of the average accrued benefit~~ is completed, the member's service under the former system shall be treated as membership service under the current system for purposes of this chapter and chapter 97A.

Sec. 72. Section 411.36, subsection 1, paragraph c, Code 2003, is amended to read as follows:

c. 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~~ thirty thousand, and three of whom are from cities having a population of ~~forty~~ thirty thousand or more. The members authorized pursuant to this paragraph shall be appointed by the governing body of the Iowa league of cities.

Sec. 73. EFFECTIVE DATE — RETROACTIVE APPLICABILITY. The section of this Act amending section 411.6B, subsection 1, being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to January 1, 2002, and is applicable on and after that date.

DIVISION IV
JUDICIAL RETIREMENT SYSTEM

Sec. 74. JUDICIAL RETIREMENT SYSTEM — SPECIAL VESTING PROVISION.

1. Notwithstanding any provision of chapter 602 to the contrary, a judge who has had an aggregate of at least four years of service as a judge of one or more of the courts as of the effective date of this section of this Act shall be deemed to have had at least six years of service as a judge for purposes of determining the judge's eligibility for a retirement benefit under the retirement system pursuant to sections 602.9106, 602.9108, and 602.9112, and section 602.9107C, subsection 1.

2. This section of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION V
MISCELLANEOUS PROVISIONS

Sec. 75. NEW SECTION. 70A.17B PAYROLL DEDUCTION FOR ADDITIONAL INSURANCE COVERAGE.

1. The state officer in charge of any of the state payroll systems shall deduct from the wages

or salaries of a state officer or employee an amount specified by the officer or employee for payment to any company authorized to do business in this state for the purpose of purchasing insurance if all of the following conditions are met:

a. At least five hundred state officers or employees request the deduction to purchase insurance from the same company.

b. The request for the payroll deduction is made by the state officer or employee in writing to the officer in charge of the program.

c. The pay period during which the deduction is made, the frequency, and the amount of the deduction are compatible with the payroll system.

d. The insurance coverage to be purchased is not provided by the state.

e. The company providing the insurance enters into a written agreement with the state delineating each party's rights and responsibilities.

2. The moneys deducted under this section shall be paid to the company designated by the requesting state officers or employees. The deduction may be made even though the compensation paid to an officer or employee is reduced to an amount below the minimum prescribed by law. Payment to an officer or employee of compensation less the deduction shall constitute a full discharge of claims and demands for services rendered by the officer or employee during the period covered by the payment. The request for the deduction may be withdrawn at any time by filing a written notification of withdrawal with the state officer in charge of any of the state payroll systems.

3. The department of administrative services reserves the right to terminate an insurance company's participation in the program if the department receives complaints regarding the actions of the insurance company or its agents in relation to the program and such termination would be in the best interest of the state officers and employees, the department makes a determination that the insurance company has engaged in a pattern or practice of unfair, misleading, or fraudulent acts and such termination would be in the best interest of the state officers and employees, or the commissioner of insurance determines that the company has engaged in practices that would otherwise disqualify the company from providing insurance coverage in Iowa.

4. The department is authorized to establish and collect an administrative fee as deemed necessary and appropriate in an amount not to exceed the state's actual cost of providing the payroll deduction service.

Approved April 26, 2004

CHAPTER 1104

REGULATION OF BUSINESS ENTITIES

H.F. 2269

AN ACT providing for the regulation of business entities, including businesses providing for cemetery and funeral merchandising and services, business promotions and contracts, and businesses providing continuing care or adult congregate living services, and providing penalties.

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

DIVISION I
CEMETERY AND FUNERAL MERCHANDISING AND SERVICES

Section 1. Section 523A.102, subsection 22, Code 2003, is amended by striking the subsection.

Sec. 2. Section 523A.501, subsection 6, Code 2003, is amended to read as follows:

6. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the permit, the commissioner shall notify the person in writing of the reasons for the denial. ~~The permit shall disclose on its face the permit holder's employer or the establishment on whose behalf the applicant will be making or attempting to make sales, the permit number, and the expiration date.~~

Sec. 3. Section 523A.502, subsection 7, Code 2003, is amended to read as follows:

7. A sales permit is not assignable or transferable. ~~A permit holder~~ An establishment selling all or part of ~~a~~ its business to a purchaser shall cancel the establishment's sales permit ~~and the~~. The purchaser shall apply for a new sales permit in the purchaser's name within thirty days of the sale.

DIVISION II
BUSINESS PROMOTIONS AND CONTRACTS

Sec. 4. Section 22.7, subsection 42, Code Supplement 2003, is amended to read as follows:

42. Information obtained by the commissioner of insurance in the course of an investigation as provided in section 502.603~~, 523B.8,~~ or 523C.23.

Sec. 5. Section 523B.1, subsection 1, Code 2003, is amended by striking the subsection.

Sec. 6. Section 523B.1, subsection 3, paragraph a, unnumbered paragraph 1, Code 2003, is amended to read as follows:

"Business opportunity" means an opportunity to start a business according to the terms of a contract ~~or agreement,~~ between a seller and purchaser~~, express or implied, orally or in writing, at~~ in which the purchaser provides an initial investment exceeding five hundred dollars~~, where,~~ the ~~parties agree~~ seller represents that the seller or a person recommended by the seller is to provide to the purchaser any products, equipment, supplies, materials, or services for the purpose of enabling the purchaser to start ~~a~~ the business~~,~~; and the seller represents, directly or indirectly, orally or in writing, any of the following:

Sec. 7. Section 523B.1, subsection 3, paragraph b, subparagraph (5), Code 2003, is amended to read as follows:

(5) The renewal or extension of a business opportunity ~~contract or agreement~~ entered into under this chapter or prior to July 1, 1981.

Sec. 8. Section 523B.1, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 3A. "Contract" means any agreement between parties which is express or implied, and which is made orally or in writing.

Sec. 9. Section 523B.1, subsection 4, unnumbered paragraph 1, Code 2003, is amended to read as follows:

"Franchise" means a contract ~~or agreement~~ between a seller and a purchaser~~, express or implied, orally or in writing,~~ where the parties agree to ~~both~~ all of the following:

Sec. 10. Section 523B.1, subsections 9, 10, and 12, Code 2003, are amended to read as follows:

9. "Person" means ~~an individual, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity, provided, however, person~~ the same as defined in section 4.1, except that it does not include a government or governmental subdivision or agency.

10. "Purchaser" means a person who enters into a contract ~~or agreement~~ for the acquisition of a business opportunity or a person to whom an offer to sell a business opportunity is directed.

12. "Sale" or "sell" includes every contract ~~or agreement of~~ for sale, contract to sell, or disposition of, a business opportunity or interest in a business opportunity for value.

Sec. 11. Section 523B.2, subsections 1 through 7, Code 2003, are amended by striking the subsections.

Sec. 12. Section 523B.2, subsection 8, paragraphs a and b, Code 2003, are amended to read as follows:

1. DISCLOSURE DOCUMENT REQUIRED. A person required to file an irrevocable consent to service of process with the secretary of state as a seller as provided in section 523B.2A shall not act as seller in the state

~~a. It is unlawful to offer or sell a business opportunity required to be registered pursuant to this chapter~~ unless the person provides a written disclosure document ~~as filed under subsection 2 is delivered~~ to each purchaser. The person shall deliver the written disclosure document to the purchaser at least ten business days prior to the earlier of the purchaser's 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.

~~b.~~ 2. DISCLOSURE DOCUMENT COVER SHEET. The disclosure document shall have a cover sheet which ~~is entitled,~~ shall consist of a title printed in bold and a statement. The title and statement shall be in at least ten point ~~bold~~ type~~, "DISCLOSURE REQUIRED BY IOWA LAW."~~ and shall appear as follows:

DISCLOSURE REQUIRED BY IOWA LAW

~~Under the title shall appear the following statement in at least ten point type: "The~~The registration of this business opportunity does not constitute approval, recommendation, or endorsement by the state of Iowa. The information contained in this disclosure document has not been verified by this state. If you have any questions or concerns about this investment, seek professional advice before you sign a contract or make any payment. You are to be provided ten (10) business days to review this document before signing a contract ~~or agreement~~ or making any payment to the seller or the seller's ~~representative."~~representative.

The seller's name and principal business address, along with the date of the disclosure docu-

ment, shall also be provided on the cover sheet. No other information shall appear on the cover sheet.

3. DISCLOSURE DOCUMENT CONTENTS. A disclosure document shall be in one of the following forms:

a. A uniform franchise offering circular prepared in accordance with the guidelines adopted by the North American securities administrators association, inc., as amended through the effective date of this Act.

b. A disclosure document prepared pursuant to the federal trade commission rule relating to disclosure requirements and prohibitions concerning franchising and business opportunity ventures in accordance with 16 C.F.R. § 436.

c. A form that includes all of the following:

Sec. 13. Section 523B.2, subsection 8, paragraph c, unnumbered paragraph 1, Code 2003, is amended by striking the unnumbered paragraph.

Sec. 14. Section 523B.2, subsection 8, paragraph c, subparagraph (13), Code 2003, is amended by striking the subparagraph.

Sec. 15. Section 523B.2, subsection 8, paragraph c, subparagraphs (17), (18), (19), and (20), Code 2003, are amended to read as follows:

(17) A statement describing any contractual restrictions, prohibitions, or limitations on the purchaser's conduct. Attach a copy of all ~~business opportunities and other~~ contracts ~~or agreements~~ proposed for use or in use in this state including, without limitation, all lease agreements, option agreements, and purchase agreements.

(18) The rights and obligations of the seller and the purchaser regarding termination of the business opportunity contract ~~or agreement~~.

(19) A statement accurately describing the grounds upon which the purchaser may initiate legal action to terminate the business opportunity contract ~~or agreement~~.

(20) A copy of the most recent audited financial statement of the seller, prepared within thirteen months of the first offer in this state, together with a statement of any material changes in the financial condition of the seller from that date. ~~The administrator may allow the seller to submit a limited review in order to satisfy the requirements of subparagraph (13).~~

Sec. 16. Section 523B.2, subsection 8, paragraph c, subparagraph (25), Code 2003, is amended by striking the subparagraph.

Sec. 17. Section 523B.2, subsection 9, paragraphs a and b, Code 2003, are amended to read as follows:

a. ~~It is unlawful to~~ A person shall not offer or sell a business opportunity ~~required to be registered~~ unless ~~the~~ a business opportunity contract ~~or agreement~~ is in writing and a copy of the contract ~~or agreement~~ is ~~given~~ provided to the purchaser at the time the purchaser ~~signs~~ executes the contract ~~or agreement~~.

~~b. The contract or agreement is subject to this chapter and section 714.16.~~

Sec. 18. Section 523B.2, subsection 9, paragraph c, unnumbered paragraph 1, Code 2003, is amended to read as follows:

~~Contracts or agreements~~ A business opportunity contract shall set forth in at least ten point type or equivalent size, if handwritten, all of the following:

Sec. 19. Section 523B.2, subsection 10, Code 2003, is amended by striking the subsection.

Sec. 20. NEW SECTION. 523B.2A SERVICE OF PROCESS — IRREVOCABLE CONSENT.

A seller shall file an irrevocable consent with the secretary of state. The seller shall file the irrevocable consent prior to executing a business opportunity contract or engaging in the sale

of a business opportunity in this state. The irrevocable consent shall appoint the secretary of state to be the seller's attorney to receive service of any lawful process in a noncriminal suit, action, or proceeding against the seller or the seller's successor, executor, or administrator which arises under this chapter after the irrevocable consent has been filed. The irrevocable consent shall have the same force and validity as if the seller were served service of process personally.

Sec. 21. Section 523B.3, Code 2003, is amended to read as follows:

523B.3 EXEMPTIONS FROM ~~REGISTRATION AND DISCLOSURE~~ REQUIREMENTS — BURDEN OF PROOF.

1. ~~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 broker-dealer registered pursuant to chapter 502, whether the purchaser is acting for itself or in a fiduciary capacity.

b. ~~The~~ An 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 "b", 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. 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.

~~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.~~

~~2. DENIAL OR REVOCATION OF EXEMPTIONS.~~

~~a. 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.~~

~~b. If the public interest or the protection of purchasers so requires, the administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceedings under this section. Upon entry of the order, the administrator shall~~

~~promptly notify all interested parties that it has been entered and of the reasons for entering the order and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If a hearing is not requested the order shall remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator shall not modify or vacate the order or extend it until final determination.~~

~~c. An order under this section shall not operate retroactively.~~

~~d. A person does not violate section 523B.2 by reason of an offer or sale effected after the entry of an order under paragraph "b" if the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.~~

~~3. BURDEN OF PROOF.~~ 2. In an administrative, civil, or criminal proceeding related to this chapter, the burden of proving an exemption, an exception from a definition, or an exclusion from this chapter, is upon the person claiming it.

Sec. 22. Section 523B.7, subsection 1, paragraph a, Code 2003, is amended to read as follows:

~~a.~~ A person who violates the requirements for disclosure or for the contents of a business opportunity contract pursuant to section 523B.2~~, subsection 1, 8, or 9,~~ is liable to the purchaser in an action for recision of the ~~agreement~~ contract, 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. 23. Section 523B.7, subsection 1, paragraphs b and c, Code 2003, are amended by striking the paragraphs.

Sec. 24. Section 523B.7, subsection 4, Code 2003, is amended to read as follows:

4. ~~The rights and~~ In addition to any remedies ~~available pursuant to this chapter are in addition to any other rights or remedies that may exist at~~ provided by law ~~or in equity~~, a person injured by a violation of this chapter may bring a civil action and recover damages or obtain other appropriate relief including injunctive or other equitable relief. If the person is the prevailing party, the person shall be awarded court costs, reasonable attorney fees, and expert fees which shall be taxed as part of the costs of the action.

Sec. 25. Section 523B.11, Code 2003, is amended to read as follows:

523B.11 PENALTIES.

1. a.[1] A seller who willfully violates the requirements for disclosure or for the contents of a business opportunity contract pursuant to section 523B.2, ~~subsection 1, 8, or 9, or~~ who provides misleading advertising as provided in section 523B.12, ~~subsection 2,~~ who willfully violates a rule under this chapter, or 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. Otherwise, a person who violates a rule adopted or order issued under this chapter is, upon conviction, guilty of an aggravated misdemeanor. 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.

2. A business opportunity contract is subject to section 714.16.

3. A seller who willfully uses any device or scheme to defraud a person in connection with ~~the~~ an advertisement, offer to sell or lease, sale, or lease of a business opportunity, or who willfully violates any other provision of this chapter, except as provided in ~~subsections 1 and 3,~~ subsection 1, is, upon conviction, guilty of a fraudulent practice as provided in chapter 714.

~~3. A seller who violates a rule or order adopted or issued under this chapter is, upon conviction, guilty of an aggravated misdemeanor.~~

~~4. The administrator may refer available evidence concerning a possible violation of this chapter or of a rule or order issued under this chapter to the attorney general. The attorney~~

[1] According to enrolled Act; subsection 1 does not contain any other lettered paragraphs

~~general, with or without such a referral, may institute appropriate criminal proceedings or may direct the case to the appropriate county attorney to institute appropriate criminal proceedings.~~

Sec. 26. Section 523B.12, subsections 1, 2, and 3, Code 2003, are amended to read as follows:

1. MISLEADING ~~FILINGS~~ STATEMENTS. ~~It is unlawful to~~ A person shall not make or cause to be made~~,~~ a misleading statement in a disclosure document ~~filed with the administrator~~ required pursuant to section 523B.2 or in a proceeding under this chapter~~, a statement which is, at~~. The statement shall be deemed to be misleading if any of the following apply:

a. At the time and in the light of the circumstances under which it is made, the statement is false or misleading in a material respect ~~or, in connection with such a statement, to omit to state~~.

b. An omission of a material fact is necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading.

~~2. UNLAWFUL REPRESENTATIONS. The fact that an application for registration has been filed or the fact that a business opportunity is effectively registered does not constitute a finding by the administrator that a document filed under this chapter is true, complete, and not misleading. The fact that an application for registration has been filed, that a business opportunity is effectively registered, or that an exemption or exception is available for a business opportunity does not mean that the administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, a person or business opportunity. It is unlawful to make, or cause to be made, to a purchaser, any representation inconsistent with this subsection.~~

~~3.~~ 2. ADVERTISING. ~~It is unlawful for a~~ A seller shall not, in connection with the offer or sale of a business opportunity in this state, ~~to~~ publish, circulate, or use advertising which contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

Sec. 27. Section 523B.12, subsection 4, unnumbered paragraph 1, Code 2003, is amended to read as follows:

~~It is unlawful for a business opportunity~~ A seller ~~to~~ of a business opportunity shall not do any of the following:

Sec. 28. Section 523B.12, subsection 4, paragraphs d, f, h, and j, Code 2003, are amended to read as follows:

d. Misrepresent the training and management assistance available to the ~~business opportunity~~ purchaser.

f. Misrepresent, by failure to disclose or otherwise, the termination, transfer, or renewal provision of a business opportunity ~~agreement~~ contract.

h. Assign a so-called exclusive territory encompassing the same area to more than one ~~business opportunity~~ purchaser.

j. Provide merchandise, machines, or displays of a brand or kind substantially different from or inferior to those promised by the ~~business opportunity~~ seller.

Sec. 29. Section 523B.13, subsections 5 and 6, Code 2003, are amended by striking the subsections.

Sec. 30. DIRECTIONS TO CODE EDITOR. The Code editor is directed to renumber Code chapter 523B, transferring the chapter from title XIII, subtitle 1, insurance and related regulation, to title XIII, subtitle 5, regulation of commercial enterprises.

Sec. 31. Sections 523B.5, 523B.8, and 523B.10, Code 2003, are repealed.

DIVISION III
CONGREGATE CARE OR SENIOR ADULT CONGREGATE LIVING SERVICES

Sec. 32. Section 523D.2, Code 2003, is amended to read as follows:

523D.2 ~~FILING WITH DIVISION OF INSURANCE~~ APPLICATION OF CHAPTER.

~~A person shall not, as~~ This chapter applies to a provider~~, enter into~~ who executes a contract to provide continuing care or senior adult congregate living services in a facility, or extend the term of an existing contract to provide continuing care or senior adult congregate living services in a facility, if the contract requires or permits the payment of an entrance fee to ~~any~~ a person, and ~~the~~ any of the following apply:

1. The facility is or will be located in this state~~, or the~~.

2. The provider or a person acting on the provider's behalf solicits the contract within this state for a facility located in this state and the person to be provided with continuing care or senior adult congregate living services under the contract resides within this state at the time of the solicitation~~, unless the person has filed with the division of insurance of the department of commerce, a current disclosure statement which meets the requirements of section 523D.3. The disclosure statement shall be accompanied by a one hundred dollar filing fee as a condition of filing and compliance with this section.~~

Sec. 33. NEW SECTION. 523D.2A ANNUAL CERTIFICATION.

On or before March 1 of each year, a provider shall file a certification with the commissioner in a manner and according to requirements established by the commissioner. The certification shall be accompanied by a one hundred dollar administrative fee. The certification shall attest that according to the best knowledge and belief of the attesting party, the facility administered by the provider is in compliance with the provisions of this chapter, including rules adopted by the commissioner or orders issued by the commissioner as authorized under this chapter. The attesting person may be any of the following:

1. A person serving as the president or chief executive officer of a corporation.
2. A person acting as the general partner of a limited partnership.
3. A person acting as the general partner of a limited liability partnership.
4. A person acting in a fiduciary capacity or as a trustee on behalf of a provider.
5. A person who is a manager of a limited liability company.

Sec. 34. Section 523D.3, subsection 1, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. n. A description of transactions in which the provider obtains real or personal property or construction services from any of the following:

(1) The developer of the facility, or a person who is under the control of the developer.

(2) If the provider is a business entity, any person holding an executive position in the business entity, including but not limited to a member of a board of directors or an officer of a corporation, a manager of a limited liability company, a general partner of a limited partnership, or a trustee of a trust.

(3) If the provider is a business entity, any person who holds a ten percent or greater equity or beneficial interest in the business entity.

(4) Any person who directly or indirectly by acting through one or more intermediaries controls management decisions of the facility.

A transaction shall include each purchase or lease of real property or personal property by the provider, and any construction services provided to the provider. The description shall include transactions which have occurred or which are planned to occur. The description shall also include whether the terms of the transaction were or will be on terms which are at least as favorable to the provider as those terms which would be generally available from an unaffiliated third party.

Sec. 35. Section 523D.3, subsections 2 through 4, Code 2003, are amended to read as follows:

2. The provider shall ~~file with the insurance division, annually within five months following the end of the provider's fiscal year,~~ prepare an annual disclosure statement which shall contain the information required by this chapter for the initial disclosure statement. The annual disclosure statement shall also be accompanied by a narrative describing:

a. Any material differences between the pro forma cash flow projection ~~filed~~ prepared pursuant to this chapter as part of the most recent annual disclosure statement and the actual results of operations during the fiscal year, if the material differences substantially affect the financial safety or soundness of the community.

b. A revised pro forma cash flow projection for the next fiscal year.

2A. The provider shall prepare the annual disclosure statement not later than five months following the end of the provider's fiscal year. The provider shall retain a record of each annual disclosure statement prepared under this section for at least five years.

3. ~~In the event~~ If an amendment is ~~filed with the division of insurance~~ prepared pursuant to subsection 4, the provider shall deliver a copy of the amendment or the amended disclosure statement to a prospective resident and to a prospective resident's personal representative if one is appointed prior to the provider's acceptance of part or all of the entrance fee or the execution of the continuing care or senior congregate living services contract by the prospective resident.

4. ~~In addition to filing the annual disclosure statement, the~~ The provider may amend its ~~currently filed~~ current annual disclosure statement at any other time if, in the opinion of the provider, an amendment is necessary to prevent the disclosure statement and annual disclosure statement from containing any material misstatement of fact or omission to state a material fact required to be included in the statement. The amendment or amended disclosure statement shall be ~~filed with the division of insurance before the statement is delivered~~ kept with the records of the provider's annual disclosure statements. The provider shall deliver a copy of the amendment to a resident or prospective resident and a personal representative of a resident or prospective resident ~~and is subject to all the requirements, including those as to content and delivery, of this chapter~~ in the same manner as the annual disclosure statement.

Sec. 36. Section 523D.4, subsection 2, Code 2003, is amended to read as follows:

2. A provider shall not ~~file with the division of insurance or make,~~ publish, disseminate, circulate, or deliver to any person or place before the public, or cause, directly or indirectly, to be ~~made,~~ published, disseminated, circulated, or delivered to any person or placed before the public, a financial statement which does not meet generally accepted accounting principles.

Sec. 37. Section 523D.5, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A provider shall not enter into a contract to provide continuing care or senior adult congregate living services that applies to a living unit that is part of a new facility or proposed expansion that is or will be located in this state unless the ~~person has submitted an application on a form as required by the division of insurance accompanied by a fee of two hundred fifty dollars. The application at a minimum must include~~ provider has prepared or acquired all of the following information:

Sec. 38. Section 523D.5, subsection 1, paragraphs d through f, Code 2003, are amended to read as follows:

d. A statement of financial feasibility for the new facility or proposed expansion ~~in a form satisfactory to the commissioner,~~ which includes a statement of future funding sources and shall identify the qualifications of the person or persons preparing the study.

e. A statement of the market feasibility for the new facility or proposed expansion ~~in a form~~

~~satisfactory to the commissioner,~~ which identifies the qualifications of the person or persons preparing the study.

f. If the new facility or proposed expansion offers a promise to provide nursing or health care services to residents in the future pursuant to contracts effective for the life of the resident or a period in excess of one year in consideration for an entrance fee, an actuarial forecast ~~in a form satisfactory to the commissioner,~~ which identifies the qualifications of the actuary or actuaries preparing the forecast.

Sec. 39. Section 523D.5, subsection 2, paragraphs a and b, Code 2003, are amended to read as follows:

a. ~~Existing facilities. If a filing is made under this section for~~ For an expansion of an existing facility, the determination of feasibility shall be based on consolidated information for the existing facility and the proposed expansion.

b. ~~New facilities. If a filing is made under this section for~~ For a new facility, not part of an existing facility that will be constructed in more than one stage or phase, the initial stage or phase must evidence feasibility independent of any subsequent stage or phase and contain all of the facilities or components necessary to provide residents with all of the services and amenities promised by the provider.

Sec. 40. Section 523D.5, subsection 3, unnumbered paragraph 1, Code 2003, is amended to read as follows:

New construction shall not begin until ~~the filing required by this section has been made and~~ at least fifty percent of the proposed number of independent living units in the initial stage or phase have been reserved pursuant to executed contracts and at least ten percent of the entrance fees required by those contracts are held in escrow pursuant to this chapter. However, the requirements of this subsection may be waived by the commissioner by rule or order upon a showing of good cause.

Sec. 41. Section 523D.5, subsection 3, paragraph a, Code 2003, is amended to read as follows:

a. Secured financing adequate in an amount and term to complete the project ~~described in the filing required by this section~~.

Sec. 42. Section 523D.5, subsection 4, Code 2003, is amended to read as follows:

4. ESCROW REQUIREMENTS. Unless ~~proof has been submitted to the commissioner that~~ conditions for the release of escrowed funds set forth in this section have already been met, the provider shall establish an interest-bearing escrow account at a state or federally regulated financial institution located within this state to receive any deposits or entrance fees or portions of deposits or fees for a living unit which has not been previously occupied by a resident for which an entry fee arrangement is used. The escrow account agreement shall be entered into between the financial institution and the provider with the financial institution as the escrow agent and as a fiduciary for the resident or prospective resident. The agreement shall state that the purpose of the escrow account is to protect the resident or prospective resident and that the funds deposited shall be kept and maintained in an account separate and apart from the provider's business accounts.

Sec. 43. Section 523D.5, subsection 5, paragraph c, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Except as provided by paragraphs "a" and "b", amounts held in escrow shall not be released ~~only upon approval of the commissioner. The commissioner shall approve the release of funds only upon a determination that~~ unless at least one of the following conditions has been satisfied:

Sec. 44. Section 523D.5, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 6. RETENTION OF RECORDS. The provider shall maintain information required by this section for at least five years. The information shall be made available for inspection during normal business hours.

Sec. 45. Section 523D.8, subsection 1, Code 2003, is amended to read as follows:

1. A person who ~~willfully and knowingly~~ violates a provision of this chapter or a rule adopted or order entered pursuant to this chapter~~, upon conviction, is guilty of an aggravated misdemeanor~~ commits a fraudulent practice as provided in chapter 714.

Sec. 46. Section 523D.10, Code 2003, is amended to read as follows:

523D.10 RULES.

The division of insurance may adopt rules pursuant to chapter 17A as necessary and appropriate to implement this chapter, and may make further recommendations to the general assembly for the protection of residents and prospective residents of facilities ~~required to file an annual disclosure statement~~ under this chapter.

Sec. 47. Section 523D.12, subsection 1, Code 2003, is amended by striking the subsection.

Sec. 48. Section 523D.12, subsection 2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The commissioner ~~or the attorney general~~ may, for the purpose of discovering or investigating violations of this chapter or rules adopted pursuant to this chapter do any or all of the following:

Sec. 49. Section 523D.12, subsection 2, paragraph c, Code 2003, is amended to read as follows:

c. Apply to the district court for issuance of an order requiring a person's appearance before the commissioner ~~or attorney general~~. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

Sec. 50. Section 523D.14, Code 2003, is amended to read as follows:

523D.14 INJUNCTIONS.

The ~~attorney general~~ commissioner may petition 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 in violation of this chapter or rules adopted pursuant to this chapter. In a proceeding for an injunction, the ~~attorney general~~ 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, or records germane to the hearing upon the petition for an injunction. Upon proof of any of the violations described in the petition for injunction, the court may grant the injunction.

Sec. 51. Section 523D.9, Code 2003, is repealed.

Approved April 26, 2004

CHAPTER 1105

NONRESIDENT BAIT DEALER LICENSING

H.F. 2281

AN ACT relating to licensing of nonresident bait dealers and providing an effective date.

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

Section 1. Section 483A.20, Code Supplement 2003, is amended to read as follows:

483A.20 RECIPROCITY.

Licenses for bait dealers or for fishing, hunting, or fur harvesting shall not be issued to residents of states that do not sell similar licenses or certificates to residents of Iowa. However, this requirement is not applicable to the licensing of nonresident wholesale bait dealers who sell to licensed wholesale bait dealers in Iowa for resale.

Sec. 2. EFFECTIVE DATE. This Act takes effect upon enactment.

Approved April 26, 2004

CHAPTER 1106

CORRECTIONS SYSTEM — PRESENTENCE INVESTIGATIONS AND INMATE LABOR FUND

H.F. 2367

AN ACT relating to various issues under the purview of the department of corrections including the creation of an inmate labor fund.

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

Section 1. Section 901.4, Code Supplement 2003, 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 by ordinary or electronic mail 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. Pursuant to section 904.602, the presentence investigation report may also be released by ordinary or electronic mail by the department of corrections or a judicial district department of correctional services to another jurisdiction for the

purpose of providing interstate probation and parole compact services or evaluations, or to a substance abuse or mental health services provider when referring a defendant for services. 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 by ordinary or electronic mail to the department which is responsible under section 692A.13A for performing the assessment of risk.

Sec. 2. Section 904.201, subsections 2, 6, and 7, Code 2003, are amended to read as follows:

2. The ~~superintendent of the center~~ medical director of the department or the medical director's designee shall secure the professional care and treatment of each person confined at the center and maintain a complete record on the condition of each person confined at the center.

6. All admissions to the forensic psychiatric hospital shall be by written application only. Application shall be made by the head of the state institution, agency, governmental body, or court requesting admission to the ~~superintendent of the center~~ medical director of the department or the medical director's designee. An application may be denied by ~~the superintendent~~ the medical director of the department or the medical director's designee, with the approval of the director, if the admission will result in an overcrowded condition or if adequate staff or facilities are not available. The decision regarding admission and discharge of persons shall be made by the ~~superintendent of the center~~ medical director of the department or the medical director's designee, subject to approval of the director.

7. When a person transferred to the center from any other state institution or admitted by request or order of any agency, governmental body, or court no longer requires special treatment in the security setting, the person may be returned to the source from which received. The state institution, agency, governmental body, or court that referred the person for hospitalization shall retain constructive jurisdiction over the person. Persons without legal encumbrances may be discharged directly from the center upon concurrence of the ~~superintendent of the center~~ medical director of the department or the medical director's designee and the head of the referring institution, agency, governmental body, or court. The support, commitment, and release statutes applicable to a person at the state institution from which transferred shall remain applicable while the person is at the center.

Sec. 3. Section 904.703, Code 2003, is amended to read as follows:

904.703 SERVICES OF INMATES — INSTITUTIONS AND PUBLIC SERVICE — INMATE LABOR FUND.

1. Inmates shall work on state account in the maintenance of state institutions, in the erection, repair, authorized demolition, or operation of buildings and works used in connection with the institutions, and in industries established and maintained in connection with the institutions by the director. The director shall encourage the making of agreements, including chapter 28E agreements, with departments and agencies of the state or its political subdivisions to provide products or services under an inmate work program to the departments and agencies. The director may implement an inmate work program for trustworthy inmates of state correctional institutions, under proper supervision, whether at work centers located outside the state correctional institutions or in construction or maintenance work at public or charitable facilities and for other agencies of state, county, or local government. The supervision, security, and transportation of, and allowances paid to inmates used in public service projects shall be provided pursuant to agreements, including chapter 28E agreements, made by the director and the agency for which the work is done. Housing and maintenance shall also be provided pursuant to the agreement, including a chapter 28E agreement, unless the inmate is housed and maintained in the correctional facility. All such work, including but not limited to that provided in this section, shall have as its primary purpose the development of attitudes, skills, and habit patterns which are conducive to inmate rehabilitation. The director may adopt rules allowing inmates participating in an inmate work program to receive educa-

tional or vocational training outside the state correctional institutions and away from the work centers or public or charitable facilities used under a program.

~~However, an~~ 2. An inmate shall not work in a public service project if the work of that inmate would replace a person employed by the state agency or political subdivision, which employee is performing the work of the public service project at the time the inmate is being considered for work in the project.

3. An inmate labor fund is established under the control of the department. All fees, grants, appropriations, or reimbursed costs received by the department and related to inmate labor shall be deposited into the fund and the moneys shall be used by the department to offset staff and transportation costs related to providing inmate labor, to public entities. Notwithstanding section 8.33, moneys remaining in the fund at the end of a fiscal year shall not revert to the general fund of the state. Notwithstanding section 12C.7, interest and earnings deposited in the fund shall be credited to the fund.

Approved April 26, 2004

CHAPTER 1107

ELEVATORS, BOILERS, AND PRESSURE VESSELS
— REGULATION AND SAFETY

H.F. 2447

AN ACT relating to equipment and installation safety programs administered by the division of labor services of the department of workforce development, and providing an effective date.

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

Section 1. Section 10A.601, subsections 1 and 7, Code Supplement 2003, are amended to read as follows:

1. A full-time employment appeal board is created within the department of inspections and appeals to hear and decide contested cases under chapter 8A, subchapter IV, and chapters 80, 88, ~~89A,~~ 91C, 96, and 97B.

7. An application for rehearing before the appeal board shall be filed pursuant to section 17A.16, unless otherwise provided in chapter 8A, subchapter IV, or chapter 80, 88, ~~89A,~~ 91C, 96, or 97B. A petition for judicial review of a decision of the appeal board shall be filed pursuant to section 17A.19. The appeal board may be represented in any such judicial review by an attorney who is a regular salaried employee of the appeal board or who has been designated by the appeal board for that purpose, or at the appeal board's request, by the attorney general. Notwithstanding the petitioner's residency requirement in section 17A.19, subsection 2, a petition for judicial review may be filed in the district court of the county in which the petitioner was last employed or resides, provided that if the petitioner does not reside in this state, the action shall be brought in the district court of Polk county, Iowa, and any other party to the proceeding before the appeal board shall be named in the petition. Notwithstanding the thirty-day requirement in section 17A.19, subsection 6, the appeal board shall, within sixty days after filing of the petition for judicial review or within a longer period of time allowed by the court, transmit to the reviewing court the original or a certified copy of the entire records of a contested case. The appeal board may also certify to the court, questions of law involved in any

decision by the appeal board. Petitions for judicial review and the questions so certified shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state. No bond shall be required for entering an appeal from any final order, judgment, or decree of the district court to the supreme court.

Sec. 2. Section 89.2, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 0A. "ASME code" means the boiler and pressure vessel code published by the American society of mechanical engineers.

NEW SUBSECTION. 0B. "Board" means the boiler and pressure vessel board created in section 89.14.

Sec. 3. Section 89.3, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 13. An inspection report created pursuant to this chapter that requires modification, alteration, or change shall be in writing and shall cite the state law or rule or the ASME code section allegedly violated.

Sec. 4. Section 89.5, subsection 1, Code 2003, is amended by striking the subsection.

Sec. 5. Section 89.5, subsection 4, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A rule adopted pursuant to this ~~section~~ chapter which adopts standards by reference to another publication shall be exempt from the requirements of section 17A.6, subsection 4, if the following conditions exist:

Sec. 6. Section 89.7, subsection 3, Code 2003, is amended to read as follows:

3. Upon such showing and the payment of a fee, the commissioner shall issue a certificate of inspection by the division of labor services, which shall be valid only for the period specified in section 89.3. ~~The commissioner shall establish the amount of the fee by rule.~~

Sec. 7. Section 89.8, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

89.8 BOILER AND PRESSURE VESSEL SAFETY FUND — FEES APPROPRIATED.

1. A boiler and pressure vessel safety revolving fund is created within the state treasury under the control of the commissioner and shall consist of moneys collected by the commissioner as fees. Moneys in the fund are appropriated and shall be used by the commissioner to pay the actual costs and expenses necessary to operate the board and administer the provisions of this chapter. All salaries and expenses properly chargeable to the fund shall be paid from the fund. 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.

2. This section is repealed effective July 1, 2012.

Sec. 8. Section 89.9, Code 2003, is amended to read as follows:

89.9 DISPOSAL OF FEES.

All fees provided for in this chapter shall be collected by the commissioner and remitted to the treasurer of state, to be deposited in the boiler and pressure vessel safety fund pursuant to section 89.8, together with an itemized statement showing the source of collection.

Sec. 9. Section 89.11, Code 2003, is amended to read as follows:

89.11 INJUNCTION.

In addition to any and all other remedies, if any owner, user, or person in charge of any equipment covered by this chapter, shall continue to use any equipment covered by this chapter, after receiving a notice of defect and exhausting appeal rights as provided by this chapter,

without first correcting ~~said~~ the defects or making replacements, the commissioner ~~of labor~~ may apply to the district court or any judge thereof by petition in equity, in an action brought in the name of the state, for a writ of injunction to restrain the use of ~~said~~ the alleged defective equipment.

Sec. 10. NEW SECTION. 89.14 BOILER AND PRESSURE VESSEL BOARD — CREATED — DUTIES.

1. A boiler and pressure vessel board is created within the division of labor services of the department of workforce development to formulate definitions and rules requirements for the safe and proper installation, repair, maintenance, alteration, use, and operation of boilers and pressure vessels in this state.

2. The boiler and pressure vessel board is composed of nine members, one of whom shall be the commissioner or the commissioner's designee. The remaining eight members shall be appointed by the governor, subject to confirmation by the senate, to four-year staggered terms beginning and ending as provided in section 69.19. One member shall be a special inspector who is employed by an insurance company that is licensed and actively writing boiler and machinery insurance in this state and who is commissioned to inspect boiler and pressure vessels in this state, two members shall be appointed from certified employee organizations, one of whom shall represent steamfitters, two members shall be mechanical engineers who regularly practice in the area of boilers and pressure vessels, one member shall be a boiler and pressure vessel distributor in this state, one member shall represent boiler and pressure vessel manufacturers, and one member shall be a mechanical contractor engaged in the business of installation, renovation, and repair of boilers and pressure vessels.

3. A vacancy in membership shall be filled in the same manner as the original appointment. The members shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of official duties as a member.

4. The members of the board shall select a chairperson, vice chairperson, and secretary from their membership. However, neither the commissioner nor the commissioner's designee shall serve as chairperson. The board shall meet at least quarterly but may meet as often as necessary. Meetings shall be set by a majority of the board or upon the call of the chairperson, or in the chairperson's absence, upon the call of the vice chairperson. A majority of the board members shall constitute a quorum.

5. The board shall adopt rules pursuant to chapter 17A necessary to administer the duties of the board. Rules adopted by the board shall be in accordance with accepted engineering standards and practices. The board shall adopt rules relating to the equipment covered by this chapter that are in accordance with the ASME code, which may include addenda, interpretations, and code cases, as soon as reasonably practical following publication by ASME.

6. A notice of defect or inspection report issued by the commissioner pursuant to this chapter may, within thirty days after the making of the order, be appealed to the board. Board action constitutes final agency action for purposes of chapter 17A.

7. Not later than July 1, 2005, and every three years thereafter, the board shall conduct a comprehensive review of existing boiler rules, regulations, and standards, including but not limited to those relating to potable hot water supply boilers and water heaters.

8. The board shall establish fees for examinations, commissions, inspections, annual statements, shop inspections, and other services. The fees shall reflect the actual costs and expenses necessary to operate the board and perform the duties of the commissioner.

Sec. 11. Section 89A.1, subsection 2, Code 2003, is amended by striking the subsection.

Sec. 12. Section 89A.1, subsection 19, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

NEW SUBSECTION. 19. "Safety board" means the elevator safety board created in section 89A.13.

Sec. 13. Section 89A.3, subsection 1, unnumbered paragraphs 1 and 2, Code 2003, are amended to read as follows:

The ~~commissioner~~ safety board may adopt rules governing maintenance, construction, alteration, and installation of facilities, and the inspection and testing of new and existing installations as necessary to provide for the public safety, and to protect the public welfare.

The ~~commissioner~~ safety board shall adopt, amend, or repeal rules pursuant to chapter 17A as ~~the commissioner~~ it deems necessary for the ~~execution of the commissioner's duties under~~ administration of this chapter, which shall include, but not be limited to, rules providing for:

Sec. 14. Section 89A.3, subsection 1, paragraphs h and i, Code 2003, are amended by striking the paragraphs.

Sec. 15. Section 89A.3, subsection 2, Code 2003, is amended to read as follows:

2. The ~~commissioner~~ safety board shall adopt rules for facilities according to the applicable provisions of the American society of mechanical engineers safety codes for elevators and escalators, A17.1 and A17.3, as the ~~commissioner~~ safety board deems necessary. In adopting rules the ~~commissioner~~ safety board may adopt the American society of mechanical engineers safety codes, or any part of the codes, by reference.

The ~~commissioner~~ safety board may adopt rules permitting existing passenger and freight elevators to be modified into material lift elevators.

Sec. 16. Section 89A.3, subsections 4 and 5, Code 2003, are amended to read as follows:

4. The commissioner shall furnish copies of the rules adopted ~~by the commissioner~~ pursuant to this chapter to any person who requests them, without charge, or upon payment of a charge not to exceed the actual cost of printing of the rules.

5. The ~~commissioner~~ safety board may adopt rules permitting inclined or vertical wheelchair lifts in churches and houses of worship to service more than one floor.

Sec. 17. Section 89A.3, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 6. The commissioner may adopt rules pursuant to chapter 17A relating to the denial, issuance, revocation, and suspension of special inspector commissions.

Sec. 18. Section 89A.6, subsections 2, 3, and 6, Code 2003, are amended to read as follows:

2. Every existing facility registered with the commissioner shall be inspected within one year after the effective date of the registration, except that the ~~commissioner~~ safety board may~~, at the commissioner's discretion,~~ extend by rule the time specified for making inspections.

3. Every facility shall be inspected not less frequently than annually, except that the ~~commissioner~~ safety board may adopt rules providing for inspections of facilities at intervals other than annually.

6. In addition to the inspections required by subsections 1 to 3, the ~~commissioner~~ safety board may provide by rule for additional inspections as the ~~commissioner~~ safety board deems necessary to enforce the provisions of this chapter.

Sec. 19. Section 89A.9, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Operating permits shall be issued by the commissioner to the owner of every facility when the inspection report indicates compliance with the applicable provisions of this chapter. However, ~~no permits~~ a permit shall not be issued if the fees required by ~~section 89A.13~~ this chapter have not been paid. Permits shall be issued within thirty days after filing of the inspection report required by section 89A.6, unless the time is extended for cause by the division. ~~No~~ A facility shall not be operated after the thirty days or after an extension granted by the commissioner has expired, unless an operating permit has been issued.

Sec. 20. Section 89A.10, subsection 2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

If the owner does not make the changes necessary for compliance as required in subsection 1 within the period specified by the commissioner, the commissioner, upon notice, may suspend or revoke the operating permit, or may refuse to issue the operating permit for the facility. The commissioner shall notify the owner of any action to suspend, revoke, or refuse to issue an operating permit and the reason for the action by service in the same manner as an original notice or by certified mail. An owner may appeal the commissioner's initial decision to the safety board. ~~The appeal shall be heard by an administrative law judge of the department of inspections and appeals. An owner who, after a hearing before an administrative law judge, is aggrieved by a suspension, revocation, or refusal to issue an operating permit may appeal to the employment appeal board created under section 10A.601. Notice of appeal shall be filed with the appeal board within thirty calendar days from receipt of the notice of the commissioner's action.~~ The decision of the safety board shall be considered final agency action pursuant to chapter 17A.

Sec. 21. Section 89A.10, subsection 2, unnumbered paragraphs 2 and 3, Code 2003, are amended by striking the unnumbered paragraphs.

Sec. 22. Section 89A.11, Code 2003, is amended to read as follows:

89A.11 NONCONFORMING FACILITIES.

The ~~commissioner~~ safety board, pursuant to rule, may grant exceptions and variances from the requirements of rules adopted for any facility. Exceptions or variations shall be reasonably related to the age of the facility, and may be conditioned upon a repair or modification of the facility deemed necessary by the ~~commissioner~~ safety board to assure reasonable safety. However, ~~no~~ an exception or variance ~~may~~ shall not be granted except to prevent undue hardship. Such facilities shall be subject to orders issued pursuant to section 89A.10.

Sec. 23. Section 89A.13, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

89A.13 ELEVATOR SAFETY BOARD.

1. An elevator safety board is created within the division of labor services in the department of workforce development to formulate definitions and rules for the safe and proper installation, repair, maintenance, alteration, use, and operation of facilities in this state.

2. The safety board is composed of nine members, one of whom shall be the commissioner or the commissioner's designee. The governor shall appoint the remaining eight members of the board, subject to senate confirmation, to staggered four-year terms which shall begin and end as provided in section 69.19. The members shall be as follows: two representatives from an elevator manufacturing company or its authorized representative; two representatives from elevator servicing companies; one building owner or manager; one representative employed by a local government in this state who is knowledgeable about building codes in this state; one representative of workers actively involved in the installation, maintenance, and repair of elevators; and one licensed mechanical engineer.

3. A vacancy in membership shall be filled in the same manner as the original appointment. The members shall serve without salary, but shall be reimbursed for actual and necessary expenses incurred in the performance of official duties as a member.

4. The members of the safety board shall select a chairperson, vice chairperson, and a secretary from their membership. However, neither the commission nor the commissioner's designee shall serve as chairperson. The safety board shall meet at least quarterly but may meet as often as necessary. Meetings shall be set by a majority of the safety board or upon the call of the chairperson, or in the chairperson's absence, upon the call of the vice chairperson. A majority of the safety board members shall constitute a quorum.

5. The owner or user of equipment regulated under this chapter may appeal a notice of de-

fect or an inspection report to the safety board within thirty days after the issuance of the notice or report. Safety board action constitutes final agency action for purposes of chapter 17A.

6. The safety board shall adopt rules pursuant to chapter 17A necessary to administer the duties of the board.

7. Not later than July 1, 2005, and every three years thereafter, the safety board shall conduct a comprehensive review of existing elevator and facility rules, regulations, and standards.

Sec. 24. Section 89A.14, Code 2003, is amended to read as follows:

89A.14 CONTINUING DUTY OF OWNER.

Every facility shall be maintained by the owner in a safe operating condition and in conformity with the rules adopted by the ~~commissioner~~ safety board.

Sec. 25. Section 89A.15, Code 2003, is amended to read as follows:

89A.15 INSPECTIONS BY LOCAL AUTHORITIES.

~~No~~ A city or other governmental subdivision shall not make or maintain any ordinance, bylaw, or resolution providing for the licensing of special inspectors. An ordinance or resolution relating to the inspection, construction, installation, alteration, maintenance, or operation of facilities within the limits of the city or governmental subdivision, which conflicts with this chapter or with rules adopted ~~by the commissioner~~ pursuant to this chapter is void. The commissioner, in the commissioner's discretion, may accept inspections by local authorities in lieu of inspections required by section 89A.6, but only upon a showing by the local authority that applicable laws and rules will be consistently and literally enforced, and that inspections will be performed by special inspectors.

Sec. 26. Section 89A.18, Code 2003, is amended to read as follows:

89A.18 CIVIL PENALTY.

If upon notice and hearing the commissioner determines that an owner has operated a facility after an order of the commissioner that suspends, revokes, or refuses to issue an operating permit for the facility has become final under section 89A.10, subsection 2, the commissioner may assess a civil penalty against the owner in an amount not exceeding five hundred dollars, as determined by the commissioner. An order assessing a civil penalty is subject to appeal ~~and judicial review~~ under section 89A.10, subsection 2, in the same manner and to the same extent as decisions referred to in that subsection. The commissioner may commence an action in the district court to enforce payment of the civil penalty. No record of assessment against or payment of a civil penalty by any person for a violation of this section shall be admissible as evidence in any court in any civil action. Revenue from the penalty provided in this section shall be remitted to the treasurer of state for deposit in the state general fund.

Sec. 27. NEW SECTION. 89A.19 ELEVATOR SAFETY FUND — FEES APPROPRIATED.

1. A revolving elevator safety fund is created in the state treasury under the control of the commissioner and shall consist of moneys collected by the commissioner as fees. Moneys in the fund are appropriated to and shall be used by the commissioner to pay the actual costs and expenses necessary to operate the safety board and perform the duties of the commissioner as described in this chapter. All fees collected by the commissioner pursuant to this chapter shall be remitted to the treasurer of state to be deposited in the elevator safety fund. All salaries and expenses properly chargeable to the fund shall be paid from the fund. 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.

2. This section is repealed effective July 1, 2012.

Sec. 28. Section 602.8102, subsection 25, Code Supplement 2003, is amended to read as follows:

25. Carry out duties relating to the judicial review of orders of the ~~employment appeal~~ elevator safety board as provided in section 89A.10, subsection 2.

Sec. 29. FY 2004-2005 FEE DISPOSITION — INTENT. Notwithstanding sections 89.8 and 89A.19 or any other provision of law to the contrary, revenues from fees imposed or collected during the fiscal year beginning July 1, 2004, and the amount of accruals of those revenues collected from the fees imposed or collected before June 30, 2005, but not remitted to the commissioner until after June 30, 2005, shall be deposited in the general fund of the state. It is the intent of the general assembly that the moneys appropriated from the general fund of the state to the division of labor services of the department of workforce development for the fiscal year beginning July 1, 2005, and ending June 30, 2006, be reduced by the total amount of revenues projected to be deposited in the boiler and pressure vessel safety fund created by section 89.8 and the elevator safety fund created by section 89A.19 in the fiscal year beginning July 1, 2005.

Sec. 30. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 26, 2004

CHAPTER 1108

IOWACCESS ADVISORY COUNCIL — QUORUM

H.F. 2467

AN ACT relating to the quorum requirement for the IowAccess advisory council.

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

Section 1. Section 8A.221, subsection 3, paragraph b, Code Supplement 2003, is amended to read as follows:

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

Approved April 26, 2004

CHAPTER 1109

USE OF PETS AS PRIZES

H.F. 2480

AN ACT prohibiting the award of pets, or advertisement thereof, in certain circumstances, and providing a penalty.

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

Section 1. NEW SECTION. 717E.1 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. "Business" means any enterprise relating to any of the following:

a. The sale or offer for sale of goods or services.

b. A recruitment for employment or membership in an organization.

c. A solicitation to make an investment.

d. An amusement or entertainment activity.

3. "Fair" means any of the following:

a. The annual fair and exposition held by the Iowa state fair board pursuant to chapter 173 or any fair held by a county or district fair or agricultural society under the provisions of chapter 174.[1]

b. An exhibition of agricultural or manufactured products.

c. An event for operation of amusement rides or devices or concession booths.

4. "Game" means a "game of chance" or "game of skill" as defined in section 99B.1.

5. "Pet" means a living animal which is limited to a dog, cat, or an animal normally maintained in a small tank or cage in or near a residence, including but not limited to a rabbit, gerbil, hamster, mouse, parrot, canary, mynah, finch, tropical fish, goldfish, snake, turtle, gecko, or iguana.

Sec. 2. NEW SECTION. 717E.2 PET AWARDS PROHIBITED.

A person is guilty of a simple misdemeanor if the person awards a pet or advertises that a pet may be awarded as any of the following:

1. A prize for participating in a game.

2. A prize for participating in a fair event.

3. An inducement or condition for visiting a place of business or attending an event sponsored by a business.

4. An inducement or condition for executing a contract which includes provisions unrelated to the ownership, care, or disposition of the pet.

Sec. 3. NEW SECTION. 717E.3 EXCEPTIONS.

This chapter shall not apply to any of the following:

1. A pet shop licensed pursuant to section 162.5 if the award of a pet is provided in connection with the sale of a pet on the premises of the pet shop.

2. Youth programs associated with 4-H clubs; future farmers of America; the Izaak Walton league of America; or organizations associated with outdoor recreation, hunting, or fishing including but not limited to the Iowa sportsmen's federation.

Approved April 26, 2004

[1] See chapter 1175, §391 herein

CHAPTER 1110

REGULATION OF INSURANCE AND
CEMETERY AND FUNERAL MERCHANDISE AND SERVICES

H.F. 2489

AN ACT relating to the regulation of various industries by the insurance division, including modifications related to the interstate insurance product regulation compact; investigations and penalties; procedures and contempt orders; insurance company investments; insurance producer licensing; individual health insurance programs; coverage obligations of the Iowa comprehensive health insurance association; refunds of unearned premium; coverage of federal Trade Adjustment Act recipients; penalties and discipline applicable to holders of establishment and sales permits for cemetery and funeral merchandise and services; and providing and applying penalties.

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

Section 1. Section 272C.1, subsection 6, paragraph z, Code 2003, is amended by striking the paragraph.

Sec. 2. Section 272C.3, subsection 2, paragraph a, Code Supplement 2003, is amended to read as follows:

a. Revoke a license, or suspend a license either until further order of the board or for a specified period, upon any of the grounds specified in section 147.55, 148.6, 148B.7, 152.10, 153.34, 154A.24, 169.13, 455B.219, 542.10, 542B.21, 543B.29, 544A.13, 544B.15, or 602.3203 or chapter 151~~,~~ or 155, ~~507B, or 522B,~~ as applicable, or upon any other grounds specifically provided for in this chapter for revocation of the license of a licensee subject to the jurisdiction of that board, or upon failure of the licensee to comply with a decision of the board imposing licensee discipline;

Sec. 3. Section 272C.4, subsection 6, Code 2003, is amended to read as follows:

6. Define by rule acts or omissions ~~which~~ that are grounds for revocation or suspension of a license under section 147.55, 148.6, 148B.7, 152.10, 153.34, 154A.24, 169.13, 455B.219, 542.10, 542B.21, 543B.29, 544A.13, 544B.15, or 602.3203 or chapter 151~~,~~ or 155, ~~507B or 522B,~~ as applicable, and to define by rule acts or omissions ~~which~~ that constitute negligence, careless acts, or omissions within the meaning of section 272C.3, subsection 2, paragraph "b", which licensees are required to report to the board pursuant to section 272C.9, subsection 2;

Sec. 4. Section 432.5, Code Supplement 2003, is amended to read as follows:

432.5 RISK RETENTION GROUPS.

A risk retention group organized and operating pursuant to Pub. L. No. 99-563, also known as the risk retention amendments of 1986, shall pay as taxes to the director of revenue an amount equal to ~~two percent~~ the applicable percent, as provided in section 432.1, subsection 4, of the gross amount of the premiums received during the previous calendar year for risks placed in this state. A resident or nonresident ~~agent~~ producer shall report and pay the taxes on the premiums for risks that the ~~agent~~ producer has placed in this state with or on behalf of a risk retention group. The failure of a risk retention group to pay the tax imposed in this section shall result in the risk retention group being considered an unauthorized insurer under chapter 507A.

Sec. 5. NEW SECTION. 505.7A CIVIL PENALTIES.

Unless specifically provided for in this subtitle, penalties imposed under this subtitle by order of the commissioner of insurance after hearing shall not exceed one thousand dollars for each act or violation of this subtitle, up to an aggregate of ten thousand dollars, unless the person knew or reasonably should have known the person was in violation of this subtitle, in

which case the penalty shall not exceed five thousand dollars for each act or violation, up to an aggregate of fifty thousand dollars in any one six-month period.

Sec. 6. Section 505A.1, article III, subsections 1 and 2, Code Supplement 2003, are amended to read as follows:

1. The compacting states hereby create and establish ~~an entity~~ a joint public agency known as the interstate insurance product regulation commission. Pursuant to article IV, the commission has the power to develop uniform standards for product lines, receive and provide prompt review of products filed therewith, and give approval to those product filings satisfying applicable uniform standards, provided it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance, and any such filing shall be subject to the laws of the state where filed.

2. The commission is a body corporate ~~comprising each~~ and politic, and an instrumentality of the compacting state.

Sec. 7. Section 505A.1, article III, subsection 3, Code Supplement 2003, is amended by striking the subsection.

Sec. 8. Section 505A.1, article V, subsection 1, paragraph c, subparagraphs (3) and (4), Code Supplement 2003, are amended to read as follows:

(3) Providing reasonable standards and procedures:

(a) For the establishment and meetings of other committees.

(b) Governing any general or specific delegation of any authority or function of the commission.

(4) Providing reasonable procedures for calling and conducting meetings of the commission~~, and~~ that consists of a majority of commission members ensuring reasonable advance notice of each such meeting, and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the commission shall make public:

(a) A copy of the vote to close the meeting, revealing the vote of each member, with no proxy votes allowed.

(b) Votes taken during such meeting.

Sec. 9. Section 505A.1, article V, subsection 1, paragraph c, Code Supplement 2003, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (8) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees.

Sec. 10. Section 505A.1, article V, subsection 1, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. The commission shall publish its bylaws in a convenient form and file a copy of the bylaws, along with any amendments, with the appropriate agency or officer in each of the compacting states.

Sec. 11. Section 505A.1, article VII, subsection 2, Code Supplement 2003, is amended to read as follows:

2. RULEMAKING PROCEDURE. Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to the model state administrative procedure act of 1981 as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committee or committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission, in adopting a uniform

standard, shall consider fully all submitted materials and issue a concise explanation of its decision.

Sec. 12. Section 505A.1, article VIII, subsection 1, Code Supplement 2003, is amended to read as follows:

1. The commission shall promulgate rules ~~to establish~~ establishing conditions and procedures ~~under which the commission shall make its information and official records available to the public for inspection or copying~~ for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records, and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

Sec. 13. Section 505A.1, article VIII, subsection 4, paragraphs a and b, Code Supplement 2003, are amended to read as follows:

a. With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, ~~no activity of an insurer~~ the content of the product or advertisement shall not constitute a violation of the provisions, standards, or requirements of this compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

b. Before a commissioner may bring an action for violation of any provision, standard, or requirement of this compact relating to the ~~use~~ content of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on such requests.

Sec. 14. Section 505A.1, article XI, subsection 1, Code Supplement 2003, is amended to read as follows:

1. Not later than thirty days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. ~~The decision of the review panel shall be the final action of the commission and not subject to review by any court. Notwithstanding the foregoing, an~~ An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with article III, section 5.

Sec. 15. Section 505A.1, article XII, subsection 6, Code Supplement 2003, is amended to read as follows:

6. The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts~~, any work papers related to any internal audit, and~~

~~any work papers related to the independent audit,~~ shall not be confidential~~, provided that~~ and such materials may be shared with the commissioner of any compacting state ~~and shall remain confidential pursuant to article VII~~ upon request; provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of the individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

Sec. 16. Section 505A.1, article XVI, subsection 1, paragraph b, Code Supplement 2003, is amended to read as follows:

b. For any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission which governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, action taken by the commission shall not abrogate or restrict:

(1) The access of any person~~, including the attorney general,~~ to state courts.

(2) Remedies available under state law related to breach of contract, tort, general consumer protection laws, or general consumer protection regulations that apply to the sale or advertisement of the product or other laws not specifically directed to the content of the product.

(3) State law relating to the construction of insurance contracts.

(4) The authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

Sec. 17. Section 507.14, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Analysis notes, work papers, or other documents related to the analysis of an insurer are not public records under chapter 22.

Sec. 18. Section 507.16, Code 2003, is amended to read as follows:

507.16 UNLAWFUL SOLICITATION OF BUSINESS.

~~Any~~ It shall be unlawful for any officer, manager, agent, or representative of any insurance company contemplated by this chapter, who, with knowledge that its certificate of authority has been suspended or revoked, or that it is insolvent, or is doing an unlawful or unauthorized business, ~~solicits~~ to solicit or receive applications for insurance for ~~said~~ the company, ~~or receives applications therefor,~~ or ~~does~~ to do any other act or thing toward receiving or procuring any new business for ~~said~~ the company~~, shall be deemed guilty of a serious misdemeanor, and the~~. The provisions of sections 511.16 and 511.17 are ~~hereby~~ extended to all companies contemplated by this chapter.

Sec. 19. Section 507A.10, Code 2003, is amended to read as follows:

507A.10 CEASE AND DESIST ~~ORDER~~ ORDERS — CIVIL ~~PENALTY~~ AND CRIMINAL PENALTIES.

1. Upon a determination by the commissioner, after a hearing conducted pursuant to chapter 17A, that a person or insurer has violated a provision of this chapter, the commissioner shall reduce the findings of the hearing to writing and deliver a copy of the findings to the person or insurer, may issue an order requiring the person or insurer to cease and desist from engaging in the conduct resulting in the violation, and may assess a civil penalty of not more than fifty thousand dollars against the person or insurer.

2. a. Upon a determination by the commissioner that a person or insurer has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may issue a summary order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision, and directing the person or insurer to cease and desist from engaging in the

act or practice or to take other affirmative action as is in the judgment of the commissioner necessary to comply with the requirements of this chapter.

b. A person to whom a summary order has been issued under this subsection may contest the order by filing a request for a contested case proceeding and hearing as provided in chapter 17A and in accordance with rules adopted by the commissioner. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this subsection. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing.

c. A person or insurer violating a summary order issued under this subsection shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall find the person in contempt of the order if the court finds after hearing that the person or insurer is not in compliance with the order. The court may assess a civil penalty against the person or insurer and may issue further orders as it deems appropriate.

3. A person acting as an insurance producer, as defined in chapter 522B, without proper licensure, or an insurer who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, is guilty of a class "D" felony.

4. A person acting as an insurance producer, as defined in chapter 522B, without proper licensure, or an insurer who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, and when such violation results in a loss of more than ten thousand dollars, is guilty of a class "C" felony.

5. The commissioner may refer such evidence as is available concerning violations of this chapter or of any rule adopted or order issued under this chapter, or of the failure of a person to comply with the licensing requirements of chapter 522B, to the attorney general or the proper county attorney who may, with or without such reference, institute the appropriate criminal proceedings under this chapter.

6. This chapter does not limit the power of the state to punish any person for any conduct that constitutes a crime under any other statute.

Sec. 20. Section 507B.2, subsection 1, Code 2003, is amended to read as follows:

1. "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, interinsurer, fraternal beneficiary association, and any other legal entity engaged in the business of insurance, including ~~agents, brokers~~ insurance producers and adjusters. "Person" shall also mean any corporation operating under the provisions of chapter 514 and any benevolent association as defined and operated under chapter 512A. For purposes of this chapter, corporations operating under the provisions of chapter 514 and chapter 512A shall be deemed to be engaged in the business of insurance.

Sec. 21. Section 507B.3, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 3. Information obtained by the commissioner in the course of investigating a consumer complaint may, in the discretion of the commissioner, be provided to the insurance company or insurance producer which is the subject of the complaint or to the consumer who filed the complaint or the individual insured who is the subject of the complaint without waiving the confidentiality afforded by this section to the commissioner or other persons.

Sec. 22. Section 507B.6, subsection 5, Code 2003, is amended to read as follows:

5. Statements of charges, notices, orders, subpoenas, and other processes of the commissioner under this chapter may be served by anyone ~~duly~~ authorized by the commissioner, either in the manner provided by law for service of process in civil actions, or by mailing a copy ~~thereof~~ by restricted certified mail to the person affected by ~~such~~ the statement, notice, order,

subpoena, or other process at the person's residence or principal office or place of business. The verified return by the person ~~so~~ serving ~~such~~ the statement, notice, order, subpoena, or other process, setting forth the manner of such service, shall be proof of ~~the same~~ service, and the return receipt for ~~such~~ the statement, notice, order, subpoena, or other process, ~~and~~ mailed by restricted certified mail ~~as aforesaid~~, shall be proof of the service ~~of the same~~.

Sec. 23. NEW SECTION. 507B.6A SUMMARY CEASE AND DESIST ORDERS.

1. Upon a determination by the commissioner that a person or insurer has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may issue a summary order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision, and directing the person or insurer to cease and desist from engaging in the act or practice or to take other affirmative action as is in the judgment of the commissioner necessary to comply with the requirements of this chapter.

2. A person who has been issued a summary order under this section may contest the order by filing a request for a contested case proceeding and hearing as provided in chapter 17A and in accordance with the rules adopted by the commissioner. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this section. The order shall remain effective from the date of issuance unless overturned by a presiding officer or court following a request for hearing. If a hearing is not timely requested, the summary order becomes final by operation of law.

3. A person or insurer violating a summary order issued under this section shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person or insurer is not in compliance with the order. The court may assess a civil penalty against the person or insurer and may issue further orders as it deems appropriate.

Sec. 24. Section 507B.7, Code 2003, is amended to read as follows:

507B.7 CEASE AND DESIST ORDERS AND ~~MODIFICATIONS THEREOF~~ PENALTIES.

1. If, after ~~such~~ hearing, the commissioner determines that ~~the~~ a person ~~charged~~ has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings, an order requiring such person to cease and desist from engaging in such method of competition, act, or practice, and ~~if the act or practice is a violation of section 507B.4, 507B.4A, or 507B.5,~~ the commissioner may at the commissioner's discretion order any one or more of the following:

a. Payment of a civil penalty of not more than one thousand dollars for each act or violation of this subtitle, but not to exceed an aggregate of ten thousand dollars, unless the person knew or reasonably should have known the person was in violation of ~~section 507B.4, 507B.4A, or 507B.5~~ this subtitle, in which case the penalty shall be not more than five thousand dollars for each act or violation, but not to exceed an aggregate penalty of fifty thousand dollars in any one six-month period. If the commissioner finds that a violation of ~~section 507B.4, 507B.4A, or 507B.5~~ this subtitle was directed, encouraged, condoned, ignored, or ratified by the employer of the person or by an insurer, the commissioner shall also assess a fine to the employer or insurer.

b. Suspension or revocation of the license of a person as defined in section 507B.2, subsection 1, if the person knew or reasonably should have known the person was in violation of ~~section 507B.4, 507B.4A, or 507B.5~~ this subtitle.

c. Payment of interest at the rate of ten percent per annum if the commissioner finds that the insurer failed to pay interest as required under section 507B.4, subsection 12.

2. Until the expiration of the time allowed under section 507B.8 for filing a petition for review if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed

in the district court, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as the commissioner may deem proper, modify or set aside in whole or in part any order issued by the commissioner under this section.

3. After the expiration of the time allowed for filing such a petition for review if no such petition has been duly filed within such time, the commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by the commissioner under this section, whenever in the commissioner's opinion conditions of fact or of law have so changed as to require such action, or if the public interest shall so require.

4. Any person who violates a cease and desist order of the commissioner, and while such order is in effect, may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to any one or more of the following:

a. A monetary penalty of not more than ten thousand dollars for each and every act or violation.

b. Suspension or revocation of such person's license.

Sec. 25. Section 507C.6, subsection 4, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

4. It shall be unlawful for a person as defined in subsection 1 to fail to cooperate with the commissioner, or to obstruct or interfere with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental to a delinquency proceeding, or to violate a valid order of the commissioner.

Sec. 26. Section 507C.11, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Notwithstanding chapter 22, in all administrative proceedings pursuant to sections 507C.9 and 507C.10 all orders, records, and documents pertaining to or a part of the record of the proceedings are confidential except as is necessary to obtain compliance with a proceeding. However, the records may be released if either of the following occurs:

Sec. 27. Section 509.18, Code 2003, is amended to read as follows:

509.18 PROHIBITED DEPOSIT IN FINANCIAL INSTITUTION.

A company or its agent licensed to sell a policy of credit life or credit accident and health insurance or certificate under a policy of group credit life or credit accident and health insurance shall not deposit or offer to deposit funds in a financial institution of this state in exchange for the privilege of selling such insurance to or on behalf of the financial institution. ~~Any person violating the provisions of this section shall be guilty of a simple misdemeanor.~~

Sec. 28. Section 511.8, subsection 1, Code Supplement 2003, is amended to read as follows:

1. UNITED STATES GOVERNMENT OBLIGATIONS.

a. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality ~~thereof~~ of the United States of America.

b. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality of the United States of America include investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7, the portfolio of which is limited to the United States government obligations described in paragraph "a", and which are included in the national association of insurance commissioners' securities valuation office's United States direct obligations-full faith and credit exempt list.

Sec. 29. Section 511.8, subsection 19, unnumbered paragraph 1, Code Supplement 2003, 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. 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. Such corporate obligations must meet the qualifications established in subsection 5 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 ~~ten~~ twenty percent of the legal reserve of the life insurance company or association. Investments in obligations of a foreign government, other than Canada and the United Kingdom, 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 obligations of the United Kingdom are not eligible in excess of four percent of the legal reserve. 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. 30. Section 511.8, subsection 22, paragraph e, Code Supplement 2003, is amended to read as follows:

e. Investments in financial instruments of foreign governments or foreign corporate obligations, other than Canada, used in hedging transactions are not eligible in excess of ~~ten~~ twenty percent of the legal reserve, less any foreign investment authorized by subsection 19 owned by the company or association and in which its legal reserve is invested, except insofar as the financial instruments are collateralized by cash or United States government obligations as authorized by subsection 1 deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

Sec. 31. Section 511.8, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 23. SECURITY LOANS.

a. A life insurance company or association may loan securities held by it in its legal reserve to a broker-dealer registered under the Securities Exchange Act of 1934, a national bank, or a state bank, foreign bank, or trust company that is a member of the United States federal reserve system, and the loaned securities shall continue to be eligible for inclusion in the legal reserve of the life insurance company or association.

b. The loan shall be fully collateralized by cash, cash equivalents, or obligations issued or guaranteed by the United States or an agency or instrumentality of the United States. The life insurance company or association shall take delivery of the collateral either directly or through an authorized custodian.

c. If the loan is collateralized by cash or cash equivalents, the cash or cash equivalent collateral may be reinvested by the life insurance company or association in either individual securities which are eligible for inclusion in the legal reserve of the life insurance company or association or in repurchase agreements fully collateralized by such securities if the life insurance company or association takes delivery of the collateral either directly or through an authorized custodian or pooled fund comprised of individual securities which are eligible for inclusion in the legal reserve of the life insurance company or association. If such reinvestment is made in individual securities or in repurchase agreements, the individual securities or the securities which collateralize the repurchase agreements shall mature in less than two hundred seventy days. If such reinvestment is made in a pooled fund, the average maturity of the securities comprising such pooled fund must be less than two hundred seventy days. Individual securities and securities comprising the pooled fund shall be investment grade.

d. The loan shall be evidenced by a written agreement which provides all of the following:

(1) That the loan will be fully collateralized at all times during the term of the loan, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

(2) If the loan is fully collateralized by cash or cash equivalents, the cash or cash equivalent may be reinvested by the life insurance company or association as provided in paragraph "c".

(3) That the loan may be terminated by the life insurance company or association at any time, and that the borrower shall return the loaned stocks or obligations or equivalent stocks or obligations within five business days after termination.

(4) That the life insurance company or association has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the life insurance company or association due to default that are not covered by the collateral.

e. Securities loaned pursuant to this subsection are not eligible for inclusion in the legal reserve of the life insurance company or association in excess of twenty percent of the legal reserve.

Sec. 32. Section 511.16, Code 2003, is amended to read as follows:

511.16 ILLEGAL BUSINESS.

~~Any~~ It shall be unlawful for any officer, manager, or agent of any life insurance company or association ~~who~~, with knowledge that it is doing business in an unlawful manner or is insolvent, ~~solicits~~ to solicit or receive applications for insurance with ~~said~~ the company or association, ~~or receives applications therefor,~~ or ~~does~~ to do any other act or thing ~~towards~~ toward procuring or receiving any new business for ~~such~~ the company or association~~, shall be guilty of an aggravated misdemeanor~~.

Sec. 33. Section 512A.8, Code 2003, is amended to read as follows:

512A.8 ~~PENALTIES~~ VIOLATION.

Except as otherwise provided by law, it shall be unlawful for any person or corporation to operate a benevolent association in this state except as provided for in this chapter. ~~Any person violating the provisions of this chapter shall be guilty of a serious misdemeanor.~~

Sec. 34. Section 512B.35, Code 2003, is amended to read as follows:

512B.35 ~~PENALTIES~~ FALSE OR FRAUDULENT STATEMENTS.

1. ~~A person who~~ It shall be unlawful for a person knowingly ~~makes~~ to make a false or fraudulent statement or representation in or relating to an application for membership or for the purpose of obtaining money from or a benefit in a society~~, is guilty of a fraudulent practice~~.

2. ~~A person who willfully makes~~ It shall be unlawful for a person to willfully make a false or fraudulent statement in a verified report or declaration under oath required or authorized by this chapter, or of a material fact or thing contained in a sworn statement concerning the death or disability of an insured for the purpose of procuring payment of a benefit named in the certificate~~, is guilty of perjury~~.

3. ~~A person who solicits~~ It shall be unlawful for a person to solicit membership for, or in any manner ~~assists~~ to assist in procuring membership in, a society not licensed to do business in this state~~, is guilty of a serious misdemeanor~~.

~~4. A person guilty of a willful violation of, or neglect or refusal to comply with, a provision of this chapter for which a penalty is not otherwise prescribed, is guilty of a simple misdemeanor.~~

Sec. 35. Section 513C.3, subsection 15, Code Supplement 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. For purposes of this subsection, an association policy under chapter 514E is not considered "qualifying existing coverage" or "qualifying previous coverage".

Sec. 36. Section 513C.8, Code 2003, is amended to read as follows:

513C.8 HEALTH BENEFIT PLAN STANDARDS.

The ~~commissioner~~ board of directors of the Iowa comprehensive health insurance association, with the approval of the commissioner, shall adopt ~~by rule~~ the form and level of coverage of the basic health benefit plan and the standard health benefit plan for the individual market which shall provide benefits substantially similar to ~~those as provided for under chapter 513B with respect to small group coverage, but which shall be appropriately adjusted at least every three years to reflect~~ the current state of the individual market.

Sec. 37. Section 513C.10, subsection 1, paragraph a, Code Supplement 2003, is amended to read as follows:

a. All persons that provide health benefit plans in this state including insurers providing accident and sickness insurance under chapter 509, 514, or 514A, whether on an individual or group basis; fraternal benefit societies providing hospital, medical, or nursing benefits under chapter 512B; and health maintenance organizations, organized delivery systems, ~~and all~~ other entities providing health insurance or health benefits subject to state insurance regulation, and all other insurers as designated by the board of directors of the Iowa comprehensive health insurance association with the approval of the commissioner shall be members of the association.

Sec. 38. Section 513C.10, subsection 4, Code Supplement 2003, is amended to read as follows:

4. The board shall develop procedures and assessment mechanisms and make assessments and distributions as required to equalize the individual carrier and organized delivery system gains or losses so that each carrier or organized delivery system receives the same ratio of paid claims to ninety percent of earned premiums as the aggregate of all basic and standard plans insured by all carriers and organized delivery systems in the state.

Sec. 39. NEW SECTION. 514A.3A REFUND OF UNEARNED PREMIUM UPON DEATH OF INSURED.

In the event of the death of the insured of any policy covered by this chapter, the insurer, upon receipt of notice of the insured's death supported by a certified copy of a valid death certificate and a request for a pro rata refund by a party entitled to claim such a refund, shall refund the unearned premium prorated to the month of the insured's death. Refund of the premium and termination of the coverage shall be without prejudice to any claim originating prior to the date of the insured's death. The commissioner of insurance shall adopt by rule the minimum amount required for issuance of a refund.

Sec. 40. Section 514E.1, subsection 2, Code Supplement 2003, is amended to read as follows:

2. "Association policy" means an individual or group policy issued by the association that provides the coverage ~~specified in section 514E.4~~ as set forth in the benefit plans adopted by the association's board of directors and approved by the commissioner.

Sec. 41. Section 514E.1, subsections 7, 8, and 12, Code Supplement 2003, are amended by striking the subsections.

Sec. 42. Section 514E.1, subsection 9, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. Who has been confirmed eligible under the federal Trade Adjustment Act of 2002, Pub. L. No. 107-210, as a recipient under that Act, by the department of workforce development and the federal internal revenue service.

Sec. 43. Section 514E.1, subsection 13, Code Supplement 2003, is amended to read as follows:

13. "Health care services" means services, the coverage of which is authorized under

chapter 509, chapter 514, chapter 514A, or chapter 514B as limited by ~~sections 514E.4 and 514E.5~~ benefit plans established by the association's board of directors, with the approval of the commissioner and includes services for the purposes of preventing, alleviating, curing, or healing human illness, injury or physical disability.

Sec. 44. Section 514E.2, subsection 1, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

The Iowa comprehensive health insurance association is established as a nonprofit corporation. The association shall assure that ~~health insurance, as limited by sections 514E.4 and 514E.5, is~~ benefit plans as authorized in section 514E.1, subsection 2, for an association policy, are made available to each eligible Iowa resident and each federally eligible individual applying to the association for coverage. The association shall also be responsible for administering the Iowa individual health benefit reinsurance association pursuant to all of the terms and conditions contained in chapter 513C.

Sec. 45. Section 514E.2, subsection 1, paragraph a, Code Supplement 2003, is amended to read as follows:

a. All carriers ~~as defined in section 514E.1, subsection 3,~~ and all organized delivery systems licensed by the director of public health providing health insurance or health care services in Iowa and all other insurers designated by the association's board of directors and approved by the commissioner shall be members of the association.

Sec. 46. Section 514E.2, subsection 6, Code Supplement 2003, is amended by striking the subsection and inserting in lieu thereof the following:

6. Rates for coverages issued by the association shall reflect rating characteristics used in the individual insurance market. The rates for a given classification shall not be more than one hundred fifty percent of the average premium or payment rate for the classification charged by the five carriers with the largest health insurance premium or payment volume in the state during the preceding calendar year. In determining the average rate of the five largest carriers, the rates or payments charged by the carriers shall be actuarially adjusted to determine the rate or payment that would have been charged for benefits similar to those issued by the association.

Sec. 47. Section 514E.4, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

514E.4 ASSOCIATION POLICY — COVERAGE AND BENEFIT REQUIREMENTS — DEDUCTIBLES — COINSURANCE.

The association policy shall pay for medically necessary eligible health care services as established in the benefit plans adopted by the association's board of directors and approved by the commissioner. The plans shall provide benefits, deductibles, and coinsurance that reflect the current state of the individual insurance market. The board may modify the benefits provided under the plans to reflect the current state of the individual insurance market with the approval of the commissioner.

Sec. 48. Section 514E.7, subsection 1, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The association shall rescind coverage for an individual who no longer resides in the state.

Sec. 49. Section 514E.7, subsection 5, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. The individual is eligible for Medicare based upon age.

Sec. 50. Section 514E.8, subsection 1, Code 2003, is amended to read as follows:

1. An association policy shall contain provisions under which the association is obligated

to renew the ~~contract~~ coverage for an individual until the day ~~on which~~ the individual ~~in whose name the contract is issued first~~ becomes eligible for Medicare coverage~~, except that in a family policy covering both husband and wife, the age of the younger spouse shall be used as the basis for meeting the durational requirements of this subsection. However, when the individual in whose name the contract is issued becomes eligible for Medicare coverage, the person shall be eligible for the Medicare supplement plan offered by the association~~ based on age.

Sec. 51. Section 514E.11, Code 2003, is amended to read as follows:

514E.11 NOTICE OF ASSOCIATION POLICY.

Every carrier, including a health maintenance organization subject to chapter 514B and an organized delivery system, authorized to provide health care insurance or coverage for health care services in Iowa, shall provide a notice of the availability of coverage by the association to any person who receives a rejection of coverage for health insurance or health care services, or ~~a notice to any person who is informed that~~ a rate for health insurance or coverage for health care services that will exceed the rate of an association policy, and that person is eligible to apply for health insurance provided by the association. Application for the health insurance shall be on forms prescribed by the association's board of directors and made available to the carriers and organized delivery systems and other entities providing health care insurance or coverage for health care services regulated by the commissioner.

Sec. 52. Section 515.35, subsection 3, paragraph a, subparagraph (2), Code Supplement 2003, is amended by striking the subparagraph and inserting in lieu thereof the following:

(2) A company may loan securities held by it to a broker-dealer registered under the Securities Exchange Act of 1934, a national bank, or a state bank, foreign bank, or trust company that is a member of the United States federal reserve system, and the loaned securities shall continue to be allowable investments of the company.

(a) The loan shall be fully collateralized by cash, cash equivalents, or obligations issued or guaranteed by the United States or an agency or instrumentality of the United States. The company shall take delivery of the collateral either directly or through an authorized custodian.

(b) If the loan is collateralized by cash or cash equivalents, the cash or cash equivalent collateral may be reinvested by the company in either individual securities which are allowable investments of the company or in repurchase agreements fully collateralized by such securities if the company takes delivery of the collateral either directly or through an authorized custodian or a pooled fund comprised of individual securities which are allowable investments of the company. If such reinvestment is made in individual securities or in repurchase agreements, the individual securities or the securities which collateralize the repurchase agreements shall mature in less than two hundred seventy days. If such reinvestment is made in a pooled fund, the average maturity of the securities comprising such pooled fund must be less than two hundred seventy days. Individual securities and securities comprising the pooled fund shall be investment grade.

(c) The loan shall be evidenced by a written agreement which provides all of the following:

(i) That the loan will be fully collateralized at all times during the term of the loan, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

(ii) If the loan is fully collateralized by cash or cash equivalents, the cash or cash equivalent collateral may be reinvested by the company as provided in subparagraph subdivision (b).

(iii) That the loan may be terminated by the company at any time, and that the borrower shall return the loaned stocks and obligations or equivalent stocks or obligations within five business days after termination.

(iv) That the company has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the company due to default that are not covered by the collateral.

(d) Securities loaned pursuant to this subparagraph (2) are not eligible for investment of the company in excess of twenty percent of admitted assets.

Sec. 53. Section 515.35, subsection 4, paragraph a, Code Supplement 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality of the United States of America include investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a) and operated in accordance with 17 C.F.R. § 270.2a-7, the portfolio of which is limited to the United States government obligations described in this paragraph "a", and which are included in the national association of insurance commissioners' securities valuation office's United States direct obligation-full faith and credit list.

Sec. 54. Section 515.35, subsection 4, paragraph i, subparagraphs (3) and (4), Code Supplement 2003, are amended to read as follows:

(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 and the United Kingdom. Investments in obligations of the United Kingdom are not eligible in excess of four percent of admitted assets. 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~~ twenty percent of its admitted assets in foreign investments pursuant to this paragraph.

Sec. 55. Section 515.120, Code 2003, is amended to read as follows:

515.120 VIOLATIONS.

~~Any~~ It shall be unlawful for any officer, manager, or agent of any insurance company or association who, with knowledge that it is doing business in an unlawful manner, or is insolvent, ~~solicits~~ to solicit or receive applications for insurance with ~~said~~ the company or association, ~~or receives applications therefor,~~ or ~~does~~ to do any other act or thing ~~towards~~ toward procuring or receiving any new business for such company or association~~, shall be guilty of a serious misdemeanor~~.

Sec. 56. Section 515.121, Code 2003, is amended to read as follows:

515.121 OFFICERS PUNISHED.

~~Any~~ It shall be unlawful for any of the following to fail to comply with or to violate any of the requirements of this chapter:

1. The president, secretary, or other officer of any company organized under the laws of this state~~, or any~~.

2. Any officer or person doing or attempting to do business in this state for any insurance company organized either within or without this state~~, failing to comply with any of the requirements of this chapter, or violating any of the provisions thereof, shall be guilty of a simple misdemeanor~~.

Sec. 57. Section 515.140, Code 2003, is amended to read as follows:

515.140 VIOLATIONS — STATUS OF POLICY.

~~Any~~ It shall be unlawful for any insurance company, its officers or agents, or either of them,

~~violating~~ to violate any of the provisions of section 515.138, by issuing, delivering, or offering to issue or deliver any policy of fire insurance on property in this state other ~~or different from~~ than the standard form~~, herein~~ as provided ~~for, shall be guilty of a simple misdemeanor~~ in statute, but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the ~~same, and such~~ policy. The company shall, until the payment of ~~such fine~~ a penalty assessed by order after hearing, be disqualified from doing any insurance business in this state~~; but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the same~~.

Sec. 58. Section 518A.41, Code 2003, is amended to read as follows:

518A.41 INSURANCE PRODUCERS TO BE LICENSED.

~~No~~ A person or corporation shall not solicit ~~any~~ an application for insurance for any association in this state without having procured from the commissioner of insurance a license authorizing the person or corporation to act as an insurance producer. ~~Violation of this provision shall constitute a serious misdemeanor.~~

Sec. 59. Section 520.14, Code 2003, is amended to read as follows:

520.14 VIOLATIONS — EXCEPTIONS.

~~Any~~ It shall be unlawful for an attorney ~~who shall~~ to exchange ~~any~~ contracts of insurance of the kind and character specified in this chapter, or ~~any~~ for an attorney or representative of ~~such~~ the attorney~~, who shall~~ to solicit or negotiate any applications for the same without the attorney having first complied with the foregoing provisions~~, shall be deemed guilty of a simple misdemeanor~~. For the purpose of organization and upon issuance of permit by the commissioner of insurance, powers of attorney and applications for such contracts may be solicited without compliance with the provisions of this chapter, but ~~no~~ an attorney, agent, or other person shall not make any such contracts of indemnity until all of the provisions of this chapter shall have been complied with.

Sec. 60. Section 522B.11, subsection 1, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. q. Is the subject of an order of the securities administrator of this state or any other state, province, district, or territory, denying, suspending, revoking, or otherwise taking action against a registration as a broker-dealer, agent, investment adviser, or investment adviser representative.

Sec. 61. Section 522B.11, subsection 5, Code 2003, is amended to read as follows:

5. The commissioner may conduct an investigation of any suspected violation of this chapter pursuant to section 507B.6 and may enforce the provisions and impose any penalty or remedy authorized by this chapter and chapter 507B against any person who is under investigation for, or charged with, a violation of either chapter even if the person's license has been surrendered or has lapsed by operation of law.

Sec. 62. Section 522B.11, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 6. a. In order to assure a free flow of information for accomplishing the purposes of this section, all complaint files, investigation files, other investigation reports, and other investigative information in the possession of the commissioner or the commissioner's employees or agents that relates to licensee discipline are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the licensee, and are not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. A final written decision of the commissioner in a disciplinary proceeding is a public record.

b. Investigative information in the possession of the commissioner or the commissioner's employees or agents that relates to licensee discipline may be disclosed, in the commissioner's discretion, to appropriate licensing authorities within this state, the appropriate licensing

authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license.

c. If the investigative information in the possession of the commissioner or the commissioner's employees or agents indicates a crime has been committed, the information shall be reported to the proper law enforcement agency.

d. Pursuant to the provisions of section 17A.19, subsection 6, upon an appeal by the licensee, the commissioner shall transmit the entire record of the contested case to the reviewing court.

e. Notwithstanding the provisions of section 17A.19, subsection 6, if a waiver of privilege has been involuntary and evidence has been received at a disciplinary hearing, the court shall issue an order to withhold the identity of the individual whose privilege was waived.

Sec. 63. NEW SECTION. 522B.16A DUTIES OF LICENSEES.

1. An insurance producer has a continuing duty and obligation to keep, at the insurance producer's place of business, usual and customary records pertaining to transactions undertaken by the insurance producer. All such records shall be kept available and open for inspection by the commissioner or the commissioner's representative at any time during regular business hours, provided that the commissioner or the commissioner's representative is not entitled to inspect any records prepared in anticipation of litigation or that are subject to any privilege recognized in chapter 622. Such records shall be maintained for a minimum of three years following the completion of an insurance transaction.

2. An insurance producer who willfully fails to comply with this section commits a violation of this chapter and is subject to sanctions under section 522B.11.

Sec. 64. Section 523A.401, subsection 6, paragraph c, Code 2003, is amended to read as follows:

c. The insurance policy shall not ~~allow for contesting coverage,~~ be contestable, or limit death benefits in the case of suicide, with respect to that portion of the face amount of the policy that is required by paragraph "b". The policy shall not refer to physical examination, or otherwise operate as an exclusion, limitation, or condition other than requiring submission of proof of death or surrender of policy at the time the prepaid purchase agreement is funded, matures, or is canceled, as the case may be.

Sec. 65. Section 523A.402, subsection 6, paragraph c, Code 2003, is amended to read as follows:

c. The annuity shall not ~~allow for contesting coverage,~~ be contestable, or limit death benefits in the case of suicide, with respect to that portion of the face amount of the annuity which is required by paragraph "b". The annuity shall[1] refer to physical examination, or otherwise operate as an exclusion, limitation, or condition other than requiring submission of proof of death or surrender of the annuity at the time the prepaid purchase agreement is funded, matures, or is canceled, as the case may be.

Sec. 66. Section 523A.501, subsection 6, Code 2003, is amended to read as follows:

6. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the permit, the commissioner shall notify the person in writing of the reasons for the denial. ~~The permit shall disclose on its face the permit holder's employer or the establishment on whose behalf the applicant will be making or attempting to make sales, the permit number, and the expiration date.~~

Sec. 67. Section 523A.502, subsection 7, Code 2003, is amended to read as follows:[2]

7. A sales permit is not assignable or transferable. A permit holder selling all or part of a

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[1] The word "not" probably also intended

[2] See chapter 1175, §398 herein

business shall cancel the ~~permit~~ establishment's sales permits and the purchaser shall apply for ~~a~~ new ~~permit~~ sales permits in the purchaser's name within thirty days of the sale.

Sec. 68. Section 523A.503, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The commissioner may, pursuant to chapter 17A, deny any permit application, or immediately suspend, ~~or~~ revoke, or otherwise impose disciplinary action related to any permit issued under this chapter for several reasons, including but not limited to:

Sec. 69. Section 523A.503, subsection 3, Code 2003, is amended to read as follows:

3. Except as provided in subsection 2, a permit shall not be revoked, ~~or~~ suspended, or otherwise be the subject of disciplinary action except after notice and hearing under chapter 17A.

Sec. 70. Section 523A.503, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 6. The commissioner may impose a civil penalty in an amount not exceeding ten thousand dollars per violation against any person violating this chapter. Each day of a continuing violation constitutes a separate offense.

Sec. 71. Sections 506.7, 507B.11, 508.27, 511.18, 514.6, 514A.9, 514B.29, 515.132, 515.145, and 521.15, Code 2003, are repealed.

Sec. 72. Sections 514.6, 514E.5, and 514E.6, Code 2003, are repealed.

Approved April 26, 2004

CHAPTER 1111

CRIMINAL PENALTY SURCHARGES

H.F. 2530

AN ACT relating to the assessment of surcharges in criminal proceedings.

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

Section 1. Section 331.302, subsection 2, Code Supplement 2003, is amended to read as follows:

2. A county shall not provide a penalty in excess of a five hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. The criminal penalty surcharge required by section ~~911.2~~ 911.1 shall be added to a county fine and is not a part of the county's penalty.

Sec. 2. Section 364.3, subsection 2, Code Supplement 2003, is amended to read as follows:

2. A city shall not provide a penalty in excess of a five hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. An amount equal to ten percent of all fines collected by cities shall be deposited in the account established in section 602.8108. However, one hundred percent of all fines collected by a city pursuant to section 321.236, subsection 1, shall be retained by the city. The criminal penalty surcharge required by section ~~911.2~~ 911.1 shall be added to a city fine and is not a part of the city's penalty.

Sec. 3. Section 602.8108, subsections 2 through 6, Code Supplement 2003, are amended to read as follows:

2. Except as otherwise provided, the clerk of the district court shall report and submit to the state court administrator, not later than the fifteenth day of each month, the fines and fees received during the preceding calendar month. Except as provided in subsections 3, ~~4, and~~ 5, 6, and 7, the state court administrator shall deposit the amounts received with the treasurer of state for deposit in the general fund of the state. The state court administrator shall report to the legislative services agency within thirty days of the beginning of each fiscal quarter the amount received during the previous quarter in the account established under this section.

3. ~~When a court assesses a criminal surcharge under section 911.2, the amounts collected shall be distributed as follows:~~

~~a.~~ The clerk of the district court shall ~~submit~~ remit to the state court administrator, not later than the fifteenth day of each month, ninety-five percent of ~~the surcharge collected~~ all moneys collected from the criminal penalty surcharge provided in section 911.1 during the preceding calendar month. The clerk shall remit the remainder to the county treasurer of the county that was the plaintiff in the action or to the city that was the plaintiff in the action.

~~b.~~ Of the amount received from the clerk, the state court administrator shall allocate eighteen percent to be deposited in the victim compensation fund established in section 915.94 and eighty-two percent to be deposited in the general fund.

~~c.~~ 4. ~~Notwithstanding provisions of this subsection to the contrary,~~ The clerk of the district court shall remit all moneys collected from the drug abuse resistance education surcharge provided in section 911.2 ~~shall be remitted~~ to the ~~treasurer of~~ state court administrator for deposit in the general fund of the state and the amount deposited is appropriated to the governor's office of drug control policy for use by the drug abuse resistance education program and other programs directed for a similar purpose.

~~4.~~ 5. ~~When a court assesses the law enforcement initiative surcharge under section 911.3, the~~ The clerk of the district court shall remit ~~to the treasurer of the state,~~ all moneys collected from the assessment of the law enforcement initiative surcharge provided in section 911.3 to the state court administrator no later than the fifteenth day of each month, all the moneys collected during the preceding month, for deposit in the general fund of the state.

~~5.~~ 6. A court technology and modernization fund is established as a separate fund in the state treasury. The state court administrator shall allocate one million dollars of the moneys received under subsection 2 to be deposited in the fund, which shall be administered by the supreme court and shall be used to enhance the ability of the judicial branch to process cases more quickly and efficiently, to electronically transmit information to state government, local governments, law enforcement agencies, and the public, and to improve public access to the court system.

~~6.~~ 7. 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.

Sec. 4. Section 805.8, subsection 1, Code 2003, is amended to read as follows:

1. APPLICATION. Except as otherwise indicated, violations of sections of the Code specified in sections 805.8A, 805.8B, and 805.8C are scheduled violations, and the scheduled fine for each of those violations is as provided in those sections, whether the violation is of state law or of a county or city ordinance. The criminal penalty surcharge required by section ~~911.2~~ 911.1 shall be added to the scheduled fine.

Sec. 5. Section 805.8C, subsection 3, paragraph a, Code 2003, is amended to read as follows:

a. For violations of section 142B.6, the scheduled fine is twenty-five dollars, and is a civil penalty, and the criminal penalty surcharge under section ~~911.2~~ 911.1 shall not be added to the penalty, and the court costs pursuant to section 805.9, subsection 6, shall not be imposed.

If the civil penalty assessed for a violation of section 142B.6 is not paid in a timely manner, a citation shall be issued for the violation in the manner provided in section 804.1. However, a person under age eighteen shall not be detained in a secure facility for failure to pay the civil penalty. The complainant shall not be charged a filing fee.

Sec. 6. Section 805.8C, subsection 3, paragraph c, unnumbered paragraph 1, Code 2003, is amended to read as follows:

For violations of section 453A.2, subsection 2, the scheduled fine is as follows and is a civil penalty, and the criminal penalty surcharge under section ~~911.2~~ 911.1 shall not be added to the penalty, and the court costs pursuant to section 805.9, subsection 6, shall not be imposed:

Sec. 7. Section 902.9, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The ~~criminal penalty surcharge~~ surcharges required by sections 911.1, 911.2, and 911.3 shall be added to a fine imposed on a class "C" or class "D" felon, as provided by those sections, and ~~is~~ are not a part of or subject to the maximums set in this section.

Sec. 8. Section 903.1, subsection 4, Code 2003, is amended to read as follows:

4. The ~~criminal penalty surcharge~~ surcharges required by sections 911.1, 911.2, and 911.3 shall be added to a fine imposed on a misdemeanant as provided in those sections, and ~~is~~ are not a part of or subject to the maximums set in this section.

Sec. 9. Section 909.10, subsection 1, Code 2003, is amended to read as follows:

1. As used in this section, unless the context otherwise requires, "delinquent amounts" means a fine, court-imposed court costs in a criminal proceeding, or ~~criminal~~ surcharge imposed pursuant to section 911.1 or 911.2, which remains unpaid after two years from the date that the fine, court costs, or surcharge was imposed, and which is not collected by the county attorney pursuant to section 602.8107. However, if the fine may be paid in installments pursuant to section 909.3, the fine is not a delinquent amount unless the installment remains unpaid after two years from the date the installment was due.

Sec. 10. Section 911.1, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

911.1 CRIMINAL PENALTY SURCHARGE.

1. A criminal penalty surcharge shall be levied against law violators as provided in this section. When a court imposes a fine or forfeiture for a violation of state law, or a city or county ordinance, except an ordinance regulating the parking of motor vehicles, the court or the clerk of the district court shall assess an additional penalty in the form of a criminal penalty surcharge equal to thirty percent of the fine or forfeiture imposed.[1]

2. In the event of multiple offenses, the surcharge shall be based upon the total amount of fines or forfeitures imposed for all offenses.

3. When a fine or forfeiture is suspended in whole or in part, the court shall reduce the surcharge in proportion to the amount suspended.

4. The surcharge is subject to the provisions of chapter 909 governing the payment and collection of fines, as provided in section 909.8.

5. The surcharge shall be remitted by the clerk of court as provided in section 602.6108,[2] subsection 3.

Sec. 11. Section 911.2, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

911.2 DRUG ABUSE RESISTANCE EDUCATION SURCHARGE.

1. In addition to any other surcharge, the court or clerk of the district court shall assess a drug abuse resistance education surcharge of ten dollars if a violation arises out of a violation of an offense provided for in chapter 321J or chapter 124, division IV.

2. In the event of multiple offenses, the surcharge shall be imposed for each applicable

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[1] See chapter 1175, §282 herein

[2] Section "602.8108" probably intended

offense. The surcharge shall not be assessed for any offense for which the court defers the sentence or judgment or suspends the sentence.

3. The surcharge is subject to the provisions of chapter 909 governing the payment and collection of fines, as provided in section 909.8.

4. The surcharge shall be remitted by the clerk of court as provided in section 602.8108, subsection 4.

Sec. 12. Section 911.3, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

911.3 LAW ENFORCEMENT INITIATIVE SURCHARGE.

1. In addition to any other surcharge, the court or clerk of the district court shall assess a law enforcement initiative surcharge of one hundred twenty-five dollars if an adjudication of guilt or a deferred judgment has been entered for a criminal violation under any of the following:

a. Chapter 124, 155A, 453B, 713, 714, 715A, or 716.

b. Section 719.8, 725.1, 725.2, or 725.3.

2. In the event of multiple offenses, the surcharge shall be imposed for each applicable offense.

3. The surcharge shall be remitted by the clerk of court as provided in section 602.8108, subsection 5.

Approved April 26, 2004

CHAPTER 1112

INTELLECTUAL PROPERTY COUNTERFEITING

H.F. 2395

AN ACT creating the criminal offense of intellectual property counterfeiting, and providing a penalty.

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

Section 1. NEW SECTION. 714.26 INTELLECTUAL PROPERTY COUNTERFEITING.

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

a. "Counterfeit mark" means any unauthorized reproduction or copy of intellectual property, or intellectual property affixed to any item knowingly sold, offered for sale, manufactured, or distributed, or identifying services offered or rendered, without authority of the owner of the intellectual property.

b. "Intellectual property" means any trademark, service mark, trade name, label, term, device, design, or word adopted or used by a person to identify the items or services of the person.

c. "Retail value" means the highest value of an item determined by any reasonable standard at the time the item bearing or identified by a counterfeit mark is seized. If a seized item bearing or identified by a counterfeit mark is a component of a finished product, "retail value" also means the highest value, determined by any reasonable standard, of the finished product on which the component would have been utilized. The retail value shall be the retail value of the aggregate quantity of all items seized which bear or are identified by a counterfeit mark. For purposes of this paragraph, reasonable standard includes but is not limited the to[1] market

[1] See chapter 1175, §390 herein

value within the community, actual value, replacement value, or the counterfeiter's regular selling price for the item bearing or identified by a counterfeit mark, or the intellectual property owner's regular selling price for an item similar to the item bearing or identified by a counterfeit mark.

2. CRIMINAL OFFENSE. A person who knowingly manufactures, produces, displays, advertises, distributes, offers for sale, sells, possesses with intent to sell or distributes any item or knowingly provides service bearing or identified by a counterfeit mark commits intellectual property counterfeiting.

a. A person commits intellectual property counterfeiting in the first degree if any of the following apply:

(1) The person is manufacturing or producing an item bearing or identified by a counterfeit mark.

(2) The offense involves more than one thousand items bearing or identified by a counterfeit mark or the total retail value of such items is equal to or greater than ten thousand dollars.

(3) The offense is a third or subsequent violation of this section.

Intellectual property counterfeiting in the first degree is a class "C" felony.

b. A person commits intellectual property counterfeiting in the second degree if any of the following apply:

(1) The offense involves more than one hundred items but does not involve more than one thousand items bearing or identified by a counterfeit mark or the total retail value of such items is equal to or greater than one thousand dollars but less than ten thousand dollars.

(2) The offense is a second violation of this section.

Intellectual property counterfeiting in the second degree is a class "D" felony.

c. All intellectual property counterfeiting which is not intellectual property counterfeiting in the first degree or second degree is intellectual property counterfeiting in the third degree. Intellectual property counterfeiting in the third degree is an aggravated misdemeanor.

3. EVIDENCE. Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of ownership of the intellectual property in dispute.

4. SEIZURE AND DISPOSITION. Any items bearing or identified by a counterfeit mark, and all personal property, including but not limited to any items, objects, tools, machines, equipment, instrumentalities, or vehicles used in connection with a violation of this section, shall be seized by any law enforcement agency.

a. All seized personal property shall be disposed of in accordance with section 809.5 or as provided in paragraph "b".

b. Upon request of the intellectual property owner, all seized items bearing or identified by a counterfeit mark shall be released by the seizing agency to the intellectual property owner for destruction or disposition. If the intellectual property owner does not request release of the seized items, the items shall be destroyed unless the intellectual property owner consents to another disposition.

Approved April 27, 2004

CHAPTER 1113

MOTOR VEHICLE SAFETY — CHILD RESTRAINT SYSTEMS

S.F. 2066

AN ACT modifying requirements for securing children transported in motor vehicles and making a penalty applicable.

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

Section 1. Section 321.445, subsection 2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The driver and front seat occupants of a type of motor vehicle ~~which~~ that is subject to registration in Iowa, except a motorcycle or a motorized bicycle, shall each wear a properly adjusted and fastened safety belt or safety harness any time the vehicle is in forward motion on a street or highway in this state except that a child under ~~six~~ eleven years of age shall be secured as required under section 321.446.

Sec. 2. Section 321.446, subsections 1, 2, and 4, Code 2003, are amended to read as follows:

1. a. A child under one year of age and weighing less than twenty pounds who is being transported in a motor vehicle subject to registration, except a school bus or motorcycle, shall be secured during transit in a rear-facing child restraint system that is used in accordance with the manufacturer's instructions.

b. A child under ~~three~~ six years of age who does not meet the description in paragraph "a" and who is being transported in a motor vehicle subject to registration, except a school bus or motorcycle, shall be secured during transit by a child restraint system ~~which meets federal motor vehicle safety standards, and the system shall be~~ that is used in accordance with the manufacturer's instructions.

2. A child at least ~~three~~ six years of age but under ~~six~~ eleven years of age who is being transported in a motor vehicle subject to registration, except a school bus or motorcycle, shall be secured during transit by ~~either~~ a child restraint system that ~~meets federal motor vehicle safety standards and~~ is used in accordance with the manufacturer's instructions~~,~~ or by a safety belt or safety harness of a type approved under section 321.445.

4. a. ~~The~~ An operator who violates subsection 1 or 2 is guilty of a simple misdemeanor and subject ~~only~~ to the penalty provisions of section 805.8A, subsection 14, paragraph "c".

b. During the eighteen-month period beginning July 1, 2004, and ending December 31, 2005, peace officers shall issue only warning citations for violations of subsections 1 and 2, provided the operator is, at a minimum, in compliance with the provisions of subsections 1 and 2, Code 2003. A peace officer may issue a citation for a violation of this section or section 321.445, as applicable, to an operator who is not in compliance with section 321.446, subsections 1 and 2, Code 2003, in regard to a child under six years of age, or section 321.445, Code 2003, in regard to a child at least six years of age but under eleven years of age. This paragraph is repealed January 1, 2006.

Sec. 3. Section 321.446, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 7. For purposes of this section, "child restraint system" means a specially designed seating system, including a belt-positioning seat or a booster seat, that meets federal motor vehicle safety standards set forth in 49 C.F.R. § 571.213.

Sec. 4. EDUCATION PROGRAMS AND COMPLIANCE ASSISTANCE.

1. The state department of transportation, in cooperation with the department of public safety, shall develop and implement public awareness and education programs to foster compliance with the child restraint system usage requirements of this Act.

2. The state department of transportation and the department of public safety shall make

every reasonable effort to identify existing programs administered by state and local government agencies that provide assistance to low-income families and to coordinate efforts with those agencies to assist Iowa parents, including but not limited to parents with more than three children under age eleven, to comply with the requirements of this Act. This subsection is contingent upon the availability of funds to cover the costs associated with its implementation.

Approved April 28, 2004

CHAPTER 1114

REGULATION OF POLITICAL ACTIVITIES AND MATERIALS

H.F. 2319

AN ACT relating to the operation, reporting, and dissolution of committees, reporting requirements for special and other elections, the placement of attribution statements in political materials, and the size and placement of political signs.

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

Section 1. Section 68A.402, Code Supplement 2003, is amended by striking the section and inserting in lieu thereof the following:

68A.402 DISCLOSURE REPORT DUE DATES — PERMANENT ORGANIZATION TEMPORARILY ENGAGING IN POLITICAL ACTIVITY REQUIRED TO FILE REPORTS.

1. FILING METHODS. Each committee shall file with the board reports disclosing information required under this section on forms prescribed by rule. Reports shall be filed on or before the required due dates by using any of the following methods: mail bearing a United States postal service postmark, hand-delivery, facsimile transmission, or electronic filing as prescribed by rule.

2. STATEWIDE OFFICE, GENERAL ASSEMBLY, AND COUNTY ELECTIONS.

a. ELECTION YEAR. A candidate's committee of a candidate for statewide office, the general assembly, or county office shall file reports in an election year as follows:

Report due:	Covering period:
May 19	January 1 through May 14
July 19	May 15 or Wednesday preceding primary election through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 or Wednesday preceding general election through December 31

b. SUPPLEMENTARY REPORT — STATEWIDE AND GENERAL ASSEMBLY ELECTIONS. A candidate's committee of a candidate for statewide office or the general assembly shall file a supplementary report in a year in which a primary, general, or special election for that office is held. The supplementary reports shall be filed if contributions are received after the close of the period covered by the last report filed prior to that primary, general, or special election if any of the following applies:

(1) The committee of a candidate for governor receives ten thousand dollars or more.

(2) The committee of a candidate for any other statewide office receives five thousand dollars or more.

(3) The committee of a candidate for the general assembly receives one thousand dollars or more.

The amount of any contribution causing a supplementary report under this paragraph "b" shall include the estimated fair market value of any in-kind contribution. The report shall be filed by the Friday immediately preceding the election and be current through the Tuesday immediately preceding the election.

c. NONELECTION YEARS. A candidate's committee of a candidate for statewide office, the general assembly, or county office shall file reports in a nonelection year as follows:

Report due:	Covering period:
January 19	January 1 through December 31 of the previous year

3. CITY OFFICES.

a. ELECTION/YEARS. A candidate's committee of a candidate for city office shall file a report in an election year as follows:

Report due:	Covering period:
Five days before primary election	Date of initial activity through ten days before primary election
Five days before general election	Nine days before primary election through ten days before general election
Five days before runoff election (if applicable)	Nine days before the general election through ten days before the runoff election
January 19 (next calendar year)	Cutoff date from previously filed report through December 31

b. NONELECTION YEARS. A candidate's committee of a candidate for city office shall file a report in a nonelection year as follows:

Report due:	Covering period:
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4. SCHOOL BOARD AND OTHER POLITICAL SUBDIVISION ELECTIONS.

a. ELECTION YEAR. A candidate's committee of a candidate for school board or any other political subdivision office, except for county and city office, shall file a report in an election year as follows:

Report due:	Covering period:
Five days before election	Date of initial activity through ten days before election
January 19 (next calendar year)	Nine days before election through December 31

b. NONELECTION YEAR. A candidate's committee of a candidate for school board or any other political subdivision office, except for county and city office, shall file a report in a nonelection year as follows:

Report due:	Covering period:
January 19 (next calendar year)	January 1 through December 31 of nonelection year

5. SPECIAL ELECTIONS.

a. A candidate's committee shall file a report by the fifth day prior to a special election that is current through the tenth day prior to the special election.

b. SPECIAL ELECTIONS — NONELECTION YEAR. A candidate's committee at a special election shall file a report in a nonelection year as follows:

Report due:	Covering period:
January 19 (next calendar year)	January 1 through December 31 of nonelection year

6. STATUTORY POLITICAL COMMITTEES.

a. A state statutory political committee shall file a report on the same dates as a candidate's committee is required to file reports under subsection 2, paragraph "a" and subsection 5, paragraph "b".

b. A county statutory political committee shall file a report on the same dates as a candidate's committee is required to file reports under subsection 2, paragraph "a" and subsection 5, paragraph "b".

7. POLITICAL COMMITTEES.

a. STATEWIDE OFFICE AND GENERAL ASSEMBLY ELECTIONS.

ELECTION YEAR. A political committee expressly advocating the nomination, election, or defeat of candidates for statewide office or the general assembly shall file a report on the same dates as a candidate's committee is required to file reports under subsection 2, paragraph "a".

NONELECTION YEAR. A political committee expressly advocating the nomination, election, or defeat of candidates for statewide office or the general assembly shall file a report as follows:

Report due:	Covering period:
January 19 (next calendar year)	January 1 through June 30
July 19 (next calendar year)	July 1 through December 31

b. COUNTY ELECTIONS. A political committee expressly advocating the nomination, election, or defeat of candidates for county office shall file reports on the same dates as[1] candidate's committee is required to file reports under subsection 2, paragraph "a" and subsection 5, paragraph "b".

c. CITY ELECTIONS. A political committee expressly advocating the nomination, election, or defeat of candidates for city office shall file reports on the same dates as candidates for city office are required to file reports under subsection 3.

d. SCHOOL BOARD AND OTHER POLITICAL SUBDIVISION ELECTIONS. A political committee expressly advocating the nomination, election, or defeat of candidates for school board or other political subdivision office, except for county office or city office, shall file reports on the same dates as candidates for school board or other political subdivision office are required to file reports under subsection 4.

8. POLITICAL COMMITTEES — BALLOT ISSUES. A political committee expressly advocating the passage or defeat of a ballot issue shall file reports on the same dates as candidates for city office are required to file reports under subsection 3.

9. PERMANENT ORGANIZATIONS. A permanent organization temporarily engaging in activity described in section 68A.102, subsection 18 shall organize a political committee and shall keep the funds relating to that political activity segregated from its operating funds. The political committee shall file reports on the appropriate due dates as required by this section. The reports filed under this subsection shall identify the source of the original funds used for a contribution made to a candidate or a candidate's committee. When the permanent organization ceases to be involved in the political activity, the permanent organization shall dissolve the political committee. As used in this subsection, "permanent organization" means an organization that is continuing, stable, and enduring, and was originally organized for purposes other than engaging in election activities.

10. ELECTION YEAR DEFINED. As used in this section, "election year" means a year in which the name of the candidate or ballot issue that is expressly advocated for or against appears on any ballot to be voted on by the electors of the state of Iowa. For state and county statutory political committees, "election year" means a year in which primary and general elections are held.

Sec. 2. NEW SECTION. 68A.402A INFORMATION DISCLOSED ON REPORTS.

1. Each report filed under section 68A.402 shall disclose:

[1] See chapter 1175, §363 herein

a. The amount of cash on hand at the beginning of the reporting period.

b. The name and mailing address of each person who has made one or more contributions of money to the committee when the aggregate amount in a calendar year exceeds the amount specified in the following schedule:

(1) For any candidate for school or other political subdivision office: ..... $ 25
(2) For any candidate for city office: ..... $ 25
(3) For any candidate for county office: ..... $ 25
(4) For any candidate for the general assembly: ..... $ 25
(5) For any candidate for statewide office: ..... $ 25
(6) For any state statutory political committee: $200
(7) For any county statutory political committee: ..... $ 50
(8) For any political committee: ..... $ 25

c. The total amount of contributions made to the committee during the reporting period and not reported under paragraph "b".

d. The name and mailing address of each person who has made one or more in-kind contributions to the committee when the aggregate market value of the in-kind contributions in a calendar year exceeds the applicable amount specified in paragraph "b". In-kind contributions shall be designated on a separate schedule from schedules showing contributions of money and shall identify the nature of the contribution and provide its estimated fair market value.

e. Each loan to any person or committee within the calendar year if in the aggregate the amount of the loan or loans exceeds the applicable amount specified in paragraph "b", together with the name and mailing address of the lender and endorsers, the date and amount of each loan received, and the date and amount of each loan repayment. Loans received and loan repayments shall be reported on a separate schedule.

f. The name and mailing address of each person to whom disbursements or loan repayments have been made by the committee from contributions during the reporting period and the amount, purpose, and date of each disbursement except that disbursements of less than five dollars may be shown as miscellaneous disbursements so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed one hundred dollars.

g. Disbursements made to a consultant and disbursements made by the consultant during the reporting period disclosing the name and address of the recipient, amount, purpose, and date.

h. The amount and nature of debts and obligations owed by the committee in excess of the applicable amounts specified in the schedule in paragraph "b". Loans made to a committee and reported under paragraph "e" shall not be considered a debt or obligation under this paragraph. A loan made by a committee to any person shall be considered a disbursement.

i. If a person listed under paragraph "b", "d", "e", or "f" as making a contribution or loan to or purchase from a candidate's committee is related to the candidate within the third degree of consanguinity or affinity, the existence of that person's family relationship shall be indicated on the report.

j. Campaign property belonging to a candidate's committee pursuant to section 68A.304.

k. Other pertinent information required by this chapter, by rules adopted pursuant to this chapter, or forms prescribed by the board.

2. If a report is the first report filed by a committee, the report shall include all information required under subsection 1 covering the period from the beginning of the committee's financial activity, even if from a different calendar year, through the end of the current reporting period. If no contributions have been accepted, no disbursements have been made, and no indebtedness has been incurred during that reporting period, the treasurer of the committee shall file a disclosure statement that discloses only the amount of cash on hand at the beginning of the reporting period.

Sec. 3. NEW SECTION. 68A.402B COMMITTEE DISSOLUTION OR INACTIVITY.

1. If a committee, after having filed a statement of organization or one or more disclosure reports, dissolves or determines that it will no longer receive contributions or make disbursements, the committee shall notify the board within thirty days following such dissolution or determination by filing a dissolution report on forms prescribed by the board.

2. a. A committee shall not dissolve until all loans, debts, and obligations are paid, forgiven, or transferred and the remaining moneys in the committee's account are distributed according to sections 68A.302 and 68A.303. If a loan is transferred or forgiven, the amount of the transferred or forgiven loan must be reported as an in-kind contribution and deducted from the loans payable balance on the disclosure form. If, upon review of a committee's statement of dissolution and final report, the board determines that the requirements for dissolution have been satisfied, the dissolution shall be certified and the committee relieved of further filing requirements.

b. A statutory political committee is prohibited from dissolving, but may be placed in an inactive status upon the approval of the board. Inactive status may be requested for a statutory political committee when no officers exist and the statutory political committee has ceased to function. The request shall be made by the previous treasurer or chairperson of the committee and by the appropriate state statutory political committee. A statutory political committee granted inactive status shall not solicit or expend funds in its name until the committee reorganizes and fulfills the requirements of a political committee under this chapter.

Sec. 4. Section 68A.405, Code Supplement 2003, is amended by striking the section and inserting in lieu thereof the following:

68A.405 ATTRIBUTION STATEMENT ON PUBLISHED MATERIAL.

1. a. For purposes of this subsection:

(1) "Individual" includes a candidate for public office who has not filed a statement of organization under section 68A.201.

(2) "Organization" includes an organization established to advocate the passage or defeat of a ballot issue but that has not filed a statement of organization under section 68A.201.

(3) "Published material" means any newspaper, magazine, shopper, outdoor advertising facility, poster, direct mailing, brochure, internet web site, campaign sign, or any other form of printed general public political advertising.

b. Except as set out in section 2, published material designed to expressly advocate the nomination, election, or defeat of a candidate for public office or the passage or defeat of a ballot issue shall include on the published material an attribution statement disclosing who is responsible for the published material.

c. If the person paying for the published material is an individual, the words "paid for by" and the name and address of the person shall appear on the material.

d. If more than one individual is responsible, the words "paid for by", the names of the individuals, and either the addresses of the individuals or a statement that the addresses of the individuals are on file with the Iowa ethics and campaign disclosure board shall appear on the material.

e. If the person responsible is an organization, the words "paid for by", the name and address of the organization, and the name of one officer of the organization shall appear on the material.

f. If the person responsible is a committee that has filed a statement of organization pursuant to section 68A.201, the words "paid for by" and the name of the committee shall appear on the material.

2. The requirement to include an attribution statement does not apply to any of the following:

a. The editorials or news articles of a newspaper or magazine that are not paid political advertisements.

b. Small items upon which the inclusion of the statement is impracticable including, but not

limited to, yard signs, bumper stickers, pins, buttons, pens, political business cards, and matchbooks.

c. T-shirts, caps, and other articles of clothing.

d. Any published material that is subject to federal regulations regarding an attribution requirement.

e. Any material published by an individual, acting independently, who spends one hundred dollars or less of the individual's own money to advocate the passage or defeat of a ballot issue.

3. The board shall adopt rules relating to the placing of an attribution statement on published materials.

Sec. 5. NEW SECTION. 68A.406B CAMPAIGN SIGNS.

1. Campaign signs may be placed with the permission of the property owner on any of the following:

a. Residential property.

b. Agricultural land owned by individuals or by a family farm operation as defined in section 9H.1, subsections 8, 9, and 10.

c. Property leased for residential purposes including, but not limited to, apartments, condominiums, and houses.

d. Vacant lots owned by a private individual.

e. Property owned by an organization that is not a prohibited contributor under section 68A.503.

f. Property leased by a candidate, committee, or an organization established to advocate the passage or defeat of a ballot issue that has not yet registered pursuant to section 68A.201, when the property is used as campaign headquarters or a campaign office and the placement of the sign is limited to the space that is actually leased.

2. Campaign signs shall not be placed on any of the following:

a. Any property owned by the state or the governing body of a county, city, or other political subdivision of the state, including all property considered the public right-of-way. Upon a determination by the board that a sign has been improperly placed, the sign shall be removed by highway authorities as provided in section 319.13, or by county or city law enforcement authorities in a manner consistent with section 319.13.

b. Property owned by a prohibited contributor under section 68A.503 unless the sign advocates the passage or defeat of a ballot issue or is exempted under section 1.

c. On any property without the permission of the property owner.

d. On election day either on the premises of any polling place or within three hundred feet of any outside door of any building affording access to any room where the polls are held, or of any outside door of any building affording access to any hallway, corridor, stairway, or other means of reaching the room where the polls are held.

This subsection shall not apply to the posting of signs on private property not a polling place, except that the placement of a sign on a motor vehicle, trailer, or semitrailer, or any attachment to a motor vehicle, trailer, or semitrailer parked on public property within three hundred feet of a polling place, which sign is more than ninety square inches in size, is prohibited.

3. Yard signs with dimensions of thirty-two square feet or less are exempt from the attribution statement requirement in section 68A.405. Campaign signs in excess of thirty-two square feet, or signs that are affixed to buildings or vehicles regardless of size except for bumper stickers, are required to include the attribution statement required by section 68A.405. The placement or erection of yard signs shall be exempt from the requirements of chapter 480 relating to underground facilities organization.

Sec. 6. Section 68A.503, subsection 4, unnumbered paragraph 2, Code Supplement 2003, is amended by striking the unnumbered paragraph.

Approved April 28, 2004

CHAPTER 1115

BLAZE ORANGE HUNTERS' APPAREL

H.F. 2366

AN ACT relating to the use of blaze orange apparel by hunters and subjecting violators to a penalty.

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

Section 1. Section 481A.122, Code 2003, is amended to read as follows:

481A.122 ~~DEER HUNTERS'~~ HUNTERS' ORANGE APPAREL.

A person shall not hunt deer with firearms unless the person is at the time wearing one or more of the following articles of visible, external apparel: A vest, coat, jacket, sweatshirt, sweater, shirt, or coveralls, the color and material of which shall be solid blaze orange. A person shall not hunt upland game birds, as defined by the department, unless the person is at the time wearing one or more of the following articles of visible, external apparel: A hat, cap, vest, coat, jacket, sweatshirt, sweater, shirt, or coveralls, the color and material of which shall be at least fifty percent solid blaze orange.

Approved April 28, 2004

CHAPTER 1116

HUMAN SERVICES — MISCELLANEOUS CHANGES

H.F. 2390

AN ACT making technical changes to programs under the purview of the department of human services.

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

Section 1. Section 225C.42, subsection 1, Code Supplement 2003, is amended to read as follows:

1. The department shall conduct ~~an annual~~ a periodic evaluation of the family support subsidy program and shall submit the evaluation report with recommendations to the governor and general assembly ~~by September 30 following the end of the fiscal year~~.

Sec. 2. Section 225C.42, subsection 2, paragraph a, Code Supplement 2003, is amended to read as follows:

a. A statement of the number of children and families served by the program during the ~~fiscal year~~ period and the number remaining on the waiting list at the end of the ~~fiscal year~~ period.

Sec. 3. Section 232.2, subsection 13, Code Supplement 2003, is amended to read as follows:

13. "Department" means the department of human services and includes the local, county, and ~~regional~~ service area officers of the department.

Sec. 4. Section 232.52, subsection 2A, Code Supplement 2003, is amended to read as follows:

2A. Notwithstanding subsection 2, the court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the ~~regional~~ service area plan for group foster care established pursuant to section 232.143 for the departmental ~~region~~ service area in which the court is located.

Sec. 5. Section 232.52, subsection 7, Code Supplement 2003, is amended to read as follows:

7. If the court orders the transfer of the custody of the child to the department of human services or to another agency for placement in group foster care, the department or agency shall make every reasonable effort to place the child ~~within the state,~~ in the least restrictive, most family-like, and most appropriate setting available and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

Sec. 6. Section 232.68, subsection 4, Code Supplement 2003, is amended to read as follows:

4. "Department" means the state department of human services and includes the local, county, and ~~regional~~ service area offices of the department.

Sec. 7. Section 232.72, subsection 1, Code Supplement 2003, is amended to read as follows:

1. For the purposes of this division, the terms "department of human services", "department", or "county attorney" ordinarily refer to the ~~regional~~ service area or local office of the department of human services or of the county attorney's office serving the county in which the child's home is located.

Sec. 8. Section 232.102, subsection 1A, Code Supplement 2003, is amended to read as follows:

1A. The court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the ~~regional~~ service area plan for group foster care established pursuant to section 232.143 for the departmental ~~region~~ service area in which the court is located.

Sec. 9. Section 232.102, subsection 7, Code Supplement 2003, 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 interests of the child. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency shall consider placing the child in the same licensed foster care facility. If the court orders the transfer of custody to a parent who does not have physical care of the child, other relative, or other suitable person, the court may direct the department or other agency to provide services to the child's parent, guardian, or custodian in order to enable them to resume custody of the child. If the court orders the transfer of custody to the department of human services or to another agency for placement in group foster care, the department or agency shall make every reasonable effort to place the child ~~within Iowa,~~ in the least restrictive, most family-like, and most appropriate setting available, and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

Sec. 10. Section 232.102, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 13. Unless prohibited by the court order transferring custody of the child for placement or other court order or the department or agency that received the custody transfer finds that allowing the visitation would not be in the child's best interest, the department or agency may authorize reasonable visitation with the child by the child's grandparent, great-grandparent, or other adult relative who has established a substantial relationship with the child.

Sec. 11. Section 232.117, subsection 4, Code Supplement 2003, is amended to read as follows:

4. The court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the ~~regional~~ service area plan for group foster care established pursuant to section 232.143 for the departmental ~~region~~ service area in which the court is located.

Sec. 12. Section 232.127, subsection 8, Code Supplement 2003, is amended to read as follows:

8. The court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the ~~regional~~ service area plan for group foster care established pursuant to section 232.143 for the departmental ~~region~~ service area in which the court is located.

Sec. 13. Section 232.143, Code Supplement 2003, is amended to read as follows:

232.143 ~~REGIONAL~~ SERVICE AREA GROUP FOSTER CARE BUDGET TARGETS.

1. A statewide expenditure target for children in group foster care placements in a fiscal year, which placements are a charge upon or are paid for by the state, shall be established annually in an appropriation bill by the general assembly. ~~The~~ Representatives of the department and ~~the judicial branch~~ juvenile court services 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~~ service areas. The formula shall be based upon the ~~region's~~ service area'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 upon other indicators of need. The expenditure amount determined in accordance with the formula shall be the group foster care budget target for that ~~region~~ service area. A ~~region~~ service area may exceed ~~its~~ the service area's 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~~ service area is not exceeded.

2. For each of the department's ~~regions~~ service areas, representatives appointed by the department and ~~the~~ juvenile court services shall establish a plan for containing the expenditures for children placed in group foster care ordered by the court within the budget target allocated to that ~~region~~ service area pursuant to subsection 1. The plan shall be established in a manner so as to ensure the budget target amount will last the entire fiscal year. The plan shall include monthly targets and strategies for developing alternatives to group foster care placements in order to contain expenditures for child welfare services within the amount appropriated by the general assembly for that purpose. 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. Each ~~regional~~ service area plan shall be established within sixty days of the date by which the group foster care budget target for the ~~region~~ service area is determined. To the extent possible, the department and ~~the~~ juvenile court services shall coordinate the planning required under this subsection with planning for services paid under section 232.141, subsection 4. The department's ~~regional administrator~~ service area manager shall communicate regularly, as specified in the ~~regional~~ service area plan, with the chief juvenile ~~courts~~ court officers within that ~~region~~ service area concerning the current status of the ~~regional~~ service area plan's implementation.

3. State payment for group foster care placements shall be limited to those placements which are in accordance with the ~~regional~~ service area plans developed pursuant to subsection 2.

Sec. 14. Section 232.188, subsection 4, Code Supplement 2003, is amended to read as follows:

4. In a decategorization agreement, the department and the county's or group of counties' decategorization governance board shall agree on all of the following items: the governance relationship between the department and the decategorization governance board; the respective areas of autonomy of the department and the board; the budgeting structure for the decategorization; and a method for resolving disputes between the department and the board. The decategorization agreement shall require the department and the decategorization governance board to agree upon a budget within sixty days of the date by which the ~~regional~~ group foster care budget targets are determined for departmental service areas under section 232.143 for the fiscal year to which the budget applies. The budget may later be modified to reflect new or changed circumstances.

Sec. 15. Section 234.35, subsection 1, paragraph e, Code Supplement 2003, is amended to read as follows:

e. When a court has entered an order transferring the legal custody of the child to a foster care placement pursuant to section 232.52, subsection 2, paragraph "d", or section 232.102, subsection 1. However, payment for a group foster care placement shall be limited to those placements which conform to a ~~regional~~ service area group foster care plan established pursuant to section 232.143.

Sec. 16. Section 235B.1, subsection 4, paragraph a, subparagraph (1), Code 2003, is amended to read as follows:

(1) Advise the director of human services ~~and the administrator of the division of child and family services of the department of human services~~, the director of elder affairs, the director of inspections and appeals, the director of public health, the director of the department of corrections, and the director of human rights regarding dependent adult abuse.

Sec. 17. Section 235B.3, subsections 2 and 3, Code Supplement 2003, are amended to read as follows:

~~2. All of the following persons shall report suspected dependent adult abuse to the department:~~

~~a. A social worker.~~

~~b. A certified psychologist.~~

~~c.~~ 2. A person who, in the course of employment, examines, attends, counsels, or treats a dependent adult and reasonably believes the dependent adult has suffered abuse, shall report the suspected dependent adult abuse to the department including all of the following:

~~(1)~~ a. A member of the staff of a community mental health center, a member of the staff of a hospital, a member of the staff or employee of a public or private health care facility as defined in section 135C.1, a member of the staff or employee of an elder group home as defined in section 231B.1, a member of the staff or employee of an assisted living program certified under section 231C.3, and a member of the staff or employee of an adult day services program as defined in section 231D.1.

~~(2)~~ b. A peace officer.

~~(3)~~ c. An in-home homemaker-home health aide.

~~(4)~~ d. An individual employed as an outreach person.

~~(5)~~ e. A health practitioner, as defined in section 232.68.

~~(6)~~ f. A member of the staff or an employee of a supported community living service, sheltered workshop, or work activity center.

g. A social worker.

h. A certified psychologist.

~~d. A person who performs inspections of elder group homes for the department of inspections and appeals and a resident advocate committee member assigned to an elder group home pursuant to chapter 231B.~~

3. a. If a staff member or employee is required to report pursuant to this section, the person shall immediately notify the department and shall also immediately notify the person in charge or the person's designated agent~~, and the person in charge or the designated agent shall make the report by the end of the next business day~~.

b. The employer or supervisor of a person who is required to or may make a report pursuant to this section shall not apply a policy, work rule, or other requirement that interferes with the person making a report of dependent adult abuse or that results in the failure of another person to make the report.

Sec. 18. Section 235B.3, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 3A. An employee of a financial institution may report suspected financial exploitation of a dependent adult to the department.

Sec. 19. Section 237.5A, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A licensee who is unable to complete six hours of foster parent training prior to annual licensure renewal because the licensee is engaged in active duty in the military service shall be considered to be in compliance with the training requirement for annual licensure renewal.

Sec. 20. Section 252B.9, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Nothing in this chapter, chapter 252A, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, or 252K, or any other comparable chapter or law shall preclude the unit from exchanging any information, notice, document, or certification with any government or private entity, if the exchange is not otherwise prohibited by law, through mutually agreed upon electronic data transfer rather than through other means.

Sec. 21. Section 252H.8, subsection 4, paragraph b, Code 2003, is amended to read as follows:

b. The return of service, acceptance of service, or signed statement by the parent requesting review and adjustment or requesting modification, waiving service of the notice.

Sec. 22. Section 252H.15, subsection 2, Code 2003, is amended to read as follows:

2. Notice shall be served upon each parent in accordance with the rules of civil procedure, except that a parent requesting a review pursuant to section 252H.13 ~~may~~ shall waive the right to personal service of the notice in writing and accept service by regular mail. If the service by regular mail does not occur within ninety days of the written waiver of personal service, personal service of the notice is required unless a new waiver of personal service is obtained.

Sec. 23. Section 252H.19, subsection 2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The notice shall be served upon each parent in accordance with the rules of civil procedure, except that a parent requesting modification shall, at the time of the request, waive the right to personal service of the notice in writing and accept service by regular mail. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

Sec. 24. Section 252J.5, subsection 3, Code 2003, is amended to read as follows:

3. Following issuance of a certificate of noncompliance, if the obligor enters into a written

agreement with the unit, the unit shall issue a withdrawal of the certificate of noncompliance to any appropriate licensing authority and shall forward a copy of the withdrawal by regular mail to the obligor ~~and any appropriate licensing authority~~.

Sec. 25. Section 252J.6, subsection 2, paragraph a, Code 2003, is amended to read as follows:

a. That ~~a copy of~~ the certificate of noncompliance or withdrawal of the certificate of noncompliance has been provided to the licensing authorities named in the notice provided pursuant to section 252J.3.

Sec. 26. Section 252J.7, subsection 1, Code 2003, is amended to read as follows:

1. If the individual fails to respond to the notice of potential license sanction provided pursuant to section 252J.3 or the unit issues a written decision under section 252J.6 which states that the individual is not in compliance, the unit shall ~~certify, in writing,~~ issue a certificate of noncompliance to any appropriate licensing authority ~~that the support obligor is not in compliance with a support order or the individual is not in compliance with a subpoena or warrant and shall include a copy of the certificate of noncompliance~~.

Sec. 27. Section 235A.15, subsection 10, if enacted by 2004 Iowa Acts, House File 2328,[1] section 7, is amended to read as follows:

10. The information released by the director of human services or the director's designee pursuant to a request made under subsection 9 relating to a case of founded child abuse involving a fatality or near fatality to a child shall ~~be a summary of~~ include all of the following, unless such information is excepted from disclosure under subsection 9:

a. Any relevant child abuse ~~report data~~ information concerning the child or the child's family and the department's response and findings ~~concerning the report data, including but not limited to assessment and disposition data~~.

b. ~~Information~~ A summary of information, that would otherwise be confidential under section 217.30, as to whether or not the child or a member of the child's family was utilizing social services provided by the department at the time of the child fatality or near fatality or within the five-year period preceding the fatality or near fatality.

c. Any recommendations made by the department to the county attorney or the juvenile court.

d. If applicable, a summary of an evaluation of the department's responses in the case.

Sec. 28. CHILD DEVELOPMENT HOMES — PROVIDER QUALIFICATIONS. The department of human services shall revise the department's standards for child development home provider qualifications under category "C" which are applicable at times when more than one qualified provider must be present. The revised standards shall provide that one of the providers required to be present must meet the provider qualifications for category "C" and allow any other providers required to be present to meet the provider qualifications for either category "B" or "C". Until the revised standards are adopted, a provider to which the revised standards would be applicable may request approval from the department for an exception to policy for the provider to operate under the revised standards as described in this section prior to adoption of the revised standards.

Approved April 28, 2004

[1] Chapter 1153 herein

CHAPTER 1117

DETENTION OF OUT-OF-STATE PRISONERS

H.F. 2471

AN ACT relating to a prisoner from another state being detained or committed to a county jail in this state, and providing an effective date.

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

Section 1. Section 331.658, subsection 3, Code 2003, is amended to read as follows:

3. The sheriff is accountable to the board for fees due or collected for boarding, lodging, and providing other services for prisoners in the sheriff's custody under the order of another state or a federal court.

Sec. 2. Section 356.1, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The provisions of this section extend to persons detained or committed by authority of the courts of the United States as well as of ~~this~~ any state.

Sec. 3. Section 356.15, Code 2003, is amended to read as follows:

356.15 EXPENSES.

All charges and expenses for the safekeeping and maintenance of prisoners shall be allowed by the board of supervisors, except those committed or detained by the authority of the courts of the United States, in which cases the United States must pay such expenses to the county, ~~and~~ or those committed for violation of a city ordinance, in which case the city shall pay expenses to the county, or those committed or detained from another state, in which case the governmental entity from the other state sending the prisoners shall pay expenses to the county.

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

Approved April 28, 2004

CHAPTER 1118

ELECTRICAL AND MECHANICAL AMUSEMENT DEVICES

H.F. 2562

AN ACT relating to electrical and mechanical amusement devices that are required to be registered with the department of inspections and appeals, establishing fees, making an appropriation, making penalties applicable, and including an effective and retroactive applicability provision.

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

Section 1. Section 99B.1, Code Supplement 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 11A. "Distributor" means, for the purposes of sections 99B.10, 99B.10A, and 99B.10B, any person that owns electrical and mechanical amusement devices

registered as provided in section 99B.10, subsection 4, that are offered for use at more than a single location or premises.

NEW SUBSECTION. 16A. "Manufacturer" means, for the purposes of sections 99B.10, 99B.10A, and 99B.10B, any person engaged in business in this state who originally produces an electrical and mechanical amusement device required to be registered under section 99B.10, subsection 4, or individual components for use in such a device.

NEW SUBSECTION. 16B. "Manufacturer's representative" means, for the purposes of sections 99B.10, 99B.10A, and 99B.10B, any person engaged in business in this state who promotes or sells electrical and mechanical amusement devices required to be registered under section 99B.10, subsection 4, or individual components for use in such devices on behalf of a manufacturer of such devices or components.

NEW SUBSECTION. 19A. "Owner" means, for the purposes of sections 99B.10A and 99B.10B, any person who owns an operable electrical and mechanical amusement device required to be registered under section 99B.10, subsection 4.

Sec. 2. Section 99B.10, subsection 4, Code Supplement 2003, is amended to read as follows:

4. Each electrical and mechanical amusement device in operation or distributed in this state that awards a prize, as provided in this section, where the outcome is not primarily determined by the skill or knowledge of the operator, is registered by the department as provided by this subsection and is only located on premises for which a class "A", class "B", class "C", or class "D" liquor control license or class "B" or class "C" beer permit has been issued pursuant to chapter 123. For an organization that meets the requirements of section 99B.7, subsection 1, paragraph "m", no more than four, and for all other persons, no more than two electrical and mechanical amusement devices registered as provided by this subsection shall be permitted or offered for use in any single location or premises for which a class "A", class "B", class "C", or class "D" liquor control license or class "B" or class "C" beer permit has been issued pursuant to chapter 123. Each person owning an electrical and mechanical amusement device in this state shall obtain a registration tag for each electrical and mechanical amusement device owned that is required to be registered as provided in this subsection. Upon receipt of an application and a fee of twenty-five dollars for each device required to be registered, the department shall issue an annual registration tag which tag shall be displayed as required by rules adopted by the department. The application shall be submitted on forms designated by the department and contain the information required by rule of the department. A registration may be renewed annually upon submission of a registration application and payment of the annual registration fee and compliance with this chapter and the rules adopted pursuant to this chapter. However, the number of electrical and mechanical amusement devices registered by the department under this subsection shall not exceed the total number of devices registered by the department as of the effective date of this Act. In addition, the department shall not initially register an electrical and mechanical amusement device that is required to be registered as provided in this subsection to an owner for a location for which only a class "B" or class "C" beer permit has been issued pursuant to chapter 123 on or after the effective date of this Act. A person owning or leasing an electrical and mechanical amusement device required to be registered under this subsection shall only own or lease an electrical and mechanical amusement device that is required to be registered that has been purchased from a manufacturer, manufacturer's representative, or distributor registered with the department under section 99B.10A and shall not advertise or promote the availability of the device to the public as anything other than an electrical and mechanical amusement device pursuant to rules adopted by the department. In addition, an owner at a location for which only a class "B" or class "C" beer permit has been issued pursuant to chapter 123 shall not relocate an amusement device registered as provided in this subsection to a location other than the location of the device on the effective date of this Act, and shall not transfer, assign, sell, or lease an amusement device registered as provided in this subsection to another person for which only a class "B" or class "C" beer permit has been issued pursuant to chapter 123 after the effective date of this Act.

Sec. 3. Section 99B.10, Code Supplement 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 5A. Each electrical or mechanical amusement device required to be registered as provided by this section shall, by January 1, 2006, include on the device a counting mechanism which establishes the volume of business of the device. The department and the department of public safety shall have access to the information provided by the counting mechanism.

NEW SUBSECTION. 5B. Each electrical or mechanical amusement device required to be registered as provided by this section at a location for which only a class "B" or class "C" beer permit has been issued pursuant to chapter 123 shall include on the device a security mechanism which prevents the device from being operated by a person until action is taken by the owner or owner's designee to allow the person to operate the device.

Sec. 4. Section 99B.10A, Code Supplement 2003, is amended to read as follows:

99B.10A MANUFACTURERS AND DISTRIBUTORS OF ELECTRICAL AND MECHANICAL AMUSEMENT DEVICES — REGISTRATION.

1. A person engaged in business in this state as a manufacturer, manufacturer's representative, ~~or~~ distributor, or for-profit owner of electrical and mechanical amusement devices required to be registered as provided in section 99B.10, subsection 4, shall register with the department. Each person who registers with the department under this section shall pay an annual registration fee ~~of two thousand five hundred dollars~~ in an amount as provided in subsection 2. Registration shall be submitted on forms designated by the department that shall contain the information required by the department by rule. The department shall adopt rules providing for the submission of information to the department by a person registered pursuant to this section if information in the initial registration is changed, including discontinuing the business in this state.

2. For purposes of this section, the annual registration fee shall be as follows:

a. For a manufacturer or manufacturer's representative, two thousand five hundred dollars.

b. For a distributor, five thousand dollars.

c. For an owner of no more than two electrical and mechanical amusement devices registered as provided in section 99B.10, subsection 4, at a single location or premises that is not an organization that meets the requirements of section 99B.7, subsection 1, paragraph "m", two thousand five hundred dollars.

Sec. 5. Section 99B.10B, Code Supplement 2003, is amended to read as follows:

99B.10B REVOCATION OF REGISTRATION — ELECTRICAL AND MECHANICAL AMUSEMENT DEVICES.

1. The department may revoke a registration issued pursuant to section 99B.10 or 99B.10A, for a period not to exceed two years, for cause, following at least ten days' written notice and opportunity for an evidentiary hearing, pursuant to rules adopted by the department. The rules shall provide that a registration may be revoked if the registrant or agent of the registrant violates, or permits a violation, of section 99B.10 or 99B.10A, violates any rule adopted by the department under this chapter that the department determines should warrant revocation of the registration, or engages in any act or omission that would have permitted the department to refuse to issue a registration under section 99B.10 or 99B.10A.

2. The department shall revoke a registration issued pursuant to section 99B.10 or 99B.10A, for a period of ten years following at least ten days' written notice and opportunity for an evidentiary hearing, if a person awards a cash prize in violation of section 99B.10, subsection 1, pursuant to rules adopted by the department. A person whose registration is revoked under this subsection who is a person for which a class "A", class "B", class "C", or class "D" liquor control license has been issued pursuant to chapter 123 shall have the person's liquor control license suspended for a period of fourteen days in the same manner as provided in section 123.50, subsection 3, paragraph "a". In addition, a person whose registration is revoked under this subsection who is a person for which only a class "B" or class "C" beer permit has been

issued pursuant to chapter 123 shall have the person's class "B" or class "C" beer permit suspended and that person's sales tax permit suspended for a period of fourteen days in the same manner as provided in section 123.50, subsection 3, paragraph "a".

Sec. 6. NEW SECTION. 99B.10C ELECTRICAL AND MECHANICAL AMUSEMENT DEVICES — PERSONS UNDER TWENTY-ONE — PENALTIES.

1. A person under the age of twenty-one years shall not participate in the operation of an electrical and mechanical amusement device. A person who violates this subsection commits a scheduled violation under section 805.8C, subsection 4.

2. A person owning or leasing an electrical and mechanical amusement device who knowingly allows a person under the age of twenty-one years to participate in the operation of an electrical and mechanical amusement device, or a person who knowingly participates in the operation of an electrical and mechanical amusement device, with a person under the age of twenty-one years is guilty of a simple misdemeanor.

3. For purposes of this section, an electrical and mechanical amusement device means an electrical and mechanical amusement device required to be registered as provided in section 99B.10, subsection 4.

Sec. 7. Section 805.8C, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4. ELECTRICAL AND MECHANICAL AMUSEMENT DEVICE VIOLATIONS. For violations of legal age for operating an electrical and mechanical amusement device required to be registered as provided in section 99B.10, subsection 4, pursuant to section 99B.10C, subsection 1, the scheduled fine is two hundred fifty dollars. Failure to pay the fine by a person under the age of eighteen shall not result in the person being detained in a secure facility.

Sec. 8. 2003 Iowa Acts, chapter 147, section 5, is amended to read as follows:

SEC. 5. ELECTRICAL AND MECHANICAL AMUSEMENT DEVICES — SPECIAL FUND. Fees collected by the department of inspections and appeals pursuant to ~~section~~ sections 99B.10 and 99B.10A for the fiscal years beginning July 1, 2003, and July 1, 2004, shall be deposited in a special fund created in the state treasury. Moneys in the fund are appropriated to the department of inspections and appeals and the department of public safety for administration and enforcement of sections 99B.10 and 99B.10A, including employment of necessary personnel. The distribution of moneys in the fund to the department of inspections and appeals and the department of public safety shall be pursuant to a written policy agreed upon by the departments. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

Sec. 9. 2003 Iowa Acts, chapter 147, section 6, is amended to read as follows:

SEC. 6. DEPARTMENTAL REPORT. The department of inspections and appeals, in consultation with the department of public safety, shall submit ~~a~~ an interim written report to the general assembly by December 31, 2004, and a final written report to the general assembly by September 1, 2005, with copies to the committees on government oversight and state government of the senate and house of representatives, that provides details on the implementation of this Act, including fees collected annually, and expenses by all state government agencies for administration, registration issuance, inspection, and other costs related to this Act. The department shall also include information in the ~~report~~ reports as to its projections as to whether the fees collected under this Act are properly set to cover future expenses of applicable state agencies under this Act.

Sec. 10. ELECTRICAL AND MECHANICAL AMUSEMENT DEVICES — NONLIQUOR CONTROL LICENSEES — SPECIAL PROVISIONS.

1. Notwithstanding any provision of section 99B.10, subsection 4, as amended by this Act, to the contrary, an owner of an electrical and mechanical amusement device that has been

registered pursuant to section 99B.10, subsection 4, prior to the effective date of this Act that is offered for use by the public at a location for which a class "A", class "B", class "C", or class "D" liquor control license or class "B" or class "C" beer permit has not been issued pursuant to chapter 123 shall be allowed to offer the device for use by the public until July 1, 2005.

2. On and after July 1, 2005, an owner of an electrical and mechanical amusement device as described in subsection 1 shall not offer the device for use by the public. However, the owner of a device shall be permitted to sell the device to a distributor, as defined in section 99B.1, as amended by this Act, or to a person authorized to offer the device to the public pursuant to section 99B.10, subsection 4, as amended by this Act for which a class "A", class "B", class "C", or class "D" liquor control license or class "B" or class "C" beer permit[1] has been issued pursuant to chapter 123.

Sec. 11. EFFECTIVE DATE — RETROACTIVE APPLICABILITY.

1. This Act,[2] being deemed of immediate importance, takes effect upon enactment.

2. The section of this Act amending 2003 Iowa Acts, chapter 147, section 5, is retroactively applicable to July 1, 2003, and is applicable on and after that date.

Approved April 28, 2004

CHAPTER 1119

SCHEDULED VIOLATIONS —
COUNTY ENFORCEMENT SURCHARGE

H.F. 2569

AN ACT establishing a county enforcement surcharge for citations issued by the county sheriff.

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

Section 1. Section 331.301, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 16. The board of supervisors may by resolution allow a five dollar county enforcement surcharge to be assessed pursuant to section 911.4.

Sec. 2. Section 602.8102, subsection 135A, Code Supplement 2003, is amended to read as follows:

135A. Assess the ~~drug abuse resistance education surcharge as provided by section~~ surcharges provided by sections 911.2, 911.3, and 911.4.

Sec. 3. Section 602.8102, subsection 135B, Code Supplement 2003, is amended by striking the subsection.

Sec. 4. Section 602.8107, subsection 4, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

This subsection does not apply to amounts collected for victim restitution, the victim compensation fund, criminal penalty surcharge, law enforcement initiative surcharge, county enforcement surcharge, amounts collected as a result of procedures initiated under subsection 5 or under section 8A.504, or sheriff's room and board fees.

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[1] See chapter 1175, §396 herein

[2] See chapter 1175, §343 herein

Sec. 5. Section 602.8108, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4A. The clerk of the district court shall remit all moneys collected from the county enforcement surcharge to the county where the citation was issued for deposit in the county general fund no later than the fifteenth day of each month.

Sec. 6. Section 805.8, subsection 1, Code 2003, is amended to read as follows:

1. APPLICATION. Except as otherwise indicated, violations of sections of the Code specified in sections 805.8A, 805.8B, and 805.8C are scheduled violations, and the scheduled fine for each of those violations is as provided in those sections, whether the violation is of state law or of a county or city ordinance. The criminal penalty surcharge required by section 911.2 and the county enforcement surcharge required by section 911.4, if applicable, shall be added to the scheduled fine.

Sec. 7. Section 903.1, subsection 4, Code 2003, is amended to read as follows:

4. The ~~criminal penalty surcharge~~ surcharges required by sections 911.2, ~~and~~ 911.3, and 911.4 shall be added to a fine imposed on a misdemeanant, and ~~is~~ are not a part of or subject to the maximums set in this section.

Sec. 8. Section 909.8, Code 2003, is amended to read as follows:

909.8 PAYMENT AND COLLECTION PROVISIONS APPLY TO SURCHARGE.

The provisions of this chapter governing the payment and collection of a fine, except section 909.3A, also apply to the payment and collection of surcharges imposed pursuant to chapter 911. However, section 909.10 shall not apply to surcharges assessed under ~~section~~ sections 911.3 and 911.4.

Sec. 9. NEW SECTION. 911.4 COUNTY ENFORCEMENT SURCHARGE.

1. If the county has adopted a resolution pursuant to section 331.301, subsection 16, and a court imposes a fine or forfeiture for any simple misdemeanor punishable as a scheduled violation pursuant to a citation issued by the sheriff as defined in section 331.101, the court or the clerk of the district court shall assess a surcharge in the amount of five dollars for each applicable violation in addition to any fine, forfeiture, or other surcharge.

2. Pursuant to section 602.8108, subsection 4A, the surcharge shall be deposited in the county general fund of the county where the citation was issued.

3. The surcharge is subject to the provisions of chapter 909 governing the payment and collection of fines, as provided in section 909.8.

Approved April 28, 2004

CHAPTER 1120

ADMINISTRATION OF COURTS AND JUDICIAL PROCEEDINGS

H.F. 2572

AN ACT relating to the procedures and duties of the clerk of the district court and the judicial branch, and providing for a fee.

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

Section 1. Section 305.2, subsection 1, Code Supplement 2003, is amended to read as follows:

1. "Agency" means any executive or legislative branch department, office, commission, board, or other unit of state government except as otherwise provided by law.

Sec. 2. Section 321.174, subsection 3, Code 2003, is amended to read as follows:

3. A licensee shall have the licensee's driver's license in immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a judicial magistrate, district associate judge, district judge, peace officer, or examiner of the department. However, a person charged with violating this subsection shall not be convicted if the person produces ~~in court, within a reasonable time,~~ to the clerk of the district court, prior to the licensee's court date indicated on the citation, a driver's license issued to that person and valid for the vehicle operated at the time of the person's arrest or at the time the person was charged with a violation of this section.

Sec. 3. Section 602.8101, subsection 3, Code 2003, is amended to read as follows:

3. The clerk may employ ~~deputies, assistants, and clerks~~ staff when authorized under section 602.1402 and when authorized by the chief judge of the judicial district. The clerk is responsible for the acts of these employees. ~~Each first deputy~~ The clerk shall designate one or more employees who shall give bond as provided in chapter 64.

Sec. 4. Section 602.8102, subsections 13 and 57, Code Supplement 2003, are amended by striking the subsections.

Sec. 5. Section 602.8104, subsection 2, paragraph j, Code 2003, is amended by striking the paragraph.

Sec. 6. Section 602.8106, subsection 1, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. For a motion to show cause in a criminal case, the fee shall be the same amount as the fee for filing and docketing a complaint, information, or citation for the underlying criminal case from which the motion arises.

Sec. 7. Section 633.31, subsection 2, paragraph i, Code 2003, is amended to read as follows:

i. For certifying change of title ..... ~~10.00~~ 20.00

Sec. 8. Section 635.7, Code Supplement 2003, is amended to read as follows:

635.7 REPORT AND INVENTORY — EXCESS VALUE AND TERMINATION.

The executor or administrator is required to file the report and inventory for which provision is made in section 633.361. Nothing in sections 635.1 to 635.3 shall exempt the executor or administrator from complying with the requirements of section 422.27, 450.22, 450.58, ~~or~~ 633.480, or 633.481. If the inventory and report shows assets subject to the jurisdiction of this state which exceed the total gross value of the amount permitted the small estate under the

applicable provision of section 635.1, the clerk shall terminate the letters issued under section 635.1 without prejudice to the rights of persons who delivered property as permitted under section 635.3. The executor or administrator shall then be required to petition for administration of the estate as provided in chapter 633.

Sec. 9. Section 636.13, Code 2003, is repealed.

Approved April 28, 2004

CHAPTER 1121

APPEALS FROM CONDEMNATION PROCEEDINGS
— DAMAGE AWARDS — INTEREST

H.F. 2579

AN ACT relating to disposition of an award of damages in a condemnation proceeding pending appeal of the award to district court and the award of interest earned on the damages.

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

Section 1. Section 6B.23, Code 2003, is amended to read as follows:

6B.23 QUESTION DETERMINED.

On the trial of the appeal, no judgment shall be rendered except for costs and allocation of interest earned pursuant to section 6B.25, but the amount of damages shall be ascertained and entered of record.

Sec. 2. Section 6B.25, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If an award of damages is appealed to district court, the amount deposited with the sheriff, if any, less the amount paid by the sheriff to the claimant, shall be transferred to the clerk of district court where the appeal was filed and the clerk shall deposit the money in an interest-bearing account. The district court in its judgment rendered pursuant to section 6B.23 shall award the interest earned on the account in proportion to the amount of damages ascertained and entered of record.

Approved April 28, 2004

CHAPTER 1122

LOESS HILLS STUDY

S.F. 2282

AN ACT requiring a comprehensive study of the archaeological and paleontological significance and the significance of the flora and fauna of the loess hills and of the feasibility of creating a state native prairie preserve in the loess hills and of other various uses of the loess hills, and providing a contingent effective date.

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

Section 1. LOESS HILLS STUDY AND REPORT. The loess hills development and conservation authority, in consultation with the state advisory board for preserves, shall conduct a comprehensive study to determine the archaeological and paleontological significance and the significance of the flora and fauna of the loess hills and to determine the feasibility of designating land in the loess hills for dedication as a state native prairie preserve and of other various uses of the loess hills. The natural resource commission[1] may accept gifts, grants, bequests, and other private contributions, as well as federal, state, or local funds for the purposes of conducting the study. The loess hills development and conservation authority and the state advisory board for preserves shall file a joint report containing their findings and recommendations with the legislative services agency by December 15, 2006, for distribution to the general assembly.

Sec. 2. CONTINGENT EFFECTIVE DATE. This Act takes effect upon receipt by the loess hills development and conservation authority of federal, state, or local funding for the loess hills study and report.

Approved May 3, 2004

CHAPTER 1123

LEGISLATORS' PER DIEM — 2004 REGULAR SESSION

S.F. 2308

AN ACT relating to the number of days of payment for expenses of office for members of the general assembly for the 2004 Regular Session of the Eightieth General Assembly and including effective date and retroactive applicability provisions.

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

Section 1. LEGISLATORS' PER DIEM FOR THE 2004 REGULAR SESSION. Notwithstanding section 2.10, subsection 1 to the contrary, members of the Eightieth General Assembly shall be limited to the receipt of per diem for expenses of office for the Second Regular Session convening in 2004 for a maximum of ninety-five calendar days rather than one hundred calendar days.

Sec. 2. EFFECTIVE DATE AND APPLICABILITY PROVISIONS. This Act, being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to the

[1] See chapter 1175, §399 herein

ninety-fifth calendar day of the Second Regular Session of the Eightieth General Assembly convening in 2004.

Approved May 3, 2004

CHAPTER 1124

UNLAWFUL SALE, TAKING, DAMAGING,
OR DESTRUCTION OF ANTLERED DEER — DAMAGES PAYABLE

H.F. 2186

AN ACT increasing the damages payable upon conviction of certain unlawful activities involving antlered deer.

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

Section 1. Section 481A.130, subsection 1, paragraph g, Code Supplement 2003, is amended by striking the paragraph and inserting in lieu thereof the following:

NEW PARAGRAPH. g. For each antlered deer, reimbursement shall be based on the point score of the antlered deer as measured by the Boone and Crockett club's net scoring system for whitetail deer as follows:

(1) 150 points or less: A minimum of two thousand dollars and not more than five thousand dollars, and eighty hours of community service or, in lieu of the community service, a minimum of four thousand dollars and not more than ten thousand dollars, in an amount that is deemed reasonable by the court.

(2) More than 150 points: A minimum of five thousand dollars and not more than ten thousand dollars, and eighty hours of community service or, in lieu of the community service, a minimum of ten thousand dollars and not more than twenty thousand dollars, in an amount that is deemed reasonable by the court.

Approved May 3, 2004

CHAPTER 1125

ARSON AND FIRE SAFETY REGULATION

H.F. 2200

AN ACT relating to fire safety issues, including the establishment of a fire extinguishing system contractor certification program in the office of the state fire marshal, the promulgation of administrative rules by the state fire marshal, and arson and simulated explosive related criminal offenses, and providing for fees and penalties and for the Act's applicability.

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

Section 1. Section 100.1, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 7. To administer the fire extinguishing system contractor certification program established in chapter 100C.

Sec. 2. NEW SECTION. 100C.1 DEFINITIONS.

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

1. "Automatic dry-chemical extinguishing system" means a system supplying a powder composed of small particles, usually of sodium bicarbonate, potassium bicarbonate, urea-potassium-based bicarbonate, potassium chloride, or monoammonium phosphate, with added particulate material supplemented by special treatment to provide resistance to packing, resistance to moisture absorption, and the proper flow capabilities.

2. "Automatic fire extinguishing system" means a system of devices and equipment that automatically detects a fire and discharges an approved fire extinguishing agent onto or in the area of a fire and includes automatic sprinkler systems, carbon dioxide extinguishing systems, deluge systems, automatic dry-chemical extinguishing systems, foam extinguishing systems, halogenated extinguishing systems, or other equivalent fire extinguishing technologies recognized by the fire extinguishing system contractors advisory board.

3. "Automatic sprinkler system" means an integrated fire protection sprinkler system usually activated by heat from a fire designed in accordance with fire protection engineering standards and includes a suitable water supply. The portion of the system above the ground is a network of specially sized or hydraulically designed piping installed in a structure or area, generally overhead, and to which automatic sprinklers are connected in a systematic pattern.

4. "Carbon dioxide extinguishing system" means a system supplying carbon dioxide from a pressurized vessel through fixed pipes and nozzles and includes a manual or automatic actuating mechanism.

5. "Deluge system" means a sprinkler system employing open sprinklers attached to a piping system connected to a water supply through a valve that is opened by the operation of a detection system installed in the same area as the sprinklers.

6. "Fire extinguishing system contractor" means a person engaging in or representing oneself to the public as engaging in the activity or business of layout, installation, repair, alteration, addition, maintenance, or maintenance inspection of automatic fire extinguishing systems in this state.

7. "Foam extinguishing system" means a special system discharging foam made from concentrates, either mechanically or chemically, over the area to be protected.

8. "Halogenated extinguishing system" means a fire extinguishing system using one or more atoms of an element from the halogen chemical series of fluorine, chlorine, bromine, and iodine.

9. "Maintenance inspection" means periodic inspection and certification completed by a fire extinguishing system contractor. For purposes of this chapter, "maintenance inspection"

does not include an inspection completed by a local building official, fire inspector, or insurance inspector, when acting in an official capacity.

10. "Responsible managing employee" means an owner, partner, officer, or manager employed full-time by a fire extinguishing system contractor who has any of the following qualifications:

a. Is certified by the national institute for certification in engineering technologies at a level III in fire protection technology, automatic sprinkler system layout, or another recognized certification in automatic sprinkler system layout recognized by rules adopted by the fire marshal pursuant to section 100C.7.

b. Meets any other criteria established by rule under this chapter.

Sec. 3. NEW SECTION. 100C.2 CERTIFICATION — EMPLOYEES.

1. A person shall not act as a fire extinguishing system contractor without first obtaining a fire extinguishing system contractor's certificate pursuant to this chapter.

2. A responsible managing employee may act as a responsible managing employee for only one fire extinguishing system contractor at a time. The responsible managing employee shall not be designated as the responsible managing employee for more than two fire extinguishing system contractors in any twelve-month period.

3. An employee of a certified fire extinguishing system contractor working under the direction of a responsible managing employee is not required to obtain and maintain an individual fire extinguishing system contractor's certificate.

Sec. 4. NEW SECTION. 100C.3 APPLICATION — INFORMATION TO BE PROVIDED.

1. A fire extinguishing system contractor shall apply for a certificate on a form prescribed by the state fire marshal. The application shall be accompanied by a fee in an amount prescribed by rule pursuant to section 100C.7 and shall include all of the following information:

a. The name, address, and telephone number of the contractor, including all legal and fictitious names.

b. Proof of insurance coverage required by section 100C.4.

c. The name and qualifications of the person designated as the contractor's responsible managing employee and of persons designated as alternate responsible managing employees.

d. Any other information deemed necessary by the state fire marshal.

2. Upon receipt of a completed application and prescribed fees, if the contractor meets all requirements established by this chapter, the state fire marshal shall issue a certificate to the fire extinguishing system contractor within thirty days.

3. Certificates shall expire and be renewed as established by rule pursuant to section 100C.7.

4. Any change in the information provided in the application shall be promptly reported to the state fire marshal. When the employment of a responsible managing employee is terminated, the fire extinguishing system contractor shall notify the state fire marshal within thirty days after termination.

Sec. 5. NEW SECTION. 100C.4 INSURANCE.

A fire extinguishing system contractor shall maintain general and complete operations liability insurance for the layout, installation, repair, alteration, addition, maintenance, and inspection of automatic fire extinguishing systems in an amount determined by the state fire marshal by rule.

Sec. 6. NEW SECTION. 100C.5 SUSPENSION AND REVOCATION.

1. The state fire marshal shall suspend or revoke the certificate of any fire extinguishing system contractor who fails to maintain compliance with the conditions necessary to obtain a certificate. A certificate may also be suspended or revoked if any of the following occur:

a. The employment or relationship of a responsible managing employee with a fire extinguishing system contractor is terminated, unless the fire extinguishing system contractor has

included a qualified alternate on the application or an application designating a new responsible managing employee is filed with the state fire marshal within six months after the termination.

b. The contractor fails to comply with any provision of this chapter.

c. The contractor fails to comply with any other applicable codes and ordinances.

2. If a certificate is suspended pursuant to this section, the certificate shall not be reinstated until the condition or conditions which led to the suspension have been corrected.

3. The state fire marshal shall adopt rules pursuant to section 100C.7 for the acceptance and processing of complaints against certificate holders, for procedures to suspend and revoke certificates, and for appeals of decisions to suspend or revoke certificates.

Sec. 7. NEW SECTION. 100C.6 APPLICABILITY.

This chapter shall not be construed to do any of the following:

1. Relieve any person from payment of any local permit or building fee.

2. Limit the power of the state or a political subdivision of the state to regulate the quality and character of work performed by fire extinguishing system contractors through a system of fees, permits, and inspections designed to ensure compliance with, and aid in the administration of, state and local building codes or to enforce other local laws for the protection of the public health and safety.

Sec. 8. NEW SECTION. 100C.7 ADMINISTRATION — RULES.

The state fire marshal shall administer this chapter and, after consultation with the fire extinguishing system contractors advisory board, shall adopt rules pursuant to chapter 17A necessary for the administration and enforcement of this chapter.

Sec. 9. NEW SECTION. 100C.8 PENALTIES.

1. A person who violates any provision of this chapter is guilty of a simple misdemeanor.

2. The state fire marshal may impose a civil penalty of up to five hundred dollars on any person who violates any provision of this chapter for each day a violation continues. The state fire marshal may adopt rules necessary to enforce and collect any penalties imposed pursuant to this chapter.

Sec. 10. NEW SECTION. 100C.9 DEPOSIT AND USE OF MONEYS COLLECTED.

1. All fees assessed pursuant to this chapter shall be retained as repayment receipts by the division of fire protection in the department of public safety and such fees received shall be used exclusively to offset the costs of administering this chapter.

2. Notwithstanding section 8.33, fees collected by the division of fire protection that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year.

Sec. 11. NEW SECTION. 100C.10 FIRE EXTINGUISHING SYSTEM CONTRACTORS ADVISORY BOARD.

1. A fire extinguishing system contractors advisory board is established in the division of fire protection of the department of public safety and shall advise the state fire marshal on matters pertaining to the application and certification of fire extinguishing system contractors pursuant to this chapter.

2. The board shall consist of seven voting members appointed by the commissioner of public safety as follows:

a. Two full-time fire officials of incorporated municipalities or counties.

b. One full-time building official of an incorporated municipality or county.

c. Two fire extinguishing system contractors, certified pursuant to this chapter, of which at least one shall be a water-based fire sprinkler contractor.

d. One professional engineer or architect licensed in the state.

e. One representative of the general public.

3. The state fire marshal, or the state fire marshal's designee, shall be a nonvoting ex officio member of the board.

4. The commissioner shall initially appoint two members for two-year terms, two members for four-year terms, and three members for six-year terms. Following the expiration of the terms of initially appointed members, each term thereafter shall be for a period of six years. No member shall serve more than two consecutive terms.

5. Four voting members of the advisory board shall constitute a quorum. A majority vote of the board shall be required to conduct business.

Sec. 12. Section 101.5, Code 2003, is amended to read as follows:

101.5 PUBLICATION OF RULES.

The rules shall be promulgated pursuant to chapter 17A, only after a public hearing at least twenty days' notice of the time and place of which is given by publication ~~in a newspaper of general circulation throughout the state~~ in the Iowa administrative bulletin and by mail to any person who has filed the person's name and address with the state fire marshal for the purpose of receiving the notice.

Sec. 13. Section 712.1, Code 2003, is amended to read as follows:

712.1 ARSON DEFINED.

1. Causing a fire or explosion, or placing any burning or combustible material, or any incendiary or explosive device or material, in or near any property with the intent to destroy or damage such property, or with the knowledge that such property will probably be destroyed or damaged, is arson, whether or not any such property is actually destroyed or damaged. Provided, that where a person who owns said property which the defendant intends to destroy or damage, or which the defendant knowingly endangers, consented to the defendant's acts, and where no insurer has been exposed fraudulently to any risk, and where the act was done in such a way as not to unreasonably endanger the life or property of any other person the act shall not be arson.

2. Causing a fire or explosion that damages or destroys property while manufacturing or attempting to manufacture a controlled substance in violation of section 124.401 is arson. Even if a person who owns property which the defendant intends to destroy or damage, or which the defendant knowingly endangers, consents to the defendant's act, and even if an insurer has not been exposed fraudulently to any risk, and even if the act was done in such a way as not to unreasonably endanger the life or property of any person, the act constitutes arson.

Sec. 14. Section 712.2, Code 2003, is amended to read as follows:

712.2 ARSON IN THE FIRST DEGREE.

Arson is arson in the first degree when ~~the property which the defendant intends to destroy or damage, or which the defendant knowingly endangers, is property in which~~ the presence of one or more persons can be reasonably anticipated in or near the property which is the subject of the arson, or the arson results in the death of a fire fighter, whether paid or volunteer.

Arson in the first degree is a class "B" felony.

Sec. 15. Section 712.3, Code 2003, is amended to read as follows:

712.3 ARSON IN THE SECOND DEGREE.

Arson which is not arson in the first degree is arson in the second degree when the property ~~which the defendant intends to destroy or damage, or which the defendant knowingly endangers,~~ which is the subject of the arson is a building or a structure, or real property of any kind, or standing crops, or is personal property the value of which exceeds five hundred dollars. Arson in the second degree is a class "C" felony.

Sec. 16. Section 712.6, Code 2003, is amended to read as follows:

712.6 ~~POSSESSION OF~~ EXPLOSIVE OR INCENDIARY MATERIALS OR DEVICES.

1. Any person who shall possess any incendiary or explosive device or material with the

intent to use such device or material to commit any public offense shall be guilty of a class "C" felony.

2. Any person, with the intent to intimidate, annoy, or alarm another person, who places a simulated explosive or simulated incendiary device in or near an occupied structure as defined in section 702.12, is guilty of a serious misdemeanor.

Sec. 17. APPLICABILITY DATE. The sections of this Act enacting sections 100C.1 through 100C.6, 100C.8, and 100C.9 shall not be applicable until July 1, 2005.

Approved May 3, 2004

CHAPTER 1126

LIQUEFIED PETROLEUM GAS SYSTEMS —
LIABILITY FOR INJURIES OR DAMAGES

H.F. 2243

AN ACT regarding user responsibility and liability with respect to liquefied petroleum gas systems.

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

Section 1. NEW SECTION. 101.14 USER RESPONSIBILITY.

1. In any action or claim seeking damages for personal injuries or damage to property arising out of injuries or loss due to defects in a liquefied petroleum gas system, or arising out of the condition of any portion of that system, the negligence or other fault of the customer, owner, or other person in possession of or making use of that system relating to the installation, modification, maintenance, or repair of the system or damage incurred to the system, shall be admissible in evidence and considered by the finder of fact if such conduct was a cause in fact of the accident or condition leading to the injuries or damages.

2. For purposes of this section, "liquefied petroleum gas system" means any container designed to hold liquefied petroleum gas and attached valves, regulators, piping, appliances, controls on appliances, and venting of appliances.

Approved May 3, 2004

CHAPTER 1127

PSEUDOEPHEDRINE — SALE, PURCHASE, OR THEFT — PENALTIES

H.F. 2259

AN ACT relating to the selling and purchasing of products containing pseudoephedrine, and providing penalties.

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

Section 1. NEW SECTION. 126.23A PSEUDOEPHEDRINE — RESTRICTIONS.

1. A retailer shall not sell and a person shall not purchase in a single transaction more than two packages containing pseudoephedrine as the products' sole active ingredient.

2. A retailer who offers for sale a product containing pseudoephedrine as the product's sole active ingredient shall display and offer such product for sale, except as otherwise provided, behind a counter where the public is not permitted or within twenty feet of a counter which allows the attendant to view the products in an unobstructed manner. A retailer may display or offer for sale without restriction a product containing pseudoephedrine as the sole active ingredient if the product is displayed using any type of antitheft device system including but not limited to an electronic antitheft device system that utilizes a product tag and detection alarm which prevents the theft of the product.

3. A retailer shall post a notice at the location where a product containing pseudoephedrine as its sole active ingredient is displayed or offered for sale stating the following:

Iowa law prohibits the sale or purchase of more than two packages containing pseudoephedrine as the sole active ingredient.

4. An employee of a retailer who sells packages containing pseudoephedrine or a person who purchases packages containing pseudoephedrine in violation of subsection 1 commits a simple misdemeanor, punishable as a scheduled violation under section 805.8C, subsection 4, paragraph "a". If a citation is issued for a violation of subsection 1, the citation shall be issued to both the employee who sells the packages and the purchaser.

5. For each violation of subsection 1, 2, or 3 by a retailer, the retailer shall be assessed a scheduled fine under section 805.8C, subsection 4, paragraph "b".

6. a. Enforcement of any scheduled fine for violation of this section by the state or a political subdivision of the state shall be in magistrate court.

b. Enforcement of this section shall also be implemented uniformly throughout the state. For purposes of uniform implementation, a county or municipality shall not set requirements or establish a penalty which is higher or more stringent than the requirements or penalties enumerated in this section.

7. All civil penalty moneys collected by the state or a political subdivision of the state pursuant to this section shall be retained by the state or political subdivision of the state, respectively.

8. As used in this section, "retailer" means a person or business entity engaged in this state in the business of selling products on a retail basis.

9. This section shall not apply to the following:

a. Any package of a product containing pseudoephedrine as the product's sole active ingredient which is in liquid form.

b. Any package of a product containing pseudoephedrine as the product's sole active ingredient which is primarily intended for administration to children under twelve years of age according to the label, regardless of whether the product is in liquid or solid form.

c. Any package of a product containing pseudoephedrine as the product's sole active ingredient that the board of pharmacy examiners, with the concurrence of the department of public safety, upon application of a manufacturer, exempts from this section because the product is formulated to effectively prevent conversion of the active ingredient into methamphetamine or its salts or precursors. The board of pharmacy examiners, with the concurrence of the

department of public safety, shall adopt rules pursuant to chapter 17A to administer this paragraph.

Sec. 2. Section 602.8105, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4. The clerk of the district court shall collect a civil penalty assessed against a retailer pursuant to section 126.23A. Any moneys collected from the civil penalty shall be distributed to the state or a political subdivision of the state as provided in section 126.23A, subsection 7.

Sec. 3. NEW SECTION. 714.7C THEFT OF PSEUDOEPHEDRINE — ENHANCEMENT.

Notwithstanding section 714.2, subsection 5, a person who commits a simple misdemeanor theft of more than two packages containing any of the following commits a serious misdemeanor:

1. Pseudoephedrine as the product's sole active ingredient.
2. Pseudoephedrine in combination with other active ingredients.

A simple misdemeanor theft of more than two packages containing pseudoephedrine as the products' sole active ingredient which are in liquid form does not constitute a serious misdemeanor under this section.

Sec. 4. Section 805.8C, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4. a. PSEUDOEPHEDRINE SALES VIOLATIONS. For a violation of section 126.23A, subsection 1, the scheduled fine is one hundred dollars.

b. For a violation of section 126.23A, subsection 1, 2, or 3, by a retailer, the scheduled fine is one hundred dollars, and is a civil penalty and the criminal penalty surcharge under section 911.2 shall not be added to the penalty, and the court costs pursuant to section 805.9, subsection 6, shall not be imposed.

Approved May 3, 2004

CHAPTER 1128

ILLEGAL DUMPING ENFORCEMENT OFFICERS

H.F. 2352

AN ACT relating to the appointment of illegal dumping enforcement officers and providing a penalty.

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

Section 1. NEW SECTION. 455B.307B ILLEGAL DUMPING ENFORCEMENT OFFICER.

1. For purposes of this section, "officer" means the illegal dumping enforcement officer in a county.

2. The board of supervisors of each county may annually appoint an illegal dumping enforcement officer for the county. The board of supervisors may appoint the officer from recommendations by the county board of health or may select a person outside the recommendations made by the county board of health. The board of supervisors shall appoint a person who

is a citizen of the United States, is of good moral character, and has not previously been convicted of a felony.

3. An illegal dumping enforcement officer shall take an oath of office prescribed by the board of supervisors. An officer's appointment shall be effective March 1 and shall continue for a term at the discretion of the board of supervisors.

4. An illegal dumping enforcement officer, subject to direction and control by the county board of supervisors, shall only be empowered to enforce the provisions of sections 455B.307A and 455B.363 and local littering ordinances. An officer shall not have the duty to enforce any other traffic or criminal laws of the state, county, or a municipality. An officer may enter upon any public land in the county, excluding land within the limits of cities, unless otherwise authorized by a city, and any private property with the permission of the landowner at any time for the performance of the officer's duties, and may hire the labor and equipment necessary subject to the approval of the board of supervisors.

5. A person shall not willfully obstruct, resist, impede, or interfere with an illegal dumping enforcement officer in connection with the officer's enforcement of sections 455B.307A and 455B.363 and local littering ordinances. A person shall not willfully retaliate or discriminate in any manner against an officer as a reprisal for any act or omission of the officer. A person violating this subsection is guilty of a simple misdemeanor.

Approved May 3, 2004

CHAPTER 1129

REGENTS UNIVERSITIES — FINAL DECISIONS
TO INCREASE TUITION, FEES, OR CHARGES

H.F. 2418

AN ACT relating to meeting dates by which the state board of regents must make final decisions on tuition increases for institutions of higher education under its control.

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

Section 1. Section 262.9, subsection 18, Code Supplement 2003, is amended to read as follows:

18. Not less than thirty days prior to action by the board on any proposal to increase tuition, fees, or charges at one or more of the institutions of higher education under its control, send written notification of the amount of the proposed increase including a copy of the proposed tuition increase docket memorandum prepared for its consideration to the presiding officers of the student government organization of the affected institutions. The final decision on an increase in tuition or mandatory fees charged to all students at an institution for a fiscal year shall be made ~~no later than the~~ at a regular meeting ~~held in November of the preceding fiscal year~~ and shall be reflected in a final docket memorandum that states the estimated total cost of attending each of the institutions of higher education under the board's control. The regular meeting ~~held in November~~ shall be held in Ames, Cedar Falls, or Iowa City and shall not be held during ~~the~~ a period in which classes have been suspended for ~~Thanksgiving vacation~~ university holiday or break.

Approved May 3, 2004

CHAPTER 1130

CHILD WELFARE PILOT PROJECTS

H.F. 2462

AN ACT directing the department of human services to implement child welfare diversion and mediation pilot projects.

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

Section 1. CHILD WELFARE MEDIATION PILOT PROJECTS. The department of human services shall implement one or more child welfare diversion and mediation pilot projects through the offices of the county attorney. The projects shall be implemented in separate counties commencing during the fiscal year beginning July 1, 2004, and ending June 30, 2005. The purposes of the projects are to divert selected child abuse and neglect cases that may otherwise result in a child in need of assistance adjudication, improve permanency for children, promote family unification, and reduce state expenditures associated with adjudication of child protection cases. Selection of children and families for participation in a pilot project shall be based upon diversion criteria mutually agreed upon by the department and a pilot project. The department shall be assisted by the pilot projects in collecting data to analyze the effectiveness of the pilot projects and the department shall submit an initial evaluation to the general assembly on or before December 15, 2007. The savings attributable to the pilot projects shall be calculated and may be allocated to the projects as necessary to assist with operating expenses.

Sec. 2. CHILD IN NEED OF ASSISTANCE FAMILY CASE STAFFING PILOT PROJECT. The department of human services shall implement a child in need of assistance family case staffing pilot project in at least two counties. Under the pilot project, unless the department determines that the pilot project approach would not be in the child's best interest, prior to a child in need of assistance petition being filed, the department shall conduct a full case staffing for the child's case. The staffing participants shall include but are not limited to relevant treatment providers, the child's parents or guardians, and other persons involved with the child. The purposes of the pilot project are to divert selected child abuse and neglect cases that may otherwise result in a child in need of assistance adjudication, improve permanency for children, promote family unification, and reduce state expenditures associated with adjudication of child in need of assistance cases.

Approved May 3, 2004

CHAPTER 1131

DOMESTIC ABUSE PROTECTIVE ORDERS
AND COURT-APPROVED CONSENT AGREEMENTS

H.F. 2533

AN ACT relating to protective orders and court-approved consent agreements under the domestic abuse Act.

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

Section 1. Section 236.3A, subsection 1, Code 2003, is amended to read as follows:

1. The department shall prescribe standard forms to be used by plaintiffs seeking protective orders by proceeding pro se in actions under this chapter. The standard forms shall include language in fourteen-point boldface type~~, with a box which may be checked by the plaintiff, indicating that the plaintiff wishes to proceed by filing an affidavit pursuant to section 236.3, because the plaintiff does not have sufficient funds to pay the cost of filing and service~~. Standard forms prescribed by the department shall be the exclusive forms used by plaintiffs proceeding pro se, and may be used by other plaintiffs. The department shall distribute the forms to the clerks of the district courts.

Sec. 2. Section 236.8, Code 2003, is amended to read as follows:

236.8 VIOLATION OF ORDER — CONTEMPT — PENALTIES — HEARINGS.

1. A person commits a simple misdemeanor or the court may hold a person in contempt for a violation of an order or court-approved consent agreement entered under this chapter, including a violation of a valid foreign protective order under section 236.19, subsection 3, for a violation of a temporary or permanent protective order or order to vacate the homestead under chapter 598, for a violation of any order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault, or for a violation by an adult of a protective order under chapter 232.

2. If convicted or held in contempt for a violation the defendant shall serve a jail sentence. Any jail sentence of more than one day imposed under this section shall be served on consecutive days. A defendant who is held in contempt or convicted may be ordered by the court to pay the plaintiff's attorney fees and court costs incurred in the proceedings under this section.

3. 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.

4. A person shall not be convicted of and held in contempt for the same violation of an order or court-approved consent agreement entered under this chapter including the same violation of a valid foreign protective order under section 236.19, subsection 3, for the same violation of a temporary or permanent protective order or order to vacate the homestead under chapter 598, for a violation of any order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault, or for violation of a protective order under chapter 232.

Sec. 3. Section 236.11, unnumbered paragraph 3, Code 2003, is amended to read as follows:

If the magistrate finds probable cause, the magistrate shall order the person to appear either before the court which issued the original order or approved the consent agreement, ~~whichever was allegedly violated~~ or before the court in the jurisdiction where the alleged violation took place, at a specified time not less than five days nor more than fifteen days after the initial appearance under this section. The magistrate shall cause the original court to be notified of the contents of the magistrate's order.

Approved May 3, 2004

CHAPTER 1132

SNOWMOBILE AND ALL-TERRAIN VEHICLE REGULATION

S.F. 297

AN ACT relating to the regulation of snowmobiles and all-terrain vehicles, establishing fees, providing penalties, and providing an applicability date.

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

Section 1. Section 321G.1, subsection 1, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

1. "All-terrain vehicle" means the same as defined in section 321I.1.

Sec. 2. Section 321G.1, subsections 4, 7, 10, 11, 12, 15, 17, and 19, Code 2003, are amended to read as follows:

4. "Dealer" means a person engaged in the business of buying, selling, or exchanging ~~all-terrain vehicles or~~ snowmobiles required to be registered under this chapter and who has an established place of business for that purpose in this state.

7. "Manufacturer" means a person engaged in the business of constructing or assembling ~~all-terrain vehicles or~~ snowmobiles required to be registered under this chapter and who has an established place of business for that purpose in this state.

10. "Operate" means to ride in or on, other than as a passenger, use, or control the operation of ~~an all-terrain vehicle or~~ a snowmobile in any manner, whether or not the ~~all-terrain vehicle or~~ snowmobile is moving.

11. "Operator" means a person who operates or is in actual physical control of ~~an all-terrain vehicle or~~ a snowmobile.

12. "Owner" means a person, other than a lienholder, having the property right in or title to ~~an all-terrain vehicle or~~ a snowmobile. The term includes a person entitled to the use or possession of ~~an all-terrain vehicle or~~ a snowmobile subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

15. "Railroad right-of-way" ~~shall mean~~ means the full width of property owned, leased, or subject to easement for railroad purposes and ~~shall not be~~ is not limited to those areas on which tracks are located.

17. "Safety certificate" means ~~an all-terrain vehicle or~~ a snowmobile safety certificate ~~issued~~, approved by the commission, issued to a qualified applicant who is twelve years of age or ~~more~~ older.

19. "Special event" means an organized race, exhibition, or demonstration of limited duration which is conducted on public land or ice under the jurisdiction of the commission according to a prearranged schedule and in which general public interest is manifested.

Sec. 3. Section 321G.2, Code 2003, is amended to read as follows:

321G.2 RULES.

The commission may adopt rules for the following purposes:

1. Registration and titling of ~~all-terrain vehicles and~~ snowmobiles.

2. Use of ~~all-terrain vehicles and~~ snowmobiles as far as game and fish resources or habitats are affected.

3. Use of ~~all-terrain vehicles and~~ snowmobiles on public lands under the jurisdiction of the commission.

4. Use of ~~all-terrain vehicles and~~ snowmobiles on any waters of the state under the jurisdiction of the commission, while the waters are frozen.

5. ~~Establish~~ Establishment of a program of grants, subgrants, and contracts to be administered by the department for the development and delivery of certified courses of instruction for the safe use and operation of ~~all-terrain vehicles and~~ snowmobiles by political subdivisions and incorporated private organizations.

6. Issuance of safety certificates.

7. Issuance of competition registrations and the participation of ~~all-terrain vehicles and~~ snowmobiles so registered in special events.

The director of transportation may adopt rules not inconsistent with this chapter regulating the use of ~~all-terrain vehicles and~~ snowmobiles on streets and highways. Cities may designate streets under the jurisdiction of cities within their respective corporate limits which may be used for snowmobiling ~~and the sport of driving all-terrain vehicles~~.

In adopting the rules, consideration shall be given to the need to protect the environment and the public health, safety, and welfare; to protect private property, public parks, and other public lands; to protect wildlife and wildlife habitat; and to promote uniformity of rules relating to the use, operation, and equipment of ~~all-terrain vehicles and~~ snowmobiles. The rules shall be in conformance with chapter 17A.

Sec. 4. Section 321G.3, Code 2003, is amended to read as follows:

321G.3 REGISTRATION AND NUMBERING REQUIRED.

1. Each ~~all-terrain vehicle and~~ snowmobile used on public land or ice of this state shall be currently registered and numbered. A person shall not operate, maintain, or give permission for the operation or maintenance of ~~an all-terrain vehicle or~~ a snowmobile on public land or ice unless the ~~all-terrain vehicle or~~ snowmobile is numbered in accordance with this chapter, ~~or in accordance with~~ applicable federal laws, or ~~in accordance with~~ an approved numbering system of another state, and unless the identifying number set forth in the registration is displayed as prescribed by rules of the commission.

2. A registration number shall be assigned, without payment of fee, to ~~all-terrain vehicles and~~ snowmobiles owned by the state of Iowa or its political subdivisions upon application for the number, and the assigned registration number shall be displayed on the ~~all-terrain vehicle or~~ snowmobile as required under section 321G.5. A registration number and certificate shall be assigned, without payment of fee, to ~~an all-terrain vehicle or~~ a snowmobile which is exempt from registration but is being titled. A decal displaying an audit number shall not be issued and the registration shall not expire while the ~~all-terrain vehicle or~~ snowmobile is exempt. The application for registration shall indicate the reason for exemption from the fee. The registration certificate shall indicate the reason for exemption.

Sec. 5. Section 321G.4, Code Supplement 2003, is amended to read as follows:

321G.4 REGISTRATION WITH COUNTY RECORDER — FEE.

The owner of each ~~all-terrain vehicle or~~ snowmobile required to be numbered shall register it ~~every two years~~ annually with the county recorder of the county in which the owner resides or, if the owner is a nonresident, the owner shall register it in the county in which the ~~all-terrain vehicle or~~ snowmobile is principally used. The commission has supervisory responsibility over the registration of ~~all-terrain vehicles and~~ snowmobiles and shall provide each county recorder with registration forms and certificates and shall allocate registration numbers to each county.

The owner of the ~~all-terrain vehicle or~~ snowmobile shall file an application for registration with the appropriate county recorder on forms provided by the commission. The application shall be completed and signed by the owner ~~of the all-terrain vehicle or snowmobile~~ and shall be accompanied by a fee of ~~twenty-five~~ fifteen dollars and a writing fee. ~~An all-terrain vehicle or a~~ A snowmobile shall not be registered by the county recorder until the county recorder is presented with receipts, bills of sale, or other satisfactory evidence that the sales or use tax has been paid for the purchase of the ~~all-terrain vehicle or~~ snowmobile or that the owner is exempt from paying the tax. ~~However, an owner of an all-terrain vehicle, except an all-terrain vehicle~~

~~purchased new on or after January 1, 1990, may apply for registration without proof of sales or use tax paid until one year after January 1, 1990. An all-terrain vehicle or~~ A snowmobile that has an expired registration certificate from another state may be registered in this state upon proper application, payment of all applicable registration and writing fees, and payment of a penalty of five dollars.

Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall enter it upon the records and shall issue to the applicant a ~~pocket-size~~ registration certificate. The certificate shall be executed in triplicate, one copy to be delivered to the owner, one copy to the commission, and one copy to be retained on file by the county recorder. The registration certificate shall bear the number awarded to the ~~all-terrain vehicle or~~ snowmobile and the name and address of the owner. The registration certificate shall be carried either in the ~~all-terrain vehicle or~~ snowmobile or on the person of the operator of the ~~machine~~ snowmobile when in use. The operator of ~~an all-terrain vehicle or~~ a snowmobile shall exhibit the registration certificate to a peace officer upon request, to a person injured in an accident involving ~~an all-terrain vehicle or~~ a snowmobile, ~~or~~ to the owner or operator of another ~~all-terrain vehicle or~~ snowmobile or the owner of personal or real property when the ~~all-terrain vehicle or~~ snowmobile is involved in a collision or accident of any nature with another ~~all-terrain vehicle or~~ snowmobile or the property of another person, or to the property owner or tenant when the ~~all-terrain vehicle or~~ snowmobile is being operated on private property without permission from the property owner or tenant.

If ~~an all-terrain vehicle or~~ a snowmobile is placed in storage, the owner shall return the current registration certificate to the county recorder with an affidavit stating that the ~~all-terrain vehicle or~~ snowmobile is placed in storage and the effective date of storage. The county recorder shall notify the commission of each ~~all-terrain vehicle or~~ snowmobile placed in storage. When the owner of a stored ~~all-terrain vehicle or~~ snowmobile desires to renew the registration, the owner shall make application to the county recorder and pay the registration and writing fees without penalty. A refund of the registration fee shall not be allowed for a stored ~~all-terrain vehicle or~~ snowmobile.

Sec. 6. Section 321G.5, Code 2003, is amended to read as follows:

321G.5 DISPLAY OF IDENTIFICATION NUMBERS.

The owner shall display the identification number on ~~an all-terrain vehicle or~~ a snowmobile in the manner prescribed by the rules of the commission.

Sec. 7. Section 321G.6, Code 2003, is amended to read as follows:

321G.6 REGISTRATION — RENEWAL — TRANSFER.

1. Every ~~all-terrain vehicle or~~ snowmobile registration certificate and number issued expires at midnight December 31~~, and renewals expire every two years thereafter~~ unless sooner terminated or discontinued in accordance with this chapter. After the first day of September each ~~even-numbered~~ year, an unregistered ~~all-terrain vehicle or~~ snowmobile ~~and renewals~~ may be registered or a registration may be renewed for the subsequent ~~biennium~~ year beginning January 1. ~~An all-terrain vehicle or snowmobile registered between January 1 and September 1 of even-numbered years shall be registered for a fee of twelve dollars and fifty cents for the remainder of the registration period.~~

~~After the first day of September in even-numbered years an unregistered all-terrain vehicle or snowmobile may be registered for the remainder of the current registration period and for the subsequent registration period in one transaction. The fee shall be five dollars for the remainder of the current period, in addition to the registration fee of twenty-five dollars for an all-terrain vehicle and twenty-five dollars for a snowmobile for the subsequent biennium beginning January 1, and a writing fee. Registration certificates and numbers may be renewed upon application of the owner in the same manner as provided in securing the original registration. The all-terrain vehicle or snowmobile registration fee is in lieu of personal property tax for each year of the registration.~~

2. An expired ~~all-terrain vehicle or snowmobile~~ registration may be renewed for the same fee as if the owner is securing the original registration plus a penalty of five dollars and a writing fee.

~~All all-terrain vehicles used on public land must be registered within six months following January 1, 1990, unless otherwise exempt.~~

3. When a person, after registering ~~an all-terrain vehicle or~~ a snowmobile, moves from the address shown on the registration certificate, the person shall, within ~~ten~~ thirty days, notify the county recorder in writing of the move and the person's new address.

4. Upon the transfer of ownership of ~~an all-terrain vehicle or~~ a snowmobile, the owner shall complete the form on the back of the title, if any, and registration, if any, and deliver both to the purchaser or transferee when the ~~all-terrain vehicle or~~ snowmobile is delivered. If the ~~all-terrain vehicle or~~ snowmobile is not titled, the owner shall complete the form on the back of the current registration certificate and shall deliver the certificate to the purchaser or transferee at the time of delivering the ~~all-terrain vehicle or~~ snowmobile. If the ~~all-terrain vehicle or~~ snowmobile has not been titled and has not been registered, the owner shall deliver an affidavit for an unregistered and untitled ~~all-terrain vehicle or~~ snowmobile to the purchaser or transferee. The purchaser or transferee shall, within thirty days of transfer, file a new application form with the county recorder with a fee of one dollar and the writing fee, and a transfer of number shall be awarded in the same manner as provided in an original registration. If the purchaser or transferee does not file a new application form within thirty days of transfer, the transfer of number shall be awarded upon payment of all applicable fees plus a penalty of five dollars.

All registrations must be valid for the current registration period prior to the transfer of any registration, including assignment to a dealer.

5. Duplicate registrations may be issued upon application ~~therefore~~ to the county recorder and the payment of the same fees collected for the transfer of registrations.

~~A motorcycle, as defined in section 321.1, subsection 40, paragraph "a", may be registered as an all-terrain vehicle as provided in this section. A motorcycle registered as an all-terrain vehicle may participate in all programs established for all-terrain vehicles under this chapter except for the safety instruction and certification program.~~

Sec. 8. Section 321G.7, Code 2003, is amended to read as follows:

321G.7 FEES REMITTED TO COMMISSION — APPROPRIATION.

Within ten days after the end of each month, a county recorder shall remit to the commission the ~~all-terrain vehicle and~~ snowmobile fees collected by the recorder during the previous month. Before January 10 of ~~odd-numbered years~~ each year, a recorder shall remit to the commission unused license forms from the previous ~~biennium to the commission~~ year.

The department shall remit the fees to the treasurer of state, who shall place the money in a special ~~conservation~~ snowmobile fund. The money is appropriated to the department for the ~~all-terrain vehicle and~~ snowmobile programs of the state. ~~All-terrain vehicle fees shall be used only for all-terrain vehicle programs and snowmobile fees shall be used only for snowmobile programs. Joint programs shall be supported from both types of fees on a usage basis.~~ The ~~all-terrain vehicle and snowmobile~~ programs shall include grants, subgrants, contracts, or cost-sharing of ~~all-terrain vehicle and~~ snowmobile programs with political subdivisions or incorporated private organizations or both in accordance with rules adopted by the commission. ~~All all-terrain vehicle programs using cost-sharing, grants, subgrants, or contracts shall establish and implement a safety instruction program either singly or in cooperation with other all-terrain vehicle programs.~~ Snowmobile fees may be used to support snowmobile programs on a usage basis. At least fifty percent of the special fund shall be available for political subdivisions or incorporated private organizations or both. Moneys from the special fund not used by the political subdivisions or incorporated private organizations or both shall remain in the ~~all-terrain vehicle or snowmobile accounts. The~~ fund and may be used by the department ~~may use funds from these accounts~~ for the administration of the ~~all-terrain vehicle and~~ snowmobile programs. Notwithstanding section 8.33, moneys in the special fund shall not revert to the

general fund of the state at the end of a fiscal year. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the special fund shall remain in the fund.

Sec. 9. Section 321G.8, Code 2003, is amended to read as follows:

321G.8 EXEMPT VEHICLES.

Registration shall not be required for the following described ~~all-terrain vehicles and~~ snowmobiles:

1. ~~All-terrain vehicles and snowmobiles~~ Snowmobiles owned and used by the United States, another state, or a political subdivision of another state.

2. ~~All-terrain vehicles and snowmobiles~~ Snowmobiles registered in a country other than the United States used within this state for not more than twenty consecutive days.

3. ~~All-terrain vehicles and snowmobiles~~ Snowmobiles covered by a valid license of another state and which have not been within this state for more than twenty consecutive days.

4. ~~All-terrain vehicles and snowmobiles~~ Snowmobiles not registered or licensed in another state or country being used in this state while engaged in a special event and not remaining in the state for a period of more than ten days.

~~5. All-terrain vehicles used in accordance with section 321.234A.~~

~~6.~~ 5. Snowmobiles ~~and all-terrain vehicles~~ used exclusively as farm implements.

Sec. 10. Section 321G.9, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A person shall not operate ~~an all-terrain vehicle or~~ a snowmobile upon roadways or highways, as defined in section 321.1, except as provided in ~~section 321.234A and~~ this chapter.

Sec. 11. Section 321G.9, subsections 1, 2, and 3, Code 2003, are amended to read as follows:

1. ~~An all-terrain vehicle or~~ A snowmobile shall not be operated at any time within the ~~right of way~~ right-of-way of any interstate highway or freeway within this state except ~~under either of the following circumstances:~~

~~a. As provided in section 321.234A.~~

~~b. When~~ when using an underpass located on an interstate highway or freeway if all of the following apply:

~~(1)~~ a. The underpass has been abandoned and is no longer being used by motor vehicles or trains.

~~(2)~~ b. Use of the underpass is the only alternative to the use of a traveled roadway.

~~(3)~~ c. Notwithstanding the provisions of chapter 321, use of the underpass does not conflict with any rules or regulations adopted by a federal governmental entity or this state or a political subdivision of this state.

2. ~~An all-terrain vehicle or~~ A snowmobile may make a direct crossing of a street or highway provided all of the following occur:

a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing~~; and~~.

b. The ~~all-terrain vehicle or~~ snowmobile is brought to a complete stop before crossing the shoulder or main traveled way of the highway~~; and~~.

c. The driver yields the ~~right of way~~ right-of-way to all oncoming traffic which constitutes an immediate hazard~~; and~~.

d. In crossing a divided highway, the crossing is made only at an intersection of such highway with another public street or highway.

3. ~~An all-terrain vehicle or~~ A snowmobile shall not be operated on public highways under any of the following conditions:

a. On the roadway portion of a highway and adjacent shoulder, or at least five feet on either side of the roadway, except as provided in subsection 4 ~~of this section, and~~.

b. On limited access highways and approaches~~, and~~.

c. For racing any moving object~~, and~~.

d. Abreast with one or more other ~~all-terrain vehicles or~~ snowmobiles on a city highway.

Sec. 12. Section 321G.9, subsection 4, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A registered ~~all-terrain vehicle or~~ snowmobile may be operated under the following conditions:

Sec. 13. Section 321G.9, subsection 4, paragraph d, Code 2003, is amended to read as follows:

d. On the roadways of that portion of county highways designated by the county board of supervisors for such use during a specified period. The county board of supervisors shall evaluate the traffic conditions on all county highways and designate roadways on which ~~all-terrain vehicles or~~ snowmobiles may be operated for the specified period without unduly interfering with or constituting an undue hazard to conventional motor vehicle traffic. Signs warning of the operation of ~~all-terrain vehicles or~~ snowmobiles on the roadway shall be placed and maintained on the portions of highway thus designated during the period specified for the operation.

Sec. 14. Section 321G.9, subsection 4, paragraph f, Code 2003, is amended by striking the paragraph.

Sec. 15. Section 321G.9, subsections 6 and 7, Code 2003, are amended to read as follows:

6. a. ~~An all-terrain vehicle or~~ A snowmobile shall not be operated on or across a public highway by a person under sixteen years of age who does not have in the person's possession a safety certificate issued to the person pursuant to this chapter.

b. A person twelve to fifteen years of age and possessing a valid safety certificate must be under the direct supervision of a parent, guardian, or another adult authorized by the parent or guardian, who is experienced in ~~all-terrain vehicle or~~ snowmobile operation, and who possesses a valid driver's license as defined in section 321.1, or a safety certificate issued under this chapter.

7. ~~An all-terrain vehicle or~~ A snowmobile shall not be operated within the ~~right of way~~ right-of-way of a primary highway between the hours of sunset and sunrise except on the right-hand side of the ~~right of way~~ right-of-way and in the same direction as the motor vehicular traffic on the nearest lane of traveled portion of the ~~right of way~~ right-of-way.

Sec. 16. Section 321G.10, Code 2003, is amended to read as follows:

321G.10 ACCIDENT REPORTS.

If ~~an all-terrain vehicle or~~ a snowmobile is involved in an accident resulting in injury or death to anyone or property damage amounting to ~~two hundred~~ one thousand dollars or more, either the operator or someone acting for the operator shall immediately notify the county sheriff or another law enforcement agency in the state. ~~The~~ If the accident occurred on public land or ice under the jurisdiction of the commission, the operator shall file with the commission a report of the accident, within ~~forty-eight~~ seventy-two hours, containing information as the commission may require. All other accidents shall be reported as required under section 321.266.

Sec. 17. Section 321G.11, subsections 1 and 2, Code 2003, are amended to read as follows:

1. ~~An all-terrain vehicle or~~ A snowmobile shall not be operated without suitable and effective muffling devices which limit engine noise to not more than eighty-six decibels as measured on the "A" scale at a distance of fifty feet; and a snowmobile, manufactured after July 1, 1973, which is sold, offered for sale, or used in this state, except in an authorized special event, shall have a muffler system that limits engine noise to not more than eighty-two decibels as measured on the "A" scale at a distance of fifty feet.

2. The commission may adopt rules with respect to the inspection of ~~all-terrain vehicles and~~ snowmobiles and testing of ~~their~~ snowmobile mufflers.

Sec. 18. Section 321G.12, Code 2003, is amended to read as follows:

321G.12 ~~HEAD LAMP~~ HEADLAMP — 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~~ headlamp and one tail lamp. Every ~~all-terrain vehicle and~~ snowmobile shall be equipped with brakes.

Sec. 19. Section 321G.13, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A person shall not drive or operate ~~an all-terrain vehicle or~~ a snowmobile:

Sec. 20. Section 321G.13, subsection 1, paragraphs g and h, Code 2003, are amended to read as follows:

g. In or on any park or fish and game areas except on designated ~~all-terrain vehicle or~~ snowmobile trails.

h. Upon an operating railroad right-of-way. ~~An all-terrain vehicle or~~ A snowmobile may be driven directly across a railroad right-of-way only at an established crossing and, notwithstanding any other provisions of law, may, if necessary, use the improved portion of the established crossing after yielding to all oncoming traffic. This paragraph does not apply to a law enforcement officer or railroad employee in the lawful discharge of the officer's or employee's duties or to an employee of a utility with authority to enter upon the railroad right-of-way in the lawful performance of the employee's duties.

Sec. 21. Section 321G.13, subsection 2, Code 2003, is amended to read as follows:

2. A person shall not operate or ride ~~in an all-terrain vehicle or~~ a snowmobile with a firearm in the person's possession unless it is unloaded and enclosed in a carrying case. However, a nonambulatory person may carry an uncased and unloaded firearm while operating or riding ~~an all-terrain vehicle or~~ a snowmobile.

Sec. 22. Section 321G.13, subsection 3, Code 2003, is amended by striking the subsection.

Sec. 23. Section 321G.14, Code 2003, is amended to read as follows:

321G.14 PENALTY.

~~Any~~ A person who ~~shall violate any provision of~~ violates this chapter or ~~any regulation~~ a rule of the commission or director of transportation ~~shall be~~ is guilty of a simple misdemeanor.

Chapter 232 shall have no application in the prosecution of offenses which are committed in violation of this chapter~~,~~ and which constitute simple misdemeanors.

Sec. 24. Section 321G.15, Code 2003, 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~~.

Sec. 25. Section 321G.16, Code 2003, is amended to read as follows:

321G.16 SPECIAL EVENTS.

The department may authorize the holding of organized special events as defined in this chapter within this state. The department shall adopt rules relating to the conduct of special events held under department permits and designating the equipment and facilities necessary for safe operation of ~~all-terrain vehicles and~~ snowmobiles or for the safety of operators,

participants, and observers in the special events. ~~A special event for all-terrain vehicles may include motorcycles upon payment of an entrance fee set by the organizer of the special event. The department may require that part of the motorcycle entrance fee be credited to pay costs of all-terrain vehicle programs authorized pursuant to section 321G.7.~~ At least thirty days before the scheduled date of a special event in this state, an application shall be filed with the department for authorization to conduct the special event. The application shall set forth the date, time, and location of the proposed special event and any other information the department requires. The special event shall not be conducted without written authorization of the department. Copies of the rules shall be furnished by the department to any person making an application.

Sec. 26. Section 321G.17, Code 2003, is amended to read as follows:

321G.17 VIOLATION OF ~~"STOP"~~ STOP SIGNAL.

A person, after having received a visual or audible signal from a peace officer to come to a stop, shall not operate ~~an all-terrain vehicle or~~ a snowmobile in willful or wanton disregard of the signal or interfere with or endanger the officer or any other person or vehicle, or increase speed or attempt to flee or elude the officer.

Sec. 27. Section 321G.18, Code 2003, is amended to read as follows:

321G.18 NEGLIGENCE.

The owner and operator of ~~an all-terrain vehicle or~~ a snowmobile are liable for any injury or damage occasioned by the negligent operation of the ~~all-terrain vehicle or~~ snowmobile. The owner of ~~an all-terrain vehicle or~~ a snowmobile shall be liable for any such injury or damage only if the owner was the operator of the ~~all-terrain vehicle or~~ snowmobile at the time the injury or damage occurred or if the operator had the owner's consent to operate the ~~all-terrain vehicle or~~ snowmobile at the time the injury or damage occurred.

Sec. 28. Section 321G.19, Code Supplement 2003, is amended to read as follows:

321G.19 RENTED SNOWMOBILES ~~AND ALL-TERRAIN VEHICLES~~.

1. The owner of a rented ~~all-terrain vehicle or~~ snowmobile shall keep a record of the name and address of each person renting the ~~all-terrain vehicle or~~ snowmobile, its registration number, the departure date and time, and the expected time of return. The records shall be preserved for six months.

2. The owner of ~~an all-terrain vehicle or~~ a snowmobile operated for hire shall not permit the use or operation of a rented ~~all-terrain vehicle or~~ snowmobile unless it has been provided with all equipment required by this chapter or rules of the commission or the director of transportation, properly installed and in good working order.

Sec. 29. Section 321G.20, unnumbered paragraph 2, Code 2003, is amended by striking the unnumbered paragraph.

Sec. 30. Section 321G.21, subsections 1, 3, 6, 8, 9, and 10, Code 2003, are amended to read as follows:

1. A manufacturer, distributor, or dealer owning ~~any all-terrain vehicle or~~ a snowmobile required to be registered under this chapter may operate the ~~all-terrain vehicle or~~ snowmobile for purposes of transporting, testing, demonstrating, or selling it without the ~~all-terrain vehicle or~~ snowmobile being registered, except that a special identification number issued to the owner as provided in this chapter shall be displayed on the ~~all-terrain vehicle or~~ snowmobile. The special identification number shall not be used on ~~an all-terrain vehicle or~~ a snowmobile offered for hire or for any work or service performed by a manufacturer, distributor, or dealer.

3. The commission, upon granting an application, shall issue to the applicant a special registration certificate containing the applicant's name and address, the general identification number assigned to the applicant, the word "manufacturer", "dealer", or "distributor", and other information the commission prescribes. The manufacturer, distributor, or dealer shall have the assigned number printed upon or attached to a removable sign or signs which may be

temporarily but firmly mounted or attached to the ~~all-terrain vehicle or~~ snowmobile being used. The display shall meet the requirements of this chapter and the rules of the commission.

6. Every manufacturer, distributor, or dealer shall keep a written record of the ~~all-terrain vehicles and~~ snowmobiles upon which special registration certificates are used, which record shall be open to inspection by any law enforcement officer or any officer or employee of the commission.

8. Dealers using special certificates under this chapter shall, before January 10 of each year, furnish the commission with a list of all used ~~all-terrain vehicles and~~ snowmobiles held by them for sale or trade~~,~~ and upon which the registration fee for the current year has not been paid, giving the previous registration number, name of previous owner at the time the ~~all-terrain vehicle or~~ snowmobile was transferred to the dealer, and other information the commission requires.

9. If the purchaser or transferee of ~~an all-terrain vehicle or~~ a snowmobile is a dealer who holds the same for resale and operates the ~~all-terrain vehicle or~~ snowmobile only for purposes incidental to a resale and displays the special dealer's certificate, or does not operate the ~~all-terrain vehicle or~~ snowmobile or permit it to be operated, the transferee is not required to obtain a new registration certificate but upon transferring title or interest to another person shall sign the reverse side of the title, if any, and the registration certificate of the ~~all-terrain vehicle or~~ snowmobile indicating the name and address of the new purchaser. A dealer shall make application and pay all registration and title fees if applicable on behalf of the purchaser of ~~an all-terrain vehicle or~~ a snowmobile. The recorder shall award a transfer of the registration number. If the registration has expired while in the dealer's possession, the purchaser may renew the registration for the same fee and writing fee as if the purchaser is securing the original registration.

10. When a dealer purchases or otherwise acquires ~~an all-terrain vehicle or~~ a snowmobile registered in this state, the dealer shall issue a signed receipt to the previous owner, indicating the date of purchase or acquisition, the name and address of the previous owner, and the registration number of the ~~all-terrain vehicle or~~ snowmobile purchased or acquired. The original receipt shall be delivered to the previous owner and one copy shall be mailed or delivered by the dealer to the county recorder of the county in which the ~~all-terrain vehicle or~~ snowmobile is registered, and one copy shall be delivered to the commission within forty-eight hours.

Sec. 31. Section 321G.22, Code 2003, is amended to read as follows:

321G.22 LIMITATION OF LIABILITY BY PUBLIC BODIES AND ADJOINING OWNERS.

The state, its political subdivisions, and the owners or tenants of property adjoining public lands or the ~~right of way~~ right-of-way of a public highway and their agents and employees owe no duty of care to keep the public lands, ditches, or land contiguous to a highway or roadway under the control of the state or a political subdivision safe for entry or use by persons operating ~~an all-terrain vehicle or~~ a snowmobile, or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for such purposes, except in the case of willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. The state, its political subdivisions, and the owners or tenants of property adjoining public lands or the ~~right of way~~ right-of-way of a public highway~~,~~ and their agents and employees are not liable for actions taken to allow or facilitate the use of public lands, ditches, or land contiguous to a highway or roadway except in the case of a willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

This section does not create a duty of care or ground of liability on behalf of the state, its political subdivisions, or the owners or tenants of property adjoining public lands or the ~~right of way~~ right-of-way of a public highway and their agents and employees for injury to persons or property in the operation of ~~all-terrain vehicles or~~ snowmobiles in a ditch or on land contiguous to a highway or roadway under the control of the state or a political subdivision. The state, its political subdivisions, and the owners or tenants of property adjoining public lands or the

~~right of way~~ right-of-way of a public highway and their agents and employees are not liable for the operation of ~~an all-terrain vehicle or~~ a snowmobile in violation of this chapter.

Sec. 32. Section 321G.23, subsections 1 and 4, Code 2003, are amended to read as follows:

1. The commission shall provide, by rules adopted pursuant to section 321G.2, for the establishment of certified courses of instruction to be conducted throughout the state for the safe use and operation of ~~all-terrain vehicles and~~ snowmobiles. The curriculum shall include instruction in the lawful and safe use, operation, and equipping of ~~all-terrain vehicles and~~ snowmobiles consistent with this chapter and rules adopted by the commission and the director of transportation and other matters the commission deems pertinent for a qualified ~~all-terrain vehicle or~~ snowmobile operator.

4. The commission shall provide safety material relating to the operation of ~~all-terrain vehicles and~~ snowmobiles for the use of nonpublic or public elementary and secondary schools in this state.

Sec. 33. Section 321G.24, subsections 1, 2, 4, and 5, Code 2003, are amended to read as follows:

1. A person under eighteen years of age shall not operate a snowmobile on public land or ice or land purchased with snowmobile registration funds in this state without obtaining a valid safety certificate issued by the department and having the certificate in the person's possession, unless the person is accompanied on the same snowmobile by a responsible person of at least eighteen years of age who is experienced in snowmobile operation and possesses a valid driver's license, as defined in section 321.1, or a safety certificate issued under this chapter. ~~A person under eighteen years of age shall not operate an all-terrain vehicle on public land or land purchased with all-terrain vehicle registration funds in this state without obtaining a valid safety certificate issued by the department and having the certificate in the person's possession.~~

2. Upon application and payment of a fee of ~~three~~ five dollars, a qualified applicant shall be issued a safety certificate which is valid until the certificate is suspended or revoked for a violation of a provision of this chapter or a rule of the commission or the director of transportation. The application shall be made on forms issued by the commission and shall contain information as the commission may reasonably require.

4. The permit fees collected under this section shall be credited to the ~~state conservation~~ special snowmobile fund created under section 321G.7 and shall be used for safety and educational programs.

5. A valid ~~all-terrain vehicle or~~ snowmobile safety certificate or license issued to a nonresident by a governmental authority of another state shall be considered a valid certificate or license in this state if the permit or license requirements of the governmental authority, excluding fees, are substantially the same as the requirements of this chapter as determined by the commission.

Sec. 34. Section 321G.25, Code 2003, is amended to read as follows:

321G.25 STOPPING AND INSPECTING — WARNINGS.

A peace officer may stop and inspect ~~an all-terrain vehicle or~~ a snowmobile operated, parked, or stored on public streets, highways, public lands, or frozen waters of the state to determine if the ~~all-terrain vehicle or~~ snowmobile is registered, numbered, or equipped as required by this chapter and commission rules. The officer shall not inspect an area that is not essential to determine compliance with the requirements. If the officer determines that the ~~all-terrain vehicle or~~ snowmobile is not in compliance, the officer may issue a warning memorandum to the operator and forward a copy to the commission. The warning memorandum shall indicate the items found not in compliance and shall direct the owner or operator of the ~~all-terrain vehicle or~~ snowmobile to have the ~~all-terrain vehicle or~~ snowmobile in compliance and return a copy of the warning memorandum with the proof of compliance to the commis-

sion within fourteen days. If the proof of compliance is not provided within fourteen days, the owner or operator is in violation of this chapter.

Sec. 35. Section 321G.26, Code 2003, is amended to read as follows:

321G.26 TERMINATION OF USE.

A person who receives a warning memorandum for ~~an all-terrain vehicle or~~ a snowmobile shall stop using the ~~all-terrain vehicle or~~ snowmobile as soon as possible and shall not operate it on public streets, highways, public lands, or frozen waters of the state until the ~~all-terrain vehicle or~~ snowmobile is in compliance.

Sec. 36. Section 321G.27, Code 2003, is amended to read as follows:

321G.27 WRITING FEES.

The county recorder shall collect a writing fee of one dollar and twenty-five cents for ~~an all-terrain vehicle or~~ a snowmobile registration.

Sec. 37. Section 321G.28, Code 2003, is amended to read as follows:

321G.28 CONSISTENT LOCAL LAWS — SPECIAL LOCAL RULES.

1. This chapter and other applicable laws of this state shall govern the operation, equipment, numbering, and all other matters relating to ~~an all-terrain vehicle or~~ a snowmobile when the ~~all-terrain vehicle or~~ snowmobile is operated or maintained in this state. However, this chapter does not prevent the adoption of an ordinance or local law relating to the operation ~~of~~ or equipment of ~~all-terrain vehicles or~~ snowmobiles. The ordinances or local laws are operative only so long as they are not inconsistent with this chapter or the rules adopted by the commission.

2. A subdivision of this state, after public notice by publication in a newspaper having a general circulation in the subdivision, may make formal application to the commission for special rules concerning the operation of ~~all-terrain vehicles or~~ snowmobiles within the territorial limits of the subdivision and shall provide the commission with the reasons the special rules are necessary.

3. The commission, upon application by local authorities and in conformity with this chapter, may make special rules concerning the operation of ~~all-terrain vehicles or~~ snowmobiles within the territorial limits of a subdivision of this state.

Sec. 38. Section 321G.29, Code 2003, is amended to read as follows:

321G.29 OWNER'S CERTIFICATE OF TITLE — IN GENERAL.

1. The owner of a snowmobile acquired on or after January 1, 1998, ~~or an all-terrain vehicle acquired on or after January 1, 2000,~~ other than a snowmobile ~~or all-terrain vehicle~~ used exclusively as a farm implement, shall apply to the county recorder of the county in which the owner resides for a certificate of title for the snowmobile ~~or all-terrain vehicle~~. The owner of a snowmobile ~~or all-terrain vehicle~~ used exclusively as a farm implement may obtain a certificate of title. A person who owns a snowmobile ~~or all-terrain vehicle~~ that is not required to have a certificate of title may apply for and receive a certificate of title for the snowmobile ~~or all-terrain vehicle~~ and, subsequently, the snowmobile ~~or all-terrain vehicle~~ shall be subject to the requirements of this chapter as if the snowmobile ~~or all-terrain vehicle~~ were required to be titled. All snowmobiles ~~or all-terrain vehicles~~ that are titled shall be registered.

2. A certificate of title shall contain the information and shall be issued on a form the department prescribes.

3. An owner of a snowmobile ~~or all-terrain vehicle~~ shall apply to the county recorder for issuance of a certificate of title within thirty days after acquisition. The application shall be on forms the department prescribes and accompanied by the required fee. The application shall be signed and sworn to before a notary public or other person who administers oaths, or shall include a certification signed in writing containing substantially the representation that statements made are true and correct to the best of the applicant's knowledge, information, and

belief, under penalty of perjury. The application shall contain the date of sale and gross price of the snowmobile ~~or all-terrain vehicle~~ or the fair market value if no sale immediately preceded the transfer and any additional information the department requires. If the application is made for a snowmobile ~~or all-terrain vehicle~~ last previously registered or titled in another state or foreign country, the application shall contain this information and any other information the department requires.

4. If a dealer buys or acquires a snowmobile ~~or all-terrain vehicle~~ for resale, the dealer shall report the acquisition to the county recorder on forms provided by the department and may apply for and obtain a certificate of title as provided in this chapter. If a dealer buys or acquires a used snowmobile ~~or all-terrain vehicle~~, the dealer may apply for a certificate of title in the dealer's name within thirty days. If a dealer buys or acquires a new snowmobile ~~or all-terrain vehicle~~ for resale, the dealer may apply for a certificate of title in the dealer's name.

5. A manufacturer or dealer shall not transfer ownership of a new snowmobile ~~or new all-terrain vehicle~~ without supplying the transferee with the manufacturer's or importer's certificate of origin signed by the manufacturer's or importer's authorized agent. The certificate shall contain information the department requires. The department may adopt rules providing for the issuance of a certificate of origin for a snowmobile ~~or all-terrain vehicle~~ by the department upon good cause shown by the owner.

6. A dealer transferring ownership of a snowmobile ~~or all-terrain vehicle~~ under this chapter shall assign the title to the new owner, or in the case of a new snowmobile ~~or new all-terrain vehicle~~, assign the certificate of origin. Within fifteen days the dealer shall forward all moneys and applications to the county recorder.

7. The county recorder shall maintain a record of any certificate of title which the county recorder issues and shall keep each certificate of title on record until the certificate of title has been inactive for five years. When issuing a title for a new snowmobile ~~or new all-terrain vehicle~~, the county recorder shall obtain and keep on file the certificate of origin. When issuing a title and registration for a used snowmobile ~~or all-terrain vehicle~~ for which there is no title or registration, the county recorder shall obtain and keep on file the affidavit for the unregistered and untitled snowmobile ~~or all-terrain vehicle~~.

8. Once titled, a person shall not sell or transfer ownership of a snowmobile ~~or all-terrain vehicle~~ without delivering to the purchaser or transferee a certificate of title with an assignment on it showing title in the purchaser or transferee. A person shall not purchase or otherwise acquire a snowmobile ~~or all-terrain vehicle~~ without obtaining a certificate of title for it in that person's name.

9. If the county recorder is not satisfied as to the ownership of the snowmobile or ~~all-terrain vehicle or~~ that there are no undisclosed security interests in the snowmobile ~~or all-terrain vehicle~~, the county recorder may issue a certificate of title for the snowmobile ~~or all-terrain vehicle~~ but, as a condition of such issuance, may require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, and also executed by a person authorized to conduct a surety business in this state. The form and amount of the bond shall be established by rule of the department. The bond shall be conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the snowmobile or ~~all-terrain vehicle or~~ person acquiring any security interest in the snowmobile ~~or all-terrain vehicle~~, and their respective successors in interest, against any expense, loss, or damage, including reasonable attorney fees, by reason of the issuance of the certificate of title of the snowmobile ~~or all-terrain vehicle or~~ on account of any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and to the snowmobile ~~or all-terrain vehicle~~. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall be returned at the end of three years or prior thereto if the snowmobile ~~or all-terrain vehicle~~ is no longer registered in this state and the certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

10. The county recorder shall transmit a copy of the certificate of title to the department, which shall be the central repository of title information for snowmobiles ~~and all-terrain vehicles~~.

Sec. 39. Section 321G.30, subsection 5, Code 2003, is amended to read as follows:

5. Five dollars of the certificate of title fees collected under this section shall be remitted by the county recorder to the treasurer of state for deposit in the special ~~conservation~~ snowmobile fund created under section 321G.7. The remaining five dollars shall be retained by the county and deposited into the general fund of the county.

Sec. 40. Section 321G.31, Code 2003, is amended to read as follows:

321G.31 TRANSFER OR REPOSSESSION ~~OF SNOWMOBILE OR ALL-TERRAIN VEHICLE~~ BY OPERATION OF LAW.

1. If ownership of a snowmobile ~~or all-terrain vehicle~~ is transferred by operation of law, such as by inheritance, order in bankruptcy, insolvency, replevin, or execution sale, the transferee, within thirty days after acquiring the right to possession of the snowmobile ~~or all-terrain vehicle~~, shall mail or deliver to the county recorder satisfactory proof of ownership as the county recorder requires, together with an application for a new certificate of title, and the required fee.

2. If a lienholder repossesses a snowmobile ~~or all-terrain vehicle~~ by operation of law and holds it for resale, the lienholder shall secure a new certificate of title and shall pay the required fee.

Sec. 41. Section 321G.32, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A security interest created in this state in a snowmobile ~~or all-terrain vehicle~~ is not perfected until the security interest is noted on the certificate of title.

Sec. 42. Section 321G.32, subsection 1, paragraph b, Code 2003, is amended to read as follows:

b. The application fee for a security interest is ten dollars. Five dollars of the fee shall be credited to the special ~~conservation~~ snowmobile fund created under section 321G.7. The remaining five dollars shall be retained by the county and deposited into the general fund of the county.

Sec. 43. Section 321G.33, Code Supplement 2003, is amended to read as follows:

321G.33 VEHICLE IDENTIFICATION NUMBER.

1. The department may assign a distinguishing number to ~~an all-terrain vehicle or~~ a snowmobile when the serial number on the ~~all-terrain vehicle or~~ snowmobile is destroyed or obliterated and issue to the owner a special plate bearing the distinguishing number which shall be affixed to the ~~all-terrain vehicle or~~ snowmobile in a position to be determined by the department. The ~~all-terrain vehicle or~~ snowmobile shall be registered and titled under the distinguishing number in lieu of the former serial number. Every ~~all-terrain vehicle or~~ snowmobile shall have a vehicle identification number assigned and affixed as required by the department.

2. The commission shall adopt, by rule, the procedures for application and for issuance of a vehicle identification number for homebuilt ~~all-terrain vehicles or~~ snowmobiles.

3. A person shall not destroy, remove, alter, cover, or deface the manufacturer's vehicle identification number, the plate bearing it, or any vehicle identification number the department assigns to ~~an all-terrain vehicle or~~ a snowmobile without the department's permission.

4. A person other than a manufacturer who constructs or rebuilds ~~an all-terrain vehicle or~~ a snowmobile for which there is no legible vehicle identification number shall submit to the department an affidavit which describes the ~~all-terrain vehicle or~~ snowmobile. In cooperation with the county recorder, the department shall assign a vehicle identification number to the

~~all-terrain vehicle or~~ snowmobile. The applicant shall permanently affix the vehicle identification number to the ~~all-terrain vehicle or~~ snowmobile in a manner that such alteration, removal, or replacement of the vehicle identification number would be obvious.

Sec. 44. NEW SECTION. 321I.1 DEFINITIONS.

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

1. "All-terrain vehicle" means a motorized flotation-tire vehicle with not less than three low-pressure tires, but not more than six low-pressure tires, or a two-wheeled off-road motorcycle, that is limited in engine displacement to less than eight hundred cubic centimeters and in total dry weight to less than eight hundred fifty pounds and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control.

Two-wheeled off-road motorcycles shall be considered all-terrain vehicles for the purpose of registration. Two-wheeled off-road motorcycles shall also be considered all-terrain vehicles for the purpose of titling if a title has not previously been issued pursuant to chapter 321. An operator of a two-wheeled off-road motorcycle is exempt from the safety instruction and certification program requirements of sections 321I.24 and 321I.25.

2. ""A" scale" means the physical scale marked "A" graduated in decibels on a sound level meter which meets the requirements of the American national standards institute, incorporated, publication S1.4-1961, general purpose sound level meters.

3. "Commission" means the natural resource commission of the department.

4. "Dealer" means a person engaged in the business of buying, selling, or exchanging all-terrain vehicles required to be registered under this chapter and who has an established place of business for that purpose in this state.

5. "Department" means the department of natural resources.

6. "Established place of business" means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the books and records are kept and the dealer's or manufacturer's business is primarily transacted.

7. "Manufacturer" means a person engaged in the business of constructing or assembling all-terrain vehicles required to be registered under this chapter and who has an established place of business for that purpose in this state.

8. "Nonambulatory person" means an individual with paralysis of the lower half of the body with the involvement of both legs, usually caused by disease of or injury to the spinal cord, or caused by the loss of both legs or the loss of a part of both legs.

9. "Nonresident" means a person who is not a resident of this state.

10. "Operate" means to ride in or on, other than as a passenger, use, or control the operation of an all-terrain vehicle in any manner, whether or not the all-terrain vehicle is moving.

11. "Operator" means a person who operates or is in actual physical control of an all-terrain vehicle.

12. "Owner" means a person, other than a lienholder, having the property right in or title to an all-terrain vehicle. The term includes a person entitled to the use or possession of an all-terrain vehicle subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

13. "Person" means an individual, partnership, firm, corporation, association, and the state, its agencies, and political subdivisions.

14. "Public land" means land owned by the federal government, the state, or political subdivisions of the state and land acquired or developed for public recreation pursuant to section 321I.8.

15. "Railroad right-of-way" means the full width of property owned, leased, or subject to easement for railroad purposes and is not limited to those areas on which tracks are located.

16. "Resident" means a person who meets the requirements for residency described in section 321.1A.

17. "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

18. "Safety certificate" means an all-terrain vehicle safety certificate, approved by the commission, issued to a qualified applicant who is twelve years of age or older.

19. "Snowmobile" means the same as defined in section 321G.1.

20. "Special event" means an organized race, exhibition, or demonstration of limited duration which is conducted on public land or ice under the jurisdiction of the commission according to a prearranged schedule and in which general public interest is manifested.

21. "Street" or "highway" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular travel, except in public areas in which the boundary shall be thirty-three feet each side of the center line of the roadway.

Sec. 45. NEW SECTION. 321I.2 RULES.

The commission may adopt rules for the following purposes:

1. Registration and titling of all-terrain vehicles.

2. Use of all-terrain vehicles as far as game and fish resources or habitats are affected.

3. Use of all-terrain vehicles on public lands under the jurisdiction of the commission.

4. Use of all-terrain vehicles on any waters of the state under the jurisdiction of the commission, while the waters are frozen.

5. Establishment of a program of grants, subgrants, and contracts to be administered by the department for the development and delivery of certified courses of instruction for the safe use and operation of all-terrain vehicles by political subdivisions and incorporated private organizations.

6. Issuance of safety certificates.

7. Issuance of competition registrations and the participation of all-terrain vehicles so registered in special events.

8. Issuance of annual user permits for nonresidents and establishment of administrative fees for the issuance of the permits.

The director of transportation may adopt rules not inconsistent with this chapter regulating the use of all-terrain vehicles on streets and highways. Cities may designate streets under the jurisdiction of cities within their respective corporate limits which may be used for the sport of driving all-terrain vehicles.

In adopting the rules, consideration shall be given to the need to protect the environment and the public health, safety, and welfare; to protect private property, public parks, and other public lands; to protect wildlife and wildlife habitat; and to promote uniformity of rules relating to the use, operation, and equipment of all-terrain vehicles. The rules shall be in conformance with chapter 17A.

Sec. 46. NEW SECTION. 321I.3 REGISTRATION AND NUMBERING REQUIRED.

1. Each all-terrain vehicle used on public land or ice of this state shall be currently registered and numbered. A person shall not operate, maintain, or give permission for the operation or maintenance of an all-terrain vehicle on public land or ice unless the all-terrain vehicle is numbered in accordance with this chapter or applicable federal laws, or unless the all-terrain vehicle displays a current annual user permit for the all-terrain vehicle. If the all-terrain vehicle is required to be registered in this state, the identifying number set forth in the registration shall be displayed as prescribed by rules of the commission.

2. A registration number shall be assigned, without payment of fee, to all-terrain vehicles owned by the state of Iowa or its political subdivisions upon application for the number, and the assigned registration number shall be displayed on the all-terrain vehicle as required under section 321I.6. A registration number and certificate shall be assigned, without payment of fee, to an all-terrain vehicle which is exempt from registration but is being titled. A decal displaying an audit number shall not be issued and the registration shall not expire while the all-terrain vehicle is exempt. The application for registration shall indicate the reason for exemption from the fee. The registration certificate shall indicate the reason for exemption.

Sec. 47. NEW SECTION. 321I.4 REGISTRATION WITH COUNTY RECORDER — FEE.

The owner of each all-terrain vehicle required to be numbered shall register it annually with the county recorder of the county in which the owner resides or, if the owner is a nonresident, the owner shall register it in the county in which the all-terrain vehicle is principally used. The commission has supervisory responsibility over the registration of all-terrain vehicles and shall provide each county recorder with registration forms and certificates and shall allocate registration numbers to each county.

The owner of the all-terrain vehicle shall file an application for registration with the appropriate county recorder on forms provided by the commission. The application shall be completed and signed by the owner of the all-terrain vehicle and shall be accompanied by a fee of fifteen dollars and a writing fee. An all-terrain vehicle shall not be registered by the county recorder until the county recorder is presented with receipts, bills of sale, or other satisfactory evidence that the sales or use tax has been paid for the purchase of the all-terrain vehicle or that the owner is exempt from paying the tax. An all-terrain vehicle that has an expired registration certificate from another state may be registered in this state upon proper application, payment of all applicable registration and writing fees, and payment of a penalty of five dollars.

Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall enter it upon the records and shall issue to the applicant a registration certificate. The certificate shall be executed in triplicate, one copy to be delivered to the owner, one copy to the commission, and one copy to be retained on file by the county recorder. The registration certificate shall bear the number awarded to the all-terrain vehicle and the name and address of the owner. The registration certificate shall be carried either in the all-terrain vehicle or on the person of the operator of the all-terrain vehicle when in use. The operator of an all-terrain vehicle shall exhibit the registration certificate to a peace officer upon request, to a person injured in an accident involving an all-terrain vehicle, to the owner or operator of another all-terrain vehicle or the owner of personal or real property when the all-terrain vehicle is involved in a collision or accident of any nature with another all-terrain vehicle or the property of another person, or to the property owner or tenant when the all-terrain vehicle is being operated on private property without permission from the property owner or tenant.

If an all-terrain vehicle is placed in storage, the owner shall return the current registration certificate to the county recorder with an affidavit stating that the all-terrain vehicle is placed in storage and the effective date of storage. The county recorder shall notify the commission of each all-terrain vehicle placed in storage. When the owner of a stored all-terrain vehicle desires to renew the registration, the owner shall make application to the county recorder and pay the registration and writing fees without penalty. A refund of the registration fee shall not be allowed for a stored all-terrain vehicle.

Sec. 48. NEW SECTION. 321I.5 NONRESIDENT USER PERMITS.

A nonresident wishing to operate an all-terrain vehicle, other than an all-terrain vehicle owned by a resident and registered pursuant to this chapter, on public land or ice of this state shall first obtain a user permit from the department. A user permit shall be issued for the all-terrain vehicle specified at the time of application and is not transferable. A user permit shall be valid for the calendar year specified in the permit.

User permits may be issued by a county recorder or a license depositary pursuant to rules adopted by the commission. The fee for a user permit shall be fifteen dollars plus an administrative fee established by the commission. A county recorder shall retain a writing fee of one dollar from the sale of each user permit issued by the county recorder's office. The writing fees retained by the county recorder shall be deposited in the general fund of the county. A license depositary designated by the director pursuant to section 483A.11 shall retain a writing fee of one dollar from the sale of each permit issued by the agent.

Sec. 49. NEW SECTION. 321I.6 DISPLAY OF IDENTIFICATION NUMBERS.

The owner shall display the identification number on an all-terrain vehicle in the manner prescribed by rules of the commission.

Sec. 50. NEW SECTION. 321I.7 REGISTRATION — RENEWAL — TRANSFER.

1. a. Every all-terrain vehicle registration certificate and number issued expires at midnight December 31 unless sooner terminated or discontinued in accordance with this chapter. After the first day of September each year, an unregistered all-terrain vehicle may be registered or a registration may be renewed for the subsequent year beginning January 1.

b. After the first day of September an unregistered all-terrain vehicle may be registered for the remainder of the current registration year and for the subsequent registration year in one transaction. The fee shall be five dollars for the remainder of the current year, in addition to the registration fee of fifteen dollars for the subsequent year beginning January 1, and a writing fee. Registration certificates and numbers may be renewed upon application of the owner in the same manner as provided in securing the original registration. The all-terrain vehicle registration fee is in lieu of personal property tax for each year of the registration.

2. An expired all-terrain vehicle registration may be renewed for the same fee as if the owner is securing the original registration plus a penalty of five dollars and a writing fee.

3. When a person, after registering an all-terrain vehicle, moves from the address shown on the registration certificate, the person shall, within thirty days, notify the county recorder in writing of the move and the person's new address.

4. Upon the transfer of ownership of an all-terrain vehicle, the owner shall complete the form on the back of the title, if any, and registration, if any, and deliver both to the purchaser or transferee when the all-terrain vehicle is delivered. If the all-terrain vehicle is not titled, the owner shall complete the form on the back of the current registration certificate and shall deliver the certificate to the purchaser or transferee at the time of delivering the all-terrain vehicle. If the all-terrain vehicle has not been titled and has not been registered, the owner shall deliver an affidavit for an unregistered and untitled all-terrain vehicle to the purchaser or transferee. The purchaser or transferee shall, within thirty days of transfer, file a new application form with the county recorder with a fee of one dollar and the writing fee, and a transfer of number shall be awarded in the same manner as provided in an original registration. If the purchaser or transferee does not file a new application form within thirty days of transfer, the transfer of number shall be awarded upon payment of all applicable fees plus a penalty of five dollars.

All registrations must be valid for the current registration period prior to the transfer of any registration, including assignment to a dealer.

5. Duplicate registrations may be issued upon application to the county recorder and the payment of the same fees collected for the transfer of registrations.

6. A motorcycle, as defined in section 321.1, subsection 40, paragraph "a", may be registered as an all-terrain vehicle as provided in this section. A motorcycle registered as an all-terrain vehicle may participate in all programs established for all-terrain vehicles under this chapter except for the safety instruction and certification program.

Sec. 51. NEW SECTION. 321I.8 FEES REMITTED TO COMMISSION — APPROPRIATION.

Within ten days after the end of each month, a county recorder shall remit to the commission the all-terrain vehicle fees collected by the recorder during the previous month. Before January 10 of each year, a recorder shall remit to the commission unused license forms from the previous year.

The department shall remit the fees, including user fees collected pursuant to section 321I.5, to the treasurer of state, who shall place the money in a special all-terrain vehicle fund. The money is appropriated to the department for the all-terrain vehicle programs of the state. The programs shall include grants, subgrants, contracts, or cost-sharing of all-terrain vehicle programs with political subdivisions or incorporated private organizations or both in accordance with rules adopted by the commission. All-terrain vehicle fees may be used for the establishment, maintenance, and operation of all-terrain vehicle recreational riding areas through the awarding of grants administered by the department. All-terrain vehicle recreational riding areas established, maintained, or operated by the use of such grants shall not be operated for

profit. All programs using cost-sharing, grants, subgrants, or contracts shall establish and implement a safety instruction program either singly or in cooperation with other all-terrain vehicle programs. All-terrain vehicle fees may be used to support all-terrain vehicle programs on a usage basis. At least fifty percent of the special fund shall be available for political subdivisions or incorporated private organizations or both. Moneys from the special fund not used by the political subdivisions or incorporated private organizations or both shall remain in the fund and may be used by the department for the administration of the all-terrain vehicle programs. Notwithstanding section 8.33, moneys in the special fund shall not revert to the general fund of the state at the end of a fiscal year. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the special fund shall remain in the fund.

Sec. 52. NEW SECTION. 321I.9 EXEMPT VEHICLES.

Registration shall not be required for the following described all-terrain vehicles:

1. All-terrain vehicles owned and used by the United States, another state, or a political subdivision of another state.

2. All-terrain vehicles registered in a country other than the United States used within this state for not more than twenty consecutive days.

3. All-terrain vehicles covered by a valid license of another state and which have not been within this state for more than twenty consecutive days.

4. All-terrain vehicles not registered or licensed in another state or country being used in this state while engaged in a special event and not remaining in the state for a period of more than ten days.

5. All-terrain vehicles used in accordance with section 321.234A, subsection 1, paragraph "a".

6. All-terrain vehicles used exclusively as farm implements.

Sec. 53. NEW SECTION. 321I.10 OPERATION ON ROADWAYS AND HIGHWAYS — SNOWMOBILE TRAILS.

1. A person shall not operate an all-terrain vehicle upon roadways or highways except as provided in section 321.234A and this section.

2. A registered all-terrain vehicle may be operated on the roadways of that portion of county highways designated by the county board of supervisors for such use during a specified period. The county board of supervisors shall evaluate the traffic conditions on all county highways and designate roadways on which all-terrain vehicles may be operated for the specified period without unduly interfering with or constituting an undue hazard to conventional motor vehicle traffic. Signs warning of the operation of all-terrain vehicles on the roadway shall be placed and maintained on the portions of highway thus designated during the period specified for the operation.

[1]3. All-terrain vehicles shall not be operated on snowmobile trails except where designated by the controlling authority and the primary snowmobile trail sponsor.

Sec. 54. NEW SECTION. 321I.11 ACCIDENT REPORTS.

If an all-terrain vehicle is involved in an accident resulting in injury or death to anyone or property damage amounting to one thousand dollars or more, either the operator or someone acting for the operator shall immediately notify the county sheriff or another law enforcement agency in the state. If the accident occurred on public land or ice under the jurisdiction of the commission, the operator shall file with the commission a report of the accident, within seventy-two hours, containing information as the commission may require. All other accidents shall be reported as required in section 321.266.

Sec. 55. NEW SECTION. 321I.12 MUFFLERS REQUIRED — INSPECTIONS.

1. An all-terrain vehicle shall not be operated without suitable and effective muffling devices which limit engine noise to not more than eighty-six decibels as measured on the "A" scale at a distance of fifty feet.

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[1] See chapter 1175, §371 herein

2. The commission may adopt rules with respect to the inspection of all-terrain vehicles and testing of their mufflers.

Sec. 56. NEW SECTION. 321I.13 HEADLAMP — TAIL LAMP — BRAKES.

Every all-terrain vehicle operated during the hours of darkness shall display a lighted headlamp and tail lamp. Every all-terrain vehicle shall be equipped with brakes.

Sec. 57. NEW SECTION. 321I.14 UNLAWFUL OPERATION.

1. A person shall not drive or operate an all-terrain vehicle:

a. At a rate of speed greater than reasonable or proper under all existing circumstances.

b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto.

c. While under the influence of intoxicating liquor or narcotics or habit-forming drugs.

d. Without a lighted headlight and taillight from sunset to sunrise and at such other times when conditions provide insufficient lighting to render clearly discernible persons and vehicles at a distance of five hundred feet ahead.

e. In any tree nursery or planting in a manner which damages or destroys growing stock.

f. On any public land, ice, or snow, in violation of official signs of the commission prohibiting such operation in the interest of safety for persons, property, or the environment. Any officer appointed by the commission may post an official sign in an emergency for the protection of persons, property, or the environment.

g. In or on any park or fish and game areas except on designated all-terrain vehicle trails.

h. Upon an operating railroad right-of-way. An all-terrain vehicle may be driven directly across a railroad right-of-way only at an established crossing and, notwithstanding any other provisions of law, may, if necessary, use the improved portion of the established crossing after yielding to all oncoming traffic. This paragraph does not apply to a law enforcement officer or railroad employee in the lawful discharge of the officer's or employee's duties or to an employee of a utility with authority to enter upon the railroad right-of-way in the lawful performance of the employee's duties.

2. A person shall not operate or ride an all-terrain vehicle with a firearm in the person's possession unless it is unloaded and enclosed in a carrying case. However, a nonambulatory person may carry an uncased and unloaded firearm while operating or riding an all-terrain vehicle.

3. A person shall not operate an all-terrain vehicle with more persons on the vehicle than it was designed to carry.

Sec. 58. NEW SECTION. 321I.15 PENALTY.

A person who violates this chapter or a rule of the commission or director of transportation is guilty of a simple misdemeanor.

Chapter 232 shall have no application in the prosecution of offenses which are committed in violation of this chapter, and which constitute simple misdemeanors.

Sec. 59. NEW SECTION. 321I.16 OPERATION PENDING REGISTRATION.

The commission shall furnish 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 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 may operate it for ten days immediately following the purchase, without having completed a transfer of registration. An all-terrain vehicle dealer shall make application and pay all registration and title fees if applicable on behalf of the purchaser of an all-terrain vehicle.

Sec. 60. NEW SECTION. 321I.17 SPECIAL EVENTS.

The department may authorize the holding of organized special events as defined in this chapter within this state. The department shall adopt rules relating to the conduct of special

events held under department permits and designating the equipment and facilities necessary for safe operation of all-terrain vehicles or for the safety of operators, participants, and observers in the special events. A special event for all-terrain vehicles may include motorcycles upon payment of an entrance fee set by the organizer of the special event. The department may require that part of the motorcycle entrance fee be credited to pay costs of all-terrain vehicle programs authorized pursuant to section 321I.8. At least thirty days before the scheduled date of a special event in this state, an application shall be filed with the department for authorization to conduct the special event. The application shall set forth the date, time, and location of the proposed special event and any other information the department requires. The special event shall not be conducted without written authorization of the department. Copies of the rules shall be furnished by the department to any person making an application.

Sec. 61. NEW SECTION. 321I.18 VIOLATION OF STOP SIGNAL.

A person, after having received a visual or audible signal from a peace officer to come to a stop, shall not operate an all-terrain vehicle in willful or wanton disregard of the signal or interfere with or endanger the officer or any other person or vehicle, or increase speed or attempt to flee or elude the officer.

Sec. 62. NEW SECTION. 321I.19 NEGLIGENCE.

The owner and operator of an all-terrain vehicle are liable for any injury or damage occasioned by the negligent operation of the all-terrain vehicle. The owner of an all-terrain vehicle shall be liable for any such injury or damage only if the owner was the operator of the all-terrain vehicle at the time the injury or damage occurred or if the operator had the owner's consent to operate the all-terrain vehicle at the time the injury or damage occurred.

Sec. 63. NEW SECTION. 321I.20 RENTED ALL-TERRAIN VEHICLES.

1. The owner of a rented all-terrain vehicle shall keep a record of the name and address of each person renting the all-terrain vehicle, its registration number, the departure date and time, and the expected time of return. The records shall be preserved for six months.

2. The owner of an all-terrain vehicle operated for hire shall not permit the use or operation of a rented all-terrain vehicle unless it has been provided with all equipment required by this chapter or rules of the commission or the director of transportation, properly installed and in good working order.

Sec. 64. NEW SECTION. 321I.21 MINORS UNDER TWELVE.

A person under twelve years of age shall not operate an all-terrain vehicle on public lands unless the person is taking a prescribed safety training course under the direct supervision of a certified all-terrain vehicle safety instructor and a parent or guardian.

Sec. 65. NEW SECTION. 321I.22 MANUFACTURER, DISTRIBUTOR, OR DEALER — SPECIAL REGISTRATION.

1. A manufacturer, distributor, or dealer owning an all-terrain vehicle required to be registered under this chapter may operate the all-terrain vehicle for purposes of transporting, testing, demonstrating, or selling it without the all-terrain vehicle being registered, except that a special identification number issued to the owner as provided in this chapter shall be displayed on the all-terrain vehicle. The special identification number shall not be used on an all-terrain vehicle offered for hire or for any work or service performed by a manufacturer, distributor, or dealer.

2. Any manufacturer, distributor, or dealer may, upon payment of a fee of fifteen dollars, make application to the commission, upon forms prescribed by the commission, for a special registration certificate containing a general identification number and for one or more duplicate special registration certificates. The applicant shall submit reasonable proof of the applicant's status as a bona fide manufacturer, distributor, or dealer as may be required by the commission.

3. The commission, upon granting an application, shall issue to the applicant a special registration certificate containing the applicant's name and address, the general identification number assigned to the applicant, the word "manufacturer", "dealer", or "distributor", and other information the commission prescribes. The manufacturer, distributor, or dealer shall have the assigned number printed upon or attached to a removable sign or signs which may be temporarily but firmly mounted or attached to the all-terrain vehicle being used. The display shall meet the requirements of this chapter and the rules of the commission.

4. The commission shall also issue duplicate special registration certificates which shall have displayed thereon the general identification number assigned to the applicant. Each duplicate registration certificate so issued shall contain a number or symbol identifying it from every other duplicate special registration certificate bearing the same general identification number. The fee for each additional duplicate special registration certificate shall be two dollars.

5. Each special registration certificate issued hereunder shall expire on December 31 of each year, and a new special registration certificate for the ensuing twelve months may be obtained upon application to the commission and payment of the fee provided by law.

6. Every manufacturer, distributor, or dealer shall keep a written record of the all-terrain vehicles upon which special registration certificates are used, which record shall be open to inspection by any law enforcement officer or any officer or employee of the commission.

7. If a manufacturer, distributor, or dealer has an established place of business in more than one location, the manufacturer, distributor, or dealer shall secure a separate and distinct special registration certificate and general identification number for each place of business.

8. Dealers using special certificates under this chapter shall, before January 10 of each year, furnish the commission with a list of all used all-terrain vehicles held by them for sale or trade, and upon which the registration fee for the current year has not been paid, giving the previous registration number, name of previous owner at the time the all-terrain vehicle was transferred to the dealer, and other information the commission requires.

9. If the purchaser or transferee of an all-terrain vehicle is a dealer who holds the same for resale and operates the all-terrain vehicle only for purposes incidental to a resale and displays the special dealer's certificate, or does not operate the all-terrain vehicle or permit it to be operated, the transferee is not required to obtain a new registration certificate but upon transferring title or interest to another person shall sign the reverse side of the title, if any, and the registration certificate of the all-terrain vehicle indicating the name and address of the new purchaser. A dealer shall make application and pay all registration and title fees if applicable on behalf of the purchaser of an all-terrain vehicle. The recorder shall award a transfer of the registration number. If the registration has expired while in the dealer's possession, the purchaser may renew the registration for the same fee and writing fee as if the purchaser is securing the original registration.

10. When a dealer purchases or otherwise acquires an all-terrain vehicle registered in this state, the dealer shall issue a signed receipt to the previous owner, indicating the date of purchase or acquisition, the name and address of the previous owner, and the registration number of the all-terrain vehicle purchased or acquired. The original receipt shall be delivered to the previous owner and one copy shall be mailed or delivered by the dealer to the county recorder of the county in which the all-terrain vehicle is registered, and one copy shall be delivered to the commission within forty-eight hours.

11. Nothing in this section shall prohibit a dealer from obtaining a new registration and transfer of registration in the same manner as other purchasers.

Sec. 66. NEW SECTION. 321I.23 LIMITATION OF LIABILITY BY PUBLIC BODIES AND ADJOINING OWNERS.

The state, its political subdivisions, and the owners or tenants of property adjoining public lands or the right-of-way of a public highway and their agents and employees owe no duty of care to keep the public lands, ditches, or land contiguous to a highway or roadway under the control of the state or a political subdivision safe for entry or use by persons operating an

all-terrain vehicle, or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for such purposes, except in the case of willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. The state, its political subdivisions, and the owners or tenants of property adjoining public lands or the right-of-way of a public highway and their agents and employees are not liable for actions taken to allow or facilitate the use of public lands, ditches, or land contiguous to a highway or roadway except in the case of a willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

This section does not create a duty of care or ground of liability on behalf of the state, its political subdivisions, or the owners or tenants of property adjoining public lands or the right-of-way of a public highway and their agents and employees for injury to persons or property in the operation of all-terrain vehicles in a ditch or on land contiguous to a highway or roadway under the control of the state or a political subdivision. The state, its political subdivisions, and the owners or tenants of property adjoining public lands or the right-of-way of a public highway and their agents and employees are not liable for the operation of an all-terrain vehicle in violation of this chapter.

Sec. 67. NEW SECTION. 321I.23A RECREATIONAL RIDING AREA — LIMITATION OF LIABILITY OF PRIOR LANDOWNERS.

Prior owners of land on which an all-terrain vehicle recreational riding area is established, maintained, or operated owe no duty of care to keep the land safe for entry or use by persons operating an all-terrain vehicle or to give any warning of a dangerous condition, use, structure, or activity on such premises that would make the land unsafe for all-terrain vehicle usage.

Sec. 68. NEW SECTION. 321I.24 COURSE OF INSTRUCTION.

1. The commission shall provide, by rules adopted pursuant to section 321I.2, for the establishment of certified courses of instruction to be conducted throughout the state for the safe use and operation of all-terrain vehicles. The curriculum shall include instruction in the lawful and safe use, operation, and equipping of all-terrain vehicles consistent with this chapter and rules adopted by the commission and the director of transportation and other matters the commission deems pertinent for a qualified all-terrain vehicle operator.

2. The commission may certify any experienced, qualified operator to be an instructor of a class established under subsection 1. Each instructor shall be at least eighteen years of age.

3. Upon completion of the course of instruction, the commission shall provide for the administration of a written test to any student who wishes to qualify for a safety certificate.

4. The commission shall provide safety material relating to the operation of all-terrain vehicles for the use of nonpublic or public elementary and secondary schools in this state.

Sec. 69. NEW SECTION. 321I.25 SAFETY CERTIFICATE — FEE.

1. A person under eighteen years of age shall not operate an all-terrain vehicle on public land or ice or land purchased with all-terrain vehicle registration funds in this state without obtaining a valid safety certificate issued by the department and having the certificate in the person's possession.

2. Upon application and payment of a fee of five dollars, a qualified applicant shall be issued a safety certificate which is valid until the certificate is suspended or revoked for a violation of a provision of this chapter or a rule of the commission or the director of transportation. The application shall be made on forms issued by the commission and shall contain information as the commission may reasonably require.

3. Any person who is required to have a safety certificate under this chapter and who has completed a course of instruction established under section 321I.2, subsection 5, including the successful passage of an examination which includes a written test relating to such course of instruction, shall be considered qualified to apply for a safety certificate. The commission may waive the requirement of completing such course of instruction if such person successfully passes a written test based on such course of instruction.

4. The permit fees collected under this section shall be credited to the special all-terrain vehicle fund and shall be used for safety and educational programs.

5. A valid all-terrain vehicle safety certificate or license issued to a nonresident by a governmental authority of another state shall be considered a valid certificate or license in this state if the permit or license requirements of the governmental authority, excluding fees, are substantially the same as the requirements of this chapter as determined by the commission.

Sec. 70. NEW SECTION. 321I.26 STOPPING AND INSPECTING — WARNINGS.

A peace officer may stop and inspect an all-terrain vehicle operated, parked, or stored on public streets, highways, public lands, or frozen waters of the state to determine if the all-terrain vehicle is registered, numbered, or equipped as required by this chapter and commission rules. The officer shall not inspect an area that is not essential to determine compliance with the requirements. If the officer determines that the all-terrain vehicle is not in compliance, the officer may issue a warning memorandum to the operator and forward a copy to the commission. The warning memorandum shall indicate the items found not in compliance and shall direct the owner or operator of the all-terrain vehicle to have the all-terrain vehicle in compliance and return a copy of the warning memorandum with the proof of compliance to the commission within fourteen days. If the proof of compliance is not provided within fourteen days, the owner or operator is in violation of this chapter.

Sec. 71. NEW SECTION. 321I.27 TERMINATION OF USE.

A person who receives a warning memorandum for an all-terrain vehicle shall stop using the all-terrain vehicle as soon as possible and shall not operate it on public streets, highways, public lands, or frozen waters of the state until the all-terrain vehicle is in compliance.

Sec. 72. NEW SECTION. 321I.28 WRITING FEES.

The county recorder shall collect a writing fee of one dollar and twenty-five cents for an all-terrain vehicle registration.

Sec. 73. NEW SECTION. 321I.29 CONSISTENT LOCAL LAWS — SPECIAL LOCAL RULES.

1. This chapter and other applicable laws of this state shall govern the operation, equipment, numbering, and all other matters relating to an all-terrain vehicle when the all-terrain vehicle is operated or maintained in this state. However, this chapter does not prevent the adoption of an ordinance or local law relating to the operation or equipment of all-terrain vehicles. The ordinances or local laws are operative only so long as they are not inconsistent with this chapter or the rules adopted by the commission.

2. A subdivision of this state, after public notice by publication in a newspaper having a general circulation in the subdivision, may make formal application to the commission for special rules concerning the operation of all-terrain vehicles within the territorial limits of the subdivision and shall provide the commission with the reasons the special rules are necessary.

3. The commission, upon application by local authorities and in conformity with this chapter, may make special rules concerning the operation of all-terrain vehicles within the territorial limits of a subdivision of this state.

Sec. 74. NEW SECTION. 321I.30 OWNER'S CERTIFICATE OF TITLE — IN GENERAL.

1. The owner of an all-terrain vehicle acquired on or after January 1, 2000, other than an all-terrain vehicle used exclusively as a farm implement or a motorcycle previously issued a title pursuant to chapter 321, shall apply to the county recorder of the county in which the owner resides for a certificate of title for the all-terrain vehicle. The owner of an all-terrain vehicle used exclusively as a farm implement may obtain a certificate of title. A person who owns an all-terrain vehicle that is not required to have a certificate of title may apply for and receive a certificate of title for the all-terrain vehicle and, subsequently, the all-terrain vehicle shall be

subject to the requirements of this chapter as if the all-terrain vehicle were required to be titled. All all-terrain vehicles that are titled shall be registered.

2. A certificate of title shall contain the information and shall be issued on a form the department prescribes.

3. An owner of an all-terrain vehicle shall apply to the county recorder for issuance of a certificate of title within thirty days after acquisition. The application shall be on forms the department prescribes and accompanied by the required fee. The application shall be signed and sworn to before a notary public or other person who administers oaths, or shall include a certification signed in writing containing substantially the representation that statements made are true and correct to the best of the applicant's knowledge, information, and belief, under penalty of perjury. The application shall contain the date of sale and gross price of the all-terrain vehicle or the fair market value if no sale immediately preceded the transfer and any additional information the department requires. If the application is made for an all-terrain vehicle last previously registered or titled in another state or foreign country, the application shall contain this information and any other information the department requires.

4. If a dealer buys or acquires an all-terrain vehicle for resale, the dealer shall report the acquisition to the county recorder on forms provided by the department and may apply for and obtain a certificate of title as provided in this chapter. If a dealer buys or acquires a used all-terrain vehicle, the dealer may apply for a certificate of title in the dealer's name within thirty days. If a dealer buys or acquires a new all-terrain vehicle for resale, the dealer may apply for a certificate of title in the dealer's name.

5. A manufacturer or dealer shall not transfer ownership of a new all-terrain vehicle without supplying the transferee with the manufacturer's or importer's certificate of origin signed by the manufacturer's or importer's authorized agent. The certificate shall contain information the department requires. The department may adopt rules providing for the issuance of a certificate of origin for an all-terrain vehicle by the department upon good cause shown by the owner.

6. A dealer transferring ownership of an all-terrain vehicle under this chapter shall assign the title to the new owner, or in the case of a new all-terrain vehicle, assign the certificate of origin. Within fifteen days the dealer shall forward all moneys and applications to the county recorder.

7. The county recorder shall maintain a record of any certificate of title which the county recorder issues and shall keep each certificate of title on record until the certificate of title has been inactive for five years. When issuing a title for a new all-terrain vehicle, the county recorder shall obtain and keep on file the certificate of origin. When issuing a title and registration for a used all-terrain vehicle for which there is no title or registration, the county recorder shall obtain and keep on file the affidavit for the unregistered and untitled all-terrain vehicle.

8. Once titled, a person shall not sell or transfer ownership of an all-terrain vehicle without delivering to the purchaser or transferee a certificate of title with an assignment on it showing title in the purchaser or transferee. A person shall not purchase or otherwise acquire an all-terrain vehicle without obtaining a certificate of title for it in that person's name.

9. If the county recorder is not satisfied as to the ownership of the all-terrain vehicle or that there are no undisclosed security interests in the all-terrain vehicle, the county recorder may issue a certificate of title for the all-terrain vehicle but, as a condition of such issuance, may require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, and also executed by a person authorized to conduct a surety business in this state. The form and amount of the bond shall be established by rule of the department. The bond shall be conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the all-terrain vehicle or person acquiring any security interest in the all-terrain vehicle, and their respective successors in interest, against any expense, loss, or damage, including reasonable attorney fees, by reason of the issuance of the certificate of title of the all-terrain vehicle or on account of any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and to the all-terrain vehicle. Any such interested person has a right of action to recover on the bond for any breach of its

conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall be returned at the end of three years or prior thereto if the all-terrain vehicle is no longer registered in this state and the certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

10. The county recorder shall transmit a copy of the certificate of title to the department, which shall be the central repository of title information for all-terrain vehicles.

11. A motorcycle that has been issued a certificate of title pursuant to this section may be issued a title pursuant to chapter 321 upon proper application and surrender of the existing title. Upon issuance of a title pursuant to chapter 321, the certificate of title previously issued pursuant to this section shall be returned to the issuing county recorder.

Sec. 75. NEW SECTION. 321I.31 FEES — DUPLICATES.

1. The county recorder shall charge a ten dollar fee to issue a certificate of title, a transfer of title, a duplicate, or a corrected certificate of title.

2. If a certificate of title is lost, stolen, mutilated, destroyed, or becomes illegible, the first lienholder or, if there is none, the owner named in the certificate, as shown by the county recorder's records, shall within thirty days obtain a duplicate by applying to the county recorder. The applicant shall furnish information the department requires concerning the original certificate and the circumstances of its loss, mutilation, or destruction. Mutilated or illegible certificates shall be returned to the department with the application for a duplicate.

3. The duplicate certificate of title shall be marked plainly "duplicate" across its face and mailed or delivered to the applicant.

4. If a lost or stolen original certificate of title for which a duplicate has been issued is recovered, the original shall be surrendered promptly to the department for cancellation.

5. Five dollars of the certificate of title fees collected under this section shall be remitted by the county recorder to the treasurer of state for deposit in the special all-terrain vehicle fund created under section 321I.8. The remaining five dollars shall be retained by the county and deposited into the general fund of the county.

Sec. 76. NEW SECTION. 321I.32 TRANSFER OR REPOSSESSION BY OPERATION OF LAW.

1. If ownership of an all-terrain vehicle is transferred by operation of law, such as by inheritance, order in bankruptcy, insolvency, replevin, or execution sale, the transferee, within thirty days after acquiring the right to possession of the all-terrain vehicle, shall mail or deliver to the county recorder satisfactory proof of ownership as the county recorder requires, together with an application for a new certificate of title, and the required fee.

2. If a lienholder repossesses an all-terrain vehicle by operation of law and holds it for resale, the lienholder shall secure a new certificate of title and shall pay the required fee.

Sec. 77. NEW SECTION. 321I.33 SECURITY INTEREST — PERFECTION AND TITLES — FEE.

1. A security interest created in this state in an all-terrain vehicle is not perfected until the security interest is noted on the certificate of title.

a. To perfect the security interest, an application for security interest must be presented along with the original title. The county recorder shall note the security interest on the face of the title and on the copy in the recorder's office.

b. The application fee for a security interest is ten dollars. Five dollars of the fee shall be credited to the special all-terrain vehicle fund created under section 321I.8. The remaining five dollars shall be retained by the county and deposited into the general fund of the county.

2. The certificate of title shall be presented to the county recorder when the application for security interest or for assignment of the security interest is presented and a new or endorsed certificate of title shall be issued to the secured party with the name and address of the secured party upon it.

3. The secured party shall present the certificate of title to the county recorder when a release statement is filed and a new or endorsed certificate shall be issued to the owner.

Sec. 78. NEW SECTION. 321I.34 VEHICLE IDENTIFICATION NUMBER.

1. The department may assign a distinguishing number to an all-terrain vehicle when the serial number on the all-terrain vehicle is destroyed or obliterated and issue to the owner a special plate bearing the distinguishing number which shall be affixed to the all-terrain vehicle in a position to be determined by the department. The all-terrain vehicle shall be registered and titled under the distinguishing number in lieu of the former serial number. Every all-terrain vehicle shall have a vehicle identification number assigned and affixed as required by the department.

2. The commission shall adopt, by rule, the procedures for application and for issuance of a vehicle identification number for homebuilt all-terrain vehicles.

3. A person shall not destroy, remove, alter, cover, or deface the manufacturer's vehicle identification number, the plate bearing it, or any vehicle identification number the department assigns to an all-terrain vehicle without the department's permission.

4. A person other than a manufacturer who constructs or rebuilds an all-terrain vehicle for which there is no legible vehicle identification number shall submit to the department an affidavit which describes the all-terrain vehicle. In cooperation with the county recorder, the department shall assign a vehicle identification number to the all-terrain vehicle. The applicant shall permanently affix the vehicle identification number to the all-terrain vehicle in a manner that such alteration, removal, or replacement of the vehicle identification number would be obvious.

Sec. 79. Section 232.8, subsection 1, paragraph b, Code 2003, is amended to read as follows:

b. Violations by a child of provisions of chapter 321, 321G, 321I, 453A, 461A, 461B, 462A, 481A, 481B, 483A, 484A, or 484B, which would be simple misdemeanors if committed by an adult, and violations by a child of county or municipal curfew or traffic ordinances, are excluded from the jurisdiction of the juvenile court and shall be prosecuted as simple misdemeanors as provided by law. A child convicted of a violation excluded from the jurisdiction of the juvenile court under this paragraph shall be sentenced pursuant to section 805.8, where applicable, and pursuant to section 903.1, subsection 3, for all other violations.

Sec. 80. Section 321.1, subsection 32, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

"Implement of husbandry" means a vehicle or special mobile equipment manufactured, designed, or reconstructed for agricultural purposes and, except for incidental uses, exclusively used in the conduct of agricultural operations. "Implements of husbandry" includes all-terrain vehicles operated in compliance with section 321.234A, subsection 1, paragraph "a", fenceline feeders, and vehicles used exclusively for the application of organic or inorganic plant food materials, organic agricultural limestone, or agricultural chemicals. To be considered an implement of husbandry, a self-propelled implement of husbandry must be operated at speeds of thirty-five miles per hour or less. "Reconstructed" as used in this subsection means materially altered from the original construction by the removal, addition, or substitution of essential parts, new or used.

Sec. 81. Section 321.234A, Code 2003, is amended to read as follows:

321.234A ALL-TERRAIN VEHICLES — HIGHWAY USE.

1. All-terrain vehicles shall not be operated on a highway ~~only~~ unless one or more of the following conditions apply:

a. The operation is between sunrise and sunset and ~~only when the operation on the highway~~ is incidental to the vehicle's use for agricultural purposes.

b. The operation is incidental to the vehicle's use for the purpose of surveying by a licensed engineer or land surveyor.

c. The all-terrain vehicle is operated by an employee or agent of a political subdivision or public utility for the purpose of construction or maintenance on or adjacent to the highway.

d. The all-terrain vehicle is operated by an employee or agent of a public agency as defined in section 34.1 for the purpose of providing emergency services or rescue.

2. A person operating an all-terrain vehicle on a highway shall have a valid driver's license and the vehicle shall be operated at speeds of thirty-five miles per hour or less.

3. An all-terrain vehicle that is owned by the owner of land adjacent to a highway, other than an interstate road, may be operated by the owner of the all-terrain vehicle, or by a member of the owner's family, on the portion of the highway right-of-way that is between the shoulder of the roadway, or at least five feet from the edge of the roadway, and the owner's property line.

~~2.~~ 4. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 3, paragraph "f".

Sec. 82. Section 322D.1, subsection 1, Code Supplement 2003, is amended to read as follows:

1. "All-terrain vehicle" means the same as defined in section ~~321G.1~~ 321I.1.

Sec. 83. Section 322F.1, subsection 2, Code Supplement 2003, is amended to read as follows:

2. "All-terrain vehicle" means the same as defined in section ~~321G.1~~ 321I.1.

Sec. 84. Section 331.362, subsection 9, Code Supplement 2003, is amended to read as follows:

9. A county may regulate traffic on and use of the secondary roads, in accordance with sections 321.236 to 321.250, 321.254, 321.255, 321.285, subsection 5, sections 321.352, 321.471 to 321.473, and other applicable provisions of chapter 321, and sections 321G.9, 321I.10, and 327G.15.

Sec. 85. Section 331.427, subsection 1, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

Except as otherwise provided by state law, county revenues from taxes and other sources for general county services shall be credited to the general fund of the county, including revenues received under sections 9I.11, 101A.3, 101A.7, 123.36, 123.143, 142B.6, 176A.8, 321.105, 321.152, 321G.7, 321I.8, section 331.554, subsection 6, sections 341A.20, 364.3, 368.21, 422A.2, 428A.8, 430A.3, 433.15, 434.19, 445.57, 453A.35, 458A.21, 483A.12, 533.24, 556B.1, 583.6, 602.8108, 904.908, and 906.17, and the following:

Sec. 86. Section 331.602, subsection 16, Code Supplement 2003, is amended to read as follows:

16. Issue snowmobile registrations and all-terrain vehicle registrations and user permits as provided in sections 321G.4, 321G.6, ~~and~~ 321G.21, 321I.4, 321I.5, 321I.7, and 321I.22.

Sec. 87. Section 331.605, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4A. For the issuance of all-terrain vehicle registrations and user permits, the fees specified in sections 321I.4 and 321I.5.

Sec. 88. Section 350.5, Code 2003, is amended to read as follows:

350.5 REGULATIONS — PENALTY — OFFICERS.

The county conservation board may make, alter, amend or repeal regulations for the protection, regulation, and control of all museums, parks, preserves, parkways, playgrounds, recreation centers, and other property under its control. The regulations shall not be contrary to, or inconsistent with, the laws of this state. The regulations shall not take effect until ten days after their adoption by the board and after their publication as provided in section 331.305 and after a copy of the regulations has been posted near each gate or principal entrance to the public ground to which they apply. After the publication and posting, a person violating a

provision of the regulations which are then in effect is guilty of a simple misdemeanor. The board may designate the director and those employees as the director may designate as police officers who shall have all the powers conferred by law on police officers, peace officers, or sheriffs in the enforcement of the laws of this state and the apprehension of violators upon all property under its control within and without the county. The board may grant the director and those employees of the board designated as police officers the authority to enforce the provisions of chapters 321G, 321I, 461A, 462A, 481A, and 483A on land not under the control of the board within the county.

Sec. 89. Section 455A.4, subsection 1, paragraph b, Code Supplement 2003, is amended to read as follows:

b. Provide overall supervision, direction, and coordination of functions to be administered by the administrators under chapters 321G, 321I, 455B, 455C, 456, 456A, 456B, 457A, 458A, 459, subchapters I, II, III, IV, and VI, chapters 461A, 462A, 462B, 464A, 465C, 473, 481A, 481B, 483A, 484A, and 484B.

Sec. 90. Section 455A.5, subsection 6, paragraphs a, b, and d, Code 2003, are amended to read as follows:

a. Establish policy and adopt rules, pursuant to chapter 17A, necessary to provide for the effective administration of chapter 321G, 321I, 456A, 456B, 457A, 461A, 462A, 462B, 464A, 465C, 481A, 481B, 483A, 484A, or 484B.

b. Hear appeals in contested cases pursuant to chapter 17A on matters relating to actions taken by the director under chapter 321G, 321I, 456A, 456B, 457A, 461A, 462A, 462B, 464A, 465C, 481A, 481B, 483A, 484A, or 484B.

d. Approve the budget request prepared by the director for the programs authorized by chapters 321G, 321I, 456A, 456B, 457A, 461A, 462A, 462B, 464A, 481A, 481B, 483A, 484A, and 484B. The commission may increase, decrease, or strike any item within the department budget request for the specified programs before granting approval.

Sec. 91. Section 456A.14, Code 2003, is amended to read as follows:

456A.14 TEMPORARY APPOINTMENTS — PEACE OFFICER STATUS.

The director may appoint temporary officers for a period not to exceed six months and may adopt minimum physical, educational, mental, and moral requirements for the temporary officers. Chapter 80B does not apply to the temporary officers. Temporary officers have all the powers of peace officers in the enforcement of this chapter and chapters 321G, 321I, 456B, 461A, 461B, 462A, 462B, 463B, 465C, 481A, 481B, 482, 483A, 484A, and 484B, and the trespass laws.

Sec. 92. Section 456A.24, subsection 12, Code 2003, is amended to read as follows:

12. Adopt rules authorizing officers and employees of the department who are peace officers to issue warning citations for violations of this chapter and chapters 321G, 321I, 350, 456B, 457A, 461A through 461C, 462A, 462B, 463B, 464A, 465A through 465C, 481A, 481B, 482, 483A, 484A, and 484B.

Sec. 93. Section 805.8B, subsection 2, Code 2003, is amended to read as follows:

2. SNOWMOBILE AND ALL-TERRAIN VEHICLE VIOLATIONS.

a. For registration or user permit violations under ~~section~~ sections 321G.3 and 321I.3, the scheduled fine is twenty dollars. When the scheduled fine is paid, the violator shall submit sufficient proof that a valid registration or user permit has been obtained.

b. For operating violations under section 321G.9, subsections 1, 2, 3, 4, 5, and 7, sections 321G.11, ~~and~~ 321G.13, subsection 1, paragraph "d", sections 321I.10, 321I.12, and 321I.14, subsection 1, paragraph "d", the scheduled fine is twenty dollars.

c. For improper or defective equipment under ~~section~~ sections 321G.12 and 321I.13, the scheduled fine is ~~ten~~ twenty dollars.

d. For violations of ~~section~~ sections 321G.19 and 321I.20, the scheduled fine is ~~fifteen~~ twenty dollars.

e. For identification violations under ~~section~~ sections 321G.5 and 321I.6, the scheduled fine is ~~ten~~ twenty dollars.

Sec. 94. Section 805.16, subsection 1, Code 2003, is amended to read as follows:

1. Except as provided in subsection 2 of this section, a peace officer shall issue a police citation or uniform citation and complaint, in lieu of making a warrantless arrest, to a person under eighteen years of age accused of committing a simple misdemeanor under chapter 321, 321G, 321I, 461A, 461B, 462A, 481A, 481B, 483A, 484A, 484B, or a local ordinance not subject to the jurisdiction of the juvenile court, and shall not detain or confine the person in a facility regulated under chapter 356 or 356A.

Sec. 95. Section 903.1, subsection 3, Code 2003, is amended to read as follows:

3. A person under eighteen years of age convicted of a simple misdemeanor under chapter 321, 321G, 321I, 453A, 461A, 461B, 462A, 481A, 481B, 483A, 484A, or 484B, or a violation of a county or municipal curfew or traffic ordinance, except for an offense subject to section 805.8, may be required to pay a fine, not to exceed one hundred dollars, as fixed by the court, or may be required to perform community service as ordered by the court.

Sec. 96. Section 321G.22A, Code Supplement 2003, is repealed.

Sec. 97. APPLICABILITY — NEW REGISTRATIONS AND RENEWALS. The annual registration fees required for snowmobiles and all-terrain vehicles pursuant to this Act apply to new registrations and renewals effective for years beginning on or after January 1, 2005.

Approved May 6, 2004

CHAPTER 1133

SALES AND USE TAX ON GAS, ELECTRICITY, AND FUEL — EXEMPTION FOR RESIDENTIAL CUSTOMERS

S.F. 2026

AN ACT relating to the phaseout of the sales and use taxes on the sale and furnishing of gas, electricity, and fuel to residential customers.

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

Section 1. Section 423.3, as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 96, is amended by adding the following new subsection:

NEW SUBSECTION. 84. a. Subject to paragraph "b", the sales price from the sale or furnishing of metered gas, electricity, and fuel, including propane and heating oil, to residential customers which is used to provide energy for residential dwellings and units of apartment and condominium complexes used for human occupancy.

b. The exemption in this subsection shall be phased in by means of a reduction in the tax rate as follows:

(1) If the date of the utility billing or meter reading cycle of the residential customer for the

sale or furnishing of metered gas and electricity is on or after January 1, 2004, through December 31, 2004, or if the sale or furnishing of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2004, through December 31, 2004, the rate of tax is two percent of the sales price.

(2) If the date of the utility billing or meter reading cycle of the residential customer for the sale or furnishing of metered gas and electricity is on or after January 1, 2005, through December 31, 2005, or if the sale or furnishing of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2005, through December 31, 2005, the rate of tax is one percent of the sales price.

(3) If the date of the utility billing or meter reading cycle of the residential customer for the sale or furnishing of metered gas and electricity is on or after January 1, 2006, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2006, the rate of tax is zero percent of the sales price.

c. The exemption in this subsection does not apply to local option sales and services tax imposed pursuant to chapters 423B and 423E.

Approved May 6, 2004

CHAPTER 1134

INVESTMENTS BY IOWA FINANCE AUTHORITY —
FUNDS ESTABLISHED BY TREASURER OF STATE

S.F. 2215

AN ACT relating to the investment of moneys of the Iowa finance authority in funds within the office of the treasurer of state.

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

Section 1. Section 16.5, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 18. Establish one or more funds within the state treasury under the control of the authority and invest moneys of the authority therein. Notwithstanding section 8.33 or 12C.7, or any other provision to the contrary, moneys invested by the treasurer of state pursuant to this subsection shall not revert to the general fund of the state and interest accrued on the moneys shall be moneys of the authority and shall not be credited to the general fund. For purposes of this subsection, the treasurer of state shall enter into an agreement with the authority to carry out the provisions of this subsection.

Approved May 6, 2004

CHAPTER 1135

ASSAULTS ON BOARD OF PAROLE MEMBERS OR EMPLOYEES
AND DEPARTMENT OF HUMAN SERVICES EMPLOYEES

H.F. 250

AN ACT relating to the criminal penalties for an assault on members of certain occupations.

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

Section 1. Section 708.3A, subsections 1 through 4, Code 2003, are amended to read as follows:

1. A person who commits an assault, as defined in section 708.1, against a peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, or fire fighter, whether paid or volunteer, with the knowledge that the person against whom the assault is committed is a peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, or fire fighter and with the intent to inflict a serious injury upon the peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, or fire fighter, is guilty of a class "D" felony.

2. A person who commits an assault, as defined in section 708.1, against a peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, or fire fighter, whether paid or volunteer, who knows that the person against whom the assault is committed is a peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, or fire fighter and who uses or displays a dangerous weapon in connection with the assault, is guilty of a class "D" felony.

3. A person who commits an assault, as defined in section 708.1, against a peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, or fire fighter, whether paid or volunteer, who knows that the person against whom the assault is committed is a peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, or fire fighter, and who causes bodily injury or mental illness, is guilty of an aggravated misdemeanor.

4. Any other assault, as defined in section 708.1, committed against a peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, or fire fighter, whether paid or volunteer, by a person who knows that the person against whom the assault is committed is a peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, or fire fighter, is a serious misdemeanor.

Sec. 2. Section 708.3A, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 8. As used in this section, "employee of the department of human services" means a person who is an employee of an institution controlled by the director of human services that is listed in section 218.1, or who is an employee of the civil commitment unit for sex offenders operated by the department of human services. A person who commits an assault under this section against an employee of the department of human services at a department of human services' institution or unit is presumed to know that the person against whom the assault is committed is an employee of the department of human services.

Approved May 6, 2004

CHAPTER 1136

GAMBLING — MISCELLANEOUS CHANGES

H.F. 2302

AN ACT relating to gambling, concerning the operation, licensure, regulation, fee assessment, and taxation of racetracks and excursion gambling boats, including pari-mutuel wagering, horse purses and gambling games at racetracks and on gambling boats, racing and gaming commission employees, gambling treatment fund and county endowment fund appropriations, gambling by minors and others, and providing penalties and including effective and retroactive applicability date provisions.

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

Section 1. NEW SECTION. 15E.311 COUNTY ENDOWMENT FUND.

1. The purpose of this section is to enhance the quality of life for citizens of Iowa by providing moneys to new or existing citizen groups of this state organized to establish county affiliate funds or community foundations that will address countywide needs.

2. A county endowment fund is created in the state treasury under the control of the department of revenue. The fund consists of all moneys appropriated to the fund. Moneys in the fund shall be distributed by the department as provided in this section.

3. a. At the end of each fiscal year, moneys in the fund shall be transferred into separate accounts within the fund and designated for use by each county in which no licensee authorized to conduct gambling games under chapter 99F was located during that fiscal year. Moneys transferred to county accounts shall be divided equally among the counties. Moneys transferred into an account for a county shall be transferred by the department to an eligible county recipient for that county. Of the moneys transferred, an eligible county recipient shall distribute seventy-five percent of the moneys as grants to charitable organizations for educational, civic, public, charitable, patriotic, or religious uses, as defined in section 99B.7, subsection 3, paragraph "b", in that county and shall retain twenty-five percent of the moneys for use in establishing a permanent endowment fund for the benefit of charitable organizations for educational, civic, public, charitable, patriotic, or religious uses, as defined in section 99B.7, subsection 3, paragraph "b".

b. If a county does not have an eligible county recipient, moneys in the account for that county shall remain in that account until an eligible county recipient for that county is established.

c. For purposes of this subsection, an "eligible county recipient" means a qualified community foundation or community affiliate organization, as defined in section 15E.303, that is selected, in accordance with the procedures described in section 15E.304, to receive moneys from an account created in this section for a particular county. To be selected as an eligible county recipient, a community affiliate organization shall establish a county affiliate fund to receive moneys as provided by this section.

4. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the county endowment fund shall be credited to the county endowment fund. Notwithstanding section 8.33, moneys credited to the county endowment fund shall not revert at the close of a fiscal year.

Sec. 2. Section 99D.2, subsection 8, Code 2003, is amended to read as follows:

8. "Racetrack enclosure" means all real property utilized for the conduct of a race meeting, including the racetrack, grandstand, ~~clubhouse, turf club or other areas of a licensed racetrack which a person may enter only upon payment of an admission fee, or upon payment by another, at any time, based upon the person's admittance, or upon presentation of authorized credentials. "Racetrack enclosure" also means~~ concession stands, offices, barns, kennels and barn areas, employee housing facilities, parking lots, and any additional areas designated by the commission.

Sec. 3. Section 99D.2, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 9. "Wagering area" means that portion of a racetrack in which a licensee may receive wagers of money from a person present in a licensed racing enclosure on a horse or dog in a race selected by the person making the wager as designated by the commission.

Sec. 4. Section 99D.5, subsection 4, Code 2003, is amended to read as follows:

4. Commission members are each entitled to receive an annual salary of six thousand dollars. Members shall also be reimbursed for actual expenses incurred in the performance of their duties to a maximum of thirty thousand dollars per year for the commission. Each member shall ~~post a bond in the amount of ten thousand dollars, with sureties to be approved by the governor, to guarantee the proper handling and accounting of moneys and other properties required in the administration of this chapter. The premiums on the bonds shall be paid as other expenses of the commission~~ be covered by the blanket surety bond of the state purchased pursuant to section 8A.321, subsection 12.

Sec. 5. Section 99D.6, Code 2003, is amended to read as follows:

99D.6 CHAIRPERSON — ADMINISTRATOR — EMPLOYEES — DUTIES — BOND.

The commission shall elect in July of each year one of its members as chairperson for the succeeding year. The commission shall appoint an administrator of the commission subject to confirmation by the senate. The administrator shall serve a four-year term. The term shall begin and end in the same manner as set forth in section 69.19. A vacancy shall be filled for the unexpired portion of the term in the same manner as a full-term appointment is made. The administrator may hire other assistants and employees as necessary to carry out the commission's duties. Employees in the positions of equine veterinarian, canine veterinarian, and equine steward shall be exempt from the merit system provisions of chapter 8A, subchapter IV, and shall not be covered by a collective bargaining agreement. Some or all of the information required of applicants in section 99D.8A, subsections 1 and 2, may also be required of employees of the commission if the commission deems it necessary. The administrator shall keep a record of the proceedings of the commission, and preserve the books, records, and documents entrusted to the administrator's care. The ~~commission shall require the~~ administrator ~~to post a bond in a sum it may fix, conditioned upon the faithful performance of the administrator's duties~~ shall be covered by the blanket surety bond of the state purchased pursuant to section 8A.321, subsection 12. Subject to the approval of the governor, the commission shall fix the compensation of the administrator within the salary range as set by the general assembly. The commission shall have its headquarters in the city of Des Moines, and shall meet in July of each year and at other times and places as it finds necessary for the discharge of its duties.

Sec. 6. Section 99D.7, subsection 8, Code 2003, is amended to read as follows:

8. To investigate alleged violations of this chapter or the commission rules, orders, or final decisions and to take appropriate disciplinary action against a licensee or a holder of an occupational license for the violation, or institute appropriate legal action for enforcement, or both. Information gathered during an investigation is confidential during the pendency of the investigation. Decisions by the commission are final agency actions pursuant to chapter 17A.

Sec. 7. Section 99D.7, subsection 19, Code 2003, is amended to read as follows:

19. To require licensees to indicate in their racing programs those horses which are treated with the legal medication ~~lasix~~ furosemide or phenylbutazone. The program shall also indicate if it is the first or subsequent time that a horse is racing with ~~lasix~~ furosemide, or if the horse has previously raced with ~~lasix~~ furosemide and the present race is the first race for the horse without ~~lasix~~ furosemide following its use.

Sec. 8. Section 99D.7, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 23. To require licensees to establish a process to allow a person to be voluntarily excluded for life from a racetrack enclosure and all other licensed facilities under

this chapter and chapter 99F. The process established shall require that a licensee disseminate information regarding persons voluntarily excluded to all licensees under this chapter and chapter 99F. The state and any licensee under this chapter or chapter 99F shall not be liable to any person for any claim which may arise from this process. In addition to any other penalty provided by law, any money or thing of value that has been obtained by, or is owed to, a voluntarily excluded person by a licensee as a result of wagers made by the person after the person has been voluntarily excluded shall not be paid to the person but shall be deposited into the gambling treatment fund created in section 135.150.

Sec. 9. Section 99D.9, subsections 1 and 2, Code 2003, are amended to read as follows:

1. If the commission is satisfied that its rules and sections 99D.8 through 99D.25 applicable to licensees have been or will be complied with, it may issue a license for a period of not more than three years. The commission may decide which types of racing it will permit. The commission may permit dog racing, horse racing of various types, or both dog and horse racing. The commission shall decide the number, location, and type of all racetracks licensed under this chapter. The license shall set forth the name of the licensee, the type of license granted, the place where the race meeting is to be held, and the time and number of days during which racing may be conducted by the licensee. ~~The commission shall not approve the licenses for racetracks in Dubuque county and Black Hawk county if the proposed racing schedules of the two tracks conflict.~~ The commission shall not approve a license application if any part of the racetrack is to be constructed on prime farmland outside the city limits of an incorporated city. As used in this subsection, "prime farmland" means as defined by the United States department of agriculture in 7 C.F.R. ~~sec.~~ § 657.5(a). A license is not transferable or assignable. The commission may revoke any license issued for good cause upon reasonable notice and hearing. The commission shall conduct a neighborhood impact study to determine the impact of granting a license on the quality of life in neighborhoods adjacent to the proposed racetrack facility. The applicant for the license shall reimburse the commission for the costs incurred in making the study. A copy of the study shall be retained on file with the commission and shall be a public record. The study shall be completed before the commission may issue a license for the proposed facility.

2. A license shall only be granted to a nonprofit corporation or association upon the express condition that~~:~~

~~a. The~~ the nonprofit corporation or association shall not, by a lease, contract, understanding, or arrangement of any kind, grant, assign, or turn over to a person the operation of a race meeting licensed under this section or of the pari-mutuel system of wagering described in section 99D.11. This section does not prohibit a management contract approved by the commission.

~~b. The nonprofit corporation shall not in any manner permit a person other than the licensee to have a share, percentage, or proportion of the money received for admissions to the race or race meeting.~~

Sec. 10. Section 99D.9, subsection 6, Code 2003, is amended to read as follows:

6. (1) A licensee ~~may~~ shall not loan to any person money or any other thing of value for the purpose of permitting that person to wager on any race.

(2) A licensee shall not permit a financial institution, vendor, or other person to dispense cash or credit through an electronic or mechanical device including but not limited to a satellite terminal as defined in section 527.2, that is located in the wagering area.

(3) When technologically available, a licensee shall ensure that a person may voluntarily bar the person's access to receive cash or credit from a financial institution, vendor, or other person through an electronic or mechanical device including but not limited to a satellite terminal as defined in section 527.2, that is located on the licensed premises.

Sec. 11. Section 99D.9, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 8. The commission shall require that a licensee utilize Iowa

resources, goods, and services in the operation of a racetrack enclosure. The commission shall develop standards to assure that a substantial amount of all resources and goods used in the operation of a racetrack enclosure emanate from and are made in Iowa and that a substantial amount of all services and entertainment are provided by Iowans.

Sec. 12. Section 99D.11, subsection 7, Code 2003, is amended to read as follows:

7. A person under the age of twenty-one years shall not make or attempt to make a pari-mutuel wager. A person who violates this subsection commits a scheduled violation under section 805.8C, subsection 4.

Sec. 13. Section 99D.14, subsection 2, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

2. A licensee shall pay a regulatory fee to be charged as provided in this section. In determining the regulatory fee to be charged as provided under this section, the commission shall use the amount appropriated to the commission plus the cost of salaries for no more than two special agents for each racetrack that has not been issued a table games license under chapter 99F or no more than three special agents for each racetrack that has been issued a table games license under chapter 99F, plus any direct and indirect support costs for the agents, for the division of criminal investigation's racetrack activities, as the basis for determining the amount of revenue to be raised from the regulatory fee.

Sec. 14. Section 99D.14, subsection 7, Code 2003, is amended by striking the subsection.

Sec. 15. Section 99D.15, subsection 3, paragraph d, Code 2003, is amended by striking the paragraph.

Sec. 16. Section 99D.15, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 5. An amount equal to one-half of one percent of the gross sum wagered by the pari-mutuel method shall be deposited into the gambling treatment fund created in section 135.150 from the tax revenue received by the commission pursuant to subsections 1 and 3.

Sec. 17. Section 99D.19, Code 2003, is amended to read as follows:

99D.19 HORSE OR DOG RACING — LICENSEES — RECORDS — REPORTS — SUPERVISION.

1. A licensee shall keep its books and records so as to clearly show the following:

~~1.~~ a. The total number of admissions ~~to races conducted by it on each racing day, including the number of admissions upon free passes or complimentary tickets~~ for each day of operation.

~~2.~~ b. ~~The amount received daily from admission fees.~~

~~3.~~ The total amount of money wagered ~~during the race meet~~ for each day of operation.

2. The licensee shall furnish to the commission reports and information as the commission may require with respect to its activities. The commission may designate a representative to attend a licensed race meeting, who shall have full access to all places within the enclosure of the meeting and who shall supervise and check the admissions. The compensation of the representative shall be fixed by the commission but shall be paid by the licensee.

Sec. 18. Section 99D.20, Code 2003, is amended to read as follows:

99D.20 AUDIT OF LICENSEE OPERATIONS.

Within ninety days after the end of each race meet, the licensee shall transmit to the commission an audit of the financial transactions and condition of the licensee's operations conducted under this chapter. Additionally, within ninety days after the end of the licensee's fiscal year, the licensee shall transmit to the commission an audit of the ~~financial transactions and condi-~~

~~tion of the~~ licensee's total racing and gaming operations, including an itemization of all expenses and subsidies. All audits shall be conducted by certified public accountants registered in the state of Iowa under chapter 542 who are selected by the board of supervisors of the county in which the licensee operates.

Sec. 19. Section 99D.23, subsection 1, Code 2003, is amended to read as follows:

1. The commission shall employ one or more chemists or contract with a qualified chemical laboratory to determine by chemical testing and analysis of saliva, urine, blood, or other excretions or body fluids whether a substance or drug has been introduced which may affect the outcome of a race or whether an action has been taken or a substance or drug has been introduced which may interfere with the testing procedure. The commission shall adopt rules under chapter 17A concerning procedures and actions taken on positive drug reports. The commission may adopt by reference ~~the standards of the national association of state racing commissioners, the association of official racing chemists, and New York jockey club, or the United States trotting association,~~ nationally recognized standards as determined by the commission or may adopt any other procedure or standard. The commission has the authority to retain and preserve by freezing, test samples for future analysis.

Sec. 20. Section 99D.25, subsection 1, paragraph a, Code 2003, is amended to read as follows:

a. "Drugging" means administering to a horse or dog any substance foreign to the natural horse or dog prior to the start of a race. However, in counties with a population of two hundred fifty thousand or more, "drugging" does not include administering to a horse the drugs ~~lasix~~ furosemide and phenylbutazone in accordance with section 99D.25A and rules adopted by the commission.

Sec. 21. Section 99D.25, subsection 5, Code 2003, is amended to read as follows:

5. Every horse which suffers a breakdown on the racetrack, in training, or in competition, and is destroyed, and every other horse which expires while stabled on the racetrack under the jurisdiction of the commission, shall undergo a postmortem examination by a veterinarian or a veterinary pathologist at a time and place acceptable to the commission veterinarian to determine the injury or sickness which resulted in euthanasia or natural death. ~~The postmortem examination shall be conducted by a veterinarian employed by the owner or the owner's trainer in the presence of and in consultation with the commission veterinarian.~~ Test samples shall be obtained from the carcass upon which the postmortem examination is conducted and shall be sent to a laboratory approved by the commission for testing for foreign substances and natural substances at abnormal levels. When practical, blood and urine test samples should be procured prior to euthanasia. The owner of the deceased horse is responsible for payment of any charges due ~~the veterinarian employed~~ to conduct the postmortem examination. ~~The services of the commission veterinarian and the laboratory testing of postmortem samples shall be made available by the commission without charge to the owner.~~ A record of every postmortem shall be filed with the commission by the ~~owner's~~ veterinarian or veterinary pathologist who performed the postmortem within seventy-two hours of the death ~~and shall be submitted on a form supplied by the commission~~. Each owner and trainer accepts the responsibility for the postmortem examination provided herein as a requisite for maintaining the occupational license issued by the commission.

Sec. 22. Section 99D.25, subsection 9, Code 2003, is amended to read as follows:

9. The commission shall conduct random tests of bodily substances of horses entered to race each day of a race meeting to aid in the detection of any unlawful drugging. The tests ~~shall~~ may be conducted both prior to and after a race. The commission shall also test any horse that breaks down during a race and shall perform an autopsy on any horse that is killed or subsequently destroyed as a result of an accident during a race.

Sec. 23. Section 99D.25A, subsections 3 through 7, Code 2003, are amended to read as follows:

3. If a horse is to race with phenylbutazone in its system, the trainer, or trainer's designee, shall be responsible for marking the information on the entry blank for each race in which the horse shall use phenylbutazone. Changes made after the time of entry must be submitted on the prescribed form to the commission veterinarian no later than scratch time.

4. If a test detects concentrations of phenylbutazone in the system of a horse in excess of the level permitted in this section, the commission shall assess a civil penalty against the trainer of at least two hundred dollars for the first offense and at least five hundred dollars for a second offense. The penalty for a third or subsequent offense shall be in the discretion of the commission. A penalty assessed under this subsection shall not affect the placing of the horse in the race.

5. ~~Lasix~~ Furosemide may be administered to certified bleeders. Upon request, any horse placed on the bleeder list shall, in its next race, be permitted the use of ~~lasix~~ furosemide. Once a horse has raced with ~~lasix~~ furosemide, it must continue to race with ~~lasix~~ furosemide in all subsequent races unless a request is made to discontinue the use. If the use of ~~lasix~~ furosemide is discontinued, the horse shall be prohibited from again racing with ~~lasix~~ furosemide unless it is later observed to be bleeding. Requests for the use of or discontinuance of ~~lasix~~ furosemide must be made to the commission veterinarian by the horse's trainer or assistant trainer on a form prescribed by the commission on or before the day of entry into the race for which the request is made.

6. Once a horse has been permitted the use of ~~lasix~~ furosemide, the horse must be treated with ~~lasix~~ furosemide in the horse's stall, unless the commission provides that a horse must be brought to the detention barn for treatment. After the ~~lasix~~ furosemide 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~~ furosemide must be treated at least four hours prior to post time. The ~~lasix~~ furosemide 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~~ furosemide 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~~ furosemide was administered. ~~Lasix~~ Furosemide shall only be administered in a dose level of two hundred fifty milligrams.

Sec. 24. Section 99F.1, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 7A. "Excursion boat" means a self-propelled, floating vessel that is or has been previously certified for operation as a vessel.

Sec. 25. Section 99F.1, subsection 8, Code Supplement 2003, is amended to read as follows:

8. "Excursion gambling boat" means ~~a self-propelled~~ an excursion boat or moored barge on which lawful gambling is authorized and licensed as provided in this chapter.

Sec. 26. Section 99F.1, subsection 10, Code Supplement 2003, is amended to read as follows:

10. "Gambling game" means any game of chance authorized by the commission. However, for racetrack enclosures, "gambling game" does not include table games of chance or video machines which simulate table games of chance, unless otherwise authorized by this chapter. "Gambling game" does not include sports betting.

Sec. 27. Section 99F.1, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 10A. "Gaming floor" means that portion of an excursion gambling boat or racetrack enclosure in which gambling games are conducted as designated by the commission.

Sec. 28. Section 99F.1, subsection 12, Code Supplement 2003, is amended to read as follows:

12. "Holder of occupational license" means a person licensed by the commission to perform an occupation which the commission has identified as requiring a license to engage in the excursion gambling boat ~~gambling~~ industry in Iowa.

Sec. 29. Section 99F.1, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 14A. "Moored barge" means a barge or vessel that is not self-propelled.

Sec. 30. Section 99F.1, subsection 16, Code Supplement 2003, is amended to read as follows:

16. "Racetrack enclosure" means all real property utilized for the conduct of a race meeting, including the racetrack, grandstand, ~~clubhouse, turf club, or other areas of a licensed racetrack which an individual may enter only upon payment of an admission fee, or upon payment by another, at any time, based upon the individual's admittance, or upon presentation of authorized credentials. "Racetrack enclosure" also means~~ concession stands, offices, barns, kennels and barn areas, employee housing facilities, parking lots, and any additional areas designated by the commission.

Sec. 31. Section 99F.4, subsection 2, Code 2003, is amended to read as follows:

2. To license qualified sponsoring organizations, to license the operators of excursion gambling boats, to identify occupations within the excursion gambling boat operations which require licensing, and to adopt standards for licensing the occupations including establishing fees for the occupational licenses and licenses for qualified sponsoring organizations. The fees shall be paid to the commission and deposited in the general fund of the state. All revenue received by the commission under this chapter from license fees and ~~admission~~ regulatory fees shall be deposited in the general fund of the state and shall be subject to the requirements of section 8.60.

Sec. 32. Section 99F.4, subsection 6, Code 2003, is amended to read as follows:

6. To investigate alleged violations of this chapter or the commission rules, orders, or final decisions and to take appropriate disciplinary action against a licensee or a holder of an occupational license for a violation, or institute appropriate legal action for enforcement, or both. Information gathered during an investigation is confidential during the pendency of the investigation.

Sec. 33. Section 99F.4, subsection 18, Code 2003, is amended to read as follows:

18. To provide for the continuous ~~videotaping~~ recording of all gambling activities on an excursion gambling boat. The ~~videotaping~~ recording shall be performed under guidelines set by rule of the division of criminal investigation and the rules may require that all or part of the original ~~tapes~~ recordings be submitted to the division on a timely schedule.

Sec. 34. Section 99F.4, subsection 20, Code 2003, is amended by striking the subsection.

Sec. 35. Section 99F.4, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 23. To require licensees to establish a process to allow a person to be

voluntarily excluded for life from an excursion gambling boat and all other licensed facilities under this chapter and chapter 99D. The process established shall require that a licensee disseminate information regarding persons voluntarily excluded to all licensees under this chapter and chapter 99D. The state and any licensee under this chapter or chapter 99D shall not be liable to any person for any claim which may arise from this process. In addition to any other penalty provided by law, any money or thing of value that has been obtained by, or is owed to, a voluntarily excluded person by a licensee as a result of wagers made by the person after the person has been voluntarily excluded shall not be paid to the person but shall be deposited into the gambling treatment fund created in section 135.150.

NEW SUBSECTION. 24. To approve a licensee's application to operate as a moored barge, an excursion boat that will cruise, or an excursion boat that will not cruise, as submitted pursuant to section 99F.7.

NEW SUBSECTION. 25. To conduct a socioeconomic study on the impact of gambling on Iowans, every eight years beginning in calendar year 2008, and issue a report on that study. The commission shall ensure that the results of each study are readily accessible to the public.

Sec. 36. Section 99F.4A, subsection 4, Code 2003, is amended to read as follows:

4. The regulatory fee imposed in section 99D.14, subsection 2, shall be collected ~~for admission to~~ from a licensee of a racetrack enclosure where gambling games are licensed to operate in lieu of the ~~admission~~ regulatory fee imposed in section 99F.10.

Sec. 37. Section 99F.4A, subsection 8, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

8. The commission shall, upon the immediate payment of the applicable table games license fee and submission to the commission by June 1, 2005, of an application by a licensee of a pari-mutuel dog or horse racetrack licensed to conduct gambling games at a pari-mutuel racetrack enclosure, issue a license to the licensee to conduct table games of chance, including video machines that simulate table games of chance, at the pari-mutuel racetrack enclosure subject to the requirements of this subsection. However, a table games license may only be issued to a licensee required to pay a table games license fee of three million dollars under this subsection if the licensee, and all other licensees of an excursion gambling boat in that county, file an agreement with the commission authorizing the granting of a table games license under this subsection and permitting all licensees of an excursion gambling boat to operate a moored barge as of a specific date. The licensee shall be granted a table games license by the commission without conducting a separate referendum authorizing table games upon payment of the applicable license fee to the commission which table games license fee may be offset by the licensee against taxes imposed on the licensee by section 99F.11, to the extent of twenty percent of the table games license fee paid pursuant to this subsection for each of five consecutive fiscal years beginning with the fiscal year beginning July 1, 2008. Fees paid pursuant to this subsection are not refundable to the licensee. A licensee shall not be required to pay a fee to renew a table games license issued pursuant to this subsection. Moneys collected by the commission from a table games license fee paid under this subsection shall be deposited in the rebuild Iowa infrastructure fund created in section 8.57.

For purposes of this subsection, the applicable license fee for a licensee shall be three million dollars if the adjusted gross receipts from gambling games for the licensee in the previous fiscal year was less than one hundred million dollars, and shall be ten million dollars if the adjusted gross receipts from gambling games for the licensee in the previous fiscal year was one hundred million dollars or more.

Sec. 38. NEW SECTION. 99F.4C GAMBLING GAMES PROHIBITION AREA.

1. Notwithstanding any provision of this chapter or chapter 99D to the contrary, the commission shall not grant a license to conduct gambling games to a facility to be located in the applicable area as described in this section.

2. For purposes of this section, the "applicable area" means that portion of the city of Des

Moines in Polk county bounded by a line commencing at the point East Euclid avenue intersects East Fourteenth street, then proceeding south along East Fourteenth street and Southeast Fourteenth street until it intersects Park avenue, then proceeding west along Park avenue until it intersects Fleur drive, then proceeding north along Fleur drive until it intersects Eighteenth street, then proceeding north along Eighteenth street until it intersects Ingersoll avenue, then proceeding west along Ingersoll avenue until it intersects Martin Luther King Jr. parkway, then proceeding northerly along Martin Luther King Jr. parkway until it intersects Euclid avenue, then proceeding east along Euclid avenue and East Euclid avenue to the point of origin. For purposes of this section, such reference to a street or other boundary means such street or boundary as they were delineated on the official Pub. L. No. 94-171 census maps used for redistricting following the 2000 United States decennial census.

Sec. 39. Section 99F.5, subsection 1, Code 2003, is amended to read as follows:

1. A qualified sponsoring organization may apply to the commission for a license to conduct gambling games on an excursion gambling boat as provided in this chapter. A person may apply to the commission for a license to operate an excursion gambling boat. An operating agreement entered into on or after the effective date of this section of this Act between a qualified sponsoring organization and an operator shall provide for a minimum distribution by the qualified sponsoring organization for educational, civic, public, charitable, patriotic, or religious uses as defined in section 99B.7, subsection 3, paragraph "b", that averages at least three percent of the adjusted gross receipts for each license year. The application shall be filed with the administrator of the commission at least ninety days before the first day of the next excursion season as determined by the commission, shall identify the excursion gambling boat upon which gambling games will be authorized, shall specify the exact location where the excursion gambling boat will be docked, and shall be in a form and contain information as the commission prescribes. The minimum passenger capacity of an excursion gambling boat is two hundred fifty persons.

Sec. 40. Section 99F.6, subsection 4, paragraph a, Code Supplement 2003, is amended to read as follows:

a. Before a license is granted, the division of criminal investigation of the department of public safety shall conduct a thorough background investigation of the applicant for a license to operate a gambling game operation on an excursion gambling boat. The applicant shall provide information on a form as required by the division of criminal investigation. A qualified sponsoring organization licensed to operate gambling games under this chapter shall distribute the receipts of all gambling games, less reasonable expenses, charges, taxes, fees, and deductions allowed under this chapter, as winnings to players or participants or shall distribute the receipts for educational, civic, public, charitable, patriotic, or religious uses as defined in section 99B.7, subsection 3, paragraph "b". However, a licensee to conduct gambling games under this chapter shall, unless an operating agreement for an excursion gambling boat otherwise provides, distribute at least three percent of the adjusted gross receipts for each license year for educational, civic, public, charitable, patriotic, or religious uses as defined in section 99B.7, subsection 3, paragraph "b". However, if a licensee who is also licensed to conduct pari-mutuel wagering at a horse racetrack has unpaid debt from the pari-mutuel racetrack operations, the first receipts of the gambling games operated within the racetrack enclosure less reasonable operating expenses, taxes, and fees allowed under this chapter shall be first used to pay the annual indebtedness. The commission shall authorize, subject to the debt payments for horse racetracks and the provisions of paragraph "b" for dog racetracks, a licensee who is also licensed to conduct pari-mutuel dog or horse racing to use receipts from gambling games within the racetrack enclosure to supplement purses for races particularly for Iowa-bred horses pursuant to an agreement which shall be negotiated between the licensee and representatives of the dog or horse owners. For agreements subject to commission approval concerning purses for horse racing beginning on or after January 1, 2006, and ending before January 1, 2021, the agreements shall provide that total annual purses for all horse racing shall be no

less than eleven percent of the first two hundred million dollars of net receipts, and six percent of net receipts above two hundred million dollars. Agreements that are subject to commission approval concerning horse purses for a particular period of time beginning on or after January 1, 2006, and ending before January 1, 2021, shall be jointly submitted to the commission for approval. A qualified sponsoring organization shall not make a contribution to a candidate, political committee, candidate's committee, state statutory political committee, county statutory political committee, national political party, or fund-raising event as these terms are defined in section 68A.102. The membership of the board of directors of a qualified sponsoring organization shall represent a broad interest of the communities. For purposes of this paragraph, "net receipts" means the annual adjusted gross receipts from all gambling games less the annual amount of money pledged by the owner of the facility to fund a project approved to receive vision Iowa funds as of July 1, 2004.

Sec. 41. Section 99F.7, subsection 1, Code 2003, is amended to read as follows:

1. If the commission is satisfied that this chapter and its rules adopted under this chapter applicable to licensees have been or will be complied with, the commission shall issue a license for a period of not more than three years to an applicant to own a gambling game operation and to an applicant to operate an excursion gambling boat. The commission shall decide which of the gambling games authorized under this chapter ~~it~~ the commission will permit. The commission shall decide the number, location, and type of excursion gambling boats licensed under this chapter for operation on the rivers, lakes, and reservoirs of this state. An excursion gambling boat may be located or operated on a natural or man-made lake or reservoir if the lake or reservoir is of sufficient size to accommodate recreational activity. An excursion gambling boat may also be located on a man-made basin or other body of water adjacent to a river, provided it is located no more than one thousand feet from the high water mark of the river, as established by the commission in consultation with the United States army corps of engineers, the department of natural resources, or other appropriate regulatory agency. The license shall set forth, as applicable, the name of the licensee, the type of license granted, the place where the excursion gambling boats will operate and dock, and the time and number of days during the excursion season and the off season when gambling may be conducted by the licensee. ~~The~~

1A. a. An applicant for a license to conduct gambling games on an excursion gambling boat, and each licensee by June 30 of each year thereafter, shall indicate and have noted on the license whether the applicant or licensee will operate a moored barge, an excursion boat that will cruise, or an excursion boat that will not cruise subject to the requirements of this subsection. If the applicant or licensee will operate a moored barge or an excursion boat that will not cruise, the requirements of this chapter concerning cruising shall not apply. If the applicant's or licensee's excursion boat will cruise, the applicant or licensee shall comply with the cruising requirements of this chapter and the commission shall not allow such a licensee to conduct gambling games on an excursion gambling boat while docked during the off season if the licensee does not operate gambling excursions for a minimum number of days during the excursion season. The commission may delay the commencement of the excursion season at the request of a licensee.

b. However, an applicant or licensee of an excursion gambling boat that is located in the same county as a racetrack enclosure conducting gambling games shall not be allowed to operate a moored barge unless either of the following applies:

(1) If the licensee is located in the same county as a racetrack enclosure conducting gambling games that had less than one hundred million dollars in adjusted gross receipts from gambling games for the fiscal year beginning July 1, 2003, the licensee of an excursion gambling boat is authorized to operate a moored barge if the licensee, the licensee of the racetrack enclosure, and all other licensees of an excursion gambling boat in that county file an agreement with the commission agreeing to the granting of a table games license under this chapter and permitting all licensees of an excursion gambling boat in the county to operate a moored barge as of a specific date.

(2) If the licensee is located in the same county as a racetrack enclosure conducting gambling games that had one hundred million dollars or more in adjusted gross receipts from gambling games for the fiscal year beginning July 1, 2003, the licensee of an excursion gambling boat is authorized to operate a moored barge the earlier of July 1, 2007, or the date any form of gambling games, as defined in this chapter, is operational in any state that is contiguous to the county where the licensee is located.

Sec. 42. Section 99F.7, subsection 3, Code 2003, is amended to read as follows:

3. The commission shall require, as a condition of granting a license, that an applicant to operate an excursion gambling boat develop, and as nearly as practicable, recreate boats or moored barges that resemble Iowa's riverboat history.

Sec. 43. Section 99F.7, subsection 4, Code 2003, is amended to read as follows:

4. The commission shall require that an applicant utilize Iowa resources, goods and services in the operation of an excursion gambling boat. The commission shall develop standards to assure that a substantial amount of all resources and goods used in the operation of an excursion gambling boat ~~come~~ emanate from and are made in Iowa and that a substantial amount of all services and entertainment ~~be~~ are provided by Iowans.

Sec. 44. Section 99F.7, subsection 5, paragraph b, Code 2003, is amended by striking the paragraph.

Sec. 45. Section 99F.7, subsection 9, Code 2003, is amended to read as follows:

9. a. A licensee shall not loan to any person money or any other thing of value for the purpose of permitting that person to wager on any game of chance.

b. A licensee shall not permit a financial institution, vendor, or other person to dispense cash or credit through an electronic or mechanical device including but not limited to a satellite terminal, as defined in section 527.2, that is located on the gaming floor.

c. When technologically available, a licensee shall ensure that a person may voluntarily bar the person's access to receive cash or credit from a financial institution, vendor, or other person through an electronic or mechanical device including but not limited to a satellite terminal as defined in section 527.2 that is located on the licensed premises.

Sec. 46. Section 99F.7, subsection 10, paragraph e, Code 2003, is amended to read as follows:

e. After a referendum has been held which defeated a proposal to conduct gambling games on excursion gambling boats or which defeated a proposal to conduct gambling games at a licensed pari-mutuel racetrack enclosure as provided in this section, another referendum on a proposal to conduct gambling games on an excursion gambling boat or at a licensed pari-mutuel racetrack shall not be held for at least ~~two~~ eight years.

Sec. 47. Section 99F.7, subsection 13, Code 2003, is amended to read as follows:

13. An[1] excursion gambling boat operated on inland waters of this state or an excursion boat that has been removed from navigation and is designated as a permanently moored vessel by the United States coast guard shall be subject to the exclusive jurisdiction of the department of natural resources and meet all of the requirements of chapter 462A and is further subject to an inspection of its sanitary facilities to protect the environment and water quality before a certificate of registration is issued by the department of natural resources or a license is issued or renewed under this chapter.

Sec. 48. Section 99F.9, subsection 5, Code 2003, is amended to read as follows:

5. A person under the age of twenty-one years shall not make or attempt to make a wager on an excursion gambling boat or in a racetrack enclosure and shall not be allowed ~~in the area~~ on the gaming floor of ~~the~~ an excursion gambling boat ~~where gambling is being conducted~~

[1] See chapter 1175, §328 herein

or in the wagering area, as defined in section 99D.2, or on the gaming floor of a racetrack enclosure. However, a person eighteen years of age or older may be employed to work ~~in a gambling area~~ on the gaming floor of an excursion gambling boat or in the wagering area or on the gaming floor of a racetrack enclosure. A person who violates this subsection with respect to making or attempting to make a wager commits a scheduled violation under section 805.8C, subsection 4.

Sec. 49. Section 99F.10, Code 2003, is amended to read as follows:

99F.10 ~~ADMISSION~~ REGULATORY FEE — TAX — LOCAL FEES.

1. A qualified sponsoring organization conducting gambling games on an excursion gambling boat licensed under section 99F.7 shall pay the tax imposed by section 99F.11.

2. An excursion gambling boat licensee shall pay to the commission ~~an admission~~ a regulatory fee ~~for each person embarking on an excursion gambling boat with a ticket of admission~~ to be charged as provided in this section. ~~The admission fee shall be set by the commission.~~

~~a. If tickets are issued which are good for more than one excursion, the admission fee shall be paid for each person using the ticket on each excursion that the ticket is used.~~

~~b. If free passes or complimentary admission tickets are issued, the licensee shall pay the same fee upon these passes or complimentary tickets as if they were sold at the regular and usual admission rate.~~

~~c. However, the excursion boat licensee may issue fee-free passes to actual and necessary officials and employees of the licensee or other persons actually working on the excursion gambling boat.~~

~~d. The issuance of fee-free passes is subject to the rules of the commission, and a list of all persons to whom the fee-free passes are issued shall be filed with the commission.~~

3. ~~In addition to the admission fee charged under subsection 2 and subject~~ Subject to approval of excursion gambling boat docking by the voters, a city may adopt, by ordinance, an admission fee not exceeding fifty cents for each person embarking on an excursion gambling boat docked within the city or a county may adopt, by ordinance, an admission fee not exceeding fifty cents for each person embarking on an excursion gambling boat docked outside the boundaries of a city. The admission revenue received by a city or a county shall be credited to the city general fund or county general fund as applicable.

4. In determining the license fees and state ~~admission~~ regulatory fees to be charged as provided under section 99F.4 and this section, the commission shall use the amount appropriated to the commission plus the cost of salaries for no more than two special agents and no more than four gaming enforcement officers for each excursion gambling boat, plus any direct and indirect support costs for the agents and officers, for the division of criminal investigation's excursion gambling boat activities ~~and an amount for all licensees, not to exceed one hundred twenty-five thousand dollars, representing other associated costs of the division~~, as the basis for determining the amount of revenue to be raised from the license fees and ~~admission~~ regulatory fees. ~~The division's salary costs shall be limited to eighty percent of the salary costs for special agents and eighty percent of the salary costs for gaming enforcement for personnel assigned to excursion gambling boats who enforce laws and rules adopted by the commission.~~

5. No other license tax, permit tax, occupation tax, excursion fee, or taxes on fees shall be levied, assessed, or collected from a licensee by the state or by a political subdivision, except as provided in this chapter.

6. No other excise tax shall be levied, assessed, or collected from the licensee relating to gambling excursions or admission charges by the state or by a political subdivision, except as provided in this chapter.

7. In addition to any other fees required by this chapter, a person awarded a new license to conduct gambling games pursuant to section 99F.7 on or after January 1, 2004, shall pay the applicable initial license fee to the commission as provided by this subsection. A person awarded a new license shall pay one-fifth of the applicable initial license fee immediately upon the granting of the license, one-fifth of the applicable initial license fee within one year of the granting of the license, one-fifth of the applicable initial license fee within two years of the

granting of the license, one-fifth of the applicable initial license fee within three years of the granting of the license, and the remaining one-fifth of the applicable initial license fee within four years of the granting of the license. However, the license fee provided for in this subsection shall not apply when a licensed facility is sold and a new license is issued to the purchaser. Fees paid pursuant to this subsection are not refundable to the licensee. For purposes of this subsection, the applicable initial license fee shall be five million dollars if the population of the county where the licensee shall conduct gambling games is fifteen thousand or less based upon the most recent federal decennial census, shall be ten million dollars if the population of the county where the licensee shall conduct gambling games is more than fifteen thousand and less than one hundred thousand based upon the most recent federal decennial census, and shall be twenty million dollars if the population of the county where the licensee shall conduct gambling games is one hundred thousand or more based upon the most recent federal decennial census. Moneys collected by the commission from an initial license fee paid under this subsection shall be deposited in the rebuild Iowa infrastructure fund created in section 8.57.

Sec. 50. Section 99F.11, Code Supplement 2003, is amended to read as follows:

99F.11 WAGERING TAX — RATE — ALLOCATIONS.

1. A tax is imposed on the adjusted gross receipts received ~~annually~~ each fiscal year from gambling games authorized under this chapter at the rate of five percent on the first one million dollars of adjusted gross receipts~~,~~ and at the rate of ten percent on the next two million dollars of adjusted gross receipts~~., and at the rate of twenty percent~~

2. The tax rate imposed each fiscal year on any amount of adjusted gross receipts over three million dollars~~. However, beginning January 1, 1997, the rate on any amount of adjusted gross receipts over three million dollars from gambling games at racetrack enclosures is twenty-two percent and shall increase by two percent each succeeding calendar year until the rate is thirty-six percent.~~ shall be as follows:

a. If the licensee is an excursion gambling boat, twenty-two percent.

b. If the licensee is a racetrack enclosure conducting gambling games and another licensee that is an excursion gambling boat is located in the same county, then the following rate, as applicable:

(1) If the licensee of the racetrack enclosure has not been issued a table games license during the fiscal year or if the adjusted gross receipts from gambling games of the licensee in the prior fiscal year were less than one hundred million dollars, twenty-two percent.

(2) If the licensee of the racetrack enclosure has been issued a table games license during the fiscal year or prior fiscal year and the adjusted gross receipts from gambling games of the licensee in the prior fiscal year were one hundred million dollars or more, twenty-two percent on adjusted gross receipts received prior to the operational date and twenty-four percent on adjusted gross receipts received on or after the operational date. For purposes of this subparagraph, the operational date is the date the commission determines table games became operational at the racetrack enclosure.

c. If the licensee is a racetrack enclosure conducting gambling games and no licensee that is an excursion gambling boat is located in the same county, twenty-four percent.

3. The taxes imposed by this section shall be paid by the licensee to the treasurer of state within ten days after the close of the day when the wagers were made and shall be distributed as follows:

~~1.~~ a. If the gambling excursion originated at a dock located in a city, one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the city in which the dock is located and shall be deposited in the general fund of the city. Another one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the county in which the dock is located and shall be deposited in the general fund of the county.

~~2.~~ b. If the gambling excursion originated at a dock located in a part of the county outside a city, one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the county in which the dock is located and shall be deposited in the general fund of the

county. Another one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the Iowa city nearest to where the dock is located and shall be deposited in the general fund of the city.

~~3.~~ c. ~~Three-tenths~~ One-half of one percent of the adjusted gross receipts shall be deposited in the gambling treatment fund ~~specified in section 99G.39, subsection 1, paragraph "a"~~ created in section 135.150.

d. One-half of one percent of the adjusted gross receipts shall be deposited in the county endowment fund created in section 15E.311.

~~4.~~ e. The remaining amount of the adjusted gross receipts tax shall be credited to the general fund of the state.

Sec. 51. Section 99F.12, Code 2003, is amended to read as follows:

99F.12 LICENSEES — RECORDS — REPORTS — SUPERVISION.

1. A licensee shall keep its books and records so as to clearly show all of the following:

~~1.~~ a. The total number of admissions ~~to gambling excursions conducted by the licensee on each day, including the number of admissions upon free passes or complimentary tickets~~ for each day of operation.

~~2.~~ b. ~~The amount received daily from admission fees.~~

~~3.~~ The total amount of money wagered ~~during each excursion day~~ and the adjusted gross receipts for ~~the~~ each day of operation.

2. The licensee shall furnish to the commission reports and information as the commission may require with respect to its activities. The gross receipts and adjusted gross receipts from gambling shall be separately handled and accounted for from all other moneys received from operation of an excursion gambling boat or from operation of a racetrack enclosure licensed to conduct gambling games. The commission may designate a representative to board a licensed excursion gambling boat or to enter a racetrack enclosure licensed to conduct gambling games, who shall have full access to all places within the enclosure of the boat or the racetrack enclosure, who shall directly supervise the handling and accounting of all gross receipts and adjusted gross receipts from gambling, and who shall supervise and check the admissions. The compensation of a representative shall be fixed by the commission but shall be paid by the licensee.

3. The books and records kept by a licensee as provided by this section are public records and the examination, publication, and dissemination of the books and records are governed by the provisions of chapter 22.

Sec. 52. Section 99F.13, Code 2003, is amended to read as follows:

99F.13 ANNUAL AUDIT OF LICENSEE OPERATIONS.

Within ninety days after the end of the licensee's fiscal year, the licensee shall transmit to the commission an audit of the ~~financial transactions and condition of the~~ licensee's total gambling operations, including an itemization of all expenses and subsidies. All audits shall be conducted by certified public accountants registered or licensed in the state of Iowa under chapter 542 who are selected by the board of supervisors of the county in which the licensee operates.

Sec. 53. Section 99F.17, subsections 5 and 6, Code 2003, are amended to read as follows:

5. The manufacturer or distributor of gambling games or implements of gambling shall provide the commission with ~~a copy of the invoice~~ written notice showing the items shipped to the licensee ~~and a copy of the bill of lading~~.

6. Subsection 2 does not apply in the following cases, if approved by the commission:

a. Gambling games or implements of gambling previously installed ~~on an excursion gambling boat~~ in a gambling location licensed in another jurisdiction.

b. Gambling games or implements of gambling previously installed ~~on an excursion gambling boat~~ in a gambling location licensed in this state.

Sec. 54. Section 99G.39, subsection 1, paragraph a, Code Supplement 2003, is amended to read as follows:

a. An amount equal to ~~three-tenths~~ one-half of one percent of the gross lottery revenue for the year shall be deposited in ~~a~~ the gambling treatment fund ~~in the office of the treasurer of state~~ created in section 135.150.

Sec. 55. NEW SECTION. 135.150 GAMBLING TREATMENT FUND.

1. A gambling treatment fund is created in the state treasury under the control of the department. The fund consists of all moneys appropriated to the fund. However, if moneys appropriated to the fund in a fiscal year exceed six million dollars, the amount exceeding six million dollars shall be transferred to the rebuild Iowa infrastructure fund created in section 8.57. Moneys in the fund are appropriated to the department for the purposes described in this section.

2. Moneys appropriated to the department under this section shall be for the purpose of operating a gambling treatment program and shall be used for funding of 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, crisis call access, education and preventive services, and financial management and credit counseling services.

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

4. The department shall report semiannually to the legislative government oversight committees regarding the operation of the gambling treatment fund and program. The report shall include, but is not limited to, information on revenues and expenses related to the fund for the previous period, fund balances for the period, and moneys expended and grants awarded for operation of the gambling treatment program.

Sec. 56. Section 421.17, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 28. To administer the county endowment fund created in section 15E.311.

Sec. 57. NEW SECTION. 725.19 GAMBLING BY MINORS.

1. Any person under the age of twenty-one years shall not make or attempt to make a gambling wager, except as permitted under chapter 99B. A person who violates this subsection commits a scheduled violation under section 805.8C, subsection 4.

2. A person who knowingly permits a person under the age of twenty-one years to make or attempt to make a gambling wager, except as permitted under chapter 99B, is guilty of a simple misdemeanor.

Sec. 58. Section 805.8C, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4. GAMBLING VIOLATIONS. For violations of legal age for gambling wagering under section 99D.11, subsection 7, section 99F.9, subsection 5, and section 725.19, subsection 1, the scheduled fine is five hundred dollars. Failure to pay the fine by a person under the age of eighteen shall not result in the person being detained in a secure facility.

Sec. 59. Sections 99D.14A and 99F.10A, Code 2003, are repealed.

Sec. 60. DEPARTMENT OF PUBLIC SAFETY — SPECIAL AGENT AUTHORIZATION. For the fiscal year beginning July 1, 2004, the department of public safety, with the approval of the department of management, may employ one additional special agent for each racetrack facility that is issued a table games license pursuant to this Act during the fiscal year which

begins July 1, 2004. Positions authorized in this section are in addition to special agent positions otherwise authorized for the department of public safety.

Sec. 61. SOCIOECONOMIC STUDY OF GAMBLING.

1. The legislative council shall commission a study by an independent entity to study the socioeconomic impact of gambling on Iowans. The legislative council is authorized to expend up to one hundred thousand dollars to complete the study. The legislative council shall make the report available by July 1, 2005.

2. The study shall be an empirical study and include, but not be limited to, the following matters:

a. The economic impact of gambling on communities and other businesses.

b. The impact of gambling, if any, on family finances and family relations in general.

c. Demographic information on gamblers.

d. An assessment of the impact, if any, of pathological or problem gambling on individuals, families, social institutions, criminal activity, and the economy.

e. Other relevant issues to fully examine the socioeconomic impact of gambling.

Sec. 62. TRANSITION PROVISIONS — EXCURSION GAMBLING BOAT CRUISING. A licensee authorized to conduct gambling games on an excursion gambling boat pursuant to chapter 99F as of January 1, 2004, shall, no later than June 1, 2004, notify the racing and gaming commission in writing if the licensee intends to operate a moored barge, an excursion boat that will cruise, or an excursion boat that will not cruise. However, a licensee that is located in the same county as a licensee of a racetrack enclosure that conducts gambling games that had less than one hundred million dollars in adjusted gross receipts from gambling games for the fiscal year beginning July 1, 2003, shall only be allowed to operate a moored barge if the licensee, the licensee of the racetrack enclosure, and all other licensees of an excursion gambling boat in that county file an agreement with the commission agreeing to the granting of a table games license under chapter 99F and permitting all licensees of an excursion gambling boat to operate a moored barge as of a specific date. The racing and gaming commission shall make the election of each licensee under this section public by June 7, 2004. A licensee who initially elects to operate a moored barge or an excursion boat that will not cruise may, no later than June 30, 2004, change its election and elect to operate an excursion boat that will cruise.

Sec. 63. 2002-2004 RACETRACK ENCLOSURES — GAMBLING GAMES TAX.

1. Notwithstanding any provision of section 99F.11 to the contrary, a racetrack enclosure conducting gambling games shall pay a tax on the adjusted gross receipts over three million dollars received for the fiscal year beginning July 1, 2002, and ending June 30, 2003, and for the fiscal year beginning July 1, 2003, and ending June 30, 2004, from gambling games authorized under chapter 99F at the following tax rate for each fiscal year:

a. If the licensee of the racetrack enclosure conducting gambling games received adjusted gross receipts from gambling games in the fiscal year beginning July 1, 2002, of less than one hundred million dollars, twenty-two percent.

b. If the licensee of the racetrack enclosure conducting gambling games received adjusted gross receipts from gambling games in the fiscal year beginning July 1, 2002, of one hundred million dollars or more, twenty-four percent.

2. Taxes due as provided by this section on adjusted gross receipts received prior to the effective date of this section of this Act shall be paid by the licensee by June 1, 2004. Taxes on adjusted gross receipts received on or after the effective date of this section of this Act shall be due as otherwise provided for payment of taxes in section 99F.11.

3. Notwithstanding any provision of law to the contrary, taxes imposed by this section shall be deposited in the rebuild Iowa infrastructure fund created in section 8.57.

Sec. 64. 2005-2006 REBUILD IOWA INFRASTRUCTURE ASSESSMENTS.

1. Notwithstanding any provision of chapter 99F to the contrary and in addition to taxes

imposed pursuant to section 99F.11, a rebuild Iowa infrastructure assessment is imposed on each licensee authorized to conduct gambling games on an excursion gambling boat pursuant to chapter 99F as of January 1, 2004, as provided in this section.

2. a. A 2005 rebuild Iowa infrastructure assessment is imposed at the rate of two and one hundred fifty-two thousandths percent on the estimated adjusted gross receipts amount for each licensee of an excursion gambling boat licensed to conduct gambling games on an excursion gambling boat under chapter 99F as of January 1, 2004. For purposes of this subsection, the estimated adjusted gross receipts amount for a licensee is the amount of adjusted gross receipts from gambling games the revenue estimating conference estimated, as of the most recent meeting of the revenue estimating conference held prior to the effective date of this section of this Act, a facility licensed to conduct gambling games on an excursion gambling boat will receive for the fiscal year beginning July 1, 2004, and ending June 30, 2005.

b. The 2005 rebuild Iowa infrastructure assessment provided in this subsection shall be paid by June 1, 2005, which assessment may be offset by the licensee against taxes imposed on the licensee by section 99F.11 to the extent of twenty percent of the assessment paid pursuant to this subsection for each of five consecutive fiscal years beginning with the fiscal year beginning July 1, 2010. The racing and gaming commission shall revoke the license to conduct gambling games of any licensee that fails to pay the 2005 rebuild Iowa infrastructure assessment as provided in this subsection.

3. a. A 2006 rebuild Iowa infrastructure assessment is imposed at the rate of two and one hundred fifty-two thousandths percent on the estimated adjusted gross receipts amount for each licensee of an excursion gambling boat licensed to conduct gambling games on an excursion gambling boat under chapter 99F as of January 1, 2004. For purposes of this subsection, the estimated adjusted gross receipts amount for a licensee is the amount of adjusted gross receipts from gambling games the revenue estimating conference estimated, as of the most recent meeting of the revenue estimating conference held prior to the effective date of this section of this Act, a facility licensed to conduct gambling games on an excursion gambling boat will receive for the fiscal year beginning July 1, 2004, and ending June 30, 2005.

b. The 2006 rebuild Iowa infrastructure assessment provided in this subsection shall be paid by June 1, 2006, which assessment may be offset by the licensee against taxes imposed on the licensee by section 99F.11 to the extent of twenty percent of the assessment paid pursuant to this subsection for each of five consecutive fiscal years beginning with the fiscal year beginning July 1, 2010. The racing and gaming commission shall revoke the license to conduct gambling games of any licensee that fails to pay the 2006 rebuild Iowa infrastructure assessment as provided in this subsection.

4. The 2005 and 2006 rebuild Iowa infrastructure assessments imposed by this section shall be deposited in the rebuild Iowa infrastructure fund created in section 8.57.

Sec. 65. EFFECTIVE DATE — RETROACTIVE APPLICABILITY.

1. The section of this Act amending section 99D.6 takes effect April 1, 2004. If this Act is enacted after April 1, 2004, the section of this Act amending section 99D.6, being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to April 1, 2004, and is applicable on and after that date.

2. The section of this Act amending section 99D.25, subsection 5, takes effect April 1, 2004. If this Act is enacted after April 1, 2004, the section of this Act amending section 99D.25, subsection 5, being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to April 1, 2004, and is applicable on and after that date.

3. The section of this Act amending section 99F.1, subsection 10, being deemed of immediate importance, takes effect upon enactment.

4. The section of this Act amending section 99F.4A, subsection 8, being deemed of immediate importance, takes effect upon enactment.

5. The section of this Act amending section 99F.5, subsection 1, being deemed of immediate importance, takes effect upon enactment.

6. The section of this Act amending section 99F.7, subsection 10, paragraph "e", being

deemed of immediate importance, takes effect upon enactment and is retroactively applicable to referendums held on or after January 1, 2002.

7. The section of this Act requiring a socioeconomic study of gambling, being deemed of immediate importance, takes effect upon enactment.

8. The section of this Act establishing transition provisions concerning excursion gambling boat cruising, being deemed of immediate importance, takes effect upon enactment.

9. The section of this Act establishing a 2002-2004 racetrack enclosure gambling games tax, being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to July 1, 2002, and is applicable on and after that date.

10. The section of this Act establishing 2005 and 2006 rebuild Iowa infrastructure assessments, being deemed of immediate importance, takes effect upon enactment.

Approved May 6, 2004

CHAPTER 1137

INVASIVE AQUATIC PLANTS AND ANIMALS

H.F. 2357

AN ACT relating to the prevention and control of certain aquatic invasive plant and animal species and providing penalties.

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

Section 1. Section 456A.37, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

456A.37 AQUATIC INVASIVE SPECIES — PREVENTION AND CONTROL.

1. DEFINITIONS. As used in this section:

a. "Eurasian watermilfoil" means myriophyllum spicatum, a submerged aquatic weed that invades lakes, ponds, reservoirs, and other bodies of water.

b. "Infestation of an aquatic invasive species" means an infestation of Eurasian watermilfoil that occupies more than twenty percent of the littoral area of a body of water or an infestation of any other species defined as an aquatic invasive species in this section.

c. "Aquatic invasive species" means a species that is not native to an ecosystem and whose introduction causes or is likely to cause economic or environmental harm or harm to human health including but not limited to habitat alteration and degradation, and loss of biodiversity. For the purposes of this section, "aquatic invasive species" are limited to eurasian watermilfoil, purple loosestrife, and zebra mussels, except as provided in subsection 4.

d. "Purple loosestrife" means lythrum salicaria, a wetland plant that invades marshes, lakeshores, and other wetlands.

e. "Watercraft" means any vessel which through the buoyance of water floats upon the water and is capable of carrying one or more persons.

f. "Zebra mussel" means dreissena polymorpha, a small mussel that invades lakes, rivers, and other bodies of water.

2. AQUATIC INVASIVE SPECIES MANAGEMENT PLAN. Before January 1, 2005, the commission shall prepare a long-term statewide aquatic invasive species water management plan. The plan shall address all of the following:

a. The detection and prevention of accidental introductions into the state of aquatic invasive species.

b. A public awareness campaign regarding aquatic invasive species.

c. The control and eradication of aquatic invasive species in public waters.

d. The development of a plan of containment strategies that at a minimum includes all of the following:

(1) The participation by lake associations, local citizen groups, and local units of government in the development of lake management plans where aquatic invasive species exist.

(2) Notice to travelers of the penalties for violation of laws relating to aquatic invasive species.

3. GRANTS. The director of the department of natural resources shall accept gifts, donations, and grants to aid in accomplishing the control and eradication of aquatic invasive species.

4. RULEMAKING. The commission shall adopt rules pursuant to chapter 17A for the implementation and administration of this section. The rules shall do all of the following:

a. Restrict the introduction, propagation, use, possession, and spread of aquatic invasive species.

b. Identify bodies of water with infestations of aquatic invasive species. The department shall require that such bodies of water be posted as infested. The department may prohibit boating, fishing, swimming, and trapping in infested bodies of water.

If the commission determines that an additional species should be defined as an "aquatic invasive species", the species may be defined by the commission by rule as an "aquatic invasive species" subject to enactment of the definition by the general assembly at the next regular session of the general assembly. Failure of the general assembly to enact the definition pursuant to this paragraph constitutes a nullification of the definition effective upon adjournment of that next regular session of the general assembly.

5. PROHIBITIONS.

a. A person shall not do any of the following:

(1) Transport an aquatic invasive species on a public road.

(2) Place a trailer or launch a watercraft that contains or to which an aquatic invasive species is attached in public waters.

(3) Operate a watercraft in a marked aquatic invasive species infestation area.

b. A person who violates this subsection is subject to a scheduled fine pursuant to section 805.8B, subsection 5.

Sec. 2. Section 805.8B, subsection 5, Code 2003, is amended to read as follows:

5. ~~Eurasian water milfoil~~ Aquatic invasive species violations. For violations of section 456A.37, subsection 5, the scheduled fine is one hundred dollars.

Approved May 6, 2004

CHAPTER 1138

CONDUCT OF CONTROLLED BURNS
OF DEMOLISHED BUILDINGS BY CITIES

H.F. 2392

AN ACT relating to controlled burns of demolished buildings conducted by certain cities.

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

Section 1. Section 455B.133, subsection 10, Code 2003, is amended to read as follows:

10. Adopt rules allowing a city to conduct a controlled burn of a demolished building subject to the ~~same restrictions as~~ requirements that are in effect for ~~fire fighting training fires~~ the proper removal of all asbestos containing materials prior to demolition and burning. The rules shall include ~~a provision~~ provisions that a ~~city may undertake no more than three controlled burns in every overlapping six-tenths-of-a-mile-radius circle every three years~~ burn site have controlled access, that a burn site be supervised by representatives of the city at all times, and that the burning be conducted only when weather conditions are favorable with respect to surrounding property. For a burn site located outside of a city, the rules shall include a provision that a city may undertake not more than one such controlled burn per day and that a burn site be limited to an area located at least six-tenths of a mile from any inhabited building. For burn sites located within a city, the rules shall include a provision that a city may undertake not more than one such controlled burn in every six-tenths-of-a-mile-radius circle in each calendar year. The rules shall prohibit a controlled burn of a demolished building in Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, Pleasant Hill, Buffalo, Davenport, Mason City, or any other area where area-specific state implementation plans require the control of particulate matter.

Approved May 6, 2004

CHAPTER 1139

ISSUANCE OF DRIVER'S LICENSES AND NONOPERATOR CARDS
— FEES RETAINED BY COUNTIES

H.F. 2433

AN ACT relating to fees retained by county treasurers for the issuance of driver's licenses and nonoperator identification cards.

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

Section 1. Section 321M.9, subsection 1, Code Supplement 2003, is amended to read as follows:

1. FEES TO COUNTIES. Notwithstanding any other provision in the Code to the contrary, the county treasurer of any county authorized to issue driver's licenses under this chapter shall retain for deposit in the county general fund ~~five~~ seven dollars of fees received for each issuance or renewal of driver's 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.

Sec. 2. Section 321M.9, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4. PERIODIC FEE ADJUSTMENT. The auditor of state, in consultation with the state department of transportation and the Iowa county treasurers association, shall conduct a study of the fiscal impact of the county driver's license issuance program and report its findings and recommendations to the general assembly prior to January 1, 2006, and repeat the study and reporting every four years thereafter. The auditor of state's costs for conducting the study shall be paid by the department. The study shall include a comparison of the cumulative costs to issue driver's licenses and nonoperator's identification cards under both the state department of transportation program and the county issuance program. The study shall be based on those issuance activities that are common to both programs. Prior to the study period, the auditor of state shall meet with the department and the county treasurers association to determine the study methodology to ensure appropriate accounting for time and cost during the study. The findings and recommendations submitted by the auditor of state shall be considered by the general assembly in adjusting the amount of the fees retained by the county treasurers for issuance of driver's licenses and nonoperator's identification cards.

Sec. 3. 2003 Iowa Acts, chapter 8, section 27, is repealed.

Approved May 6, 2004

CHAPTER 1140

SCHOOL DISTRICT ENROLLMENT
OF PERSONS REQUIRED TO REGISTER AS A SEX OFFENDER

H.F. 2460

AN ACT relating to school district enrollment of students listed on the sex offender registry.

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

Section 1. NEW SECTION. 282.9 ENROLLMENT OF PERSON LISTED ON REGISTRY.

1. Notwithstanding sections 275.55A, 256F.4, and 282.18, or any other provision to the contrary, prior to knowingly enrolling an individual who is required to register as a sex offender under chapter 692A, but who is otherwise eligible to enroll in a public school, the board of directors of a school district shall determine the educational placement of the individual. Upon receipt of notice that a student who is enrolled in the district is required to register as a sex offender under chapter 692A, the board shall determine the educational placement of the student. The tentative agenda for the meeting of the board of directors at which the board will consider such enrollment or educational placement shall specifically state that the board is considering the enrollment or educational placement of an individual who is required to register as a sex offender under chapter 692A. If the individual is denied enrollment in a school district under this section, the school district of residence shall provide the individual with educational services in an alternative setting.

2. Notwithstanding section 692A.13, or any other provision of law to the contrary, the county sheriff shall provide to the boards of directors of the school districts located within the county the name of any individual under the age of twenty-one who is required to register as a sex offender under chapter 692A.

Approved May 6, 2004

CHAPTER 1141

REGULATION OF FINANCIAL INSTITUTIONS
AND REAL PROPERTY TRANSACTIONS

H.F. 2484

AN ACT relating to the regulation of financial and real property institutions and assets including banks, credit unions, real property loan lenders, and real property financial liability.

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

DIVISION I
DIVISION OF BANKING

Section 1. Section 8A.412, subsection 19, Code Supplement 2003, is amended to read as follows:

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

Sec. 2. Section 524.201, subsection 1, Code 2003, is amended to read as follows:

1. The governor shall appoint, subject to confirmation by the senate, a superintendent of banking. The appointee shall be selected solely with regard to qualification and fitness to discharge the duties of office, and a person shall not be appointed who has not had at least five years' experience as an executive officer in a bank ~~or in the regulation or examination of banks~~.

Sec. 3. Section 524.203, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

524.203 SUPERINTENDENT — VACANCY.

If the office of superintendent shall become vacant, the governor may appoint an acting superintendent to complete the unexpired term until an appointment is made as provided in section 524.201.

Sec. 4. Section 524.204, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

524.204 DEPUTY SUPERINTENDENT OF BANKING.

The superintendent may appoint an employee of the division of banking as deputy to perform the duties of the superintendent during the absence or inability of the superintendent to act. Any deputy so appointed shall be removable at the pleasure of the superintendent.

Sec. 5. Section 524.205, Code 2003, is amended to read as follows:

524.205 STATE BANKING ~~BOARD~~ COUNCIL.

1. The state banking ~~board~~ council shall ~~be composed~~ consist of the superintendent, who shall be an ex officio ~~nonvoting~~ member and chairperson, and six other members, appointed by the governor, who shall be ~~chosen~~ appointed, where practical, from various ~~sections~~ parts of the state. Provided, however, that in no event shall more than five members of such ~~board~~ council be engaged in the business of banking in any executive capacity. ~~In case of a vacancy in the state banking board, other than one resulting from a vacancy in the office of the superintendent, the governor shall appoint a new member to fill such vacancy for the unexpired term.~~

2. The ~~regular term~~ terms of office ~~of each member~~ for members of the state banking council, other than the superintendent, shall be ~~contemporaneous with the regular term of office of the superintendent as defined in subsection 2 of section 524.201, and each such member shall hold office for such term and until the member's successor shall have been appointed~~

four-year staggered terms. Each member shall hold office for the term for which the member is appointed or until a successor is appointed.

3. A member of the state banking ~~board~~ council, other than the superintendent, shall not receive a salary but is entitled to reimbursement for actual expenses incurred by the member in connection with the member's duties. Each member of the ~~board~~ council may also be eligible to receive compensation as provided in section 7E.6.

4. The state banking ~~board~~ council shall act ~~with the superintendent~~ in an advisory capacity concerning ~~all~~ matters submitted to the council by the superintendent pertaining to the conduct of the administration ~~of the provisions~~ of this chapter ~~and shall perform such other duties as are specifically provided for by the laws of this state~~.

5. The state banking ~~board~~ council shall meet at least once each ~~month~~ calendar quarter on such date and at such place as the ~~state banking board~~ council may ~~designate~~ decide, and shall meet at such other times as ~~the board~~ may ~~deem~~ be deemed necessary~~, or when called by the chairperson of the board, or any two members thereof~~ by the superintendent or a majority of the council members.

Sec. 6. Section 524.207, subsection 1, Code Supplement 2003, is amended to read as follows:

1. All expenses required in the discharge of the duties and responsibilities imposed upon the banking division of the department of commerce, the superintendent, and the state banking ~~board~~ council by the laws of this state shall be paid from fees provided by the laws of this state and appropriated by the general assembly from the general fund of the state. All of these fees are payable to the superintendent. The superintendent shall pay all the fees and other moneys received by the superintendent to the treasurer of state within the time required by section 12.10 and the fees and other moneys shall be deposited into the general fund of the state. The superintendent may keep on hand with the treasurer of state funds in excess of the current needs of the division to the extent ~~approved~~ recommended by the state banking ~~board~~ council.

Sec. 7. Section 524.208, Code 2003, is amended to read as follows:

524.208 ~~ASSISTANTS,~~ EXAMINERS~~,~~ AND OTHER EMPLOYEES.

The superintendent may appoint ~~assistants,~~ examiners~~,~~ and other employees as the superintendent deems necessary to the proper discharge of the duties imposed upon the superintendent by the laws of this state. Pay plans shall be established for employees, other than clerical, who examine the accounts and affairs of state banks and who examine the accounts and affairs of other persons, subject to supervision and regulation by the superintendent, which are substantially equivalent to those paid by the ~~Federal Deposit Insurance Corporation~~ federal deposit insurance corporation and other federal supervisory agencies in this area of the United States.

Sec. 8. Section 524.209, Code Supplement 2003, is amended to read as follows:

524.209 EXPENSES.

The superintendent, ~~deputy superintendent, assistants,~~ examiners, and other employees of the banking division shall be entitled to receive reimbursement for expenses incurred in the performance of their duties. The superintendent, and when specifically authorized by the superintendent, ~~the deputy superintendent, assistants,~~ examiners and other employees of the banking division, shall be entitled to receive reimbursement for expenses incurred while attending conventions, meetings, conferences, schools, or seminars relating to the performance of their duties, and such expenses shall be paid by the treasurer of state on warrants drawn by the director of the department of administrative services.

Sec. 9. Section 524.210, Code 2003, is amended to read as follows:

524.210 INSURANCE AND SURETY BONDS.

The superintendent shall acquire good and sufficient bond in a company authorized to do

business in this state insuring the faithful performance of ~~the deputy superintendent, assistants,~~ examiners~~,~~ and all other employees of the banking division and insuring against any liability which may accrue in the case of the loss of any property of a state bank, of a customer of a state bank or of any other person, in the course of any examination, investigation, or other function required or allowed by the laws of this state. The superintendent shall be bonded in accordance with the provisions of chapter 64.

Sec. 10. Section 524.211, subsections 1, 2, 3, 4, 5, and 7, Code 2003, are amended to read as follows:

1. The superintendent, ~~deputy superintendent, an assistant to the superintendent, a bank examination analyst,~~ general counsel, ~~or an examiner~~ examiners, and other employees assigned to the bank bureau of the banking division ~~is~~ are prohibited from obtaining a loan of money or property from a state-chartered bank or any person or entity affiliated with a state-chartered bank.

2. The superintendent, ~~deputy superintendent, finance company bureau chief,~~ general counsel, ~~and all~~ examiners, and other employees assigned to the finance ~~company~~ bureau of the banking division are prohibited from obtaining a loan of money or property from a person or entity licensed pursuant to chapter 533A, 533D, 536, or 536A, or a person or entity affiliated with such licensee.

3. The superintendent, ~~deputy superintendent, an assistant to the superintendent, a bank examination analyst, finance company bureau chief,~~ general counsel, ~~or an examiner~~ examiners, and other employees of the banking division, who ~~has~~ have credit relations with a person or entity licensed or registered pursuant to chapter 535B or 536C, ~~is~~ are prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the licensee or registrant.

4. ~~An assistant to the superintendent, a bank examination analyst, or an examiner~~ Examiners and other employees assigned to the bank bureau of the banking division who ~~has~~ have credit relations with a person or entity licensed pursuant to chapter 533A, 533D, 536, or 536A, or with a person or entity affiliated with such licensee, ~~is~~ are prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the licensee.

5. An employee of the banking division, other than the superintendent or a member of the state banking ~~board~~ council, shall not perform any services for, and shall not be a shareholder, member, partner, owner, director, officer, or employee of, any enterprise, person, or affiliate subject to the regulatory purview of the banking division.

7. The superintendent, ~~deputy superintendent, or any assistant or examiner~~ examiners, or other employees who ~~is~~ are convicted of a felony while holding such position shall be immediately discharged from employment and shall be forever disqualified from holding any position in the banking division.

Sec. 11. Section 524.212, Code Supplement 2003, is amended to read as follows:

524.212 PROHIBITION AGAINST DISCLOSURE OF REGULATORY INFORMATION.

The superintendent, ~~deputy superintendent, assistant to the superintendent, examiner~~ members of the state banking council, general counsel, examiners, or other ~~employee~~ employees of the banking division shall not disclose, in any manner, to any person other than the person examined and those regulatory agencies referred to in section 524.217, subsection 2, any information relating specifically to the supervision and regulation of any state bank, persons subject to the provisions of chapter 533A, 533C, 536, or 536A, any affiliate of any state bank, or an affiliate of a person subject to the provisions of chapter 533A, 533C, 536, or 536A, except when ordered to do so by a court of competent jurisdiction and then only in those instances referred to in section 524.215, subsections 1, 2, 3, and 5.

Sec. 12. Section 524.214, subsection 1, Code 2003, is amended to read as follows:

1. The superintendent, ~~the deputy superintendent,~~ and upon the approval of the superinten-

dent, any ~~assistant or~~ examiner or other employees of the banking division shall have the power to subpoena witnesses, to compel their attendance, to administer an oath, to examine any person under oath and to require the production of any relevant books or papers. Such examination may be conducted on any subject relating to the duties imposed upon, or powers vested in, the superintendent under the provisions of this chapter.

Sec. 13. Section 524.215, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The superintendent, ~~deputy superintendent, assistants, or~~ members of the state banking council, examiners, or other employees of the banking division shall not be subpoenaed in any cause or proceeding to give testimony concerning information relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state, and the records of the banking division which relate specifically to the supervision and regulation of any such state bank or other such person shall not be offered in evidence in any court or subject to subpoena by any party except, where relevant:

Sec. 14. Section 524.216, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The superintendent shall make a report in writing annually to the governor in the manner and within the time required by chapter 7A. ~~A copy of the report shall be furnished by the superintendent to each state bank.~~

Sec. 15. Section 524.217, subsection 1, paragraph a, Code 2003, is amended to read as follows:

a. Make or cause to be made an examination of every state bank and trust company whenever in the superintendent's judgment such examination is necessary or advisable, but in no event less frequently than once during each two-year period by either the banking division or the appropriate federal banking agency. During the course of each examination of a state bank or trust company, inquiry shall be made as to its financial condition, the security afforded to those to whom it is obligated, the policies of its management, whether the requirements of law have been complied with in the administration of its affairs, and such other matters as the superintendent may prescribe.

Sec. 16. Section 524.218, Code 2003, is amended to read as follows:

524.218 REGULATION AND EXAMINATION OF SERVICES.

A state bank ~~may~~ shall not cause to be performed~~,~~ by contract or otherwise, any bank services, of a type referred to in section 524.804~~,~~ for itself or any affiliate, whether on or off its premises, unless ~~assurances satisfactory to the superintendent are furnished to the superintendent by both the state bank and the person performing such services that the performance thereof~~ the person performing such services will be subject to supervision, regulation, and examination by the superintendent to the same extent as if such services were being performed by the state bank itself on its own premises.

Sec. 17. Section 524.219, Code 2003, is amended to read as follows:

524.219 FEES.

1. A state bank subject to examination, supervision, and regulation by the superintendent, shall pay to the superintendent fees, established by the ~~state banking board~~ superintendent, based on the costs and expenses incurred in the discharge of the duties imposed upon the superintendent by this chapter. The fees shall include, but are not limited to, costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment.

2. The fees for examination of any affiliate of a state bank as provided for in section 524.1105, and the examinations provided for in section 524.217, subsection 1, paragraphs "c" and "d", shall be established by the ~~state banking board~~ superintendent, based on the time required for the examination and the administrative costs and expenses incurred in the

discharge of the duties imposed upon the superintendent by this chapter. The fees shall include, but not be limited to, costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment.

~~Upon completion of each examination required or allowed by this chapter, the examiner in charge of the examination shall render a bill for the fees, in duplicate, and shall deliver one copy of the bill to the state bank and one copy to the superintendent.~~

3. Failure to pay the amount of the fees to the superintendent within ten days after the date of billing shall subject the state bank or any affiliate of a state bank to an additional charge equal to five percent of the amount of the fees for each day the payment is delinquent.

Sec. 18. Section 524.310, subsection 1, Code 2003, is amended to read as follows:

1. The name of a state bank originally incorporated after the effective date of this chapter shall include the word "bank" and may include the word "state" or "trust" in its name. A state bank using the word "trust" in its name must be authorized under this chapter to act in a fiduciary capacity. A national bank or federal savings bank shall not use the word "state" in its legally chartered name.

Sec. 19. Section 524.405, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A state bank~~, with the approval of the superintendent,~~ may increase its capital structure or effect an allocation of amounts within its capital structure, by the use of any of the following methods:

Sec. 20. NEW SECTION. 524.607A ACTION WITHOUT MEETING.

1. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted to be taken under this chapter at a board of directors' meeting may be taken without a meeting if the action is consented to 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 records reflecting the action taken.

2. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

3. A written consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Sec. 21. Section 524.610, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The shareholders of a state bank shall fix the reasonable compensation of directors for their services as members of the board of directors. Subject to ~~the approval of the superintendent and~~ approval by the shareholders at an annual or special meeting called for that purpose, the shareholders of a state bank may adopt a pension or profit sharing plan, or both, or other plan of deferred compensation for directors, to which a state bank may contribute.

Sec. 22. Section 524.703, unnumbered paragraph 2, Code 2003, is amended to read as follows:

Subject to ~~the approval of the superintendent, and~~ approval by the shareholders at an annual or special meeting called for the purpose, the board of directors of a state bank may adopt a pension or profit-sharing plan, or both, or other plan of deferred compensation, for both officers and employees, to which the state bank may contribute.

Sec. 23. Section 524.802, subsection 5, Code 2003, is amended to read as follows:

5. Act as agent for a depository institution affiliate ~~to the same extent that a national bank can act as an agent for a depository institution under the provisions of section 18 of the Federal Deposit Insurance Act, 12 U.S.C. § 1828~~.

Sec. 24. Section 524.903, subsections 2 and 3, Code 2003, are amended to read as follows:

2. A state bank shall not accept such drafts in an amount which exceeds at any time in the aggregate for all drawers thirty percent of the state bank's aggregate capital. ~~The superintendent may authorize a state bank to accept drafts in an amount not exceeding at any time in the aggregate for all drawers sixty percent of the state bank's aggregate capital, but the aggregate of acceptance growing out of domestic transactions shall in no event exceed thirty percent of aggregate capital.~~

3. A state bank~~, with the prior approval of the superintendent,~~ may accept drafts, having not more than three months after sight to run, drawn upon it by banks or bankers in foreign countries, or in dependencies or insular possessions of the United States, for the purpose of furnishing dollar exchange as required by the usages of trade where the drafts are drawn in an aggregate amount which shall not at any time exceed for all such acceptance on behalf of a single bank or banker seven and one-half percent of the state bank's aggregate capital, and for all such acceptances, thirty percent of the state bank's aggregate capital.

Sec. 25. Section 524.904, subsection 7, paragraph a, Code 2003, is amended to read as follows:

a. Additional funds advanced for taxes or for insurance if the advance is for the protection of the state bank~~, and provided that such amounts receive the prior approval of the superintendent~~.

Sec. 26. Section 524.1201, subsection 3, Code 2003, is amended to read as follows:

3. Notwithstanding any of the other provisions of this section, original loan documentation and trust recordkeeping functions may be located at ~~an~~ any authorized bank office or at any other location approved by the superintendent.

Sec. 27. Section 524.1303, subsection 3, Code 2003, is amended to read as follows:

3. Within thirty days after the application for dissolution involving a provision of acquisition of the state bank's assets and assumption of its liabilities by another state bank is accepted for processing, the dissolving bank shall publish ~~once each week for two consecutive weeks a~~ notice of the proposed transaction~~. The notice shall be published~~ in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the dissolving bank has its principal place of business, and in the municipal corporation or unincorporated area in which the acquiring state bank has its principal place of business, or if there is none, a newspaper of general circulation published in the county or counties, or in a county adjoining the county or counties, in which the dissolving bank and the acquiring bank have their principal place of business. The notice shall be on forms provided by the superintendent, and proof of publication of the notice shall be delivered to the superintendent within fourteen days.

Sec. 28. Section 524.1402, subsection 4, Code 2003, is amended to read as follows:

4. If a proposed merger will result in a state bank, within thirty days after the application for merger is accepted for processing, the parties to the plan shall publish~~, once each week for two consecutive weeks,~~ a notice of the proposed transaction~~. The notices shall be published~~ in a newspaper of general circulation published in the municipal corporation or unincorporated area in which each party to the plan has its principal place of business, or if there is none, in a newspaper of general circulation published in the county, or in a county adjoining the county, in which each party to the plan has its principal place of business. The notice shall be on forms prescribed by the superintendent and shall set forth the names of the parties to the plan and the resulting state bank, the location and post office address of the principal place of business of the resulting state bank and of each office to be maintained by the resulting state bank, and the purpose or purposes of the resulting state bank. Proof of publication of the notice shall be delivered to the superintendent within fourteen days.

Sec. 29. Section 524.1412, unnumbered paragraph 1, Code 2003, 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. Proof of publication of the notice shall be delivered to the superintendent within fourteen days. The notice shall set forth all of the following:

Sec. 30. Section 524.1416, subsection 2, Code 2003, is amended to read as follows:

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. A state bank that converts into a national bank or federal savings association shall comply with the provisions of section 524.310, subsection 1.

Sec. 31. Section 524.1611, subsection 1, Code 2003, is amended to read as follows:

1. Any person violating the provisions ~~of subsection 1~~ of section 524.211, subsection 1, shall be guilty of a fraudulent practice, and shall be subject to a further fine of a sum equal to the amount of the value of the property given or received or the money so loaned or borrowed. ~~The deputy superintendent, an assistant or examiner~~ An employee of the division of banking convicted of a violation of such subsection shall be immediately discharged from employment and shall be forever disqualified from holding any position in the banking division.

Sec. 32. Section 546.3, Code 2003, is amended to read as follows:

546.3 BANKING DIVISION.

The banking division shall regulate and supervise banks under chapter 524, regulated loan companies under chapter 536, and industrial loan companies under chapter 536A, and shall perform other duties assigned to the division by law. The division is headed by the superintendent of banking who is appointed pursuant to section 524.201. The state banking ~~board~~ council shall ~~perform duties~~ render advice within the division ~~as prescribed by law~~ when requested by the superintendent.

Sec. 33. STATE BANKING COUNCIL — INITIAL FOUR-YEAR TERMS. The governor shall appoint members to the state banking council for terms beginning on May 1, 2005, as follows: One member shall be appointed for a one-year term, one member shall be appointed for a two-year term, two members shall be appointed for three-year terms, and two members shall be appointed for four-year terms.

Sec. 34. Section 68B.35, Code Supplement 2003, and sections 536.13, 536.23, and 536.28, Code 2003, are amended by striking from the sections the words "state banking board" and "banking board" and "board" when referring to the state banking board and inserting in lieu thereof the words "state banking council".

Sec. 35. CODE EDITOR'S DIRECTIVE. The Code editor shall correct any references to the state banking council as the successor to the state banking board, including grammatical constructions, anywhere else in the Iowa Code, in any bills awaiting codification, and in any bills enacted by the Eighteieth General Assembly, 2004 Regular Session.

DIVISION II
CREDIT UNIONS

Sec. 36. Section 533.2, Code 2003, is amended to read as follows:

533.2 AMENDMENTS.

1. ~~The articles~~ Articles of incorporation ~~or the bylaws~~ may be amended by a favorable vote of a majority of the members present at a meeting, if that number constitutes a quorum and if the proposed amendment was contained in the notice of the meeting.

2. Bylaws may ~~also~~ be amended by ~~a~~ any of the following methods:

a. The favorable vote of a majority of the members ~~of the board, or by~~ present at a meeting, if that number constitutes a quorum and if the proposed amendment was contained in the notice of the meeting.

b. The favorable vote of a majority of the members of the board.

c. By a majority vote of members voting by mailed or electronic ballot~~, according to procedures specified by rule of the superintendent requiring at least twenty days' notice to all members, mailed ballots~~ ensuring the confidentiality of voters, ~~announcement to members of the results of the vote, and preservation of the ballots for a reasonable period of time~~ according to procedures specified by rule of the superintendent, requiring at least twenty days' notice to all members. ~~All amendments must be approved by the superintendent before they become effective.~~ An announcement shall be made to members of the results of the vote. Ballots shall be preserved for a reasonable period of time following the vote.

d. A combination of procedures as specified in paragraphs "a" and "c", whereby members are allowed to vote either in person at a meeting or by mailed or electronic ballot, according to procedures specified by rule of the superintendent. If the proposed amendment receives a favorable majority of the total votes cast in person and by mailed ballot, the bylaws shall be amended.

Sec. 37. Section 533.4, subsection 5, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. j. Any permissible investment for federal credit unions, provided that this paragraph shall not permit a credit union to invest in a credit union service organization except as provided in paragraph "f".

Sec. 38. Section 533.4, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 28. Set off a member's accounts against any of the member's debts or liabilities owed the state credit union pursuant to an agreement entered into between the member and the credit union. The credit union shall also have a lien on the shares and deposits of a member for any sum due the credit union from the member or for any loan endorsed by the member.

Sec. 39. Section 533.6, subsection 2, Code 2003, is amended to read as follows:

2. The superintendent may make or cause to be made an examination of each credit union whenever the superintendent believes such examination is necessary or advisable, but in no event less frequently than once during each ~~eighteen-month~~ twenty-four-month period. A credit union designated as serving predominantly low-income members shall be reviewed during each examination to ensure that such credit union is continuing to meet the standards established by rule of the superintendent. Each credit union and all of its officers and agents shall give to the representatives of the superintendent free access to all books, papers, securities, records, and other sources of information under their control. A report of such examination shall be forwarded to the chairperson of each credit union within thirty days after the completion of the examination. Within thirty days of the receipt of this report, a meeting of the directors shall be called to consider matters contained in the report and the action taken shall be set forth in the minutes of the board. The superintendent may accept, in lieu of the examination of a credit union, an audit report conducted by a certified public accounting firm

selected from a list of firms previously approved by the superintendent. The cost of the audit shall be paid by the credit union.

Sec. 40. Section 533.8, Code 2003, is amended to read as follows:

533.8 ELECTIONS.

1. At the organization meeting there shall be elected a board of directors of not less than nine members to hold office for such terms as the bylaws provide and until successors are elected and qualify.

2. At each annual meeting there shall be elected one member to fill each position vacated by reason of expiring terms or other causes.

3. Pursuant to rules adopted by the superintendent, state credit unions may allow members to vote on the election of directors via electronic means including, but not limited to, the internet or telephone.

4. A record of the names and addresses of the directors, officers and committee persons shall be filed with the superintendent within ten days following each election.

5. A state credit union wishing to maintain a board of directors of less than nine members may apply to the superintendent for permission to reduce the required number of directors to no fewer than seven members. An application to reduce the required number of directors under this subsection must demonstrate both of the following:

a. The application is necessitated by a hardship or other special circumstance.

b. The lesser number of directors is in the best interest of the credit union and its members.

Sec. 41. Section 533.9, Code 2003, is amended to read as follows:

533.9 DIRECTORS AND OFFICERS.

1. Within five days following the organization meeting and each annual meeting, the directors shall elect from their own number a chairperson of the board, a vice chairperson, a secretary, and a chief financial officer whose title shall be designated by the board of directors.

2. The board shall appoint a credit committee of not less than three members, and an auditing committee of not less than three members, and may also appoint alternate members of the credit committee.

3. Only a member of the board of directors or a member of the credit union may be appointed to the credit committee or to the auditing committee.

4. The board may appoint an executive committee to act on its behalf when designated for that purpose.

5. The duties and responsibilities of a director and of the board of directors ~~have general~~ shall include, but are not limited to, all of the following:

a. General management of the affairs of the state credit union ~~including, but not limited to, the power to fix~~.

b. Setting the amount of the surety bond ~~which~~ that shall be required of all officers and employees handling money.

c. Periodic review of the original records of the state credit union, or comprehensive summaries prepared by the officers of the credit union, pertaining to loans, security interests, and investments.

d. Review of the adequacy of the state credit union's internal controls.

e. Periodic review of utilization of security measures.

f. Establishing education and training programs to ensure that the directors possess adequate knowledge to manage the affairs of the state credit union.

6. a. Directors of a state credit union shall discharge the duties of their position in good faith and with that diligence, care, and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

b. The directors have a continuing responsibility to assure themselves that the state credit union is being managed according to law and that the practices and policies adopted by the board are being implemented.

7. Unless the bylaws provide otherwise, the board of directors may permit any and all

directors to participate in all except one meeting per year of the board of directors through the use of any means of communication by which all directors participating in the meeting may simultaneously hear each other and communicate during the meeting. A director participating in a meeting by this means is deemed to be present at the meeting.

8. a. A director, committee member, officer, or employee of a state credit union shall not directly or indirectly participate in either the deliberation upon or the determination of any matter in which the director, committee member, officer, or employee has a direct or indirect interest.

b. For the purposes of this subsection, an interest may include, but is not limited to, a pecuniary or familial interest.

Sec. 42. Section 533.12, subsection 1, Code 2003, is amended to read as follows:

1. The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on shares. ~~The credit union shall have a lien on the shares and deposits of a member for any sum due to the credit union from the member or for any loan endorsed by the member.~~ A credit union may charge an entrance fee as may be provided by the bylaws.

Sec. 43. Section 533.19, Code 2003, is amended to read as follows:

533.19 EXPULSION — WITHDRAWAL.

1. The board of directors may expel any member who has failed to do either of the following:

a. Carry out the member's obligations to the state credit union.

b. Comply with the state credit union's bylaws or policies.

2. A member may be expelled by a majority vote of the board of directors at a regular or special meeting of the board.

a. ~~The~~ An expelled member may request a hearing before the membership of the credit union. A meeting of the membership shall be held within sixty days of the member's request.

b. The membership may, by majority vote at the membership meeting, reinstate the expelled member upon terms and conditions prescribed by it.

3. Any member may withdraw from the credit union at any time, but notice of withdrawal may be required as provided in this section.

4. All amounts paid on shares or as deposits of an expelled or withdrawing member, with any dividends or interest accredited thereto, to the date thereof, shall, after deducting all amounts due from the member to the credit union and an amount as necessary to honor outstanding share drafts drawn against accounts of the member, be paid to the member.

5. Upon expulsion or withdrawal of a member from a credit union, or at any other time, the credit union may require sixty days' notice of intention to withdraw shares and thirty days' notice of intention to withdraw deposits, except that a credit union shall not at any time require notice of withdrawal with respect to funds which are subject to withdrawal by share drafts.

6. Withdrawing or expelled members shall have no further rights in the credit union but are not, by such expulsion or withdrawal, released from any remaining liability to the credit union.

Sec. 44. NEW SECTION. 533.19A SUSPENSION OR RESTRICTION OF SERVICES.

1. A state credit union may suspend or deny certain services to members who have performed any of the following actions:

a. Caused a loss to the state credit union.

b. Violated the membership agreement or any policy adopted by the board.

c. Been physically or verbally abusive to state credit union members or staff.

2. Members with suspended services may maintain a share account and continue to vote at annual and special meetings.

Sec. 45. Section 533.38, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 12. Establish one or more capital accounts in the same manner as if it were a federal credit union.

DIVISION III
BANKS AS LIMITED LIABILITY COMPANIES

Sec. 46. Section 422.11, Code 2003, is amended to read as follows:

422.11 FRANCHISE TAX CREDIT.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a franchise tax credit. A taxpayer who is a shareholder in a financial institution, as defined in section 581 of the Internal Revenue Code, which has in effect for the tax year an election under subchapter S of the Internal Revenue Code, or is a member of a financial institution organized as a limited liability company under chapter 524 that is taxed as a partnership for federal income tax purposes, shall compute the amount of the tax credit by recomputing the amount of tax under this division by reducing the taxable income of the taxpayer by the taxpayer's pro rata share of the items of income and expense of the financial institution and subtracting the credits allowed under section 422.12. This recomputed tax shall be subtracted from the amount of tax computed under this division after the deduction for credits allowed under section 422.12. The resulting amount, which shall not exceed the taxpayer's pro rata share of the franchise tax paid by the financial institution, is the amount of the franchise tax credit allowed.

Sec. 47. Section 524.103, subsections 6, 8, 17, 20, 30, 31, and 33, Code 2003, are amended to read as follows:

6. "Articles of incorporation" means the original or restated articles of incorporation and all amendments thereto and includes articles of merger. "Articles of incorporation" also means the original or restated articles of organization and all amendments including articles of merger if a state bank is organized as a limited liability company under this chapter.

8. "Bank" means a corporation or limited liability company organized under this chapter or 12 U.S.C. § 21.

17. "Control" means when a person, directly or indirectly or acting through or together with one or more persons, satisfies any of the following:

a. Owns, controls, or has the power to vote fifty percent or more of any class of voting securities or membership interests of another person.

b. Controls, in any manner, the election of a majority of the directors, managers, trustees, or other persons exercising similar functions of another person.

c. Has the power to exercise a controlling influence over the management or policies of another person.

20. "Executive officer" means a person who participates or has authority to participate, other than in the capacity of a director or manager, in major policymaking functions of a state bank, whether or not the officer has an official title, whether or not such a title designates the officer as an assistant, or whether or not the officer is serving without salary or other compensation. The chief executive officer, chairperson of the board, the president, every vice president, and the cashier of a state bank are deemed to be executive officers, unless such an officer is excluded, by resolution of the board of directors of a state bank or by the bylaws of the state bank, from participation, other than in the capacity of a director, in major policymaking functions of the state bank, and the officer does not actually participate in the major policymaking functions. All officers who serve on a board of directors are deemed to be executive officers, except as provided for in section 524.701, subsection 3.

30. "Shareholder" means one who is a holder of record of shares in a state bank. If a state bank is organized as a limited liability company under this chapter, "shareholder" means any member of the limited liability company.

31. "Shares" means the units into which the proprietary interests in a state bank are divided, including any membership interests of a state bank organized as a limited liability company under this chapter.

33. "State bank" means any bank incorporated pursuant to the provisions of this chapter after January 1, 1970, and any "state bank" or "savings bank" incorporated pursuant to the

laws of this state and doing business as such on January 1, 1970, or organized as a limited liability company under this chapter.

Sec. 48. Section 524.103, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 9A. "Board of directors" means the board of directors of a state bank as provided in section 524.601. For state banks organized as a limited liability company under this chapter, "board of directors" means a board of directors or board of managers as designated by the limited liability company in its articles of organization or operating agreement.

NEW SUBSECTION. 18A. "Director" means a member of the board of directors and includes a manager of a state bank organized as a limited liability company under this chapter.

NEW SUBSECTION. 23A. "Manager" means a person designated by the members to manage a state bank organized as a limited liability company under this chapter as provided in the articles of organization or an operating agreement and may include a member of the board of directors.

NEW SUBSECTION. 23B. "Member" means a person with a membership interest in a state bank organized as a limited liability company under this chapter.

NEW SUBSECTION. 23C. "Membership interest" means a member's share of the profits and losses, the right to receive distributions of assets, and any right to vote or participate in management, of a state bank organized as a limited liability company under this chapter.

Sec. 49. Section 524.301, Code 2003, is amended to read as follows:

524.301 INCORPORATORS — ORGANIZERS.

A state bank may be incorporated or organized as a limited liability company under this chapter by one or more individuals eighteen years of age or older, a majority of whom shall be residents of this state and citizens of the United States.

Sec. 50. NEW SECTION. 524.302A ARTICLES OF INCORPORATION — LIMITED LIABILITY COMPANY.

1. The articles of incorporation of a state bank organized as a limited liability company under this chapter shall be in the form prescribed by the superintendent, and shall set forth all of the following:

a. The name of the state bank, that it is organized for the purpose of conducting the business of banking, and that it is organized under the provisions of this chapter.

b. The street address of the limited liability company's initial registered office and the name of its initial registered agent at that office.

c. The location of the state bank's proposed principal office of the limited liability company, which may be the same as the registered office, but need not be within this state.

d. The duration of the state bank, which shall be perpetual.

e. The aggregate number of common and preferred shares which the state bank shall have authority to issue and the par value of such shares. If such shares are to be divided into classes or series, the number of shares of each class or series and a statement of the par value of the shares of each class or series.

f. The number of managers constituting the initial board of directors and the names and addresses of the individuals who are to serve as directors until successors are elected and qualify. A statement that the exclusive authority to manage the state bank is vested in a board of directors that is elected or appointed by the members, that operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, and responsibilities as, a board of directors of a state bank chartered as a corporation under this chapter.

g. A provision that the articles of incorporation, operating agreement, or other organizational documents of the state bank shall not require the consent of any other owner in order for an owner to transfer membership interests in the state bank, including voting rights.

2. The articles of incorporation may set forth any or all of the following:

a. Provisions not inconsistent with law regarding management of the business and regulation of the affairs of the state bank.

b. Any provision required or permitted by this chapter to be set forth in the operating agreement.

3. The articles of incorporation need not set forth any of the organizational powers enumerated in this chapter.

Sec. 51. Section 524.303, Code 2003, is amended to read as follows:

524.303 APPLICATION FOR APPROVAL.

The incorporators or organizers shall make an application to the superintendent for approval of a proposed state bank in the manner prescribed by the superintendent and shall deliver to the superintendent, together with such application:

1. The articles of incorporation.

2. Applicable fees, payable to the secretary of state as specified in section 490.122 or 490A.124, for the filing and recording of the articles of incorporation.

Sec. 52. Section 524.304, subsection 1, Code 2003, is amended to read as follows:

1. The incorporators or organizers of a state bank shall, within thirty days of the acceptance of the application for processing, publish notice of the proposed incorporation or organization once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation which is proposed as the principal place of business of the state bank, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the proposed state bank is to have its principal place of business. The notice shall set forth all of the following:

a. The name of the proposed state bank.

b. A statement that it is to be incorporated or organized under this chapter.

c. The purpose or purposes of the state bank.

d. The names and addresses of the incorporators or organizers and of the members of the initial board of directors or board of directors as they appear, or will appear, in the articles of incorporation.

e. The date the application was accepted for processing.

f. If the incorporation or organization of the state bank has been approved by the superintendent under section 524.305, subsection 8, the name and address of the bank with which the state bank will have merged, or the assets of which the state bank will have acquired or the condition of which in some other way provided a purpose for the incorporation or organization.

Sec. 53. Section 524.305, subsection 1, paragraph d, Code 2003, is amended to read as follows:

d. The character and fitness of the incorporators or organizers and of the members of the initial board of directors are such as to command the confidence of the community and to warrant the belief that the business of the proposed state bank will be honestly and efficiently conducted.

Sec. 54. Section 524.305, subsections 6, 7, and 9, Code 2003, are amended to read as follows:

6. If the superintendent approves the application, the superintendent shall notify the incorporators or organizers, and such other persons who requested in writing that they be notified, of the approval. If the superintendent disapproves the application, the superintendent shall notify the incorporators or organizers of the action and the reason for the decision.

7. The actions of the superintendent shall be subject to judicial review in accordance with chapter 17A. The court may award damages to the incorporators or organizers if it finds that review is sought frivolously or in bad faith.

9. As a condition of receiving the decision of the superintendent with respect to the application the incorporators or organizers shall reimburse the superintendent for all expenses incurred by the superintendent in connection with the application.

Sec. 55. Section 524.306, Code 2003, is amended to read as follows:

524.306 INCORPORATION OR ORGANIZATION OF STATE BANK.

1. Unless a delayed effective date or time is specified, the corporate or organizational existence of a state bank begins when the articles of incorporation, with the superintendent's approval indicated on the articles of incorporation, are filed with the secretary of state. The secretary of state shall record the articles of incorporation and forward a copy of them to the county recorder of the county in which the state bank is to have its principal place of business.

2. The secretary of state's acknowledgment of filing of the articles of incorporation is conclusive proof that the incorporators or organizers satisfied all conditions precedent to incorporation or organization, except in a proceeding instituted by the superintendent to cancel or revoke the incorporation or involuntarily dissolve the corporation or organization.

Sec. 56. Section 524.307, Code 2003, is amended to read as follows:

524.307 INITIAL ORGANIZATION OF STATE BANK.

Upon incorporation, or organization as a limited liability company, of the state bank, the initial board of directors shall hold an organizational meeting within this state, at the call of a majority of the directors, to complete the organization of the state bank by electing officers, adopting bylaws, if any are to be adopted, and conducting any other business properly brought before the board at the meeting.

Sec. 57. Section 524.308, subsection 2, Code 2003, is amended to read as follows:

2. If a state bank transacts any business before receipt of an authorization to do business in violation of subsection 1, the directors, managers, and officers who willfully authorized or participated in the action are severally liable for the debts and liabilities of the state bank incurred prior to the receipt of the authorization to do business.

Sec. 58. Section 524.310, Code 2003, is amended to read as follows:

524.310 NAME OF STATE BANK.

1. The name of a state bank originally incorporated or organized after the effective date of this chapter shall include the word "bank" and may include the word "state" or "trust" in its name. A state bank using the word "trust" in its name must be authorized under this chapter to act in a fiduciary capacity.

2. The provisions of this section shall not require any state bank, existing and operating on January 1, 1970, to add to, modify or otherwise change its corporate or organizational name, either on January 1, 1970, or upon renewal of its corporate existence pursuant to section 524.314.

3. If a state bank existing and operating on January 1, 1970, causes its corporate or organizational name to be changed, the name as changed shall comply with subsection 1 of this section.

4. a. A person may reserve the exclusive use of a corporate or organizational name for a state bank by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate or organizational name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty day period.

b. The owner of a reserved corporate or organizational name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

Sec. 59. Section 524.312, subsections 1 and 5, Code 2003, are amended to read as follows:

1. A state bank originally incorporated or organized pursuant to this chapter shall have its principal place of business within the city limits of a municipal corporation. The existence of a state bank shall not, however, be affected by the subsequent discontinuance of the municipal corporation. A state bank existing and operating on January 1, 1970, which does not have its principal place of business within the city limits of a municipal corporation, may renew its

corporate or organizational existence pursuant to section 524.314 without regard to this section and may also operate as a bank or convert to and operate as a bank office when acquired by or merged into another state bank and approved by the superintendent.

5. A state bank approved under the provisions of section 524.305, subsection 8, shall not commence its business at any location other than within a municipal corporation or unincorporated area in which was located the principal place of business or an office of the bank the condition of which was the basis for the superintendent authorizing incorporation or organization of the new state bank.

Sec. 60. Section 524.313, Code 2003, is amended to read as follows:

524.313 BYLAWS.

A state bank may adopt bylaws. The power to adopt, amend, or repeal bylaws or adopt new bylaws is vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the state bank not inconsistent with law or the articles of incorporation. For a state bank organized as a limited liability company under this chapter, "bylaws" means the operating agreement of the state bank.

Sec. 61. NEW SECTION. 524.315 STATE BANKS AS LIMITED LIABILITY COMPANIES.

1. A state bank organized as a limited liability company under this chapter shall also be subject to chapter 490A, the Iowa limited liability company Act. If a provision of the Iowa limited liability company Act conflicts with a provision of this chapter or any rule of the superintendent adopted pursuant to this chapter, the provisions of this chapter or rule of the superintendent shall control.

2. The superintendent shall possess the exclusive authority to regulate a state bank organized as a limited liability company under this chapter.

3. The superintendent may adopt rules to ensure that a state bank organized as a limited liability company under this chapter is operating in a safe and sound manner and is subject to the superintendent's authority in the same manner as a state bank organized as a corporation.

Sec. 62. Section 524.401, subsections 2, 3, and 4, Code 2003, are amended to read as follows:

2. The minimum capital structure of a state bank incorporated after July 1, 1995, or organized after July 1, 2004, pursuant to the provisions of this chapter shall not be less than the amount required by the federal deposit insurance corporation, or its successor, or a greater amount which the superintendent may deem necessary in view of the deposit potential of the state bank and current banking standards relating to total capital requirements.

3. A state bank incorporated on or after July 1, 1995, or organized after July 1, 2004, pursuant to this chapter, prior to receiving authorization to do business from the superintendent, shall establish paid-in surplus and undivided profits as required by the superintendent.

4. A state bank originally incorporated or organized pursuant to this chapter shall establish, prior to receiving authorization to do business from the superintendent, paid-in surplus and undivided profits as required by the superintendent.

Sec. 63. Section 524.525, Code 2003, is amended to read as follows:

524.525 SUBSCRIPTION FOR SHARES BEFORE INCORPORATION OR ORGANIZATION.

1. A subscription for shares entered into before incorporation or organization of the state bank is irrevocable for six months unless the subscription agreement provides a longer or shorter period, or all subscribers agree to revocation.

2. The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation or organization of the state bank unless the subscrip-

tion agreement specifies the terms. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

3. Shares issued pursuant to subscriptions entered into before incorporation or organization of the state bank are fully paid and nonassessable when the state bank receives the consideration specified in the subscription agreement.

4. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation or organization of the state bank, the state bank may do either of the following:

a. Collect the amount owed as any other debt.

b. Unless the subscription agreement provides otherwise, the state bank may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the state bank sends written demand for payment to the subscriber.

Sec. 64. Section 524.528, subsection 2, paragraph c, Code 2003, is amended to read as follows:

c. There is no preemptive right with respect to any of the following:

(1) Shares issued as compensation to directors, managers, officers, agents, or employees of the state bank, its subsidiaries, or its affiliates.

(2) Shares issued to satisfy conversion or option rights created to provide compensation to directors, managers, officers, agents, or employees of the state bank, its subsidiaries, or its affiliates.

(3) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation or organization.

Sec. 65. Section 524.801, subsection 1, Code 2003, is amended to read as follows:

1. To sue and be sued, complain and defend, in its corporate or organizational name.

Sec. 66. Section 524.801, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The powers granted in this section shall not be construed as limiting or enlarging any grant of authority made elsewhere in this chapter, or as a limitation on the purposes for which a state bank may be incorporated or organized.

Sec. 67. Section 524.1301, Code 2003, is amended to read as follows:

524.1301 DISSOLUTION BY INCORPORATORS, ORGANIZERS, OR INITIAL DIRECTORS.

A majority of the incorporators, organizers, or initial directors of a state bank that has not issued shares or has not commenced business may dissolve the state bank by delivering articles of dissolution to the superintendent, together with the applicable filing and recording fees, for filing with the secretary of state that set forth all of the following:

1. The name of the state bank.

2. The date of its incorporation or organization.

3. Either of the following:

a. That the state bank has not issued any shares.

b. That the state bank has not commenced business.

4. That no debt of the state bank remains unpaid.

5. If shares were issued, that the net assets of the state bank remaining after the payment of all necessary expenses have been distributed to the shareholders.

6. That a majority of the incorporators, organizers, or initial directors authorized the dissolution.

Sec. 68. Section 524.1302, Code 2003, is amended to read as follows:

524.1302 INVOLUNTARY DISSOLUTION PRIOR TO COMMENCEMENT OF BUSINESS.

Prior to the issuance of an authorization to do business, the superintendent may cause the

dissolution of a state bank if there exists any reason why it should not have been incorporated or organized under this chapter or if an authorization to do business has not been issued within one year after the date of its incorporation or organization, or such longer time as the superintendent may allow for satisfaction of conditions precedent to its issuance. After giving the state bank adequate notice and an opportunity for hearing, the superintendent shall certify the applicable facts by the filing of a statement with the secretary of state, who shall thereafter issue a certificate of dissolution. Upon the issuance of such certificate of dissolution by the secretary of state, the corporate or organizational existence of the state bank shall cease.

Sec. 69. Section 524.1309, Code 2003, is amended to read as follows:

524.1309 BECOMING SUBJECT TO CHAPTER 490 OR 490A.

In lieu of the dissolution procedure prescribed in sections 524.1303 to 524.1306, a state bank may cease to carry on the business of banking and, after compliance with this section, continue as a corporation subject to chapter 490; or if the state bank is organized as a limited liability company under this chapter, continue as a limited liability company subject to chapter 490A.

1. A state bank ~~which~~ that has commenced business may propose to voluntarily cease to carry on the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 490A, upon the affirmative vote of the holders of at least a majority of the shares entitled to vote on such proposal, adopting a plan involving both a provision for acquisition of its assets and assumption of its liabilities by another state bank, national bank, or other financial institution insured by the federal deposit insurance corporation, and a provision for continuance of its business if acquisition of its assets and assumption of its liabilities is not effected, or any other plan providing for the cessation of banking business and the payment of its liabilities.

2. The application to the superintendent for approval of a plan described in subsection 1 ~~of this section~~ shall be treated by the superintendent in the same manner as an application for approval of a plan of dissolution under ~~subsection 2 of~~ section 524.1303, subsection 2, and shall be subject to ~~subsection 3 of~~ section 524.1303, subsection 3.

3. Immediately upon adoption and approval of a plan to voluntarily cease to carry on the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 490A, the state bank shall deliver to the superintendent a plan to cease the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 490A, which shall be signed by two of its duly authorized officers and shall contain the name of the state bank, the post office address of its principal place of business, the name and address of its officers and directors, the number of shares entitled to vote on the plan and the number of shares voted for or against the plan, respectively, the nature of the business to be conducted by the corporation under chapter 490, or by the limited liability company subject to chapter 490A, and the general nature of the assets to be held by the corporation or company.

4. Upon approval of the plan by the superintendent, the state bank shall immediately surrender to the superintendent its authorization to do business as a bank and shall cease to accept deposits and carry on the banking business except insofar as may be necessary for it to complete the settlement of its affairs as a state bank in accordance with subsection 5.

5. The board of directors has full power to complete the settlement of the affairs of the state bank. Within thirty days after approval by the superintendent of the plan to cease the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 490A, the state bank shall give notice of its intent to persons identified in section 524.1305, subsection 4, in the manner provided for in that subsection. In completing the settlement of its affairs as a state bank the state bank shall also follow the procedure prescribed in section 524.1305, subsections 4, 5, and 6.

6. Upon completion of all the requirements of this section, the state bank shall deliver to the superintendent articles of intent to be subject to chapter 490 or 490A, together with the applicable filing and recording fees, which shall set forth that the state bank has complied with this section, that it has ceased to carry on the business of banking, and the information required

by section 490.202 relative to the contents of articles of incorporation under chapter 490, or article of organization under chapter 490A. If the superintendent finds that the state bank has complied with this section and that the articles of intent to be subject to chapter 490 or 490A satisfy the requirements of this section, the superintendent shall deliver them to the secretary of state for filing and recording in the secretary of state's office, and they shall be filed and recorded in the office of the county recorder.

7. Upon the filing of the articles of intent to be subject to chapter 490 or 490A, the state bank shall cease to be a state bank subject to this chapter, and shall cease to have the powers of a state bank subject to this chapter and shall become a corporation subject to chapter 490 or a limited liability company subject to chapter 490A. The secretary of state shall issue a certificate as to the filing of the articles of intent to be subject to chapter 490 or 490A, and send the certificate to the corporation or limited liability company or its representative. The articles of intent to be subject to chapter 490 or 490A shall be the articles of incorporation of the corporation or a limited liability company. The provisions of chapter 490 or 490A becoming applicable to a corporation or limited liability company formerly doing business as a state bank shall not affect any right accrued or established, or liability or penalty incurred under this chapter prior to the filing with the secretary of state of the articles of intent to be subject to chapter 490 or 490A.

8. A shareholder of a state bank who objects to adoption by the state bank of a plan to cease to carry on the business of banking and to continue as a corporation subject to chapter 490, or a limited liability company subject to chapter 490A, is entitled to appraisal rights provided for in chapter 490, division XIII, or in chapter 490A, subchapter VII.

9. A state bank, at any time prior to the approval of the articles of intent to become subject to chapter 490 or 490A, may revoke the proceedings in the manner prescribed by section 524.1306.

Sec. 70. Section 524.1405, subsection 2, paragraph f, Code 2003, 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 limited liability company 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 section 524.1406.

Sec. 71. Section 524.1408, Code 2003, is amended to read as follows:

524.1408 MERGER OF CORPORATION OR LIMITED LIABILITY COMPANY SUBSTANTIALLY OWNED BY A STATE BANK.

A state bank owning at least ninety percent of the outstanding shares, of each class, of another corporation or limited liability company which it is authorized to own under this chapter, may merge the other corporation or limited liability company into itself without approval by a vote of the shareholders of either the state bank or the subsidiary corporation or limited liability company. The board of directors of the state bank shall approve a plan of merger, mail to shareholders of record of the subsidiary corporation or holders of membership interests in the subsidiary limited company, and prepare and execute articles of merger in the manner provided for in section 490.1105. The articles of merger, together with the applicable filing and recording fees, shall be delivered to the superintendent who shall, if the superintendent approves of the proposed merger and if the superintendent finds the articles of merger satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in the secretary of state's office, and they shall be filed in the office of the county recorder. The secretary of state upon filing the articles of merger shall issue a certificate of merger and send the certificate to the state bank and a copy of it to the superintendent.

Sec. 72. Section 524.1802, subsection 1, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. gg. "Incorporated in any state" means a limited liability company

organized as a state bank under this chapter and a limited liability company organized as a state bank under the laws of any state as defined in 12 U.S.C. § 1813(a)(3).

Sec. 73. Section 524.2001, Code 2003, is amended to read as follows:

524.2001 APPLICABILITY OF OTHER CHAPTERS.

Chapters 490, 490A, 491, 492, and 493 do not apply to banks except as provided by this chapter.

DIVISION IV
REAL PROPERTY LOANS

Sec. 74. Section 535.8, subsection 2, paragraph b, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The lender shall not charge the borrower for the cost of revenue stamps or real estate commissions which are paid by the seller.

PARAGRAPH DIVIDED. ~~Collection~~ The collection of any ~~cost~~ costs other than as expressly permitted by this ~~lettered~~ paragraph "b" is prohibited. However, additional costs incurred in connection with a loan under this paragraph "b", if bona fide and reasonable, may be collected by a state-chartered financial institution licensed under chapter 524, 533, or 534, to the extent permitted under applicable federal law as determined by the office of the comptroller of the currency of the United States department of treasury, the national credit union association, or the office of thrift supervision of the United States department of treasury. Such costs shall apply only to the same type of state chartered entity as the federally chartered entity affected and shall apply to and may be collected by an insurer organized under chapter 508 or 515, or otherwise authorized to conduct the business of insurance in this state.[1]

Nothing in this section shall be construed to change the prohibition against the sale of title insurance or sale of insurance against loss or damage by reason of defective title or encumbrances as provided in section 515.48, subsection 10.

DIVISION V
REAL PROPERTY FINANCIAL LIABILITY

Sec. 75. NEW SECTION. 455B.751 DEFINITIONS.

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

1. "Acquired" means purchased, leased, obtained by inheritance or descent and distribution, or obtained by foreclosure sale under chapter 654, nonjudicial voluntary foreclosure under section 654.18, deed in lieu of foreclosure under section 654.19, foreclosure without redemption under section 654.20, or nonjudicial foreclosure of nonagriculture mortgages under chapter 655A.

2. "Hazardous substance" means the same as defined in section 455B.381 or 455B.411.

3. "Hazardous waste" means the same as defined in section 455B.411.

4. "Potentially responsible party" means a person whose acts or omissions were a proximate cause of the contamination of the acquired property, or a person whose negligent acts or omissions are a proximate cause of injury or damages resulting from exposure to such contamination. Injury or damages to persons or property arising by reason of contamination that migrates from the acquired property shall not be deemed to be caused by an act or omission of the person that acquired the property, except to the extent that the act or omission of such person exacerbated the release of such contamination.

5. "Regulated substance" means the same as defined in section 455B.471.

6. "Response action" means any action taken to reduce, minimize, eliminate, clean up, control, assess, or monitor a release of hazardous substances, hazardous waste, or regulated substances to protect the public health, safety, or the environment.

7. "Third party" means any person other than a person that holds indicia of title to property as identified in section 455B.752, subsection 1, or that has acquired property as identified in section 455B.752, subsection 2.

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[1] See chapter 1175, §262 herein

8. "Third-party liability" means any liability or obligation, other than contractual obligations that specifically waive all or part of the immunity provided by section 455B.752, arising out of or resulting from contamination of property by a hazardous substance, hazardous waste, or a regulated substance, including without limitation, claims for illness, personal injury, death, consequential damages, exemplary damages, lost profits, trespass, loss of use of property, loss of rental value, reduction in property value, property damages, or statutory or common law nuisance.

Sec. 76. NEW SECTION. 455B.752 IMMUNITY FROM THIRD-PARTY LIABILITY.

A person that holds indicia of ownership of property contaminated by a hazardous substance, hazardous waste, or regulated substance, and that satisfies all of the conditions provided in section 455B.381, subsection 7, paragraphs "a", "b", and "c", or section 455B.471, subsection 6, paragraph "b", subparagraphs (1), (2), and (3), or a person that has acquired property contaminated by a hazardous substance, hazardous waste, or regulated substance, shall not be liable to any third party for any third-party liability arising from such contamination provided that all of the following apply:

1. The person does not knowingly cause or permit a new or additional hazardous substance, hazardous waste, or regulated substance to arise on or from the acquired property that injures a third party or contaminates property owned or leased by a third party.

2. The person is not a potentially responsible party or affiliated with any potentially responsible party by reason of any of the following:

a. Any direct or indirect familial relationship.

b. Any contractual, corporate, or financial relationship, other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the property is conveyed or financed or by a contract for the sale of goods or services.

c. A reorganization of a business entity that is or was a potentially responsible party.

Sec. 77. NEW SECTION. 455B.753 ACCESS TO PROPERTY.

A person that holds indicia of title to property or a person that has acquired property as identified in section 455B.752, shall provide reasonable access to the acquired property to any potentially responsible party or to any authorized regulatory authority for the purpose of investigating or evaluating any contamination, planning, or preparing a remedial plan for any abatement of the contamination, and for any required remediation.

Sec. 78. NEW SECTION. 455B.754 LEGAL RESPONSIBILITY.

This division shall not be interpreted to affect the legal responsibility to the state to conduct response actions under any applicable state law. This division shall not be interpreted to affect or provide immunity from any criminal liability.

Sec. 79. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 6, 2004

CHAPTER 1142

CRIMES AGAINST AGRICULTURAL PRODUCTION

H.F. 2486

AN ACT providing for animal agriculture, including by providing for offenses involving animals and crops and related property, and providing penalties.

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

Section 1. Section 717A.2, subsection 3, paragraph a, Code Supplement 2003, is amended to read as follows:

a. A person who violates subsection 1, paragraph "a", is guilty of a class "C" felony if the injury to or death of an animal or damage to property exceeds ~~fifty~~ ten thousand dollars, a class "D" felony if the injury to or death of an animal or damage to property exceeds ~~five hundred~~ one thousand dollars but does not exceed ~~fifty~~ ten thousand dollars, an aggravated misdemeanor if the injury to or death of an animal or damage to property exceeds one hundred dollars but does not exceed ~~five hundred~~ one thousand dollars, a serious misdemeanor if the injury to or death of an animal or damage to property exceeds fifty dollars but does not exceed one hundred dollars, or a simple misdemeanor if the injury to or death of an animal or damage to property does not exceed fifty dollars.

Sec. 2. NEW SECTION. 717A.4 PATHOGENS THREATENING ANIMALS AND CROPS — PENALTY.

1. Except as provided in subsection 2, a person shall not willfully possess, transport, or transfer a pathogen with an intent to threaten the health of an animal or crop.

a. For animals, a pathogen restricted under this section shall be limited to a biological agent or toxin listed in 9 C.F.R. § 121.2(b), as that list exists on January 1, 2004.

b. For crops, a pathogen restricted under this section shall be limited to a biological agent or toxin listed in 7 C.F.R. § 331.3, as that list exists on January 1, 2004.

2. This section does not apply to a person who possesses, transports, or distributes a pathogen in compliance with federal law, including but not limited to as provided in 9 C.F.R. pt. 121 or 7 C.F.R. pt. 331.

3. A person who violates this section is guilty of a class "B" felony.

Approved May 6, 2004

CHAPTER 1143

SOIL AND WATER CONSERVATION DISTRICTS — SURVEY OF PRIVATE CONTRACTORS

H.F. 2518

AN ACT relating to the duties of the soil and water conservation division of the department of agriculture and land stewardship.

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

Section 1. Section 161A.4, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 5. The division, in consultation with the commissioners of the soil and

water conservation districts, shall conduct a biennial review to survey the availability of private soil and water conservation control contractors in each district. A report containing the results of the review shall be prepared and posted on the department's internet site.

Approved May 6, 2004

CHAPTER 1144

REAL ESTATE RECORDS AND TRANSACTIONS

H.F. 2544

AN ACT requiring identification numbers for all parcels of real estate, additional real estate transaction recordings, and making a fee applicable.

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

Section 1. Section 331.507, subsection 2, paragraph a, Code 2003, is amended to read as follows:

a. For a transfer of property made in the transfer records, five dollars for each separate ~~parcel of~~ real estate ~~described in a deed~~ transaction described in section 558.57, or transfer of title certified by the clerk of the district court. However, the fee shall not exceed fifty dollars for a transfer of property which is described in one instrument of transfer.

Sec. 2. Section 441.29, Code 2003, is amended to read as follows:

441.29 PLAT BOOK — INDEX SYSTEM.

The county auditor shall furnish to each assessor a plat book on which shall be platted the lands and lots in the assessor's assessment district, showing on each subdivision or part thereof, written in ink or pencil, the name of the owner, the number of acres, or the boundary lines and distances in each, and showing as to each tract the number of acres to be deducted for railway right of way and for roads and for rights of way for public levees and open public drainage improvements.

The auditor, or the auditor's designee, of any county ~~with the approval of the board of supervisors may~~ shall establish a permanent real estate index number system with related tax maps for all real estate tax administration purposes, including the assessment, levy and collection of such taxes. Wherever in real property tax administration the legal description of tax parcels is required, such permanent number system ~~may~~ shall be adopted in addition thereto ~~or in lieu thereof~~. ~~If established, the permanent real estate index number system shall describe real estate by township, section, quarter section, block series and parcel; and the auditor shall prepare and maintain permanent real estate index number tax maps, which shall carry such numbers and reflect the legal description of each parcel of real estate and delineate it graphically; and the auditor shall prepare and maintain cross indexes of the numbers assigned under said system, with legal description of the real estate to which such numbers relate.~~ The permanent real estate index numbers shall begin with the two-digit county number and be a unique identifying number for each parcel within the county. These numbers shall follow the property, not the owner, and can be an alphanumeric system. In the event of a division of an existing parcel, the original permanent parcel index number shall be retired and new numbers assigned. The auditor shall prepare and maintain permanent real estate index number tax maps, which shall carry such numbers. The auditor shall prepare and maintain cross indexes of the numbers

assigned under this system, with legal description of the real estate to which such numbers relate. Indexes and tax maps established as provided herein shall be open to public inspection.

Sec. 3. Section 558.41, Code 2003, is amended to read as follows:

558.41 RECORDING.

1. EFFECT OF RECORDING. An instrument affecting real estate is of no validity against subsequent purchasers for a valuable consideration, without notice, or against the state or any of its political subdivisions during and after condemnation proceedings against the real estate, unless the instrument is filed and recorded in the county in which the real estate is located, as provided in this chapter.

2. PRIORITY. An interest in real estate evidenced by an instrument so filed shall have priority over any lien that is given equal precedence with ordinary taxes under chapter 260E or 260F, or its successor provisions, except for a lien under chapter 260E or 260F upon the real estate described in an instrument or job training agreement filed in the office of the recorder of the county in which the real estate is located prior to the filing of a conflicting instrument affecting the real estate, and a subordinate lien under chapter 260E or 260F may be divested or discharged by judicial sale or by other available legal remedy notwithstanding any provision to the contrary contained in chapter 260E or 260F, or its successor provisions. Nothing in this section shall abrogate the collection of, or any lien for, unpaid property taxes which have attached to real estate pursuant to chapter 445, including taxes levied against tangible property that is assessed and taxed as real property pursuant to chapter 427A, or the collection of, or any lien for, unpaid taxes for which notice of lien has been properly recorded pursuant to section 422.26.

3. PROHIBITIONS AGAINST RECORDING UNENFORCEABLE. 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.

4. TERMINATION OF LIFE ESTATE. Upon the termination of a life estate interest through the death of the holder of the life estate, any surviving holder or successor in interest shall prepare a change of title for tax purposes and delivery of the deed or change of title to the county recorder of the county in which each parcel of real estate is located.

Sec. 4. Section 558.57, Code 2003, is amended to read as follows:

558.57 ENTRY ON AUDITOR'S TRANSFER BOOKS.

The recorder shall not record any deed, real estate installment contract, or other instrument unconditionally conveying real estate or altering a real estate contract by assigning the buyer's or seller's interest, changing the name of the buyer or seller, changing the legal description of the property, forfeiting or canceling the contract, or making other significant changes until the proper entries have been made upon the transfer books in the auditor's office, and endorsement made upon the deed, real estate installment contract, or other instrument properly dated and officially signed, in substantially the following form:

Entered upon transfer books and for taxation this .... day of ..... (month), ... (year). My fee $..... collected by recorder.

.....
Auditor.

Approved May 6, 2004

CHAPTER 1145

REGULATION OF POSTSECONDARY EDUCATION

H.F. 2559

AN ACT relating to the duties of the college student aid commission and the approval and registration of postsecondary schools by the commission, the department of education, and the secretary of state, and the establishment and collection of fees and chargeable expenses by the state board of education and the secretary of state.

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

Section 1. Section 256.7, subsection 3, Code Supplement 2003, is amended to read as follows:

3. Prescribe standards and procedures for the approval of practitioner preparation programs and professional development programs~~,~~ offered in this state by practitioner preparation institutions located within or outside this state and by area education agencies~~, in this state~~. Procedures provided for approval of programs shall include procedures for enforcement of the prescribed standards and shall not include a procedure for the waiving of any of the standards prescribed. The board may establish by rule and collect from practitioner preparation institutions located outside this state an amount equivalent to the department's necessary travel and actual expenses incurred while engaged in the program approval process for the institution located outside this state. Amounts collected under this subsection shall be deposited in the general fund of the state.

Sec. 2. Section 261.2, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 7. Adopt rules to establish reasonable registration standards for the approval, pursuant to section 261B.3A, of postsecondary schools that are required to register with the secretary of state in order to operate in this state. The registration standards established by the commission shall ensure that all of the following conditions are satisfied:

a. The courses, curriculum, and instruction offered by the postsecondary school are of such quality and content as may reasonably and adequately ensure achievement of the stated objective for which the courses, curriculum, or instruction are offered.

b. The postsecondary school has adequate space, equipment, instructional material, and personnel to provide education and training of good quality.

c. The educational and experience qualifications of the postsecondary school's directors, administrators, and instructors are such as may reasonably ensure that students will receive instruction consistent with the objectives of the postsecondary school's programs of study.

d. Upon completion of training or instruction, students are given certificates, diplomas, or degrees as appropriate by the postsecondary school indicating satisfactory completion of the program.

e. The postsecondary school is financially responsible and capable of fulfilling commitments for instruction.

The commission may require schools seeking registration under chapter 261B to provide copies of its application to the Iowa coordinating council for post-high school education. The commission may consider comments from the council that are received by the commission within ninety days of the filing of the application. The commission shall render a decision on an application for registration within one hundred eighty days of the filing of the application.

NEW SUBSECTION. 8. Establish an advisory committee on postsecondary registration to review and make recommendations relating to applications from schools required to register pursuant to chapter 261B. The commission shall adopt rules pursuant to chapter 17A to establish the policies and procedures of the advisory committee. Meetings of the advisory committee are subject to the requirements of chapter 21. The members of the advisory committee shall include one representative from each of the following:

a. The state board of regents.

b. The department of education.
c. The office of the secretary of state.
d. The office of the attorney general.
e. A community college located in this state.
f. An accredited private postsecondary institution as defined in section 261.9, subsection 1, incorporated or otherwise organized under the laws of this state.

Sec. 3. Section 261.37, subsection 7, Code Supplement 2003, is amended to read as follows:
7. To establish an effective system for the collection of delinquent loans, including the adoption of an agreement with the department of administrative services to set off against a defaulter's income tax refund or rebate the amount that is due because of a default on a guaranteed or parental loan made under this division. The commission shall adopt rules under chapter 17A necessary to assist the department of administrative services in the implementation of the student loan setoff program as established under section 8A.504. The commission shall apply administrative wage garnishment procedures authorized under the federal Higher Education Act of 1965, as amended and codified in 20 U.S.C. § 1071 et seq., for all delinquent loans, including loans authorized under section 261.38, when a defaulter who is financially capable of paying fails to voluntarily enter into a reasonable payment agreement. In no case shall the commission garnish more than the amount authorized by federal law for all loans being collected by the commission, including those authorized under section 261.38.

Sec. 4. Section 261B.3, subsection 1, Code 2003, is amended to read as follows:
1. A school that maintains or conducts one or more courses of instruction, including courses of instruction by correspondence, offered in this state or which has a presence in this state and offers courses in other states or foreign countries shall register ~~annually~~ with the secretary. Registrations shall be renewed every four years or upon any substantive change in program offerings, location, or accreditation. Registration shall be made on application forms approved and supplied by the secretary and at the time and in the manner prescribed by the secretary. Upon receipt of a complete and accurate registration application, the secretary shall issue an acknowledgment of document filed and send it to the school.

Sec. 5. Section 261B.3, subsection 3, Code 2003, is amended by striking the subsection.

Sec. 6. Section 261B.3A, Code 2003, is amended to read as follows:
261B.3A REQUIREMENT.
1. In order to register, a school shall be accredited by an agency or organization approved or recognized by the United States department of education or a successor agency and, except as provided in subsection 2, be approved for operation by the college student aid commission.
2. A practitioner preparation program that is operated by a school that applies to register the program in accordance with this chapter shall, in order to register, be accredited by an agency or organization approved or recognized by the United States department of education or a successor agency and, in addition, be approved by the state board of education pursuant to section 256.7, subsection 3.

Sec. 7. Section 261B.8, Code 2003, is amended to read as follows:
261B.8 REGISTRATION FEES.
1. The secretary shall set by rule and collect ~~an~~ a nonrefundable initial registration fee ~~of one thousand dollars~~ and ~~an annual~~ a renewal of registration fee ~~of five hundred dollars~~ from each registered school.
2. Fees shall be set by rule not more than once each year and shall be based upon the costs of administering this chapter.
3. Fees collected under this section shall be deposited in the general fund of the state.

Approved May 6, 2004

CHAPTER 1146

FIRE PROTECTION AND EMERGENCY MEDICAL SERVICE

H.F. 2560

AN ACT relating to fire protection service by requiring certain counties to negotiate emergency services agreements for townships, relating to dissolution of benefited fire districts, and including effective and applicability date provisions.

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

Section 1. Section 331.385, subsections 2 and 3, Code 2003, are amended to read as follows:

2. The board of supervisors shall publish notice of the proposed resolution, and of a public hearing to be held on the proposed resolution, in a newspaper of general circulation in the county at least ten days but no more than twenty days before the date of the public hearing. If, after notice and hearing, the resolution is adopted, the board of supervisors shall assume the exercise of the powers and duties of township trustees relating to fire protection service and emergency medical service as set forth in sections 359.42 through 359.45.

3. ~~If, after notice and hearing, the resolution is adopted, the board of supervisors shall assume the exercise of the powers and duties of township trustees relating to fire protection service and emergency medical service as set forth in sections 359.42 through 359.45.~~ All of the real and personal township property used to provide fire protection service or emergency medical service shall be transferred to the county. The county shall assume all of the outstanding obligations of the township relating to fire protection service or emergency medical service. If the township provides fire protection outside of the county's boundaries, the county shall continue to provide fire protection to this area for at least ninety days after adoption of the resolution.

Sec. 2. Section 331.385, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 5. a. Notwithstanding subsection 1, in a county having a population in excess of three hundred thousand, if as of July 1, 2004, a township has in force an agreement pursuant to chapter 28E for a city or another township to provide fire protection service or fire protection service and emergency medical services, or if a township is otherwise contracting with a city or another township for fire protection service or fire protection service and emergency medical services, the agreement or contract shall remain in force for the fiscal years beginning July 1, 2005, and July 1, 2006, and it shall be the duty of the county board of supervisors to levy, pursuant to section 331.424C, for those two fiscal years an amount sufficient to meet the obligations of the township as it pertains to that agreement or contract.

b. The board of supervisors of a county described in paragraph "a" shall negotiate agreements pursuant to chapter 28E for continued fire protection service, or fire protection service and emergency medical services, for the fiscal year beginning July 1, 2007, and subsequent fiscal years, on behalf of those townships described in paragraph "a", and shall continue to certify taxes for levy in the township, pursuant to section 331.424C, in amounts sufficient to meet the financial obligations pertaining to those agreements.

c. This subsection does not apply to a chapter 28E agreement entered into by three or more townships if such agreement provides for the creation of one fire department to provide fire protection services jointly to the townships that are parties to the agreement.

Sec. 3. Section 331.424C, Code Supplement 2003, is amended to read as follows:

331.424C EMERGENCY SERVICES FUND.

A county that is providing fire protection service or emergency medical service to a township pursuant to section 331.385 shall establish an emergency services fund and may certify taxes for levy in the township not to exceed sixty and three-fourths cents per one thousand dollars

of the assessed value of taxable property located in the township. The county has the authority to use a portion of the taxes levied and deposited in the fund for the purpose of accumulating moneys to carry out the purposes of section 359.43, subsection 4.

Sec. 4. Section 357B.5, subsection 1, Code 2003, is amended to read as follows:

1. Upon petition of a number of registered voters residing in a district at least equal to thirty-five percent of the property taxpayers in the district, the board of supervisors may dissolve a benefited fire district and dispose of any remaining property, the proceeds of which shall first be applied against any outstanding obligation of the district. Any remaining balance shall be applied as a tax credit for the property owners of the district. However, except as provided in subsection 2, if all or a part of a district is annexed, the board of supervisors may transfer the remaining property and balance to the city which annexed the territory. The board of supervisors shall continue to levy an annual tax during the time the district is being dissolved and after the dissolution of a district, not to exceed ~~forty and one-half~~ sixty and three-fourths cents per thousand dollars of assessed value of the taxable property of the district, until all outstanding obligations of the district are paid. Except as otherwise provided in subsection 2, the board of supervisors shall negotiate agreements necessary to provide continued fire protection to the benefited fire district area during the time the district is being dissolved and after dissolution, and shall continue to levy an annual tax to fund such agreements, until such time as the township trustees of the township where the benefited fire district is located begin to provide fire protection service as required by section 359.42.

Sec. 5. Section 359.42, Code 2003, is amended to read as follows:

359.42 TOWNSHIP FIRE PROTECTION SERVICE, EMERGENCY WARNING SYSTEM, AND EMERGENCY MEDICAL SERVICE.

~~The~~ Except as otherwise provided in section 331.385, the trustees of each township shall provide fire protection service for the township, exclusive of any part of the township within a benefited fire district and may provide emergency medical service. The trustees may purchase, own, rent, or maintain fire protection service or emergency medical service apparatus or equipment or both kinds of apparatus or equipment and provide housing for the equipment. The trustees of a township which is located within a county having a population of three hundred thousand or more may also establish and maintain an emergency warning system within the township. The trustees may contract with a public or private agency under chapter 28E for the purpose of providing any service or system required or authorized under this section.

Sec. 6. EFFECTIVE AND APPLICABILITY DATES. Section 4 of this Act, being deemed of immediate importance, takes effect upon enactment and applies to fiscal years beginning on or after July 1, 2004.

Approved May 6, 2004

CHAPTER 1147

AGRICULTURAL LANDHOLDING REPORTING

H.F. 2571

AN ACT relating to agriculture by providing for reporting requirements.

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

Section 1. Section 10B.4, subsection 1, Code 2003, is amended to read as follows:

1. ~~An annual~~ A biennial report shall be filed by a reporting entity with the secretary of state on or before March 31 of each odd-numbered year as required by rules adopted by the secretary of state pursuant to chapter 17A. However, a reporting entity required to file a biennial report pursuant to chapter 490, 496C, 497, 498, 499, 501, or 504A, shall file the report required by this section in the same year as required by that chapter. The reporting entity may file the report required by this section together with the biennial report required to be filed by one of the other chapters referred to in this subsection. The reports shall be filed on forms prepared and supplied by the secretary of state. The secretary of state may provide for combining its reporting forms with other biennial reporting forms required to be used by the reporting entities.

Sec. 2. Section 10B.4, subsection 2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A report required pursuant to this section shall contain information for the ~~last year~~ reporting period regarding the reporting entity as required by the secretary of state which shall at least include all of the following:

Sec. 3. Section 10B.4, subsection 3, Code 2003, is amended to read as follows:

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~~ reporting period 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. 4. Section 10B.5, subsection 2, Code 2003, is amended to read as follows:

2. Information provided in reports required in this chapter is a confidential record as provided in section 22.7. The attorney general may have access to the reports, and may use information in the reports in any action to enforce state law, including but not limited to chapters 9H, 9I, and 10C. The reports 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. 5. Section 10B.7, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

Lessees of agricultural land under section 9H.4, subsection 2, paragraph "c", for research or experimental purposes, shall file a biennial report with the secretary of state on or before March 31 of each odd-numbered year on forms adopted pursuant to chapter 17A and supplied by the secretary of state. However, a lessee required to file a biennial report pursuant to chapter 490, 496C, 497, 498, 499, 501, or 504A, shall file the report required by this section in the same year as required by that chapter. The lessee may file the report required by this section together with the biennial report required to be filed by one of the other chapters referred to in this paragraph. The report shall contain the following information for the ~~last year~~ reporting period:

Sec. 6. Section 22.7, Code Supplement 2003, is amended by adding this[1] following new subsection:

NEW SUBSECTION. 48. A report regarding interest held in agricultural land required to be filed pursuant to chapter 10B.

Approved May 6, 2004

CHAPTER 1148

INVESTMENTS IN COMMUNITY-BASED SEED CAPITAL FUNDS
OR QUALIFYING BUSINESSES

S.F. 443

AN ACT relating to criteria for community-based seed capital funds and providing retroactive applicability dates.

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

Section 1. Section 15E.42, subsection 3, Code Supplement 2003, is amended to read as follows:

3. "Investor" means ~~an individual~~ a person making a cash investment in a qualifying business or ~~an individual taxed on income from a revocable trust's cash investment in a qualifying business or a person making a cash investment~~ in a community-based seed capital fund. "Investor" does not include a person ~~which is a current or previous~~ that holds at least a seventy percent ownership interest as an owner, member, or shareholder in a qualifying business.

Sec. 2. Section 15E.43, subsection 1, paragraphs a and b, Code Supplement 2003, are amended to read as follows:

~~a. For tax years beginning on or after January 1, 2002, a tax credit shall be allowed against the taxes imposed in chapter 422, division II, for a portion of an individual taxpayer's equity investment, as provided in subsection 2, in a qualifying business. An individual shall not claim a tax credit under this paragraph of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. However, an individual receiving income from a revocable trust's investment in a qualified business may claim a tax credit under this paragraph against the taxes imposed in chapter 422, division II, for a portion of the revocable trust's equity investment, as provided in subsection 2, in a qualified business.~~

b. For tax years beginning on or after January 1, 2002, a tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.24, for a portion of a taxpayer's equity investment, as provided in subsection 2, in a qualifying business or a community-based seed capital fund. An individual may claim a tax credit under this paragraph of a partnership, limited liability company, S corporation, estate, or trust electing to have 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 from the partnership, limited liability company, S corporation, estate, or trust.

Sec. 3. Section 15E.44, subsection 4, Code Supplement 2003, is amended to read as follows:

4. After verifying the eligibility of a qualifying business, the board shall issue a tax credit

[1] The word "the" probably intended

certificate to be attached to the equity investor's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of credit, the name of the qualifying business, and other information required by the department of revenue. The tax credit certificate, unless rescinded by the board, shall be accepted by the department of revenue as payment for taxes imposed pursuant to chapter 422, ~~division~~ divisions II, III, and V, and in chapter 432, and for the moneys and credits tax imposed in section 533.24, subject to any conditions or restrictions placed by the board upon the face of the tax credit certificate and subject to the limitations of section 15E.43.

Sec. 4. Section 15E.51, subsection 4, Code Supplement 2003, is amended to read as follows:

4. A taxpayer shall not claim a tax credit under this section if the taxpayer is a venture capital investment fund allocation manager for the Iowa fund of funds created in section 15E.65 or an investor that receives a tax credit for the same investment in a qualifying business as described in section 15E.44 or in a community-based seed capital fund as described in section 15E.45.

Sec. 5. Section 15E.45, subsection 2, paragraphs b and c, Code Supplement 2003, are amended to read as follows:

b. The fund has, on or after January 1, 2002, a total of both capital commitments from investors and investments in qualifying businesses of at least ~~five~~ one hundred twenty-five thousand dollars, but not more than three million dollars. However, if a fund is a rural business investment company under the rural business investment program of the federal Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, the fund may qualify notwithstanding having capital in excess of the limits set forth in this paragraph as long as the fund otherwise meets the requirements of this subsection.

c. The fund has no fewer than ~~ten~~ five investors who are not affiliates, with no single investor and affiliates of that investor together owning a total of more than twenty-five percent of the ownership interests outstanding in the fund.

Sec. 6. Section 15E.45, subsection 6, Code Supplement 2003, is amended to read as follows:

6. In the event that a community-based seed capital fund fails to meet or maintain any requirement set forth in this section, or in the event that the community-based seed capital fund has not invested at least thirty-three percent of its invested capital in ~~no fewer than two~~ one or more separate qualifying businesses, measured at the end of the thirty-sixth month after commencing the fund's investing activities, the board shall rescind any tax credit certificates issued to limited partners or members and shall notify the department of revenue that it has done so, and the tax credit certificates shall be null and void. However, a community-based seed capital fund may apply to the board for a one-year waiver of the requirements of this subsection.

Sec. 7. APPLICABILITY DATES.

1. Sections 1 through 4 of this Act apply retroactively to January 1, 2004, for tax years beginning on or after that date.

2. Sections 5 and 6 of this Act apply retroactively to January 1, 2002, for tax years beginning on or after that date.

Approved May 11, 2004

CHAPTER 1149

COUNTY RECORDS

S.F. 2270

AN ACT relating to county records, including the fees for recorded and electronic transactions and the confidentiality of veterans' military records maintained by the county recorder and providing an effective date.

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

Section 1. Section 331.605A, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The recorder shall also collect a fee of one dollar for each recorded transaction for which a fee is paid pursuant to section 331.604 to be used exclusively for the purpose of preserving and maintaining public records. The treasurer, on behalf of the recorder, shall establish and maintain ~~an interest-bearing account~~ a county recorder's records management fund into which all moneys collected pursuant to this section shall be deposited. Interest earned on moneys deposited in the fund shall be credited to the county recorder's records management fund. The recorder shall use the moneys deposited in the ~~account~~ fund to produce and maintain public records that meet archival standards, and to enhance the technological storage, retrieval, and transmission capabilities related to archival quality records. The recorder may cooperate with other entities, boards, and agencies to establish methods of records management, and participate in other joint ventures which further the purposes of this paragraph.

Sec. 2. Section 331.605C, subsections 2, 3, and 4, Code Supplement 2003, are amended to read as follows:

2. Beginning July 1, 2004, the recorder shall collect a fee of one dollar for each recorded transaction, regardless of the number of pages, for which a fee is paid pursuant to section 331.604 to be used for the purpose ~~of paying the county's ongoing costs of maintaining the systems developed and implemented under~~ set forth in subsection ~~1~~ 4.

3. The county treasurer, on behalf of the recorder, shall establish and maintain ~~an interest-bearing account~~ a county recorder's electronic transaction fund into which all moneys collected pursuant to subsections 1 and 2 shall be deposited. Interest earned on moneys deposited in this fund shall be computed based on the average monthly balance in the fund and shall be credited to the county recorder's electronic transaction fund.

4. The local ~~electronic~~ government electronic transaction fund is established in the office of the treasurer of state under the control of the treasurer of state. Moneys deposited into the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest or earnings on moneys in the local ~~electronic~~ government electronic transaction fund shall be credited to the fund. Moneys in the local ~~electronic~~ government electronic transaction fund are not subject to transfer, appropriation, or reversion to any other fund, or any other use except as provided in this subsection. ~~The treasurer of state shall enter into a contract with the Iowa state association of counties affiliate representing county recorders to hold the fund for the development, implementation, and maintenance of a statewide internet website for purposes of providing electronic access to records and information recorded or filed by county recorders.~~ On a monthly basis, the county treasurer shall pay ~~one dollar of~~ each fee collected pursuant to subsection ~~1~~ 2 to the treasurer of state for deposit into the local ~~electronic~~ government electronic transaction fund. Moneys credited to the local ~~electronic~~ government electronic transaction fund are appropriated to the treasurer of state to be used for ~~contract costs~~ the purpose of paying the ongoing costs of maintaining the statewide internet website developed and implemented under subsection 1. ~~This subsection is repealed June 30, 2004.~~

Sec. 3. Section 331.605C, subsection 5, Code Supplement 2003, is amended by striking the subsection.

Sec. 4. Section 331.608, subsection 6, paragraph e, Code Supplement 2003, is amended to read as follows:

e. When otherwise required by a department or agency of the federal or state government or a political subdivision ~~thereof~~. The recorder shall make these records available to the commission of veterans affairs. The commission and its employees shall be subject to the same state and federal confidentiality restrictions and requirements that are imposed on the recorder.

Sec. 5. Section 331.608, subsection 6, paragraph f, Code Supplement 2003, is amended by striking the paragraph.

Sec. 6. EFFECTIVE DATE. Sections 2 and 3 of this Act, being deemed of immediate importance, take effect upon enactment.

Approved May 11, 2004

CHAPTER 1150

CRIMES AND CRIMINAL SENTENCING

S.F. 2275

AN ACT relating to criminal sentencing practice and procedure.

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

Section 1. Section 902.12, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

A person serving a sentence for conviction of the following felonies, including a person serving a sentence for conviction of the following felonies prior to July 1, 2003, shall be denied parole or work release unless the person has served at least seven-tenths of the maximum term of the person's sentence:

Sec. 2. Section 906.15, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Unless sooner discharged, a person released on parole shall be discharged when the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement. Discharge from parole may be granted prior to such time, when an early discharge is appropriate. The board shall periodically review all paroles, and when the board determines that any person on parole is able and willing to fulfill the obligations of a law-abiding citizen without further supervision, the board shall discharge the person from parole. A parole officer shall periodically review all paroles assigned to the parole officer, and when the parole officer determines that any person assigned to the officer is able and willing to fulfill the obligations of a law-abiding citizen without further supervision, the officer may discharge the person from parole after notification and approval of the district director and notification of the board of parole. In any event, discharge from parole shall terminate the person's sentence. However, a person convicted of a violation of section 709.3, 709.4 or 709.8 committed on or with a child, or a person serving a sentence under section 902.12, shall not be discharged from parole until the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement.

Sec. 3. Section 915.13, subsection 1, paragraph h, Code Supplement 2003, is amended by striking the paragraph.

Sec. 4. Section 915.14, Code Supplement 2003, is amended to read as follows:

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. ~~If a motion to reopen the sentence has been filed pursuant to section 901.5B, the clerk of the district court shall notify a registered victim of the case in which the victim was involved. The notice shall include the scheduled date, time, and place of the hearing, and the clerk shall notify the victim of a cancellation or postponement of any hearing regarding the motion to reopen.~~

Sec. 5. Section 901.5B, Code Supplement 2003, is repealed.

Sec. 6. CONTROLLED SUBSTANCE PENALTY STUDY. The Iowa state bar association is requested to establish and lead a study committee to review the disparity of criminal penalties related to crack cocaine, cocaine, and other controlled substances, especially such criminal penalties classified as serious and aggravated misdemeanors and class "C" and "D" felonies. The members of the study committee shall include but are not limited to representatives of the Iowa state bar association, the attorney general, the county attorneys association, the state public defender, the department of corrections, the judicial district department of correctional services, and the criminal law section of the Iowa trial lawyers association. The study committee is requested to file recommendations with the general assembly by December 15, 2004.

Sec. 7. CRIMINAL CODE REVISIONS — STUDY. The legislative council is requested to establish an interim study committee to review and propose revisions to the criminal code. In establishing the committee, the legislative council is requested to consider proposals for the study by the Iowa state bar association and other appropriate agencies or organizations. Proposals submitted to the legislative council may address committee membership, member voting, committee rules, the process to be used for reviewing and revising the criminal code and other pertinent matters.

Approved May 11, 2004

CHAPTER 1151

CHILD ENDANGERMENT — POSSESSION OR MANUFACTURE OF SPECIFIED CONTROLLED SUBSTANCES

H.F. 2150

AN ACT establishing a child endangerment offense for permitting the presence of a child or minor at a location where a controlled substance manufacturing or product possession violation occurs and providing a penalty.

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

Section 1. Section 124.401C, subsection 1, Code 2003, is amended to read as follows:

1. In addition to any other penalties provided in this chapter, a person who is eighteen years

of age or older and who either directly or by extraction from natural substances, or independently by means of chemical processes, or both, unlawfully manufactures methamphetamine, its salts, isomers, and salts of its isomers in the presence of a minor shall be sentenced up to an additional term of confinement of five years. However, the additional term of confinement shall not be imposed on a person who has been convicted and sentenced for a child endangerment offense under section 726.6, subsection 1, paragraph "g", arising from the same facts.

Sec. 2. Section 702.11, subsection 2, paragraph e, Code Supplement 2003, is amended to read as follows:

e. Child endangerment ~~resulting in bodily injury to a child or a minor in violation of~~ subject to penalty under section 726.6, subsection 5.

Sec. 3. Section 726.6, subsection 1, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. Knowingly permits a child or minor to be present at a location where amphetamine, its salts, isomers, or salts of isomers, or methamphetamine, its salts, isomers, or salts of isomers is manufactured in violation of section 124.401, subsection 1, or where a product is possessed in violation of section 124.401, subsection 4.

Sec. 4. Section 726.6, subsections 5 and 6, Code 2003, are amended to read as follows:

5. A person who commits child endangerment resulting in bodily injury to a child or minor or child endangerment in violation of subsection 1, paragraph "g" that does not result in a serious injury, is guilty of a class "D" felony.

6. A person who commits child endangerment that is not ~~resulting in bodily injury or serious injury to a child or minor~~ subject to penalty under subsection 4 or 5 is guilty of an aggravated misdemeanor.

Approved May 11, 2004

CHAPTER 1152

CHILD ABUSE ASSESSMENT AND TRAINING

H.F. 2327

AN ACT relating to child abuse assessment requirements involving notification of parents, interviews of persons alleged to have committed child abuse, and training of child protection workers.

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

Section 1. Section 232.71B, subsection 2, Code Supplement 2003, is amended to read as follows:

2. NOTIFICATION OF PARENTS. The department, within five working days of commencing the assessment, shall provide written notification of the assessment to the child's parents. If a parent is alleged to have committed the child abuse, the notice shall inform the parents regarding the complaint or allegation made regarding the parent. The parents shall be informed in a manner that protects the confidentiality rights of an individual who reported the child abuse or provided information as part of the assessment process. However, if the

department shows the court to the court's satisfaction that notification is likely to endanger the child or other persons, the court shall orally direct the department to withhold notification. Within one working day of issuing an oral directive, the court shall issue a written order restraining the notification. The department shall not reveal in the written notification to the parents or otherwise the identity of the reporter of child abuse to a subject of a child abuse report listed in section 235A.15, subsection 2, paragraph "a".

Sec. 2. Section 232.71B, subsection 4, paragraph e, Code Supplement 2003, is amended to read as follows:

e. An interview of the person alleged to have committed the child abuse, if the person's identity and location are known. The offer of an interview shall be made to the person prior to any consideration or determination being made that the person committed the alleged abuse. The person shall be informed of the complaint or allegation made regarding the person. The person shall be informed in a manner that protects the confidentiality rights of the individual who reported the child abuse or provided information as part of the assessment process. The purpose of the interview shall be to provide the person with the opportunity to explain or rebut the allegations of the child abuse report or other allegations made during the assessment. The court may waive the requirement to offer the interview only for good cause. The person offered an interview, or the person's attorney on the person's behalf, may decline the offer of an interview of the person.

Sec. 3. Section 232.76, Code 2003, is amended to read as follows:

232.76 PUBLICITY, ~~AND~~ EDUCATIONAL, AND TRAINING PROGRAMS.

1. The department, within the limits of available funds, shall conduct a continuing publicity and educational program for the personnel of the department, persons required to report, and any other appropriate persons to encourage the fullest possible degree of reporting of suspected cases of child abuse. Educational programs shall include but not be limited to the diagnosis and cause of child abuse, the responsibilities, obligations, duties and powers of persons and agencies under this chapter and the procedures of the department and the juvenile court with respect to suspected cases of child abuse and disposition of actual cases.

2. a. For the purposes of this subsection, in addition to the definition in section 232.68, a "child protection worker" also includes any employee of the department who provides services to or otherwise works directly with children and families for whom child abuse has been alleged.

b. The training of a child protection worker shall include but is not limited to the worker's legal duties to protect the constitutional and statutory rights of a child and the child's family members throughout the child or family members' period of involvement with the department beginning with the child abuse report and ending with the department's closure of the case. The curriculum used for the training shall specifically include instruction on the fourth amendment to the Constitution of the United States and parents' legal rights.

Approved May 11, 2004

CHAPTER 1153

DISCLOSURE OF DEPARTMENT OF HUMAN SERVICES RECORDS AND INFORMATION

H.F. 2328

AN ACT relating to child protection confidentiality requirements involving the department of human services.

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

Section 1. Section 217.30, subsection 4, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. Information described in subsection 1, paragraphs "a", "b", and "c", is subject to disclosure in accordance with section 235A.15, subsection 10.

Sec. 2. Section 235A.12, Code 2003, is amended to read as follows:

235A.12 LEGISLATIVE FINDINGS AND PURPOSES.

1. The general assembly finds and declares that a central registry is required to provide a single source for the ~~state-wide~~ statewide collection, maintenance, and dissemination of child abuse information. ~~Such a~~ The existence of the central registry is imperative for increased effectiveness in dealing with the problem of child abuse. The general assembly also finds that vigorous protection of rights of individual privacy is an indispensable element of a fair and effective system of collecting, maintaining and disseminating child abuse information.

2. The purposes of this section and sections 235A.13 ~~to 235A.23~~ through 235A.24 are to facilitate the identification of victims or potential victims of child abuse by making available a single, statewide source of child abuse data; to facilitate research on child abuse by making available a single, statewide source of child abuse data; and to provide maximum safeguards against the unwarranted invasions of privacy which such a registry might otherwise entail.

Sec. 3. Section 235A.13, subsection 9, Code Supplement 2003, is amended to read as follows:

9. "Near fatality" means ~~a bodily~~ an injury ~~which involves substantial risk of death, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty and includes a serious bodily injury as described in section 702.18~~ to a child that, as certified by a physician, placed the child in serious or critical condition.

Sec. 4. Section 235A.15, subsections 7 and 8, Code Supplement 2003, are amended to read as follows:

~~7. Upon the request of a person listed in this subsection, child abuse information relating to a specific case of child abuse involving a fatality or near fatality to a child and reported to the department shall be disclosed to that person by the director of human services. The purpose of the disclosure is to provide for oversight of the department and others involved with the state's child protection system in order to improve the system. After completing a review of the child abuse information received, an authorized requester may issue a report to the governor regarding the specific case of child abuse. The following persons are authorized to make a request and receive child abuse information under this section relating to a specific case of child abuse involving a fatality or near fatality to a child:~~

~~a. The governor or the governor's designee.~~

~~b. The member of the senate or employee of the general assembly designated by the majority leader or minority leader of the senate.~~

~~c. The member of the house of representatives or employee of the general assembly designated by the speaker or minority leader of the house of representatives.~~

7. If the director of human services receives a written request for information regarding a specific case of child abuse involving a fatality or near fatality to a child from the majority or minority leader of the senate or the speaker or the minority leader of the house of representatives, the director or the director's designee shall arrange for a confidential meeting with the requestor or the requestor's designee. In the confidential meeting the director or the director's designee shall share all pertinent information concerning the case, including but not limited to child abuse information. Any written document distributed by the director or the director's designee at the confidential meeting shall not be removed from the meeting and a participant in the meeting shall be subject to the restriction on redissemination of confidential information applicable to a person under section 235A.17, subsection 3, for confidential information disclosed to the participant at the meeting. A participant in the meeting may issue a report to the governor or make general public statements concerning the department's handling of the case of child abuse.

8. Upon the request of the governor, the department shall disclose child abuse information to the governor or the governor's designee relating to a specific case of child abuse reported to the department.

Sec. 5. Section 235A.15, subsection 9, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

If, apart from a request made pursuant to subsection 7 or 8, the department receives from a member of the public a request for ~~child abuse~~ information relating to a case of founded child abuse involving a fatality or near fatality to a child, the response to the request shall be made in accordance with this subsection and subsections 10 and 11. If the request is received before or during performance of an assessment of the case in accordance with section 232.71B, the director of human services or the director's designee shall initially disclose whether or not the assessment will be or is being performed. Otherwise, within five business days of receiving the request or completing the assessment, whichever is later, the director of human services or the director's designee shall consult with the county attorney responsible for prosecution of any alleged perpetrator of the fatality or near fatality and shall disclose ~~child abuse~~ information, including but not limited to child abuse information, relating to the case ~~and the child in accordance with this subsection. The director or the director's designee shall release all child abuse information associated with the case and the child~~, except for the following:

Sec. 6. Section 235A.15, subsection 9, paragraph c, Code Supplement 2003, is amended by striking the paragraph.

Sec. 7. Section 235A.15, Code Supplement 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 10. The information released by the director of human services or the director's designee pursuant to a request made under subsection 9 relating to a case of founded child abuse involving a fatality or near fatality to a child shall be a summary of all of the following, unless such information is excepted from disclosure under subsection 9:

a. Any relevant child abuse report data concerning the child or the child's family and the department's response and findings concerning the report data, including but not limited to assessment and disposition data.

b. Information, that would otherwise be confidential under section 217.30, as to whether or not the child or a member of the child's family was utilizing social services provided by the department at the time of the child fatality or near fatality or within the five-year period preceding the fatality or near fatality.

c. Any recommendations made by the department to the county attorney or the juvenile court.

d. If applicable, an evaluation of the department's responses in the case.[1]

NEW SUBSECTION. 11. a. If a person who made a request for information under subsection 9 does not believe the department has substantially complied with the request, the person

[1] See chapter 1116, §27 herein

may apply to the juvenile court under section 235A.24 for an order for disclosure of additional information.

b. If release of social services information in addition to that released under subsection 10, paragraph "b", is believed to be in the public's interest and right to know, the director of human services or the director's designee may apply to the court under section 235A.24 requesting a review of the information proposed for release and an order authorizing release of the information. A release of information that would otherwise be confidential under section 217.30 concerning social services provided to the child or the child's family shall not include information concerning financial or medical assistance provided to the child or the child's family.

NEW SUBSECTION. 12. If an individual who is the subject of a child abuse report listed in subsection 2, paragraph "a", or another party involved in a child abuse assessment under section 232.71B releases in a public forum or to the media information concerning a case of child abuse including but not limited to child abuse information which would otherwise be confidential, the director of human services, or the director's designee, may respond with relevant information concerning the case of child abuse that was the subject of the release. Prior to releasing the response, the director or the director's designee shall consult with the child's parent or guardian, or the child's guardian ad litem, and apply to the court under section 235A.24 requesting a review of the information proposed for release and an order authorizing release of the information.

Sec. 8. Section 235A.24, Code 2003, is amended to read as follows:

235A.24 ORDER FOR DISCLOSURE OR RELEASE OF CHILD ABUSE INFORMATION.

1. a. ~~A person whose~~ If a person's request for ~~child abuse~~ information relating to a case of founded child abuse under section 235A.15, subsection 9, is denied or such person does not believe the department has substantially complied with the request and seeks additional information, the person may apply to the juvenile court for an order compelling disclosure of the information.

b. The director of human services or the director's designee may apply, if the conditions under section 235A.15, subsection 11 or 12, are met, to the court requesting a review of confidential information proposed for release and an order authorizing the release of information. A release of information that would otherwise be confidential under section 217.30 concerning social services provided to the child or the child's family shall not include information concerning financial or medical assistance provided to the child or the child's family.

2. The application shall state in reasonable detail the factors in support of the application. The juvenile court shall have jurisdiction to issue the order. A hearing shall be set immediately upon filing of an application under this section and subsequent proceedings shall be accorded priority by other courts.

3. In considering the application, the court shall weigh the public's interest and right to know the information against the privacy rights of the victim of the child abuse and other individuals who may be affected by the release of the information relating to the case of child abuse.

4. After the court has reviewed the ~~child abuse~~ information relating to the case in camera, unless the court finds that a restriction listed in section 235A.15, subsection 9, is applicable, the court ~~shall~~ may issue an order compelling disclosure or authorizing release of the ~~child abuse~~ information relating to the case.

Approved May 11, 2004

CHAPTER 1154

CHILD IN NEED OF ASSISTANCE DISPOSITIONAL ORDERS

H.F. 2481

AN ACT expanding the circumstances by which the juvenile court may modify, vacate and substitute, or terminate a child in need of assistance dispositional order.

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

Section 1. Section 232.103, subsection 3, Code Supplement 2003, is amended to read as follows:

3. A change in the level of care for a child who is subject to a dispositional order for out-of-home placement requires modification of the dispositional order. A hearing shall be held on a motion to terminate or modify a dispositional order except that a hearing on a motion to terminate or modify an order may be waived upon agreement by all parties. Reasonable notice of the hearing shall be given to the parties. The hearing shall be conducted in accordance with the provisions of section 232.50.

Sec. 2. Section 232.103, subsection 4, Code Supplement 2003, is amended to read as follows:

4. The court may modify a dispositional order, vacate and substitute a dispositional order, or terminate ~~an~~ a dispositional order and release the child if the court finds that ~~the~~ any of the following circumstances exist:

a. The purposes of the order have been accomplished and the child is no longer in need of supervision, care, or treatment.

b. The purposes of the order cannot reasonably be accomplished.

c. The efforts made to effect the purposes of the order have been unsuccessful and other options to effect the purposes of the order are not available.

d. The purposes of the order have been sufficiently accomplished and the continuation of supervision, care, or treatment is unjustified or unwarranted.

Approved May 11, 2004

CHAPTER 1155

SALE OF ALCOHOLIC BEVERAGES, WINE, OR BEER ON CREDIT — CONVENTION, CIVIC, OR EVENTS CENTERS

H.F. 2505

AN ACT providing for the selling of alcoholic beverages, wine, or beer on credit by a convention center, civic center, or events center under specified circumstances.

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

Section 1. Section 123.49, subsection 2, paragraph c, Code Supplement 2003, is amended to read as follows:

c. Sell alcoholic beverages, wine, or beer to any person on credit, except with a bona fide

credit card. This provision does not apply to sales by a club to its members, ~~nor~~ to sales by a hotel or motel to bona fide registered guests, nor to retail sales by the managing entity of a convention center, civic center, or events center.

Approved May 11, 2004

CHAPTER 1156

BIRTH CERTIFICATE COPIES — BIOLOGICAL PARENTS

H.F. 2527

AN ACT relating to the provision of a copy of a certificate of birth to a biological parent.

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

Section 1. Section 144.13A, subsection 2, Code Supplement 2003, is amended to read as follows:

2. The state registrar shall charge the parent a separate fee established under section 144.46 for a certified copy of the certificate. The certified copy shall be mailed to the parent by the state registrar. The mailing of a certified copy of the certificate to a biological parent shall not be precluded by the execution of a release of custody under chapter 600A, and, upon request, a biological parent shall be provided with a certified copy of the certificate unless the parental rights of the biological parent are terminated.

Sec. 2. Section 600A.9, subsection 4, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. The state registrar for the purposes of section 144.13A, subsection 2.

Approved May 11, 2004

CHAPTER 1157

MODIFICATION OF CHILD CUSTODY ORDERS —
ENTRY OF JUVENILE COURT DISPOSITIONAL ORDER

H.F. 2528

AN ACT relating to consideration of a juvenile court order by the district court in a custody proceeding.

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

Section 1. Section 598.21, subsection 8, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. jj. Entry of a dispositional order in juvenile court pursuant to chapter 232 placing custody or physical care of a child with a party who is obligated to pay support for a child.

Approved May 11, 2004

CHAPTER 1158

HEALTH INSURANCE — MISCELLANEOUS CHANGES

H.F. 2568

AN ACT relating to individual health insurance program modification; restructuring and modification of eligibility, benefits, tax offsets, and other terms related to the operation of the Iowa comprehensive health insurance association; phaseout of guaranteed basic and standard individual insurance plans; and coverage of federal Trade Adjustment Act recipients under the Iowa comprehensive health insurance Act; and providing effective dates.

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

Section 1. Section 513C.3, subsection 15, Code Supplement 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. For purposes of this subsection, an association policy under chapter 514E is not considered "qualifying existing coverage" or "qualifying previous coverage".

Sec. 2. Section 513C.7, subsections 1, 2, and 5, Code Supplement 2003, are amended by striking the subsections.

Sec. 3. Section 513C.8, Code 2003, is amended to read as follows:

513C.8 HEALTH BENEFIT PLAN STANDARDS.

The ~~commissioner~~ board of directors of the Iowa comprehensive health insurance association, with the approval of the commissioner, shall adopt ~~by rule~~ the form and level of coverage of the basic health benefit plan and the standard health benefit plan for the individual market which shall provide benefits substantially similar to ~~those as provided for under chapter 513B with respect to small group coverage, but which shall be appropriately adjusted at least every three years to reflect~~ the current state of the individual market.

Sec. 4. Section 513C.10, subsection 1, paragraph a, Code Supplement 2003, is amended to read as follows:

a. All persons that provide health benefit plans in this state including insurers providing accident and sickness insurance under chapter 509, 514, or 514A, whether on an individual or group basis; fraternal benefit societies providing hospital, medical, or nursing benefits under chapter 512B; and health maintenance organizations, organized delivery systems, ~~and all~~ other entities providing health insurance or health benefits subject to state insurance regulation, and all other insurers as designated by the board of directors of the Iowa comprehensive health insurance association with the approval of the commissioner shall be members of the association.

Sec. 5. Section 513C.10, subsection 4, Code Supplement 2003, is amended to read as follows:

4. The board shall develop procedures and assessment mechanisms and make assessments and distributions as required to equalize the individual carrier and organized delivery system gains or losses so that each carrier or organized delivery system receives the same ratio of paid claims to ninety percent of earned premiums as the aggregate of all basic and standard plans insured by all carriers and organized delivery systems in the state.

Sec. 6. Section 514E.1, subsection 2, Code Supplement 2003, is amended to read as follows:

2. "Association policy" means an individual or group policy issued by the association that provides the coverage ~~specified in section 514E.4~~ as set forth in the benefit plans adopted by the association's board of directors and approved by the commissioner.

Sec. 7. Section 514E.1, subsections 7, 8, and 12, Code Supplement 2003, are amended by striking the subsections.

Sec. 8. Section 514E.1, subsection 9, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. Who has been confirmed eligible under the federal Trade Adjustment Act of 2002, Pub. L. No. 107-210, as a recipient under that Act, by the department of workforce development and the federal internal revenue service.

Sec. 9. Section 514E.1, subsection 13, Code Supplement 2003, is amended to read as follows:

13. "Health care services" means services, the coverage of which is authorized under chapter 509, chapter 514, chapter 514A, or chapter 514B as limited by ~~sections 514E.4 and 514E.5~~ benefit plans established by the association's board of directors with the approval of the commissioner, and includes services for the purposes of preventing, alleviating, curing, or healing human illness, injury or physical disability.

Sec. 10. Section 514E.2, subsection 1, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

The Iowa comprehensive health insurance association is established as a nonprofit corporation. The association shall assure that ~~health insurance, as limited by sections 514E.4 and 514E.5, is~~ benefit plans as authorized in section 514E.1, subsection 2, for an association policy, are made available to each eligible Iowa resident and each federally eligible individual applying to the association for coverage. The association shall also be responsible for administering the Iowa individual health benefit reinsurance association pursuant to all of the terms and conditions contained in chapter 513C.

Sec. 11. Section 514E.2, subsection 1, paragraph a, Code Supplement 2003, is amended to read as follows:

a. All carriers ~~as defined in section 514E.1, subsection 3,~~ and all organized delivery systems

licensed by the director of public health providing health insurance or health care services in Iowa and all other insurers designated by the association's board of directors and approved by the commissioner shall be members of the association.

Sec. 12. Section 514E.2, subsection 6, Code Supplement 2003, is amended by striking the subsection and inserting in lieu thereof the following:

6. Rates for coverages issued by the association shall reflect rating characteristics used in the individual insurance market. The rates for a given classification shall not be more than one hundred fifty percent of the average premium or payment rate for the classification charged by the five carriers with the largest health insurance premium or payment volume in the state during the preceding calendar year. In determining the average rate of the five largest carriers, the rates or payments charged by the carriers shall be actuarially adjusted to determine the rate or payment that would have been charged for benefits similar to those issued by the association.

Sec. 13. Section 514E.2, subsection 13, Code Supplement 2003, is amended by striking the subsection and inserting in lieu thereof the following:

13. An insurer may offset an assessment made pursuant to this chapter against its premium tax liability pursuant to chapter 432 to the extent of twenty percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. If an insurer ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

Sec. 14. Section 514E.4, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

514E.4 ASSOCIATION POLICY — COVERAGE AND BENEFIT REQUIREMENTS — DEDUCTIBLES — COINSURANCE.

The association policy shall pay for medically necessary eligible health care services as established in the benefit plans adopted by the association's board of directors and approved by the commissioner. The plans shall provide benefits, deductibles, and coinsurance that reflect the current state of the individual insurance market. The board may modify the benefits provided under the plans to reflect the current state of the individual insurance market with the approval of the commissioner.

Sec. 15. Section 514E.7, subsection 1, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The association shall rescind coverage for an individual who no longer resides in the state.

Sec. 16. Section 514E.7, subsection 4, paragraph b, Code 2003, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (4) In the case of an individual transferring to an association policy from a basic or standard health benefit plan under chapter 513C beginning on or after January 1, 2005.

Sec. 17. Section 514E.7, subsection 5, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. The individual is eligible for Medicare based upon age.

Sec. 18. Section 514E.8, subsection 1, Code 2003, is amended to read as follows:

1. An association policy shall contain provisions under which the association is obligated to renew the ~~contract~~ coverage for an individual until the day ~~on which~~ the individual ~~in whose name the contract is issued first~~ becomes eligible for Medicare coverage~~, except that in a family policy covering both husband and wife, the age of the younger spouse shall be used as the~~

~~basis for meeting the durational requirements of this subsection. However, when the individual in whose name the contract is issued becomes eligible for Medicare coverage, the person shall be eligible for the Medicare supplement plan offered by the association~~ based on age.

Sec. 19. Section 514E.11, Code 2003, is amended to read as follows:

514E.11 NOTICE OF ASSOCIATION POLICY.

Every carrier, including a health maintenance organization subject to chapter 514B and an organized delivery system, authorized to provide health care insurance or coverage for health care services in Iowa, shall provide a notice of the availability of coverage by the association to any person who receives a rejection of coverage for health insurance or health care services, or ~~a notice to any person who is informed that~~ a rate for health insurance or coverage for health care services that will exceed the rate of an association policy, and that the person is eligible to apply for health insurance provided by the association. Application for the health insurance shall be on forms prescribed by the association's board of directors and made available to the carriers and organized delivery systems and other entities providing health care insurance or coverage for health care services regulated by the commissioner.

Sec. 20. Sections 514E.5 and 514E.6, Code 2003, are repealed.

Sec. 21. EFFECTIVE DATE. The sections of this Act amending section 513C.7 and section 514E.2, subsection 13, take effect January 1, 2005.

Approved May 11, 2004

CHAPTER 1159

IMMUNIZATIONS — MERCURY CONTENT — REIMBURSEMENT

S.F. 2209

AN ACT relating to the content of immunizations, and making a penalty applicable.

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

Section 1. NEW SECTION. 135.39A EARLY CHILDHOOD IMMUNIZATIONS — CONTENT.

1. Beginning January 1, 2006, early childhood immunizations administered in this state shall not contain more than trace amounts of mercury.

2. For the purposes of this section:

a. "Early childhood immunizations" means immunizations administrated[1] to children under eight years of age, unless otherwise provided in this section.

b. "Trace amounts" means trace amounts as defined by the United States food and drug administration.

3. The prohibition under this section shall not apply to early childhood immunizations for influenza or in times of emergency or epidemic as determined by the director of public health. If an emergency or epidemic is determined to exist by the director of public health under this subsection, the director of public health shall notify the state board of health, the governor, and the legislative council, and shall notify the public upon request.

[1] The word "administered" probably intended

Sec. 2. NEW SECTION. 514C.21 COVERAGE FOR IMMUNIZATIONS — MERCURY.

1. Third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2006, that provide reimbursement for immunizations shall provide reimbursement for immunizations containing no more than trace amounts of mercury at the acquisition cost rate for immunizations containing no more than trace amounts of mercury. For the purposes of this section, "trace amounts" means trace amounts as defined by the United States food and drug administration.

2. For the purposes of this section, "third-party payment provider contracts or policies" includes:

a. Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.

b. An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.

c. An individual or group health maintenance organization contract regulated under chapter 514B.

d. An organized delivery system licensed by the director of public health.

Approved May 14, 2004

CHAPTER 1160

DISCHARGING FIREARMS NEAR BUILDINGS AND FEEDLOTS

H.F. 2393

AN ACT relating to the regulation of target shooting near buildings and feedlots and the regulation of public hunting near buildings and feedlots and providing an effective date.

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

Section 1. Section 481A.123, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 3. This section does not apply to the discharge of a firearm for the purpose of target shooting on premises posted as a target shooting range that is open to the public, if the premises have been used as a target shooting range prior to the erection of a building inhabited by people or domestic livestock, or prior to the construction of a feedlot, located within two hundred yards of the target shooting range. This subsection applies only to the erection of a building inhabited by people or domestic livestock or to the construction of a feedlot located within two hundred yards of a target shooting range that is open to the public and that is identified as a target shooting range by the city, county, state, or federal government, which erection or construction occurs on or after the effective date of this Act.

As used in this subsection, "target shooting" means the discharge of a firearm at an inanimate object, for amusement or as a test of skill in marksmanship.

NEW SUBSECTION. 4. This section does not apply to the discharge of a firearm on premises identified as a public hunting area, if the premises have been identified as a public hunting area prior to the erection of a building inhabited by people or domestic livestock, or prior to the construction of a feedlot, located within two hundred yards of the public hunting area. This subsection applies only to the erection of a building inhabited by people or domestic livestock

or to the construction of a feedlot located within two hundred yards of a public hunting area, which erection or construction occurs on or after the effective date of this Act.

As used in this subsection, "public hunting area" means public lands or waters available for hunting by the public, and identified as a public hunting area by the city, county, state, or federal government.

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

Approved May 14, 2004

CHAPTER 1161

SECURITIES REGULATION

H.F. 2557

AN ACT providing for the regulation of securities, providing for fees and penalties, and providing an effective date.

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

DIVISION I
UNIFORM SECURITIES ACT
ARTICLE 1
GENERAL PROVISIONS

Section 1. Section 502.102, Code Supplement 2003, is amended by striking the section and inserting in lieu thereof the following:

502.102 DEFINITIONS.

In this chapter, unless the context otherwise requires:

1. "Administrator" means the commissioner of insurance or the deputy appointed pursuant to section 502.601.

2. "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this chapter.

2A. "Agricultural 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 requirement of an association as provided in 12 U.S.C. § 1141j(c) or 7 U.S.C. § 291, if the association is organized as any one of the following:

a. A farmers cooperative association as defined in section 10.1.

b. An association of persons organized pursuant to chapter 497 for purposes of conducting an agricultural or dairy business on a cooperative plan, as described in section 497.1.

c. A cooperative association organized pursuant to chapter 498 for purposes of conducting an agricultural, livestock, horticultural, or dairy business on a cooperative plan and acting as a cooperative selling agency, as described in section 498.2.

d. An agricultural association as defined in section 499.2 and organized pursuant to chapter 499.

e. A cooperative organized under chapter 501 which may acquire or otherwise obtain or lease agricultural land in this state as provided in section 501.103.

f. Any other entity which is organized on a cooperative basis under the laws of this state for the purpose of engaging in the activities of an agricultural association as defined in section 499.2.

3. "Bank" means any of the following:

a. A banking institution organized under the laws of the United States.

b. A member bank of the United States federal reserve system.

c. Any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the office of the comptroller of the currency of the United States pursuant to Pub. L. No. 87-722, § 1, 12 U.S.C. § 92a, and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter.

d. A receiver, conservator, or other liquidating agent of any institution or firm included in paragraph "a", "b", or "c".

4. "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include any of the following:

a. An agent.

b. An issuer.

c. A bank or savings institution if its activities as a broker-dealer are limited to those specified in section 3(a)(4)(B)(i) through (vi), section 3(a)(4)(B)(vii) if the offer and sale of private securities offerings are limited to nonconsumer transactions that are not primarily for personal, family, or household purposes, section 3(a)(4)(B)(viii) through (x), or section 3(a)(4)(B)(xi) if limited to unsolicited transactions all as provided in the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(4); in section 3(a)(5)(B), and 3(a)(5)(C) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(4) and (5); or a bank that satisfies the conditions described in section 3(a)(4)(E) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(4).

d. An international banking institution.

e. A person excluded by rule adopted or order issued under this chapter.

5. "Depository institution" means any of the following:

a. A bank.

b. A savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law. The term does not include any of the following:

(1) An insurance company or other organization primarily engaged in the business of insurance.

(2) A Morris plan bank.

(3) An industrial loan company.

6. "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

7. "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under section 18(b) of the Securities Act of 1933, 15 U.S.C. § 77r(b), or rules or regulations adopted pursuant to that provision.

8. "Filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator.

9. "Fraud", "deceit", and "defraud" are not limited to common law deceit.

10. "Guaranteed" means guaranteed as to payment of all principal and all interest.

11. "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

a. A depository institution or international banking institution.

b. An insurance company.

c. A separate account of an insurance company.

d. An investment company as defined in the Investment Company Act of 1940.

e. A broker-dealer registered under the Securities Exchange Act of 1934.

f. An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of five million dollars or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company.

g. A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of five million dollars or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company.

h. A trust, if it has total assets in excess of five million dollars, its trustee is a depository institution, and its participants are exclusively plans of the types identified in paragraph "f" or "g", regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans.

i. An organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of five million dollars.

j. A small business investment company licensed by the small business administration under section 301(c) of the Small Business Investment Act of 1958, 15 U.S.C. § 681(c), with total assets in excess of five million dollars.

k. A private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-2(a)(22), with total assets in excess of five million dollars.

l. A federal covered investment adviser acting for its own account.

m. A "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted by the securities and exchange commission under the Securities Act of 1933, 17 C.F.R. § 230.144A.

n. A "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted by the securities and exchange commission under the Securities Exchange Act of 1934, 17 C.F.R. § 240.15a-6.

o. Any other person, other than an individual, of institutional character with total assets in excess of five million dollars not organized for the specific purpose of evading this chapter.

p. Any other person specified by rule adopted or order issued under this chapter.

12. "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

13. "Insured" means insured as to payment of all principal and all interest.

13A. "Interest at the legal rate" means the interest rate for judgments specified in section 535.3.

14. "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

15. "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include any of the following:

a. An investment adviser representative.

b. A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession.

c. A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and who does not receive special compensation for the investment advice.

d. A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation.

e. A federal covered investment adviser.

f. A bank or savings institution.

g. Any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser.

h. Any other person excluded by rule adopted or order issued under this chapter.

16. "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds oneself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who does or is any of the following:

a. Performs only clerical or ministerial acts.

b. Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services.

c. Is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted by the securities and exchange commission under section 203A of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3a, and is any of the following:

(1) An "investment adviser representative" as that term is defined by rule adopted under section 203A of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3a.

(2) Not a "supervised person" as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-2(a)(25).

d. Is excluded by rule adopted or order issued under this chapter.

17. "Issuer" means a person that issues or proposes to issue a security, subject to all of the following:

a. The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

b. The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment

is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

c. The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

d. With respect to a viatical settlement contract, "issuer" means a person involved in creating, transferring, or selling to an investor any interest in such a contract, including but not limited to fractional or pooled interests, but does not include an agent or a broker-dealer.

18. "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

19. "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to section 14(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78n(d).

20. "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

21. "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means any of the following:

a. An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

b. Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

22. "Predecessor chapter" means this chapter as it existed on December 31, 2004.

23. "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

24. "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

25. "Record", except in the phrases "of record", "official record", and "public record", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

26. "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include all of the following:

a. A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value.

b. A gift of assessable stock involving an offer and sale.

c. A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

27. "Securities and exchange commission" means the United States securities and exchange commission.

27A. "Securities bureau" means the securities bureau of the insurance division of the department of commerce.

28. "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. All of the following shall apply to the term:

a. It includes both a certificated and an uncertificated security.

b. It does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period.

c. It does not include any of the following:

(1) An interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974.

(2) A certificate or tax credit issued or transferred pursuant to chapter 15E, division VII.

d. It includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.

e. It includes as a security an interest in a limited liability company or in a limited liability partnership or any class or series of such interest, including any fractional or other interest in such interest, provided "security" does not include an interest in a limited liability company or a limited liability partnership if the person claiming that such an interest is not a security proves that all of the members of the limited liability company or limited liability partnership are actively engaged in the management of the limited liability company or limited liability partnership; provided that the evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company or limited liability partnership, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company or limited liability partnership.

f. It includes a viatical settlement investment contract.

29. "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the municipal securities rulemaking board established under the Securities Exchange Act of 1934.

30. "Sign" means, with present intent to authenticate or adopt a record, to do any of the following:

a. To execute or adopt a tangible symbol.

b. To attach or logically associate with the record an electronic symbol, sound, or process.

31. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

31A. "Viatical settlement investment contract" means a contract entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in the death benefits of a life insurance policy, which contract is entered into for the purpose of deriving economic benefit.

Sec. 2. NEW SECTION. 502.103 REFERENCES TO FEDERAL STATUTES.

"Securities Act of 1933", 15 U.S.C. § 77a et seq.; "Securities Exchange Act of 1934", 15 U.S.C.

§ 78a et seq.; "Public Utility Holding Company Act of 1935", 15 U.S.C. § 79 et seq.; "Investment Company Act of 1940", 15 U.S.C. § 80a-1 et seq.; "Investment Advisers Act of 1940", 15 U.S.C. § 80b-1 et seq.; "Employee Retirement Income Security Act of 1974", 29 U.S.C. § 1001 et seq.; "National Housing Act", 12 U.S.C. § 1701; "Commodity Exchange Act", 7 U.S.C. § 1 et seq.; "Internal Revenue Code", 26 U.S.C. § 1 et seq.; "Securities Investor Protection Act of 1970", 15 U.S.C. § 78aaa et seq.; "Securities Litigation Uniform Standards Act of 1998", 112 Stat. 3227; "Small Business Investment Act of 1958", 15 U.S.C. § 661 et seq.; and "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. § 7001 et seq. mean those federal statutes and the rules and regulations adopted under those federal statutes, as in effect on the effective date of this Act.

Sec. 3. NEW SECTION. 502.104 REFERENCES TO FEDERAL AGENCIES.

A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

Sec. 4. NEW SECTION. 502.105 ELECTRONIC RECORDS AND SIGNATURES.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede § 101(c) of that Act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. § 7003(b). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a rule adopted or order issued under this chapter, in a manner consistent with section 104(a) of that Act, 15 U.S.C. § 7004(a).

ARTICLE 2
EXEMPTIONS FROM REGISTRATION OF SECURITIES

Sec. 5. Section 502.201, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.201 EXEMPT SECURITIES.

All of the following securities are exempt from the requirements of sections 502.301 through 502.306 and 502.504:

1. UNITED STATES GOVERNMENT AND MUNICIPAL SECURITIES. A security, including a revenue obligation or a separate security as defined in rule 131, 17 C.F.R. § 230.131, adopted by the securities and exchange commission under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing.

2. FOREIGN GOVERNMENT SECURITIES. A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor.

3. DEPOSITORY INSTITUTION AND INTERNATIONAL BANKING INSTITUTION SECURITIES. A security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by any of the following:

a. An international banking institution.

b. A banking institution organized under the laws of the United States; a member bank of the United States federal reserve system; or a depository institution, a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the comptroller of the currency pursuant to Pub. L. No. 87-722, § 1, 12 U.S.C. § 92a.

c. Any other depository institution, unless by rule or order the administrator proceeds under section 502.204.

4. INSURANCE COMPANY SECURITIES. A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state.

5. COMMON CARRIER AND PUBLIC UTILITY SECURITIES. A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is any of the following:

a. Regulated in respect to its rates and charges by the United States or a state.

b. Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory.

c. A public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that Act.

6. CERTAIN OPTIONS AND RIGHTS. A federal covered security specified in section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(1), or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the securities and exchange commission under section 9(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78i(b).

7. NONPROFIT SECURITIES. A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940, 15 U.S.C. § 80a-3(c)(10)(B); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to paragraph "b" the scope of the exemption and the grounds for denial or suspension, and requiring an issuer to do any of the following:

a. File a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule.

b. File a request for exemption authorization for which a rule under this chapter may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with section 502.611, and grounds for denial or suspension of the exemption.

c. Register under section 502.304.

8A.[1] COOPERATIVE ASSOCIATIONS. A stock or similar security, including a patronage refund certificate, issued by any of the following:

a. A cooperative housing corporation described in paragraph 1 of subsection "b" of section 216 of the Internal Revenue Code, if its activities are limited to the ownership, leasing, management, or construction of residential properties for its members, and activities incidental thereto.

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[1] The enrolled Act does not include a subsection 8

b. A mutual or cooperative organization, including a cooperative association organized in good faith under and for any of the purposes enumerated in chapter 497, 498, 499, or 501, that deals in commodities or supplies goods or services in transactions primarily with and for the benefit of its members, if all of the following apply:

(1) Such stock or similar security is part of a class issuable only to persons who deal in commodities with, or obtain goods or services from, the issuer.

(2) Such stock or similar security is transferable only to the issuer or a successor in interest of the transferor who qualifies for membership in such mutual or cooperative organization.

(3) No dividends other than patronage refunds are payable to holders of such stock or similar security except on a complete or partial liquidation.

8B. AGRICULTURAL COOPERATIVE ASSOCIATIONS. A security issued by an agricultural cooperative association, provided all of the following conditions are satisfied:

a. A commission or remuneration must not be paid or provided either directly or indirectly for the sale, except as permitted by the administrator by rule or by order issued upon written application showing good cause for allowance of a commission or other remuneration.

b. If the securities to be issued are notes or other evidences of indebtedness and are issued after July 1, 1991, the issuer must file with the administrator a written notice specifying the name of the issuer, the date of the issuer's organization, the name of a contact person, a copy of the issuer's current audited financial statement, the types of security or securities to be offered, and the class of persons to whom the offer will be made in accordance with such rules as prescribed by the administrator.

9. EQUIPMENT TRUST CERTIFICATE. An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(1).

9A. ECONOMIC DEVELOPMENT CORPORATIONS. Any security issued by a corporation formed under chapter 496B.

9B. AGRICULTURAL DEVELOPMENT AUTHORITY. Any security issued by the agricultural development authority under chapter 175.

9C. MEMBERSHIP CAMPGROUNDS. Any security representing a membership camping contract which is registered pursuant to section 557B.2 or exempt under section 557B.4.

9D. TIME-SHARES. Any security representing a time-share interval as defined in section 557A.2.

9E. VIATICAL SETTLEMENT CONTRACTS. A viatical settlement contract, or fractional or pooled interest in such contract, provided any of the following conditions are satisfied:

a. The assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract is made by the viator to an insurance company as provided under Title XIII, subtitle 1.

b. The assignment, transfer, sale, devise, or bequest of a life insurance policy or contract, for any value less than the expected death benefit, is made by the viator to a family member or other person who enters into no more than one such agreement in a calendar year.

c. A life insurance policy or contract is assigned to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan.

d. Accelerated benefits are exercised as provided in the life insurance policy or contract and consistent with applicable law.

e. The assignment, transfer, sale, devise, or bequest of the death benefit or ownership of a life insurance policy or contract made by the policyholder or contract owner to a viatical settlement provider, if the viatical settlement transaction complies with chapter 508E, including rules adopted pursuant to that chapter.

Sec. 6. Section 502.202, Code Supplement 2003, is amended by striking the section and inserting in lieu thereof the following:

NEW SECTION. 502.202 EXEMPT TRANSACTIONS.

The following transactions are exempt from the requirements of sections 502.301 through 502.306 and 502.504:

1. ISOLATED NONISSUER TRANSACTIONS. An isolated nonissuer transaction, whether effected by or through a broker-dealer or not.

2. NONISSUER TRANSACTIONS IN SPECIFIED OUTSTANDING SECURITIES. A nonissuer transaction by or through a broker-dealer registered, or exempt from registration, under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, provided that for either transaction, the security is of a class that has been outstanding in the hands of the public for at least ninety days, if, at the date of the transaction, all of the following apply:

a. The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

b. The security is sold at a price reasonably related to its current market price.

c. The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution.

d. A nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this chapter or a record filed with the securities and exchange commission that is publicly available contains all of the following:

(1) A description of the business and operations of the issuer.

(2) The names of the issuer's executive officers and the names of the issuer's directors, if any.

(3) An audited balance sheet of the issuer as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, and a pro forma balance sheet for the combined organization.

(4) An audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, and a pro forma income statement.

e. Any one of the following requirements is met:

(1) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 or designated for trading on the national association of securities dealers automated quotation system.

(2) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940.

(3) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three years.

(4) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, and a pro forma balance sheet for the combined organization.

3. NONISSUER TRANSACTIONS IN SPECIFIED FOREIGN TRANSACTIONS. A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the United States federal reserve system.

4. NONISSUER TRANSACTIONS IN SECURITIES SUBJECT TO SECURITIES EXCHANGE ACT REPORTING. A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the securities and exchange commission under the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m or 78o(d).

5. NONISSUER TRANSACTIONS IN SPECIFIED FIXED INCOME SECURITIES. A nonis-

suer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security if any of the following apply:

a. It is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories.

b. It has a fixed maturity or a fixed interest or dividend, if all of the following apply:

(1) A default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security.

(2) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

6. UNSOLICITED BROKERAGE TRANSACTIONS. A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase.

7. NONISSUER TRANSACTION BY PLEDGEES. A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter.

8. NONISSUER TRANSACTIONS WITH FEDERAL COVERED INVESTMENT ADVISERS. A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars acting in the exercise of discretionary authority in a signed record for the account of others.

9. SPECIFIED EXCHANGE TRANSACTIONS. A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing.

10. UNDERWRITER TRANSACTIONS. A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

11. UNIT SECURED TRANSACTIONS. A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if all of the following apply:

a. The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit.

b. A general solicitation or general advertisement of the transaction is not made.

c. A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent.

12. BANKRUPTCY, GUARDIAN, OR CONSERVATOR TRANSACTIONS. A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

13. TRANSACTIONS WITH SPECIFIED INVESTORS. A sale or offer to sell to any of the following:

a. An institutional investor.

b. A federal covered investment adviser.

c. Any other person exempted by rule adopted or order issued under this chapter.

d. A person or class of persons who are granted this exemption by the administrator. The administrator, by rule or order, may grant this exemption to a person or class of persons based upon the factors of financial sophistication, net worth, and the amount of assets under investment.

14. LIMITED OFFERING TRANSACTIONS. A sale or an offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which all of the following apply:

a. Not more than thirty-five purchasers are present in this state during any twelve consecutive months, other than those designated in subsection 13.

b. A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities.

c. A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this state.

d. The issuer reasonably believes that all the purchasers in this state, other than those designated in subsection 13, are purchasing for investment.

15. TRANSACTIONS WITH EXISTING SECURITY HOLDERS. A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state.

16. OFFERINGS REGISTERED UNDER THE CHAPTER AND THE SECURITIES ACT OF 1933. An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if all of the following apply:

a. A registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with rule 165 adopted under the Securities Act of 1933, 17 C.F.R. § 230.165.

b. A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the securities and exchange commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending.

17. OFFERINGS WHEN REGISTRATION HAS BEEN FILED, BUT IS NOT EFFECTIVE UNDER THIS CHAPTER AND EXEMPT FROM THE SECURITIES ACT OF 1933. An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if all of the following apply:

a. A registration statement has been filed under this chapter, but is not effective.

b. A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the administrator under this chapter.

c. A stop order of which the offeror is aware has not been issued by the administrator under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending.

18. CONTROL TRANSACTIONS. A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties.

19. RECISION OFFERS. A recision offer, sale, or purchase under section 502.510.

20. OUT-OF-STATE OFFERS OR SALES. An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter.

21. EMPLOYEE BENEFIT PLANS. Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to any of the following:

a. Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisers.

b. Family members who acquire such securities from those persons through gifts or domestic relations orders.

c. Former employees, directors, general partners, trustees, officers, consultants, and advisers if those individuals were employed by or providing services to the issuer when the securities were offered.

d. Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent of their annual income from those organizations.

22. SPECIFIED DIVIDENDS AND TENDER OFFERS AND JUDICIALLY RECOGNIZED REORGANIZATIONS. A transaction involving any of the following:

a. A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock.

b. An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

c. The solicitation of tenders of securities by an offeror in a tender offer in compliance with rule 162 adopted under the Securities Act of 1933, 17 C.F.R. § 230.162.

23. NONISSUER TRANSACTIONS INVOLVING SPECIFIED FOREIGN ISSUER SECURITIES TRADED ON DESIGNATED SECURITY EXCHANGES. A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subsection or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subsection or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subsection, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto stock exchange, inc., is a designated securities exchange. After an administrative hearing in compliance with chapter 17A, the administrator, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this subsection, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

Sec. 7. Section 502.203, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.203 ADDITIONAL EXEMPTIONS AND WAIVERS.

A rule adopted or order issued under this chapter may exempt a security, transaction, or offer; a rule under this chapter may exempt a class of securities, transactions, or offers from any or all of the requirements of sections 502.301 through 502.306 and 502.504; and an order under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under sections 502.201 and 502.202.

Sec. 8. Section 502.204, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.204 DENIAL, SUSPENSION, REVOCATION, CONDITION, OR LIMITATION OF EXEMPTIONS.

1. ENFORCEMENT-RELATED POWERS. Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under section 502.201, subsection 3, paragraph "c", or subsection 7 or 8,[2] or section 502.202, or an exemption or waiver created under section 502.203 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in section 502.306, subsection 4, or section 502.604, and only prospectively.

2. KNOWLEDGE OF ORDER REQUIRED. A person does not violate section 502.301,

[2] The enrolled Act does not include a subsection 8 in Section 502.201; see this chapter, §5 herein

502.303 through 502.306, 502.504, or 502.510 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

ARTICLE 3
REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED SECURITIES

Sec. 9. Section 502.301, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.301 SECURITIES REGISTRATION REQUIREMENT.

It is unlawful for a person to offer or sell a security in this state unless one of the following applies:

1. The security is a federal covered security.

2. The security, transaction, or offer is exempted from registration under sections 502.201 through 502.203.

3. The security is registered under this chapter.

Sec. 10. Section 502.302, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.302 NOTICE FILING.

1. REQUIRED FILING OF RECORDS. With respect to a federal covered security, as defined in section 18(b)(2) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(2), that is not otherwise exempt under sections 502.201 through 502.203, a rule adopted or order issued under this chapter may require the filing of any or all of the following records:

a. Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the securities and exchange commission under the Securities Act of 1933 and a consent to service of process complying with section 502.611 signed by the issuer.

A person who is the issuer of a federal covered security under section 18(b)(2) of the Securities Act of 1933 shall initially make a notice filing and annually renew a notice filing in this state for an indefinite amount or a fixed amount. The fixed amount must be for two hundred fifty thousand dollars. A notice filer shall pay a filing fee when the notice is filed. If the amount covered by the notice is indefinite, the notice filer shall pay a filing fee of one thousand dollars. If the amount covered by the notice is fixed, the notice filer shall pay a filing fee of two hundred fifty dollars, and all of the following shall apply:

(1) The notice filer shall file a sales report with the administrator or pay an additional filing fee of one thousand two hundred fifty dollars within ninety days after the notice filing's annual renewal date. If the notice filer files a sales report with the administrator, the notice filer shall pay an additional filing fee of one-tenth of one percent of the amount of securities sold in excess of two hundred fifty thousand dollars. The additional filing fee must be paid within ninety days after the notice filing's annual renewal date.

(2) The notice filing covering the additional securities shall be effective retroactively as of the effective date of the notice filing that is being amended.

b. After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the securities and exchange commission under the Securities Act of 1933.

2. NOTICE FILING EFFECTIVENESS AND RENEWAL. A notice filing under subsection 1 is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the securities and exchange commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the securities and exchange commission that are required by rule or order under this chapter to be filed and by paying the renewal fee required by subsection 1, paragraph "a". A previously filed consent to service of process complying with section 502.611 may be incorporated by

reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

3. NOTICE FILINGS FOR FEDERAL COVERED SECURITIES UNDER SECTION 18(b)(4)(D). With respect to a security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(4)(D), a rule under this chapter may require a notice filing by or on behalf of an issuer to include a copy of form D, including the appendix, as promulgated by the securities and exchange commission, and a consent to service of process complying with section 502.611 signed by the issuer not later than fifteen days after the first sale of the federal covered security in this state and the payment of a fee of one hundred dollars; and the payment of a fee of two hundred fifty dollars for any late filing.

4. STOP ORDERS. Except with respect to a federal security under section 18(b)(1) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(1), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator.

Sec. 11. Section 502.303, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.303 SECURITIES REGISTRATION BY COORDINATION.

1. REGISTRATION PERMITTED.

a. A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

b. A proposed sale pursuant to the exemption contained in "Regulation A" as adopted under section 3(b) of the Securities Act of 1933 where such registration statement has not become effective or notification of proposed sale has not been qualified may be registered by coordination under this section.

2. REQUIRED RECORDS. A registration statement and accompanying records under this section must contain or be accompanied by all of the following records in addition to the information specified in section 502.305 and a consent to service of process complying with section 502.611:

a. A copy of the latest form of prospectus filed under the Securities Act of 1933.

b. A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this chapter.

c. Copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the administrator.

d. An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the securities and exchange commission.

3. CONDITIONS FOR EFFECTIVENESS OF REGISTRATION STATEMENT. A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

a. A stop order under subsection 4 or section 502.306 or issued by the securities and exchange commission is not in effect and a proceeding is not pending against the issuer under section 502.306.

b. The registration statement has been on file for at least twenty days or a shorter period provided by rule adopted or order issued under this chapter.

4. NOTICE OF FEDERAL REGISTRATION STATEMENT EFFECTIVENESS. The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly

file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until in compliance with this section. The administrator shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

5. EFFECTIVENESS OF REGISTRATION STATEMENT. If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under section 502.306. The notice by the administrator does not preclude the institution of such a proceeding.

Sec. 12. Section 502.304, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.304 SECURITIES REGISTRATION BY QUALIFICATION.

1. REGISTRATION PERMITTED. A security may be registered by qualification under this section.

2. REQUIRED RECORDS. A registration statement under this section must contain the information or records specified in section 502.305, a consent to service of process complying with section 502.611, and, if required by rule adopted under this chapter, all of the following information or records:

a. With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

b. With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected.

c. With respect to persons covered by paragraph "b", the aggregate sum of the remuneration paid to those persons during the previous twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer.

d. With respect to a person owning of record or owning beneficially, if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph "b" other than the person's occupation.

e. With respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in paragraph "b", any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment.

f. With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any

material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three years or proposed to be effected; and a statement of the reasons for making the offering.

g. The capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities.

h. The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter.

i. The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition.

j. A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph "b", "d", "e", "f", or "h" and by any person that holds or will hold ten percent or more in the aggregate of those options.

k. The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract.

l. A description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities.

m. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with section 502.202, subsection 17, paragraph "b".

n. A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered.

o. A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer.

p. A signed or conformed copy of a consent of any accountant, engineer, appraiser, or other

person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement.

q. A balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant.

r. Any additional information or records required by rule adopted or order issued under this chapter.

2A. REPORTS AND EXAMINATIONS. The administrator may by rule or order require as a condition of registration by qualification, and at the expense of the applicant or registrant, that a report by an accountant, engineer, appraiser, or other professional person be filed. The administrator may also designate one or more employees of the securities bureau to make an examination of the business and records of an issuer of securities for which a registration statement has been filed by qualification, at the expense of the applicant or registrant.

3. CONDITIONS FOR EFFECTIVENESS OF REGISTRATION STATEMENT. A registration statement under this section becomes effective thirty days, or any shorter period provided by rule adopted or order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed, if any of the following applies:

a. A stop order is not in effect and a proceeding is not pending under section 502.306.

b. The administrator has not issued an order under section 502.306 delaying effectiveness.

c. The applicant or registrant has not requested that effectiveness be delayed.

4. DELAY OF EFFECTIVENESS OF REGISTRATION STATEMENT. The administrator may delay effectiveness once for not more than ninety days if the administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The administrator may also delay effectiveness for a further period of not more than thirty days if the administrator determines that the delay is necessary or appropriate.

5. PROSPECTUS DISTRIBUTION MAY BE REQUIRED. A rule adopted or order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection 2 be sent or given to each person to whom an offer is made, before or concurrently, with the earliest of any of the following:

a. The first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution.

b. The confirmation of a sale made by or for the account of the person.

c. Payment pursuant to such a sale.

d. Delivery of the security pursuant to such a sale.

Sec. 13. NEW SECTION. 502.304A EXPEDITED REGISTRATION BY FILING FOR SMALL ISSUERS.

1. REGISTRATION PERMITTED. A security meeting the conditions set forth in this section may be registered by filing as provided in this section.

2. CONDITIONS OF THE ISSUER. In order to register under this section, the issuer must meet all of the following conditions:

a. The issuer must be a corporation, limited liability company, or partnership organized under the laws of one of the states or possessions of the United States which engages in or proposes to engage in a business other than petroleum exploration or production mining or other extractive industries.

b. The securities must be offered and sold only on behalf of the issuer, and must not be used by any selling security holder to register securities for resale.

3. CONDITIONS FOR EFFECTIVENESS OF REGISTRATION — REQUIRED RECORDS AND FEE. In order to register under this section, all of the following conditions must be satisfied:

a. The offering price for common stock, the exercise price if the securities are options, warrants, or rights for common stock, or the conversion price if the securities are convertible into common stock must be equal to or greater than one dollar per share. The issuer must not split its common stock, or declare a stock dividend, for two years after effectiveness of the registration, except that in connection with a subsequent registered public offering, the issuer may upon application and consent of the administrator take such action.

b. A commission, fee, or other remuneration shall not be paid or given, directly or indirectly, for the sale of the securities, except for a payment to a broker-dealer or agent registered under this chapter, or except for a payment as permitted by the administrator by rule or by order issued upon written application showing good cause for allowance of a commission, fee, or other remuneration.

c. The issuer or a broker-dealer offering or selling the securities is not or would not be disqualified under rule 505, 17 C.F.R. § 230.505(2)(iii), adopted under the Securities Act of 1933.

d. The aggregate offering price of the offering of securities by the issuer within or outside this state must not exceed one million dollars, less the aggregate offering price for all securities sold within twelve months before the start of, and during the offering of, the securities under rule 504, 17 C.F.R. § 230.504, in reliance on any exemption under section 3(b) of the Securities Act of 1933 or in violation of section 5(a) of that Act; provided, that if rule 504, 17 C.F.R. § 230.504, adopted under the Securities Act of 1933, is amended, that the administrator may by rule increase the limit under this paragraph to conform to amendments to federal law, including but not limited to modification in the amount of the aggregate offering price.

e. An offering document meeting the disclosure requirements of rule 502(b)(2), 17 C.F.R. § 230.502(b)(2), adopted under the Securities Act of 1933, must be delivered to each purchaser in the state prior to the sale of the securities, unless the administrator by rule or order provides for disclosure different from that rule.

f. The issuer must file with the administrator an application for registration and the offering document to be used in connection with the offer and sale of securities.

g. The issuer must pay to the administrator a fee of one hundred dollars and is not required to pay the filing fee set forth in section 502.305, subsection 2.

4. EFFECTIVENESS OF REGISTRATION. Unless the administrator issues a stop order denying the effectiveness of the registration, as provided in section 502.306, the registration becomes effective on the fifth business day after the registration has been filed with the administrator, or earlier if the administrator permits a shorter time period between registration and effectiveness.

5. AGENT REGISTRATION. In connection with an offering registered under this section, a person may be registered as an agent of the issuer under section 502.402 by the filing of an application by the issuer with the administrator for the registration of the person as an agent of the issuer and the paying of a fee of ten dollars. Notwithstanding any other provision of this chapter, the registration of the agent shall be effective until withdrawn by the issuer or until the securities registered pursuant to the registration statement have all been sold, whichever occurs first. The registration of an agent shall become effective when ordered by the administrator or on the fifth business day after the agent's application has been filed with the administrator, whichever occurs first, and the administrator shall not impose further conditions upon the registration of the agent. However, the administrator may deny, revoke, suspend, or withdraw the registration of the agent at any time as provided in section 502.412. An agent registered solely pursuant to this section is entitled to sell only securities registered under this section.

6. INAPPLICABLE ISSUERS. This section is not applicable to any of the following issuers:

a. An investment company, including a mutual fund.

b. An issuer subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934.

c. A direct participation program, unless otherwise permitted by the administrator by rule or order for good cause.

d. A blind pool or other offering for which the specific business or properties cannot now be described, unless the administrator determines that the blind pool is a community development, seed, or venture capital fund for which the administrator permits a waiver.

7. LIMITS ON STOP ORDERS. Notwithstanding any other provision of this chapter, the administrator shall not deny effectiveness to or suspend or revoke the effectiveness of a registration under this section on the basis of section 502.306, subsection 1, paragraph "h".

Sec. 14. Section 502.305, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.305 SECURITIES REGISTRATION FILINGS.

1. WHO MAY FILE. A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

2. FILING. Except as provided in subsection 10 and section 502.304A, subsection 3, paragraph "g", a person who files a registration statement or a notice filing shall pay a filing fee of one-tenth of one percent of the proposed aggregate sales price of the securities to be offered to persons in this state pursuant to the registration statement or notice filing. However, except as provided in subsection 10, section 502.302, subsection 1, paragraph "a", and section 502.304A, subsection 3, paragraph "g", the annual filing fee shall not be less than fifty dollars or more than one thousand dollars. The administrator shall retain the filing fee even if the notice filing is withdrawn or the registration is withdrawn, denied, suspended, revoked, or abandoned.

3. STATUS OF OFFERING. A registration statement filed under section 502.303 or 502.304 must specify all of the following:

a. The amount of securities to be offered in this state.

b. The states in which a registration statement or similar record in connection with the offering has been or is to be filed.

c. Any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the securities and exchange commission, or a court.

4. INCORPORATION BY REFERENCE. A record filed under this chapter or its predecessor chapter within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

5. NONISSUER DISTRIBUTION. In the case of a nonissuer distribution, information or a record shall not be required under subsection 9 or section 502.304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

6. ESCROW AND IMPOUNDMENT. A rule adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this chapter, but the administrator shall not reject a depository institution solely because of its location in another state.

7. FORM OF SUBSCRIPTION. A rule adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which shall not be longer than five years.

8. EFFECTIVE PERIOD. Except while a stop order is in effect under section 502.306, a

registration statement is effective for one year after its effective date, or for any longer period designated in an order issued under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement shall not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

9. PERIODIC REPORTS. While a registration statement is effective, a rule adopted or order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

10. POSTEFFECTIVE AMENDMENTS. A registrant who sold securities to persons in this state in excess of the amount of securities registered in this state at the time of the sale may file an amendment to its registration statement to register the additional securities. All of the following requirements shall apply:

a. If a registrant proposes to sell securities to persons in this state pursuant to a registration statement that is currently effective in this state in an amount that exceeds the amount registered in this state, the registrant must do all of the following:

(1) File an amendment to register the additional securities.

(2) Pay an additional filing fee in the same amount as specified by subsection 2 as though the amendment constitutes a separate issue.

b. If a registrant sold securities to persons in this state in excess of the amount registered in this state at that time, the registrant must do all of the following:

(1) File an amendment to register the additional securities.

(2) Pay an additional filing fee that is three times the amount specified in subsection 2 as though the amendment constitutes a separate issue.

The administrator may order the amendment effective retroactively as of the effective date of the registration statement that is being amended.

Sec. 15. NEW SECTION. 502.306 DENIAL, SUSPENSION, AND REVOCATION OF SECURITIES REGISTRATION.

1. STOP ORDERS. The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that any of the following apply:

a. The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section 502.305, subsection 10, as of its effective date, or a report under section 502.305, subsection 9, is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact.

b. This chapter or a rule adopted or order issued under this chapter or a condition imposed under this chapter has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter.

c. The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering, but the administrator shall not institute a proceeding against an effective registration

statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the administrator shall not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section.

d. The issuer's enterprise or method of business includes or would include activities that are unlawful where performed.

e. With respect to a security sought to be registered under section 502.303, there has been a failure to comply with the undertaking required by section 502.303, subsection 2, paragraph "d".

f. The applicant or registrant has not paid the filing fee, but the administrator shall void the order if the deficiency is corrected.

g. The offering is subject to any of the following:

(1) Will work or tend to work a fraud upon purchasers or would so operate.

(2) Has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options.

h. The financial condition of the issuer affects or would affect the soundness of the securities, except that applications for registration of securities by companies which are in the development stage shall not be denied based solely upon the financial condition of the company. For purposes of this rule, a "development stage company" is defined as a company which has been in existence for five years or less.

i. A person who is an issuer, correspondent, or applicant, as listed on the uniform application to register securities form known as "Form U-1", has abandoned the registration statement. The administrator may enter an order pursuant to this paragraph if a notice of abandonment is sent to the last known address of each person, and the person fails to take corrective action within the time specified by the administrator. The notice of abandonment shall state the reasons for the administrator's action, specify the corrective action required, and specify the time period for submitting a response. However, the time specified shall not be less than fifteen days.

2. ENFORCEMENT OF SUBSECTION 1, PARAGRAPH "G". To the extent practicable, the administrator by rule adopted or order issued under this chapter shall publish standards that provide notice of conduct that violates subsection 1, paragraph "g".

3. INSTITUTION OF STOP ORDER. The administrator shall not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within thirty days after the registration statement became effective.

4. SUMMARY PROCESS. The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection 5 that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within fifteen days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within thirty days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

5. PROCEDURAL REQUIREMENTS FOR STOP ORDER. A stop order shall not be issued under this section without all of the following:

a. An appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered.

b. An opportunity for hearing.

c. Findings of fact and conclusions of law in a record in accordance with chapter 17A.

6. MODIFICATION OR VACATION OF STOP ORDER. The administrator may modify or

vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

Sec. 16. NEW SECTION. 502.307 WAIVER AND MODIFICATION.

The administrator may waive or modify, in whole or in part, any or all of the requirements of sections 502.302, 502.303, and 502.304, subsection 2, or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to section 502.305, subsection 9.

ARTICLE 3A
TAKEOVER PROVISIONS

Sec. 17. NEW SECTION. 502.321A SPECIAL DEFINITIONS.

For the purposes of this article, unless the context otherwise requires:

1. "Associate" means a person acting jointly or in concert with another for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to the equity securities of a target company.

2. "Beneficial owner" includes, but is not limited to, any person who directly or indirectly, through any contract, arrangement, understanding, or relationship, has or shares the power to vote or direct the voting of a security or has or shares the power to dispose of or otherwise direct the disposition of the security. A person is the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of the person, any trust or estate in which the person owns ten percent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which the person owns ten percent or more of the equity, and any affiliate or associate of the person.

3. "Beneficial ownership" includes, but is not limited to, the right, exercisable within sixty days, to acquire securities through the exercise of options, warrants, or rights or the conversion of convertible securities. The securities subject to these options, warrants, rights, or conversion privileges held by a person are outstanding for the purpose of computing the percentage of outstanding securities of the class owned by the person, but are not outstanding for the purpose of computing the percentage of the class owned by any other person.

4. "Equity security" means any stock or similar security and includes any of the following:

a. Any security convertible, with or without consideration, into a stock or similar security.

b. Any warrant or right to subscribe to or purchase a stock or similar security.

c. Any security carrying a warrant or right to subscribe to or purchase a stock or similar security.

d. Any other security which the administrator deems to be of a similar nature and considers necessary or appropriate, according to rules prescribed by the administrator for the public interest and protection of investors, to be treated as an equity security.

5. "Offeree" means the beneficial owner, who is a resident of this state, of equity securities which an offeror offers to acquire in connection with a takeover offer.

6. "Offeror" means a person who makes or in any manner participates in making a takeover offer. It does not include a supervised financial institution or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any supervised financial institution, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and who does not otherwise participate in the takeover offer.

7. "Principal place of business" means the executive office of a target company from which the officers, partners, or managers of the target company direct, control, and coordinate the activities of the target company.

8. a. "Takeover offer" means the offer to acquire any equity securities of a target company from a resident of this state pursuant to a tender offer or request or invitation for tenders, if

after the acquisition of all securities acquired pursuant to the offer any of the following are true:

(1) The offeror would be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(2) The beneficial ownership by the offeror of any class of the outstanding equity securities of the target company would be increased by more than five percent. However, this subparagraph subdivision does not apply[3] if after the acquisition of all securities acquired pursuant to the offer, the offeror would not be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

b. "Takeover offer" does not include any of the following:

(1) An offer in connection with the acquisition of a security which, together with all other acquisitions by the offeror of securities of the same class of equity securities of the target company, would not result in the offeror having acquired more than two percent of this class of securities during the preceding twelve-month period.

(2) An offer by the target company to acquire its own equity securities if such offer is subject to section 13(e) of the Securities Exchange Act of 1934.

(3) An offer in which the target company is an insurance company or insurance holding company subject to regulation by the commissioner of insurance, a financial institution subject to regulation by the superintendent of banking or the superintendent of savings and loan associations, or a public utility subject to regulation by the utilities division of the department of commerce.

9. "Target company" means an issuer of publicly traded equity securities that has at least twenty percent of its equity securities beneficially held by residents of this state and has substantial assets in this state. For the purposes of this chapter, an equity security is publicly traded if a trading market exists for the security. A trading market exists if the security is traded on a national securities exchange, whether or not registered pursuant to the Securities Exchange Act of 1934, or on the over-the-counter market.

Sec. 18. NEW SECTION. 502.321B REGISTRATION REQUIREMENTS — HEARING.

1. TAKEOVER FILING REQUIRED. It is unlawful for a person to make a takeover offer or to acquire any equity securities pursuant to the offer unless the offer is valid under this article. A takeover offer is effective when the offeror files with the administrator a registration statement containing the information prescribed in subsection 6. Not later than the date of filing of the registration statement, the offeror shall deliver a copy of the registration statement by certified mail to the target company at its principal place of business and publicly disclose the material terms of the proposed offer. Public disclosure shall require, at a minimum, that a copy of the registration statement be supplied to all broker-dealers maintaining an office in this state currently quoting the security.

2. REGISTRATION STATEMENT FILING. The registration statement shall be filed on forms prescribed by the administrator, and shall be accompanied by a consent by the offeror to service of process and filing fee specified in section 502.321G, and contain all of the following information:

a. All information specified in subsection 6.

b. Two copies of all solicitation materials intended to be used in the takeover offer, and in the form proposed to be published, sent, or delivered to offerees.

c. Additional information as prescribed by the administrator by rule, pursuant to chapter 17A, prior to the making of the offer.

3. REGISTRATION NOT APPROVAL. Registration shall not be considered approval by the administrator, and any representation to the contrary is unlawful.

4. SUSPENSION AUTHORIZED. Within three calendar days of the date of filing of the registration statement, the administrator may, by order, summarily suspend the effectiveness of the takeover offer if the administrator determines that the registration does not contain all of the information specified in subsection 6 or that the takeover offer materials provided to offerees do not provide full disclosure to offerees of all material information concerning the

[3] The phrase "this subparagraph does not apply" probably intended

takeover offer. The suspension shall remain in effect only until the determination following a hearing held pursuant to subsection 5.

5. HEARING PROCEDURES. A hearing shall be scheduled by the administrator for each suspension provided under this section. The hearing shall be held within ten calendar days of the date of the suspension. The administrator's determination following the hearing shall be made within three calendar days after the hearing has been completed, but not more than sixteen days after the date of the suspension. However, the administrator may prescribe different time periods than those specified in this subsection by rule or order.

If, based upon the record of the hearing, the administrator finds that the registration statement fails to provide for full and fair disclosure of all material information concerning the offer, or that the takeover is in violation of any of the provisions of this article, the administrator shall permanently suspend the effectiveness of the takeover offer. The administrator may provide an opportunity for the offeror to correct disclosure and other deficiencies identified by the administrator and to reinstate the takeover offer by filing a new or amended registration statement pursuant to this section.

6. REQUIRED INFORMATION. The form required to be filed by subsection 2, paragraph "a", shall contain all of the following information:

a. The identity and background of all persons on whose behalf the acquisition of any equity security of the target company has been or is to be effected.

b. The source and amount of funds or other consideration used or to be used in acquiring any equity security including, if applicable, a statement describing any securities which are being offered in exchange for the equity securities of the target company. If any part of the acquisition price is or will be represented by borrowed funds or other consideration, the information shall also include a description of the material terms of any financing arrangements and the names of the parties from whom the funds were or are to be borrowed.

c. If the offeror is other than a natural person, information concerning its organization and operations, including all of the following:

(1) The year, form, and jurisdiction of its organization.

(2) A description of each class of equity security and long-term debt.

(3) A description of the business conducted by the offeror and its subsidiaries and any material changes in the offeror or subsidiaries during the past three years.

(4) A description of the location and character of the principal properties of the offeror and its subsidiaries.

(5) A description of any pending and material legal or administrative proceedings in which the offeror or any of its affiliates is a party.

(6) The names of all directors and executive officers of the offeror and their material business activities and affiliations during the past five years.

(7) The financial statements of the offeror in a form and for periods of time as the administrator may prescribe by rule pursuant to section 17A.4, subsection 1.

d. If the offeror is a natural person, information concerning the offeror's identity and background, including business activities and affiliations during the past five years and a description of any pending and material legal or administrative proceedings in which the offeror is a party.

e. If the purpose of the acquisition is to gain control of the target company, the material terms of any plans or proposals which the offeror has, upon gaining control, to do any of the following:

(1) Liquidate the target company.

(2) Sell its assets.

(3) Effect its merger or consolidation.

(4) Change the location of its principal place of business or of a material portion of its business activities.

(5) Change its management or policies of employment.

(6) Materially alter its relationship with suppliers or customers or the community in which it operates.

(7) Make any other major changes in its business, corporate structure, management, or personnel.

(8) Other information which would materially affect the shareholders' evaluation of the acquisition.

f. The number of shares or units of any equity security of the target company owned beneficially by the offeror and any affiliate or associate of the offeror, together with the name and address of each affiliate or associate.

g. The material terms of any contract, arrangement, or understanding with any other person with respect to the equity securities of the target company by which the offeror has or will acquire any interest in additional equity securities of the target company, or is or will be obligated to transfer any interest in the equity securities to another.

h. Information required to be included in a tender offer statement pursuant to section 14(d) of the Securities Exchange Act of 1934 and the rules and regulations of the securities and exchange commission issued pursuant to the Act.

Sec. 19. NEW SECTION. 502.321C FILING OF SOLICITATION MATERIALS.

Copies of all advertisements, circulars, letters, or other materials disseminated by the offeror or the target company, soliciting or requesting the acceptance or rejection of a takeover offer, shall be filed with the administrator and sent to the target company or offeror not later than the time the solicitation or request materials are first published, sent, or given to the offerees. The administrator may prohibit the use of any materials deemed false or misleading.

Sec. 20. NEW SECTION. 502.321D FRAUDULENT, DECEPTIVE, OR MANIPULATIVE ACTS AND PRACTICES PROHIBITED.

An offeror, target company, affiliate or associate of an offeror or target company, or broker-dealer acting on behalf of an offeror or target company shall not engage in a fraudulent, deceptive, or manipulative act or practice in connection with a takeover offer. For purposes of this section, a fraudulent, deceptive, or manipulative act or practice includes, but is not limited to, any of the following:

1. The publication or use in connection with a takeover offer of a false statement of a material fact, or the omission of a material fact which renders the statements made misleading.

2. The purchase of any of the equity securities of an officer, director, or beneficial owner of five percent or more of the equity securities of the target company by the offeror or the target company for a consideration greater than that to be paid to other shareholders, unless the terms of the purchase are disclosed in a registration statement filed pursuant to section 502.321B.

3. The refusal by a target company to permit an offeror who is a shareholder of record to examine or copy its list of shareholders, pursuant to the applicable corporation statutes, for the purpose of making a takeover offer.

4. The refusal by a target company to mail any solicitation materials published by the offeror to its security holders with reasonable promptness after receipt from the offeror of the materials, together with the reasonable expenses of postage and handling.

5. The solicitation of any offeree for acceptance or rejection of a takeover offer, or acquisition of any equity security pursuant to a takeover offer, when the offer is suspended under section 502.321B, provided, however, that the target company may communicate during a suspension with its equity security holders to the extent required to respond to the takeover offer made pursuant to the Securities Exchange Act of 1934.

Sec. 21. NEW SECTION. 502.321E LIMITATIONS ON OFFERS AND OFFERORS.

1. SAME TERMS REQUIRED. A takeover offer shall contain substantially the same terms for shareholders residing within and outside this state.

2. OFFEREE WITHDRAWAL OF SECURITIES. An offeror shall provide that any equity securities of a target company deposited or tendered pursuant to a takeover offer may be withdrawn by or on behalf of an offeree within seven days after the date the offer has become

effective and after sixty days from the date the offer has become effective, or as otherwise determined by the administrator pursuant to a rule or order issued for the protection of the shareholders.

3. PRO RATA ACCEPTANCE. If an offeror makes a takeover offer for less than all the outstanding equity securities of any class and, within ten days after the offer has become effective and copies of the offer, or notice of any increase in the consideration offered, are first published or sent or given to equity security holders, the number of securities deposited or tendered pursuant to the offer is greater than the number of securities that the offeror has offered to accept and pay for, the securities shall be accepted pro rata, disregarding fractions, according to the number of securities deposited or tendered for each offeree.

4. INCREASED CONSIDERATION. If an offeror varies the terms of a takeover offer before the offer's expiration date by increasing the consideration offered to equity security holders, the offeror shall pay the increased consideration for all equity securities accepted, whether the securities have been accepted by the offeror before or after the variation in the terms of the offer.

5. PROCEEDINGS — STOP OFFERS OR ACQUISITIONS. An offeror shall not make a takeover offer or acquire any equity securities in this state pursuant to a takeover offer during the period of time that an administrator's proceeding alleging a violation of this chapter is pending against the offeror.

6. PROCEEDINGS — HALT MOVING OF TARGET COMPANY ASSETS. An offeror shall not acquire, remove, or exercise control, directly or indirectly, over any target company assets located in this state pursuant to a takeover offer during the period of time that an administrator's proceeding alleging a violation of this chapter is pending against the offeror.

7. ACQUISITIONS SUBSEQUENT TO TAKEOVER PURCHASES. An offeror shall not acquire from a resident of this state an equity security of any class of a target company at any time within two years following the last purchase of securities pursuant to a takeover offer with respect to that class, including, but not limited to, acquisitions made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, recapitalization, reorganization, or any other similar transaction, unless the holders of the equity securities are afforded, at the time of the acquisition, a reasonable opportunity to dispose of the securities to the offeror upon substantially equivalent terms as those provided in the earlier takeover offer.

Sec. 22. NEW SECTION. 502.321F ADMINISTRATION — RULES AND ORDERS.

1. EXEMPTION AUTHORITY. The administrator may by rule or order exempt from any provision of this article the following:

a. A proposed takeover offer or a category or type of takeover offer which the administrator determines does not have the purpose or effect of changing or influencing the control of a target company.

b. A proposed takeover offer for which the administrator determines that compliance with the sections is not necessary for the protection of the offerees.

c. A person from the requirement of filing statements.

2. In the event of a conflict between the provisions of chapter 17A and the provisions of this article, the provisions of this article shall prevail.

Sec. 23. NEW SECTION. 502.321G FEES.

The administrator shall charge a nonrefundable filing fee of two hundred fifty dollars for a registration statement filed by an offeror.

Sec. 24. NEW SECTION. 502.321H NONAPPLICATION OF CORPORATE TAKEOVER LAW.

If the target company is a public utility, public utility holding company, national banking association, bank holding company, or savings and loan association which is subject to regula-

tion by a federal agency and the takeover of such company is subject to approval by the federal agency, this article does not apply.

Sec. 25. NEW SECTION. 502.321I APPLICATION OF SECURITIES LAW.

All of the provisions of this chapter which are not in conflict with this article apply to any takeover offer involving a target company.

ARTICLE 4
BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS,
INVESTMENT ADVISER REPRESENTATIVES,
AND FEDERAL COVERED INVESTMENT ADVISERS

Sec. 26. Section 502.401, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.401 BROKER-DEALER REGISTRATION REQUIREMENT AND EXEMPTIONS.

1. REGISTRATION REQUIREMENT. It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under subsection 2 or 4.

2. EXEMPTIONS FROM REGISTRATION. The following persons are exempt from the registration requirement of subsection 1:

a. A broker-dealer without a place of business in this state if its only transactions effected in this state are with any of the following:

(1) The issuer of the securities involved in the transactions.

(2) A broker-dealer registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter.

(3) An institutional investor.

(4) A nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record.

(5) A bona fide preexisting customer whose principal place of residence is not in this state and the broker-dealer is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence.

(6) A bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if all of the following apply:

(a) The broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence.

(b) Within forty-five days after the customer's first transaction in this state, the broker-dealer files an application for registration as a broker-dealer in this state and a further transaction is not effected more than seventy-five days after the date on which the application is filed, or, if earlier, the date on which the administrator notifies the broker-dealer that the administrator has denied the application for registration or has stayed the pendency of the application for good cause.

(7) Not more than three customers in this state during the previous twelve months, in addition to those customers specified in this paragraph "a", if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the broker-dealer has its principal place of business.

(8) Any other person exempted by rule adopted or order issued under this chapter.

b. A person that deals solely in United States government securities and is supervised as a

dealer in government securities by the board of governors of the federal reserve system, the comptroller of the currency, the federal deposit insurance corporation, or the office of thrift supervision.

3. LIMITS ON EMPLOYMENT OR ASSOCIATION. It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the administrator under this chapter, the securities and exchange commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer or issuer.

4. FOREIGN TRANSACTIONS. A rule adopted or order issued under this chapter may permit any of the following:

a. A broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by, any of the following:

(1) An individual from Canada or other foreign jurisdiction who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States.

(2) An individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction.

(3) An individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently residing in Canada or the other foreign jurisdiction.

b. An agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker-dealer described in paragraph "a".

Sec. 27. Section 502.402, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.402 AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS.

1. REGISTRATION REQUIREMENT. It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection 2.

2. EXEMPTIONS FROM REGISTRATION. The following individuals are exempt from the registration requirement of subsection 1:

a. An individual who represents a broker-dealer in effecting transactions in this state limited to those described in section 15(h)(2) of the Securities Exchange Act of 1934, 15 U.S.C. § 78(o)(2).

b. An individual who represents a broker-dealer that is exempt under section 502.401, subsection 2 or 4.

c. An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

d. An individual who represents an issuer and who effects transactions in the issuer's securities exempted by section 502.202, other than section 502.202, subsection 11 or 14.

e. An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security

under section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(3) or 77r(b)(4)(D), is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

f. An individual who represents a broker-dealer registered in this state under section 502.401, subsection 1, or exempt from registration under section 502.401, subsection 2, in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record.

g. An individual who represents an issuer in connection with the purchase of the issuer's own securities.

h. An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts.

i. Any other individual exempted by rule adopted or order issued under this chapter.

3. REGISTRATION EFFECTIVE ONLY WHILE EMPLOYED OR ASSOCIATED. The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling, or purchasing its securities in this state.

4. LIMIT ON EMPLOYMENT OR ASSOCIATION. It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection 1 or exempt from registration under subsection 2.

5. LIMIT ON AFFILIATIONS. An individual shall not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts is affiliated by direct or indirect common control or is authorized by rule or order under this chapter.

Sec. 28. Section 502.403, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.403 INVESTMENT ADVISER REGISTRATION REQUIREMENT AND EXEMPTIONS.

1. REGISTRATION REQUIREMENT. It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under subsection 2.

2. EXEMPTIONS FROM REGISTRATION. All of the following persons are exempt from the registration requirement of subsection 1:

a. A person without a place of business in this state that is registered under the securities act of the state in which the person has its principal place of business if its only clients in this state are any of the following:

(1) Federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter.

(2) Institutional investors.

(3) Bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence.

(4) Any other client exempted by rule adopted or order issued under this chapter.

b. A person without a place of business in this state if the person has had, during the preceding twelve months, not more than five clients that are resident in this state in addition to those specified under paragraph "a".

c. Any other person exempted by rule adopted or order issued under this chapter.

3. LIMITS ON EMPLOYMENT OR ASSOCIATION. It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this chapter, the

securities and exchange commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

4. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION REQUIRED. It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under section 502.404, subsection 1, or is exempt from registration under section 502.404, subsection 2.

Sec. 29. Section 502.404, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.404 INVESTMENT ADVISER REPRESENTATIVE REGISTRATION REQUIREMENT AND EXEMPTIONS.

1. REGISTRATION REQUIREMENT. It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection 2.

2. EXEMPTIONS FROM REGISTRATION. All of the following individuals are exempt from the registration requirement of subsection 1:

a. An individual who is employed by or associated with an investment adviser that is exempt from registration under section 502.403, subsection 2, or a federal covered investment adviser that is excluded from the notice filing requirements of section 502.405.

b. Any other individual exempted by rule adopted or order issued under this chapter.

3. REGISTRATION EFFECTIVE ONLY WHILE EMPLOYED OR ASSOCIATED. The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under section 502.405.

4. LIMIT ON AFFILIATIONS. An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

5. LIMITS ON EMPLOYMENT OR ASSOCIATION. It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the securities and exchange commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

6. REFERRAL FEES. An investment adviser registered under this chapter, a federal covered investment adviser that has filed a notice under section 502.405, or a broker-dealer registered under this chapter is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this chapter, a federal covered investment adviser who has filed a notice under section 502.405, or a broker-dealer registered under this chapter with whom the individual is employed or associated as an investment adviser representative.

Sec. 30. Section 502.405, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.405 FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING REQUIREMENT.

1. NOTICE FILING REQUIREMENT. Except with respect to a federal covered investment adviser described in subsection 2, it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection 3.

2. NOTICE FILING REQUIREMENT NOT REQUIRED. The following federal covered investment advisers are not required to comply with subsection 3:

a. A federal covered investment adviser without a place of business in this state if its only clients in this state are any of the following:

(1) Federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter.

(2) Institutional investors.

(3) Bona fide preexisting clients whose principal places of residence are not in this state.

(4) Other clients specified by rule adopted or order issued under this chapter.

b. A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve months, not more than five clients that are resident in this state in addition to those specified under paragraph "a".

c. Any other person excluded by rule adopted or order issued under this chapter.

3. NOTICE FILING PROCEDURE. A person acting as a federal covered investment adviser, not excluded under subsection 2, shall file a notice, a consent to service of process complying with section 502.611, and such records as have been filed with the securities and exchange commission under the Investment Advisers Act of 1940 required by rule adopted or order issued under this chapter and pay the fees specified in section 502.410, subsection 5.

4. EFFECTIVENESS OF FILING. The notice under subsection 3 becomes effective upon its filing.

Sec. 31. Section 502.406, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.406 REGISTRATION BY BROKER-DEALER, AGENT, INVESTMENT ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE.

1. APPLICATION FOR INITIAL REGISTRATION. A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with section 502.611, and paying the fee specified in section 502.410 and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain all of the following:

a. The information or record required for the filing of a uniform application.

b. Upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.

2. AMENDMENT. If the information or record contained in an application filed under subsection 1 is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

3. EFFECTIVENESS OF REGISTRATION. If an order is not in effect and a proceeding is not pending under section 502.412, registration becomes effective at noon on the forty-fifth day after a completed application is filed, unless the registration is denied. A rule adopted or order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

4. REGISTRATION RENEWAL. A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under section 502.412, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this chapter, by paying the fee specified

in section 502.410, and by paying costs charged by the designee of the administrator for processing the filings.

5. ADDITIONAL CONDITIONS OR WAIVERS. A rule adopted or order issued under this chapter may impose such other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this chapter may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

Sec. 32. Section 502.407, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.407 SUCCESSION AND CHANGE IN REGISTRATION OF BROKER-DEALER OR INVESTMENT ADVISER.

1. SUCCESSION. A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to section 502.401 or 502.403 or a notice pursuant to section 502.405 for the unexpired portion of the current registration or notice filing.

2. ORGANIZATIONAL CHANGE. A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five days after filing its amendment to effect succession.

3. NAME CHANGE. A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

4. CHANGE OF CONTROL. A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this chapter.

Sec. 33. Section 502.408, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.408 TERMINATION OF EMPLOYMENT OR ASSOCIATION OF AGENT AND INVESTMENT ADVISER REPRESENTATIVE AND TRANSFER OF EMPLOYMENT OR ASSOCIATION.

1. NOTICE OF TERMINATION. If an agent registered under this chapter terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

2. TRANSFER OF EMPLOYMENT OR ASSOCIATION. If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter

or a federal covered investment adviser that has filed a notice under section 502.405 and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under section 502.405, then upon the filing by or on behalf of the registrant, within thirty days after the termination, of an application for registration that complies with the requirement of section 502.406, subsection 1, and payment of the filing fee required under section 502.410, the registration of the agent or investment adviser representative is one of the following:

a. Immediately effective as of the date of the completed filing, if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve months.

b. Temporarily effective as of the date of the completed filing, if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record contains a new or amended disciplinary disclosure within the preceding twelve months.

3. WITHDRAWAL OF TEMPORARY REGISTRATION. The administrator may withdraw a temporary registration if there are or were grounds for discipline as specified in section 502.412 and the administrator does so within thirty days after the filing of the application. If the administrator does not withdraw the temporary registration within the thirty-day period, registration becomes automatically effective on the thirty-first day after filing.

4. POWER TO PREVENT REGISTRATION. The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection 2, paragraph "a" or "b", based on the public interest and the protection of investors.

5. TERMINATION OF REGISTRATION OR APPLICATION FOR REGISTRATION. If the administrator determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this chapter may require that the registration be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

Sec. 34. NEW SECTION. 502.409 WITHDRAWAL OF REGISTRATION OF BROKER-DEALER, AGENT, INVESTMENT ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE.

1. WITHDRAWAL OF REGISTRATION. Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective sixty days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this chapter. The administrator may institute a revocation or suspension proceeding under section 502.412 within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

1A. CEASING TO DO BUSINESS AND ABANDONED FILINGS. If the administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after search, the administrator may by order revoke the registration or application. If the administrator finds that the applicant for registration or registrant has abandoned the application or registration, the administrator may enter an order of abandonment, and limit or eliminate further consideration of the application or registration, as provided by the administrator. The administrator may enter an order under this subsection

if notice is sent to the applicant or registrant, and either the administrator does not receive a response by the applicant or registrant within forty-five days from the date that the notice was delivered, or action is not taken by the applicant or registrant within the time specified by the administrator in the notice, whichever is later.

Sec. 35. NEW SECTION. 502.410 FILING FEES.

1. BROKER-DEALERS. A person shall pay a fee of two hundred dollars when initially filing an application for registration as a broker-dealer and a fee of two hundred dollars when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

2. AGENTS. The fee for an individual is thirty dollars when filing an application for registration as an agent, a fee of thirty dollars when filing a renewal of registration as an agent, and a fee of thirty dollars when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

3. INVESTMENT ADVISERS. A person shall pay a fee of one hundred dollars when filing an application for registration as an investment adviser and a fee of one hundred dollars when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

4. INVESTMENT ADVISER REPRESENTATIVES. The fee for an individual is thirty dollars when filing an application for registration as an investment adviser representative, a fee of thirty dollars when filing a renewal of registration as an investment adviser representative, and a fee of thirty dollars when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

However, an investment adviser representative is not required to pay a filing fee if the investment adviser is a sole proprietorship or the substantial equivalent and the investment adviser representative is the same individual as the investment adviser.

5. FEDERAL COVERED INVESTMENT ADVISERS. A federal covered investment adviser required to file a notice under section 502.405 shall pay an initial fee of one hundred dollars and an annual notice fee of one hundred dollars.

6. PAYMENT. A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this chapter.

Sec. 36. NEW SECTION. 502.411 POST-REGISTRATION REQUIREMENTS.

1. FINANCIAL REQUIREMENTS. Subject to section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or section 222 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-22, a rule adopted or order issued under this chapter may establish minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter.

2. FINANCIAL REPORTS. Subject to section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or section 222(b) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-22, a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall file such financial reports as are required by a rule adopted or order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment. The administrator may, by rule, assess a reasonable charge for the late filing of a financial report under this subsection.

3. RECORDKEEPING. Subject to section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or section 222 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-22, all of the following apply:

a. A broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this chapter.

b. Broker-dealer records required to be maintained under paragraph "a" may be maintained in any form of data storage acceptable under section 17(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78q(a), if they are readily accessible to the administrator.

c. Investment adviser records required to be maintained under paragraph "a" may be maintained in any form of data storage required by rule adopted or order issued under this chapter.

4. AUDITS OR INSPECTIONS. The records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter are subject to such reasonable periodic, special, or other audits or inspections by a representative of the administrator, within or without this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

5. CUSTODY AND DISCRETIONARY AUTHORITY BOND OR INSURANCE. Subject to section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or section 222 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-22, a rule adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount the administrator shall prescribe. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security shall not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by rule or order under this chapter. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in section 502.509, subsection 10, paragraph "b".

6. REQUIREMENTS FOR CUSTODY. Subject to section 15(h) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(h), or section 222 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-22, an agent shall not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative shall not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

7. INVESTMENT ADVISER BROCHURE RULE. With respect to an investment adviser registered or required to be registered under this chapter, a rule adopted or order issued under this chapter may require that information or other records be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

8. CONTINUING EDUCATION. A rule adopted or order issued under this chapter may require an individual registered under section 502.402 or 502.404 to participate in a continuing education program approved by the securities and exchange commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this chapter may require continuing education for an individual registered under section 502.404.

Sec. 37. NEW SECTION. 502.412 DENIAL, REVOCATION, SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION, OR LIMITATION OF REGISTRATION.

1. DISCIPLINARY CONDITIONS — APPLICANTS. If the administrator finds that the

order is in the public interest and subsection 4 authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

2. DISCIPLINARY CONDITIONS — REGISTRANTS. If the administrator finds that the order is in the public interest and subsection 4 authorizes the action, an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. However, the administrator shall not do any of the following:

a. Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one year after the date of the order on which it is based.

b. Under subsection 4, paragraph "e", subparagraph (1) or (2), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection 4 would authorize the action had the conduct occurred in this state.

3. DISCIPLINARY PENALTIES — REGISTRANTS. If the administrator finds that the order is in the public interest and subsection 4, paragraphs "a" through "f", "h", "i", "j", or "l", and "m", authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of five thousand dollars for a single violation or five hundred thousand dollars for more than one violation, on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

4. GROUNDS FOR DISCIPLINE. A person may be disciplined under subsections 1 through 3 if any of the following applies:

a. The person has filed an application for registration in this state under this chapter or the predecessor chapter within the previous ten years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact.

b. The person willfully violated or willfully failed to comply with this chapter or the predecessor chapter or a rule adopted or order issued under this chapter or the predecessor chapter within the previous ten years.

c. The person has been convicted of a felony or within the previous ten years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

d. The person is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or the predecessor chapter, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

e. The person is the subject of an order, issued after notice and opportunity for hearing, by any of the following:

(1) The securities or other financial services regulator of a state or the securities and exchange commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative.

(2) The securities regulator of a state or the securities and exchange commission against a

broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser.

(3) The securities and exchange commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization.

(4) A court adjudicating a United States postal service fraud order.

(5) The insurance regulator of a state denying, suspending, or revoking registration as an insurance agent or insurance producer.

(6) A depository institution regulator or financial services regulator suspending or barring the person from the depository institution or other financial services business.

f. The person is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the commodity futures trading commission, the federal trade commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated.

g. The person is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator shall not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant.

h. The person refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 502.411, subsection 4, or refuses access to a registrant's office to conduct an audit or inspection under section 502.411, subsection 4.

i. The person has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor chapter or a rule adopted or order issued under this chapter or the predecessor chapter within the previous ten years.

j. The person has not paid the proper filing fee within thirty days after having been notified by the administrator of a deficiency, but the administrator shall vacate an order under this paragraph when the deficiency is corrected.

k. The person after notice and opportunity for a hearing has been found within the previous ten years to have done any of the following:

(1) By a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated.

(2) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person.

(3) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction.

l. The person is the subject of a cease and desist order issued by the securities and exchange commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state.

m. The person has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten years.

n. The person is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order shall not be based on this paragraph if the individual has successfully completed all examinations required by subsection 5. The administrator may require an applicant for registration under section 502.402 or 502.404 who

has not been registered in a state within the two years preceding the filing of an application in this state to successfully complete an examination.

5. EXAMINATIONS. A rule adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

6. SUMMARY PROCESS. The administrator may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within thirty days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination. Section 17A.18A is inapplicable to a summary order issued under this subsection.

7. PROCEDURAL REQUIREMENTS. An order issued shall not be issued under this section, except under subsection 6, without all of the following:

a. Appropriate notice to the applicant or registrant.

b. Opportunity for hearing.

c. Findings of fact and conclusions of law in a record in accordance with chapter 17A.

8. CONTROL PERSON LIABILITY. A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections 1 through 3 to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

9. LIMIT ON INVESTIGATION OR PROCEEDING. The administrator shall not institute a proceeding under subsection 1, 2, or 3 based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one year after the administrator actually acquires knowledge of the material facts.

ARTICLE 5
FRAUD AND LIABILITIES

Sec. 38. Section 502.501, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.501 GENERAL FRAUD.

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

1. To employ a device, scheme, or artifice to defraud;

2. To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

3. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

Sec. 39. NEW SECTION. 502.501A PROHIBITED TRANSACTIONS OF BROKER-DEALERS AND AGENTS.

A broker-dealer or agent shall not effect a transaction in, or induce or attempt to induce the purchase or sale of, any security in this state by means of any manipulative, deceptive, or other

fraudulent scheme, device, or contrivance, fictitious quotation, or in violation of this chapter. A broker-dealer or agent shall not recommend to a customer the purchase, sale, or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and other relevant information known by the broker-dealer.

Sec. 40. Section 502.502, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.502 PROHIBITED CONDUCT IN PROVIDING INVESTMENT ADVICE.

1. FRAUD IN PROVIDING INVESTMENT ADVICE. It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities to do any of the following:

a. Employ a device, scheme, or artifice to defraud another person.

b. Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

2. RULES DEFINING FRAUD. A rule adopted under this chapter may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

3. RULES SPECIFYING CONTENTS OF ADVISORY CONTRACT. A rule adopted under this chapter may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

Sec. 41. Section 502.503, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.503 EVIDENTIARY BURDEN.

1. CIVIL. In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

2. CRIMINAL. In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

Sec. 42. Section 502.504, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.504 FILING OF SALES AND ADVERTISING LITERATURE.

1. FILING REQUIREMENT. Except as otherwise provided in subsection 2, a rule adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

2. EXCLUDED COMMUNICATIONS. This section does not apply to sales and advertising literature specified in subsection 1 which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by section 502.201, 502.202, or 502.203 except as required pursuant to section 502.201, subsection 7.

2A. AUTHORITY TO PROHIBIT FALSE ADVERTISING. The administrator may by rule or order prohibit the publication, circulation, or use of any advertising deemed false or misleading.

Sec. 43. Section 502.505, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.505 MISLEADING FILINGS.

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

Sec. 44. Section 502.506, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.506 MISREPRESENTATIONS CONCERNING REGISTRATION OR EXEMPTION.

1. CERTAIN REPRESENTATIONS NOT ALLOWED. The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the administrator that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

1A. OFFICIAL ENDORSEMENT PROHIBITED. A state official or employee of the state shall not use such person's name in an official capacity in connection with the endorsement or recommendation of the organization or the promotion of any issuer or in the sale to the public of its securities, and no one shall use the stationery of the state or of any official thereof in connection with any such transaction.

Sec. 45. NEW SECTION. 502.506A MISSTATEMENTS IN PUBLICITY PROHIBITED.

It is unlawful for any person to make or cause to be made, in any public report or press release, or in other information which is either made generally available to the public or used in opposition to a tender offer, any statement of a material fact relating to a target company or made in connection with a takeover offer which is, at the time and in the light of the circumstances under which it is made, false or misleading, if it is reasonably foreseeable that such statement will induce other persons to buy, sell, or hold securities of the target company.

Sec. 46. Section 502.507, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.507 QUALIFIED IMMUNITY.

A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the securities and exchange commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

Sec. 47. NEW SECTION. 502.508 CRIMINAL PENALTIES.

1. CRIMINAL PENALTIES.

a. Except as provided in paragraph "b", a person who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, is guilty of a class "D" felony.

b. A person who willfully violates section 502.501 or section 502.502, subsection 1, resulting in a loss of more than ten thousand dollars is guilty of a class "C" felony.

2. CRIMINAL REFERENCE NOT REQUIRED. The attorney general or the proper county,

with or without a reference from the administrator, may institute criminal proceedings under this chapter.

3. NO LIMITATION ON OTHER CRIMINAL ENFORCEMENT. This chapter does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

Sec. 48. NEW SECTION. 502.509 CIVIL LIABILITY.

1. SECURITIES LITIGATION UNIFORM STANDARDS ACT. Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

2. LIABILITY OF SELLER TO PURCHASER. A person is liable to the purchaser if the person sells a security in violation of section 502.301 or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

a. The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate from the date of the purchase, costs, and reasonable attorney fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph "c".

b. The tender referred to in paragraph "a" may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph "c".

c. Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the legal rate from the date of the purchase, costs, and reasonable attorney fees determined by the court.

3. LIABILITY OF PURCHASER TO SELLER. A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by all of the following:

a. The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorney fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph "c".

b. The tender referred to in paragraph "a" may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph "c".

c. Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at the legal rate from the date of the sale of the security, costs, and reasonable attorney fees determined by the court.

4. LIABILITY OF UNREGISTERED BROKER-DEALER AND AGENT. A person acting as a broker-dealer or agent that sells or buys a security in violation of section 502.401, subsection 1, section 502.402, subsection 1, or section 502.506 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsection 2, paragraphs "a" through "c", or, if a seller, for a remedy as specified in subsection 3, paragraphs "a" through "c".

5. LIABILITY OF UNREGISTERED INVESTMENT ADVISER AND INVESTMENT AD-

VISER REPRESENTATIVE. A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of section 502.403, subsection 1, section 502.404, subsection 1, or section 502.506 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate from the date of payment, costs, and reasonable attorney fees determined by the court and taxed as court costs.

6. LIABILITY FOR INVESTMENT ADVICE. A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person is liable to the other person. An action under this subsection is governed by all of the following:

a. The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate from the date of the fraudulent conduct, costs, and reasonable attorney fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

b. This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

7. JOINT AND SEVERAL LIABILITY. The following persons are liable jointly and severally with and to the same extent as persons liable under subsections 2 through 6:

a. A person that directly or indirectly controls a person liable under subsections 2 through 6, unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

b. An individual who is a managing partner, executive officer, or director of a person liable under subsections 2 through 6, including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

c. An individual who is an employee of or associated with a person liable under subsections 2 through 6 or a person, whether an employee of such person or otherwise, who materially aids in the act or transaction constituting the violation, and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

d. A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections 2 through 6, unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

8. RIGHT OF CONTRIBUTION. A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

9. SURVIVAL OF CAUSE OF ACTION. A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

10. STATUTE OF LIMITATIONS. A person shall not obtain relief under any of the following:

a. Under subsection 2 for violation of section 502.301, or under subsection 4 or 5, unless the action is instituted within one year after the violation occurred.

b. Under subsection 2, other than for violation of section 502.301, or under subsection 3 or 6, unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation.

11. NO ENFORCEMENT OF VIOLATIVE CONTRACT. A person that has made, or has

engaged in the performance of, a contract in violation of this chapter or a rule adopted or order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, shall not base an action on the contract.

12. NO CONTRACTUAL WAIVER. A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or order issued under this chapter is void.

13. SURVIVAL OF OTHER RIGHTS OR REMEDIES. The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or section 502.411, subsection 5.

13A. INFORMATIONAL FILING WITH THE ADMINISTRATOR. A copy of any suit or arbitration action filed under this section shall be served upon the administrator within twenty days of the filing in the form and manner prescribed by the administrator by rule or order, provided that all of the following apply:

a. The failure to comply with this provision shall not invalidate the action which is the subject of the suit.

b. The suit or arbitration action has not been filed in a record with the central registration depository or the investment adviser registration depository.

13B. LIABILITY FOR TAKEOVER VIOLATIONS. Any person who violates section 502.321B shall be liable to the person selling the security to such violator, which seller may sue either at law or in equity to recover the security, costs, and reasonable attorney fees, plus any income or distributions, in cash or in kind, received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages shall be the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable.

In addition to other remedies provided in this chapter, in a proceeding alleging a violation of article 3A, the court may provide that all shares acquired from a resident of this state in violation of any provision of this chapter or rule or order issued pursuant to this chapter be denied voting rights for one year after acquisition, that the shares be nontransferable on the books of the target company, or that during this one-year period the target company have the option to call the shares for redemption either at the price at which the shares were acquired or at book value per share as of the last day of the fiscal quarter ended prior to the date of the call for redemption, which redemption shall occur on the date set in the call notice but not later than sixty days after the call notice is given.

Sec. 49. NEW SECTION. 502.510 RECISION OFFERS.

A purchaser, seller, or recipient of investment advice may not maintain an action under section 502.509 if all of the following apply:

1. The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted, any of the following:

a. An offer stating the respect in which liability under section 502.509 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice.

b. If the basis for relief under this section may have been a violation of section 502.509, subsection 2, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate from the date of the purchase, less the amount of any income received on the security; or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of

it, and interest at the legal rate from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection.

c. If the basis for relief under this section may have been a violation of section 502.509, subsection 3, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest from the date of the sale.

d. If the basis for relief under this section may have been a violation of section 502.509, subsection 4; and if the customer is a purchaser, an offer to pay as specified in paragraph "b"; or, if the customer is a seller, an offer to tender or to pay as specified in paragraph "c".

e. If the basis for relief under this section may have been a violation of section 502.509, subsection 3, an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate from the date of payment.

f. If the basis for relief under this section may have been a violation of section 502.509, subsection 6, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate from the date of the violation causing the loss.

2. The offer under subsection 1 states that it must be accepted by the purchaser, seller, or recipient of investment advice within thirty days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three days, that the administrator, by order, specifies.

3. The offeror has the present ability to pay the amount offered or to tender the security under subsection 1.

4. The offer under subsection 1 is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice.

5. The purchaser, seller, or recipient of investment advice that accepts the offer under subsection 1 in a record within the period specified under subsection 2 is paid in accordance with the terms of the offer.

If the basis for relief under this section alleges a violation of section 502.509 which employed a device, scheme, or artifice to defraud, made an untrue statement of a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading, or engaged in an act, practice, or course of business that operated or would operate as a fraud or deceit on another person, the offer is filed with the administrator ten business days before the offering and conforms in form and content with a rule prescribed by the administrator.

ARTICLE 6
ADMINISTRATION AND JUDICIAL REVIEW

Sec. 50. Section 502.601, Code Supplement 2003, is amended by striking the section and inserting in lieu thereof the following:

502.601 ADMINISTRATION.

1. ADMINISTRATION. This chapter shall be administered by the commissioner of insurance of this state. The administrator shall appoint a deputy administrator who shall be exempt from the merit system provisions of chapter 8A, subchapter IV. The deputy administrator is the principal operations officer of the securities bureau of the insurance division of the department of commerce. The deputy administrator is responsible to the administrator for the routine administration of this chapter and the management of the securities bureau. In the absence of the administrator, whether because of vacancy in the office, by reason of absence, physical disability, or other cause, the deputy administrator shall be the acting administrator

and shall, for that period, have and exercise the authority conferred upon the administrator. The administrator may by order delegate to the deputy administrator any or all of the functions assigned to the administrator under this chapter. The administrator shall employ officers, attorneys, accountants, and other employees as needed for the administration of the chapter.

2. UNLAWFUL USE OF RECORDS OR INFORMATION. It is unlawful for the administrator or an officer, employee, or designee of the administrator to use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under section 502.607, subsection 2. This chapter does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with section 502.602, section 502.607, subsection 3, or section 502.608.

3. NO PRIVILEGE OR EXEMPTION CREATED OR DIMINISHED. This chapter does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

4. INVESTOR EDUCATION. The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.

5. THE SECURITIES INVESTOR EDUCATION AND TRAINING FUND. A securities investor education and training fund is created in the state treasury under the control of the administrator to provide moneys for the purposes specified in subsection 4. All moneys received by the state by reason of civil penalties pursuant to this chapter shall be deposited in the securities investor education and training fund. Notwithstanding section 12C.7, interest or earnings on moneys deposited into the fund shall be credited to the fund. Notwithstanding section 8.33, unencumbered or unobligated moneys remaining in the fund shall not revert but shall be available for expenditure for the following fiscal year. However, if, on June 30, unencumbered or unobligated moneys remaining in the fund exceed two hundred thousand dollars, moneys in excess of that amount shall revert to the general fund of the state in the same manner as provided in section 8.33.

Sec. 51. Section 502.602, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.602 INVESTIGATIONS AND SUBPOENAS.

1. AUTHORITY TO INVESTIGATE. The administrator may do any of the following:

a. Conduct public or private investigations within or outside of this state which the administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter.

b. Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted.

c. Notwithstanding section 502.607, subsection 2, publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a rule adopted or order issued under this chapter if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

2. ADMINISTRATOR POWERS TO INVESTIGATE. For the purpose of an investigation under this chapter, the administrator or the administrator's designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence,

require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation, all of which may be enforced pursuant to chapter 17A.

3. PROCEDURE AND REMEDIES FOR NONCOMPLIANCE. If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the administrator under this chapter, the administrator may apply to district court or a court of another state to enforce compliance. The court may do any of the following:

a. Hold the person in contempt.

b. Order the person to appear before the administrator.

c. Order the person to testify about the matter under investigation or in question.

d. Order the production of records.

e. Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice.

f. Impose a civil penalty of an amount not to exceed a maximum of five thousand dollars for a single violation or five hundred thousand dollars for more than one violation.

g. Grant any other necessary or appropriate relief.

4. APPLICATION FOR RELIEF. This section does not preclude a person from applying to district court or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

5. USE IMMUNITY PROCEDURE. An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this chapter or in an action or proceeding instituted by the administrator under this chapter on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may apply to the district court to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order shall not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

6. ASSISTANCE TO SECURITIES REGULATOR OF ANOTHER JURISDICTION. At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this state if occurring in this state. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested, whether compliance with the request would violate or prejudice the public policy of this state, and the availability of resources and employees of the administrator to carry out the request for assistance.

Sec. 52. Section 502.603, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.603 CIVIL ENFORCEMENT.

1. CIVIL ACTION INSTITUTED BY ADMINISTRATOR. If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that

materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may maintain an action in the district court to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

2. RELIEF AVAILABLE. In an action under this section and on a proper showing, the court may do any of the following:

a. Issue a permanent or temporary injunction, restraining order, or declaratory judgment.

b. Order other appropriate or ancillary relief, which may include any of the following:

(1) Ordering an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets.

(2) Ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property.

(3) Imposing a civil penalty not to exceed a maximum of five thousand dollars for a single violation or five hundred thousand dollars for more than one violation; an order of recision, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor chapter or a rule adopted or order issued under this chapter or the predecessor chapter.

(4) Ordering the payment of prejudgment and postjudgment interest.

c. Order such other relief as the court considers appropriate.

3. NO BOND REQUIRED. The administrator shall not be required to post a bond in an action or proceeding under this chapter.

Sec. 53. Section 502.604, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.604 ADMINISTRATIVE ENFORCEMENT.

1. ISSUANCE OF AN ORDER OR NOTICE. If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may do any of the following:

a. Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter.

b. Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 502.401, subsection 2, paragraph "a", subparagraph (4) or (6), or an investment adviser under section 502.403, subsection 2, paragraph "a", subparagraph (3).

c. Issue an order under section 502.204.

2. SUMMARY PROCESS. An order under subsection 1 is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or costs of investigation the administrator will seek, a statement of the reasons for the order, and notice that, within fifteen days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within thirty days after the date of service of the order, the order, including the imposition of a civil penalty or requirement for payment of costs of investigation sought in the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

3. PROCEDURE FOR FINAL ORDER. If a hearing is requested or ordered pursuant to subsection 2, a hearing must be held pursuant to chapter 17A. A final order shall not be issued

unless the administrator makes findings of fact and conclusions of law in a record in accordance with chapter 17A. The final order may make final, vacate, or modify the order issued under subsection 1.

4. CIVIL PENALTY. In a final order under subsection 3, the administrator may impose a civil penalty up to an amount not to exceed a maximum of five thousand dollars for a single violation or five hundred thousand dollars for more than one violation.

5. COSTS. In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

6. FILING OF CERTIFIED FINAL ORDER WITH COURT — EFFECT OF FILING. If a petition for judicial review of a final order is not filed in accordance with section 502.609, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

7. ENFORCEMENT BY COURT — FURTHER CIVIL PENALTY. If a person does not comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order. The court shall not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances.

Sec. 54. Section 502.604A, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.604A LIMITED LAW ENFORCEMENT AUTHORITY.

The administrator or the administrator's designee, when carrying out the provisions of section 502.603 or 502.604, may develop, share, and receive information related to any law enforcement purpose, including any criminal investigation. The administrator or designee shall not have the authority to issue criminal subpoenas or make arrests. The administrator or designee shall not be considered a peace officer, including as provided in chapter 801.

Sec. 55. Section 502.605, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.605 RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS, AND HEARINGS.

1. ISSUANCE AND ADOPTION OF FORMS, ORDERS, AND RULES. Pursuant to chapter 17A, the administrator may do any of the following:

a. Issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this chapter and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records.

b. Define terms, whether or not used in this chapter, but those definitions shall not be inconsistent with this chapter.

c. Classify securities, persons, and transactions and adopt different requirements for different classes.

2. FINDINGS AND COOPERATION. Under this chapter, a rule or form shall not be adopted or amended, or an order issued or amended, unless the administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending, and repealing rules and forms, section 502.608 applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

3. FINANCIAL STATEMENTS. Subject to section 15(h) of the Securities Exchange Act and

section 222 of the Investment Advisers Act of 1940, the administrator may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this chapter. A rule adopted or order issued under this chapter may establish any of the following:

a. Subject to section 15(h) of the Securities Exchange Act and section 222 of the Investment Advisers Act of 1940, the form and content of financial statements required under this chapter.

b. Whether unconsolidated financial statements must be filed.

c. Whether required financial statements must be audited by an independent certified public accountant.

4. INTERPRETATIVE OPINIONS. The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A rule adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the administrator will not institute an action or a proceeding under this chapter.

5. EFFECT OF COMPLIANCE. A penalty under this chapter shall not be imposed for, and liability does not arise from, conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the administrator under this chapter.

6. PRESUMPTION FOR PUBLIC HEARINGS. A hearing in an administrative proceeding under this chapter must be conducted in public unless the administrator for good cause consistent with this chapter determines that the hearing will not be so conducted.

Sec. 56. Section 502.606, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.606 ADMINISTRATIVE FILES AND OPINIONS.

1. PUBLIC REGISTER OF FILINGS. The administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor chapter; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor chapter; and interpretative opinions or no action determinations issued under this chapter.

2. PUBLIC AVAILABILITY. The administrator shall make all rules, forms, interpretative opinions, and orders available to the public.

3. COPIES OF PUBLIC RECORDS. The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this chapter may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.

Sec. 57. Section 502.607, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.607 PUBLIC RECORDS — CONFIDENTIALITY.

1. PRESUMPTION OF PUBLIC RECORDS. Except as otherwise provided in subsection 2, records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

2. NONPUBLIC RECORDS. Notwithstanding chapter 22, the following records are not public records and are not available for public examination under subsection 1:

a. A record obtained by the administrator in connection with an audit or inspection under section 502.411, subsection 4, or an investigation under section 502.602.

b. A part of a record filed in connection with a registration statement under sections 502.301 and 502.303 through 502.305 or a record under section 502.411, subsection 4, that contains

trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law.

c. A record that is not required to be provided to the administrator or filed under this chapter and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure.

d. A nonpublic record received from a person specified in section 502.608, subsection 1.

e. Any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed.

f. A record obtained by the administrator through a designee that the administrator determines by rule or order has been appropriately expunged from its own records by that designee, if the administrator finds that such expungement is in the public interest and does not impair investor protection.

3. ADMINISTRATOR DISCRETION TO DISCLOSE. If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 502.608, subsection 1, the administrator may disclose a record obtained in connection with an audit or inspection under section 502.411, subsection 4, or a record obtained in connection with an investigation under section 502.602.

Sec. 58. Section 502.608, Code 2003, is amended by striking the section and inserting in lieu thereof following:[4]

502.608 UNIFORMITY AND COOPERATION WITH OTHER AGENCIES.

1. OBJECTIVE OF UNIFORMITY. The administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to section 502.607, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the securities and exchange commission, the United States department of justice, the commodity futures trading commission, the federal trade commission, the securities investor protection corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

2. POLICIES TO CONSIDER. In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this chapter, the administrator shall, in its discretion, take into consideration in carrying out the public interest, all of the following general policies:

a. Maximizing effectiveness of regulation for the protection of investors.

b. Maximizing uniformity in federal and state regulatory standards.

c. Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

3. SUBJECTS FOR COOPERATION. The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes all of the following:

a. Establishing or employing one or more designees as a central depository for registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter.

b. Developing and maintaining uniform forms.

c. Conducting a joint examination or investigation.

d. Holding a joint administrative hearing.

e. Instituting and prosecuting a joint civil or administrative proceeding.

f. Sharing and exchanging personnel.

g. Coordinating registrations under sections 502.301 and 502.401 through 502.404 and exemptions under section 502.203.

h. Sharing and exchanging records, subject to section 502.607.

i. Formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases.

[4] The phrase "in lieu thereof the following" probably intended

j. Formulating common systems and procedures.

k. Notifying the public of proposed rules, forms, statements of policy, and guidelines.

l. Attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity.

m. Developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

Sec. 59. Section 502.609, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.609 JUDICIAL REVIEW OF ORDERS.

A final order issued by the administrator under this chapter is subject to judicial review in accordance with chapter 17A.

Sec. 60. Section 502.610, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.610 JURISDICTION.

1. SALES AND OFFERS TO SELL. Sections 502.301, 502.302, 502.401, subsection 1, 502.402, subsection 1, 502.403, subsection 1, 502.404, subsection 1, 502.501, 502.506, 502.509, and 502.510 do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

2. PURCHASES AND OFFERS TO PURCHASE. Sections 502.401, subsection 1, 502.402, subsection 1, 502.403, subsection 1, 502.404, subsection 1, 502.501, 502.506, 502.509, and 502.510 do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

3. OFFERS IN THIS STATE. For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if any of the following apply to the offer:

a. The offer originates from within this state.

b. The offer is directed by the offeror to a place in this state and received at the place to which it is directed.

4. ACCEPTANCES IN THIS STATE. For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if all of the following apply to the acceptance:

a. The acceptance is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed.

b. The acceptance has not previously been communicated to the offeror, orally or in a record, outside this state.

5. PUBLICATIONS, RADIO, TELEVISION, OR ELECTRONIC COMMUNICATIONS. An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds of its circulation outside this state during the previous twelve months or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program, or other electronic communication, is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless any of the following apply:

a. The program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state.

b. The program or communication is supplied by a radio, television, or other electronic

network with the electronic signal originating from outside this state for redistribution to the general public in this state.

c. The program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system.

d. The program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

6. INVESTMENT ADVICE AND MISREPRESENTATIONS. Sections 502.403, subsection 1, 502.404, subsection 1, 502.405, subsection 1, 502.502, 502.505, and 502.506 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

Sec. 61. Section 502.611, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.611 SERVICE OF PROCESS.

1. SIGNED CONSENT TO SERVICE OF PROCESS. A consent to service of process required by this chapter must be signed and filed in the form required by a rule or order under this chapter. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this chapter or a rule adopted or order issued under this chapter after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

2. CONDUCT CONSTITUTING APPOINTMENT OF AGENT FOR SERVICE. If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or a rule adopted or order issued under this chapter and the person has not filed a consent to service of process under subsection 1, the act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

3. PROCEDURE FOR SERVICE OF PROCESS. Service under subsection 1 or 2 may be made by providing a copy of the process to the office of the administrator, but it is not effective unless all of the following apply:

a. The plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice.

b. The plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.

4. SERVICE IN ADMINISTRATIVE PROCEEDINGS OR CIVIL ACTIONS BY ADMINISTRATOR. Service pursuant to subsection 3 may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

5. OPPORTUNITY TO DEFEND. If process is served under subsection 3, the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

Sec. 62. NEW SECTION. 502.612 SEVERABILITY CLAUSE.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Sec. 63. Sections 502.205 through 502.218, 502.502A, 502.603A, and 502.604B, Code 2003, are repealed.

DIVISION II
TRANSITION PROVISIONS

Sec. 64. APPLICATION OF ACT TO EXISTING PROCEEDING AND EXISTING RIGHTS AND DUTIES.

1. APPLICABILITY OF PREDECESSOR CHAPTER TO PENDING PROCEEDINGS AND EXISTING RIGHTS. The predecessor chapter 502 exclusively governs all actions or proceedings that are pending on the effective date of this Act or may be instituted on the basis of conduct occurring before the effective date of this Act, but a civil action shall not be maintained to enforce any liability under the predecessor chapter unless instituted within any period of limitation that applied when the cause of action accrued or within five years after the effective date of this Act, whichever is earlier.

2. CONTINUED EFFECTIVENESS UNDER PREDECESSOR CHAPTER. All effective registrations under the predecessor chapter 502, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor chapter 502 remain in effect while they would have remained in effect if this Act had not been enacted. They are considered to have been filed, issued, or imposed under chapter 502 as amended by this Act, but are exclusively governed by the predecessor chapter 502.

3. APPLICABILITY OF PREDECESSOR CHAPTER TO OFFERS OR SALES. The predecessor chapter 502 exclusively applies to an offer or sale made within one year after the effective date of this Act pursuant to an offering made in good faith before the effective date of this Act on the basis of an exemption available under the predecessor chapter 502.

DIVISION III
CONFORMING CHANGES

Sec. 65. Section 22.7, subsection 42, Code Supplement 2003, is amended to read as follows:

42. Information obtained by the commissioner of insurance in the course of an investigation as provided in section ~~502.603,~~ 523B.8~~,~~ or 523C.23.

42A. Information obtained by the commissioner of insurance pursuant to section 502.607.

Sec. 66. Section 507B.14, unnumbered paragraph 1, Code 2003, is amended to read as follows:

When a controlling interest in two or more corporations, at least one of which is an insurance company domiciled in this state, is held by any person, group of persons, firm, or corporation, no exchange of stock, transfer or sale of securities, or loan based upon securities of any such corporation shall take place between such corporations, or between such person, group of persons, firm or corporation and such corporations, without first securing the approval of the insurance commissioner. If, in the opinion of the insurance commissioner, such sale, transfer, exchange, or loan would be improper and would work to the detriment of any such insurance company, the commissioner shall have the power to prohibit the transaction. ~~Any~~ A person, firm, or corporate officer or director ~~aiding~~ shall not aid such transaction ~~carried out~~ without approval of the insurance commissioner ~~shall be deemed~~. A person, firm, or other corporate officer or director who willfully violates this provision is guilty of a class "D" felony ~~and upon conviction punished as provided in section 502.605~~. A person, firm, or corporate officer or director who willfully violates this provision, and when such violation results in a loss of more than ten thousand dollars, is guilty of a class "C" felony.

Sec. 67. Section 536A.22, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The total amount of such thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness outstanding and in the hands of the general public shall not at any time exceed ten times the total amount of capital,

surplus, undivided profits, and subordinated debt that gives priority to such securities of the issuing industrial loan company. The sale of such securities is subject to the provisions of chapter 502 and rules adopted by the superintendent of banking pursuant to chapter 17A, ~~and shall not be construed to be exempt by reason of the provisions of section 502.202, subsection 10,~~ except that the sale of thrift certificates or installment thrift certificates which are redeemable by the holder either upon demand or within a period not in excess of five years are exempt from sections 502.201 and ~~502.602~~ 502.504.

DIVISION IV
EFFECTIVE DATE

Sec. 68. This Act takes effect January 1, 2005.

Approved May 14, 2004

CHAPTER 1162

TRANSPORTATION AND DISPOSAL OF DEAD ANIMALS

H.F. 2567

AN ACT regulating the transportation of animal carcasses, providing for fees and penalties, and providing for an effective date.

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

Section 1. Section 167.4, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

167.4 LICENSING PROCEDURE — FEES.

The following shall apply to a person required to be licensed under this chapter:

1. The person shall submit an application for a license to the department in a manner and according to procedures required by the department.

2. The person shall include in the application information as required by the department, on forms prescribed by the department, which shall include at least all of the following:

a. For a disposal plant, the person's name and address, the person's proposed place of business, and the total number of vehicles to be involved in the operation.

b. For a collection point involving the accumulation of whole animal carcasses or their parts for ultimate transportation to a disposal plant, the person's name and address, the person's proposed place of business, and the total number of vehicles to be involved in the operation.

c. For a delivery service which transports whole animal carcasses or their parts to a disposal plant or collection point, the person's name and address, the total number of vehicles to be involved in the operation, and the location where the vehicles involved in the operation are to be maintained.

3. The person shall submit a separate application for each location that the person is to operate a disposal plant, collection point, or a delivery service.

4. The person shall submit a license fee as follows:

a. For a disposal plant, one hundred dollars.

b. For a collection point, one hundred dollars. However, a person is not required to pay the license fee for a collection point which is operated by a disposal plant.

c. For a delivery service which is not part of the operation of a disposal plant or collection point, fifty dollars.

5. A license issued under this section shall expire on December 31 of each year. The person may renew the license by completing a renewal form as prescribed by the department in a manner and according to procedures required by the department. However, the renewal form must be submitted to the department prior to the license's expiration date. The person shall submit a renewal license fee which shall be for the same amount as the original license fee.

Fees collected pursuant to this section shall be deposited into the general fund of the state.

6. A person's license is subject to suspension or revocation by the department if the department determines that the person has committed a material violation of this chapter, including rules adopted by this chapter, or a term or condition of the license. The person may contest the department's action as provided in chapter 17A.

Sec. 2. Section 167.15, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

167.15 TRANSPORTATION OF ANIMALS — CARCASSES OR PARTS.

1. A person required to be licensed under section 167.4 shall transport a whole or part of an animal carcass or offal material according to requirements adopted by departmental rule.

a. The delivery vehicle's container used for loading and transporting the carcass or offal material shall be constructed according to departmental rules in a manner that prevents parts or liquids associated with the carcass or offal material from escaping during transport.

b. The department shall adopt rules requiring that the delivery vehicle's container be covered when transporting an animal carcass or offal material. However, this requirement shall not apply to a route delivery vehicle used primarily to transport animal carcasses from a farm to another location, unless the department issues a special order as provided in this paragraph. The department may issue such an order and require that the delivery vehicle's container be covered, if the state veterinarian determines that an animal or animal carcass on the farm has been infected or exposed to an infectious or contagious disease or that there has been an outbreak of an infectious or contagious disease in the area where the farm is located.

c. The person shall not overload the delivery vehicle's container with carcasses or offal material.

2. The department shall provide for the inspection of delivery vehicles used to transport carcasses or offal material, disposal plants, collection points, or other locations in which carcasses or offal material is stored or processed before being delivered to a disposal plant.

Sec. 3. Section 167.19, Code 2003, is amended to read as follows:

167.19 PENALTY.

~~The violation of any of the provisions of~~ A person who violates this chapter or ~~any~~ a rule adopted ~~thereunder~~ by the department ~~shall be~~ pursuant to this chapter is guilty of a simple misdemeanor. The person may be subject to a civil penalty of not less than one hundred dollars and not more than one thousand dollars for each violation. However, the state shall be precluded from bringing a criminal action against the person if the department has initiated a civil enforcement proceeding. Moneys collected in civil penalties shall be deposited into the general fund of the state.

Sec. 4. NEW SECTION. 167.22 CHRONIC WASTING DISEASE.

1. As used in this section "chronic wasting disease" means the same as defined in section 170.1.

2. Except as otherwise provided in this subsection, a person licensed under this chapter shall not transport the carcass of a deer or elk into this state if the carcass originates from an area outside this state that has a significant prevalence of chronic wasting disease as determined by the state veterinarian. In order to transport the carcass into this state, the person must obtain approval by the state veterinarian in a manner and according to procedures required by the department.

Sec. 5. Sections 167.6, 167.9, and 167.10, Code 2003, are repealed.

Sec. 6. EFFECTIVE DATE. Section 4 of this Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 14, 2004

CHAPTER 1163

INSPECTION AND CONTROL OF ANIMAL HEALTH

H.F. 2573

AN ACT regulating animal health by the department of agriculture and land stewardship, making an appropriation, and making penalties applicable.

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

Section 1. Section 163.1, subsections 1 through 8, Code 2003, are amended to read as follows:

1. ~~Make all~~ Adopt any necessary ~~rules~~ rule for the ~~suppression and prevention~~ control of an infectious ~~and~~ or contagious ~~diseases among~~ disease affecting animals within the state.

2. Provide for quarantining animals ~~affected~~ afflicted with an infectious or contagious ~~diseases~~ disease, or that have been exposed to such ~~diseases~~ disease, whether within or without the state.

3. Determine and employ the most efficient and practical means for the ~~prevention, suppression, control, and eradication~~ control of ~~contagious or~~ an infectious ~~diseases among~~ or contagious disease afflicting animals.

4. Establish, maintain, enforce, and regulate quarantine and other measures relating to the ~~movements~~ movement and care of ~~diseased~~ animals that may be exposed or afflicted with an infectious or contagious disease.

5. Provide for the disinfection of suspected yards, buildings, ~~and~~ or articles, and for the destruction of ~~such~~ animals as may be deemed necessary by the department.

6. Enter any place where any animal is at the time located, or where it has been kept, or where the carcass of such animal may be, for the purpose of examining it in any way that may be necessary to determine whether it was or is ~~infected~~ exposed to or afflicted with ~~any~~ an infectious or contagious ~~or infectious~~ disease.

7. Regulate or prohibit the arrival in, departure from, and passage through the state~~,~~ of animals ~~infected~~ exposed to or afflicted with ~~or exposed to any~~ an infectious or contagious disease; and in case of a violation of any such regulation or prohibition, to detain any animal at the owner's ~~cost~~ expense.

8. Regulate or prohibit the ~~bringing~~ movement of animals into the state, which, in ~~its opinion~~ the department's determination, for any reason, may be detrimental to the health of animals in the state.

Sec. 2. Section 163.2, Code 2003, is amended to read as follows:

163.2 INFECTIOUS ~~AND~~ OR CONTAGIOUS DISEASES.

~~For the purpose of~~ As provided in this chapter, ~~infectious and contagious diseases shall be deemed to embrace~~ unless the context otherwise requires:

1. "Certificate of veterinary inspection" or "certificate" means a legible record, made on an official form of the state of origin or the animal and plant health inspection service of the United States department of agriculture, and issued by an accredited veterinarian of the state of origin or a veterinarian in the employ of the animal and plant health inspection service, which shows that an animal listed on the form meets the health requirements of the state of destination.

2. "Control" means the prevention, suppression, or eradication of an infectious or contagious disease afflicting an animal within the state.

3. "Department" means the department of agriculture and land stewardship.

4. "Infectious or contagious disease" means glanders, farcy, maladie du coit (dourine), anthrax, foot and mouth disease, scabies, hog cholera, ~~swine dysentery,~~ tuberculosis, brucellosis, vesicular exanthema, scrapie, rinderpest, ~~ovine foot rot,~~ or any other transmissible, transferable, or communicable disease so designated by the department.

As used in this chapter, "foot and mouth disease" means a virus of the family picornaviridae, genus aphthovirus, including any immunologically distinct serotypes.

5. "Move" or "movement", except as provided in subchapter III, means to ship, transport, or deliver an animal.

Sec. 3. Section 163.10, Code 2003, is amended to read as follows:

163.10 QUARANTINING OR ~~KILLING~~ DESTROYING ANIMALS.

The department may quarantine or ~~condemn~~ destroy any animal ~~which is infected~~ exposed to or afflicted with ~~any~~ an infectious or contagious ~~or infectious~~ disease~~, but no~~. However, cattle exposed to or infected with tuberculosis shall ~~be killed~~ not be destroyed without the owner's consent, unless there ~~shall be~~ are sufficient ~~funds~~ moneys to ~~pay~~ reimburse the owner for ~~such~~ the cattle, ~~in~~ which may be paid from the ~~allotment made for that purpose from the~~ appropriation ~~for the eradication of infectious and contagious diseases among animals as~~ provided in ~~this chapter~~ section 163.15, moneys in the brucellosis and tuberculosis eradication fund created in section 165.18, or moneys made available by the United States department of agriculture.

Sec. 4. Section 163.11, unnumbered paragraph 1, Code 2003, is amended to read as follows:

~~No~~ A person shall ~~bring~~ not move an animal into this state, except to a public livestock ~~markets~~ market where federal inspection of livestock is maintained, ~~any animal~~ for work, breeding, or dairy purposes, unless such animal has been examined and found free from all ~~contagious or~~ infectious or contagious diseases.

Sec. 5. Section 163.12, Code 2003, is amended to read as follows:

163.12 FREEDOM FROM DISEASE.

Freedom from disease as specified in section 163.11 shall be established by a ~~certificate of health~~ certificate of veterinary inspection signed by a veterinarian acting under either the authority of the ~~federal~~ department of agriculture and land stewardship, or of the ~~state~~ United States department of agriculture ~~and land stewardship~~. A copy of the certificate shall be attached to the waybill accompanying a shipment, and a copy of the certificate shall be delivered to the department.

Sec. 6. Section 163.14, Code 2003, is amended to read as follows:

163.14 INTRASTATE ~~SHIPMENTS~~ MOVEMENT.

~~All animals~~ An animal, ~~except those intended~~ other than an animal to be moved for immediate slaughter, shall be inspected when required by the department, and accompanied by the ~~aforesaid~~ certificate of veterinary inspection provided in section 163.12 when ~~shipped~~ moved from a point ~~public stockyard~~ in this state to another point within the state where federal inspection is not maintained.

Sec. 7. Section 163.15, unnumbered paragraphs 1 and 2, Code 2003, are amended to read as follows:

~~Whenever any animal is found to be infected with one of the contagious diseases enumerated in section 163.2 or one which has been designated by the department thereunder, if there be no other provisions for indemnifying the owner in case the same be condemned and ordered by the department to be killed, and~~ If the secretary of agriculture determines that ~~the existence of said communicable~~ the outbreak of an infectious or contagious disease among an animal population constitutes a threat to the general welfare or the public health of the inhabitants of ~~the~~ this state, the secretary shall formulate a program of eradication ~~including therein~~ which shall include the condemnation and ~~killing~~ destroying of the ~~infected~~ animals~~; provided however, that said~~ exposed to or afflicted with the disease. The program of eradication shall provide for the indemnification of owners of the livestock under this section, if there are no other sources of indemnification. The program shall not be ~~put into effect as hereinafter provided~~ effective until the ~~same~~ program has been approved by the executive council.

If an animal ~~infected~~ afflicted with ~~a~~ an infectious or contagious disease is destroyed under a program of eradication as provided in this section, the owner shall be compensated according to one of the following methods:

Sec. 8. Section 163.15, subsection 2, unnumbered paragraph 2, Code 2003, is amended to read as follows:

c. If an owner elects to be paid an indemnity amount based on a method that provides either a determination by appointed appraisers or pursuant to a formula, the owner shall not be entitled to revoke the election, unless otherwise provided by the department. An owner's decision to delay or refuse to make an election under this section shall not affect the condemnation and destruction of ~~infected~~ afflicted animals under the program of eradication.

d. Upon approval by the executive council, there is appropriated to the department from any moneys in the general fund of the state not otherwise appropriated moneys sufficient to carry out the provisions of this subsection.

Sec. 9. Section 163.23, Code 2003, is amended to read as follows:

163.23 FALSE CERTIFICATES OF HEALTH.

A veterinarian shall not issue a certificate of ~~health~~ veterinary inspection for an animal knowing that the animal described in the certificate ~~of health~~ was not the same animal from which tests were made as a basis for issuing the certificate. A veterinarian shall not otherwise falsify a certificate ~~of health~~.

Sec. 10. Section 163.24, Code 2003, is amended to read as follows:

163.24 USING FALSE CERTIFICATE.

A person shall not conduct a transaction to import, export, or transport an animal within this state or sell or offer for sale an animal if the person uses a certificate of ~~health~~ veterinary inspection in connection with the transaction knowing that the animal described in the certificate ~~of health~~ was not the animal from which tests were made as a basis for issuing the certificate ~~of health~~. A person shall not otherwise use an altered or otherwise false certificate in connection with such transaction.

Sec. 11. Section 163.30, subsection 5, unnumbered paragraphs 1 and 4, Code Supplement 2003, are amended to read as follows:

All swine moved shall be accompanied by ~~an official~~ a ~~health~~ certificate ~~or veterinarian~~ of veterinary inspection ~~certificate~~ issued by the state of origin and prepared and signed by a veterinarian. The ~~health~~ certificate ~~or veterinarian inspection certificate~~ shall show the point of origin, the point of destination, individual identification, immunization status, and, when required, any movement permit number assigned to the shipment by the department. All such movement of swine shall be completed within seventy-two hours unless an extension of time for movement is granted by the department.

The department may combine ~~an official health~~ a certificate ~~or a veterinarian~~ of veterinary inspection ~~certificate~~ with a certificate of inspection required under chapter 166D.

Sec. 12. Section 163.30, subsection 9, Code Supplement 2003, is amended to read as follows:

9. All swine found by a registered veterinarian to have any ~~infectious, contagious, or communicable swine~~ infectious or contagious disease after delivery to any livestock sale barn or auction market for resale other than for slaughter, shall be immediately returned to the consignor's premises to be quarantined separate and apart for fifteen days. Such swine ~~may~~ shall not be moved from such premises for any purpose unless ~~an official health~~ a certificate ~~or veterinarian~~ of veterinary inspection ~~certificate~~ accompanies the movement or unless they are sent to slaughter. This subsection shall in no way supersede the requirements of sections 163A.2 and 163A.3.

Sec. 13. Section 163.43, Code 2003, is amended to read as follows:

163.43 ~~HEALTH~~ CERTIFICATE REQUIRED.

1. A person shall not be a party to a lease of a breeding bull within this state in which the lessor is a licensee, unless the breeding bull is accompanied by a ~~health~~ certificate of veterinary inspection. For the purposes of this section, a breeding bull is leased within this state if it is leased to an Iowa resident.

2. The ~~health~~ certificate of veterinary inspection shall be issued by a licensed veterinarian who examines the breeding bull and signs the ~~health~~ certificate. The ~~health~~ certificate shall include all of the following:

a. A statement that, to the best of the knowledge and belief of the veterinarian, the breeding bull is apparently free from ~~any~~ an infectious~~,~~ or contagious~~, or communicable~~ disease.

b. A statement that the breeding bull has reacted negatively to a test for brucellosis conducted within six months prior to the date that the veterinarian signs the ~~health~~ certificate.

c. If the breeding bull does not originate from this state, a statement providing that importing the breeding bull satisfies applicable importation requirements.

d. The identification number of the breeding bull as required pursuant to section 163.42.

e. The date that the ~~health~~ certificate ~~is~~ was issued.

3. The ~~health~~ certificate of veterinary inspection shall not be valid after the term of the lease expires or after the breeding bull moves from the lessee's premises. Thereafter, a new ~~health~~ certificate must be issued as required in this section.

4. One copy of the ~~health~~ certificate of veterinary inspection shall be issued to the licensee who shall maintain the ~~health~~ certificate as part of the licensee's business records. One copy of the ~~health~~ certificate shall be issued to the lessee when the breeding bull is delivered to the lessee. A licensee shall show the ~~health~~ certificate upon request to any person designated by the department to enforce the provisions of this section.

Sec. 14. Section 163.46, Code 2003, is amended to read as follows:

163.46 SALE OF SEMEN.

The owner of a breeding bull located within this state shall not sell the semen from that bull for the purpose of artificial insemination unless the owner is in possession of a ~~health~~ certificate of veterinary inspection signed and issued by a licensed veterinarian within six months before the date the semen is collected. The ~~health~~ certificate shall not be valid if the bull is moved to other premises between the date of examination and the date of collection. The ~~health~~ certificate shall show that on the date of issue the breeding bull had been tested negative for brucellosis and, to the best knowledge and belief of the examining veterinarian, was free from any infectious~~,~~ or contagious~~, or communicable~~ disease.

Sec. 15. Section 163.61, subsection 2, paragraph b, Code 2003, is amended to read as follows:

b. Notwithstanding the provisions of paragraph "a", a person who falsifies a ~~health~~ certifi-

cate~~, veterinarian~~ of veterinary inspection ~~certificate, or certificate of inspection~~ shall be subject to a civil penalty of not more than five thousand dollars for each reference to an animal falsified on the certificate. However, a person who falsifies a certificate ~~of inspection~~ issued pursuant to chapter 166D shall be subject to a civil penalty as provided in this section or section 166D.16, but not both. A person shall not be subject to a civil penalty totaling more than twenty-five thousand dollars for falsifying a certificate, regardless of the number of animals falsified on the certificate.

Sec. 16. Section 163A.1, subsection 4, Code 2003, is amended to read as follows:

4. ~~"Health certificate" or "certificate of health" or "interstate health certificate"~~ "Certificate of veterinary inspection" or "certificate" means ~~a legible record, made on an official form of the state of origin or the animal disease eradication branch of the United States department of agriculture or any successor agency thereto, and issued by an accredited veterinarian of the state of origin or a veterinarian in the employ of the animal disease eradication branch of the United States department of agriculture or any successor agency thereto, which shows that the animals listed thereon meet the health requirements of the state of destination~~ the same as defined in section 163.2.

Sec. 17. Section 163A.5, Code 2003, is amended to read as follows:

163A.5 INTERSTATE SHIPMENTS.

1. ~~All~~ Except as provided in subsection 2, breeding swine four months of age and over, entering ~~Iowa~~ this state for breeding or exhibition purposes, shall be accompanied by ~~an official interstate health~~ a certificate of inspection issued by an accredited veterinarian of the state of origin~~, showing~~. The certificate shall show that such swine meet ~~the Iowa~~ this state's entry requirements and are negative to the test for brucellosis conducted by an official laboratory of the state of origin within thirty days of entry~~; provided, that swine from validated brucellosis-free herds~~.

2. a. Swine may enter the state or be exhibited without a test for brucellosis ~~when~~ if one of the following applies:

(1) The swine are from a brucellosis-free herd as validated according to rules adopted by the department.

(2) The swine are from a state that is declared to be brucellosis-free as recognized by the department.

b. The swine must be accompanied by a certificate of ~~health~~ veterinary inspection issued by an accredited veterinarian of the state of origin or a veterinarian employed by the animal ~~disease eradication branch~~ and plant inspection service of the United States department of agriculture ~~or any successor agency thereto, showing such swine to have originated~~. The certificate must indicate whether the swine are from a state that is declared to be brucellosis-free. If the swine are from a brucellosis-free ~~herds and giving~~ herd, the certificate must indicate the herd number and ~~showing~~ show that the herd has been tested within the past twelve months.

Sec. 18. Section 164.1, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. "Certificate of veterinary inspection" or "certificate" means the same as defined in section 163.2.

Sec. 19. Section 164.14, subsection 2, paragraph c, Code 2003, is amended to read as follows:

c. Accompanied by ~~an official health~~ a certificate of veterinary inspection showing a record of a negative brucellosis test, when required, accomplished within thirty days of importation.

Sec. 20. NEW SUBSECTION.[1] 165.1A DEFINITIONS.

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

1. "Department" means the department of agriculture and land stewardship.

2. "Certificate of veterinary inspection" or "certificate" means the same as defined in section 163.2.

[1] "NEW SECTION." probably intended

Sec. 21. Section 165.36, subsection 3, Code 2003, is amended to read as follows:

3. That such cattle are brought into ~~the state of Iowa~~ this state under quarantine to be tuberculin tested for tuberculosis and fully examined in not less than sixty days nor more than ninety days~~, such~~. The test ~~to~~ must be applied by a veterinarian accredited by the department ~~of agriculture and land stewardship of the state of Iowa~~ and at the expense of the ~~owners~~ owner. Such cattle brought in under quarantine shall be accompanied by ~~an official~~ a certificate of veterinary inspection issued by a veterinarian accredited by the state from which the cattle ~~come~~ are imported or by the ~~department of agriculture of the~~ animal and plant health inspection service of the United States department of agriculture showing them to be free from tuberculosis. The department of agriculture and land stewardship shall not release its quarantine ~~thus provided for shall be established by the department of agriculture and land stewardship of the state of Iowa and shall not be released~~ until ~~the~~ an examination has been made and the department determines that such cattle ~~found free from~~ are not afflicted with tuberculosis.

Sec. 22. Section 166A.1, subsection 8, Code 2003, is amended to read as follows:

8. "Official health certificate" "Certificate of veterinary inspection" or "certificate" means ~~a legal record covering the requirement of the state of Iowa and approved by the proper livestock sanitary official of the state of origin and issued by an accredited veterinarian~~ the same as defined in section 163.2.

Sec. 23. Section 166A.4, Code 2003, is amended to read as follows:

166A.4 DIPPING.

All breeding and feeding sheep offered for sale or exchange or otherwise moved or released from any premises, vehicle or conveyance, shall, within ten days prior to exchange, release, or movement, be dipped in an approved dip under the supervision of the ~~Iowa~~ department ~~of agriculture and land stewardship or of the animal disease eradication division~~ or the animal and plant health inspection service of the United States department of agriculture~~; provided, that when~~. When sheep are moved within or from a certified scabies-free area in ~~the~~ this state, the sheep must be accompanied by ~~an official health certificate,~~ a certificate of veterinary inspection as provided in chapter 163. The dipping shall not be required prior to such movement~~; and provided further, that sheep~~. Sheep may be moved from a premises to an approved facility for the purpose of dipping under such conditions as may be required by the rules of the department~~, and also~~ or the animal and plant health inspection service of the United States department of agriculture. In addition, sheep are not required to be dipped if moved to a livestock auction market ~~need not be dipped~~ until after sale~~, Nor~~. Sheep are not required to be dipped if consigned directly for slaughter.

Sec. 24. Section 166A.10, Code 2003, is amended to read as follows:

166A.10 RESTRAINT OF MOVEMENT.

Sheep from noncertified scabies-free areas within ~~Iowa~~ this state shall not enter certified scabies-free areas unless they have been dipped in an approved dip under supervision within ten days preceding movement and satisfactory evidence of dipping accompanies the shipment~~, except~~. However, such sheep may ~~move~~ be moved into certified scabies-free areas if consigned directly to a stockyard market, auction market or slaughter establishment, under federal inspection, provided the sheep are accompanied by a certificate of veterinary inspection stating number, description, consignor and consignee.

Sec. 25. Section 166A.11, Code 2003, is amended to read as follows:

166A.11 SHEEP ENTERING STATE.

1. ~~All sheep entering~~ Sheep being moved into the state for breeding or feeding purposes shall be accompanied by a ~~permit and by a health~~ certificate of veterinary inspection stating the sheep are ~~from~~ any of the following:

a. From a certified scabies-free area ~~or if not from a certified scabies-free area that they have been dipped~~.

b. Dipped in an approved dip within ten days prior to movement. ~~All livestock~~

2. Livestock markets, dealers and individuals shall retain all incoming waybills~~, permits and health~~ and certificates for a period of one year~~, same to~~ which shall be made available to the department upon demand ~~by the department~~.

Sec. 26. Section 166D.2, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. "Certificate of veterinary inspection" means the same as defined in section 163.2.

Sec. 27. Section 166D.10, subsection 1, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

A person shall not sell, lease, exhibit, loan, move, or relocate swine within the state unless the swine are accompanied by a certificate of inspection in the same manner as provided for ~~an official health~~ a certificate ~~or veterinarian certificate~~ of veterinary inspection as provided in section 163.30. The department may combine the certificate of inspection with ~~an official health~~ a certificate ~~or a veterinarian~~ of veterinary inspection ~~certificate~~. A certificate of inspection is not required if any of the following apply:

Sec. 28. Section 166D.10, subsection 1, paragraph b, subparagraph (3), Code Supplement 2003, is amended to read as follows:

(3) A certificate of inspection, or ~~an official health~~ a certificate ~~or a veterinarian~~ of veterinary inspection ~~certificate~~ as provided in section 163.30, has been issued for the swine within thirty days prior to the date of relocation. The department may adopt rules excusing a person from complying with this subparagraph if the department determines that the purposes of the chapter as provided in section 166D.1 are not furthered by the requirement.

Sec. 29. Section 166D.10, subsection 1, paragraph b, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

The department shall adopt rules required to administer this paragraph "b". A transportation certificate accompanying relocated swine shall cite the relevant relocation record and certificate of inspection, or ~~official health~~ certificate ~~or veterinarian~~ of veterinary inspection ~~certificate~~. The department may provide for the examination of the relocation records on the owner's premises during normal business hours, or may require that reports containing relevant information contained in relocation records and certificates of inspection, or ~~official health~~ certificates ~~or veterinarian~~ of veterinary inspection ~~certificates~~, be periodically submitted to the department. For purposes of this section, swine production information contained in relocation records is a trade secret as provided in section 22.7, unless otherwise provided by rules adopted by the department. The department shall provide for the disclosure of confidential information only to the extent required for enforcement of this chapter, the detection and prosecution of public offenses, or to comply with a subpoena or court order.

Sec. 30. Section 166D.10, subsection 2, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

As used in this subsection, "farm to farm within the state" does not include the movement or relocation of native Iowa feeder pigs to the possession of a dealer licensed pursuant to section 163.30. Native Iowa feeder pigs that are moved shall be accompanied by a certificate of inspection, or ~~an official health~~ a certificate ~~or veterinarian certificate~~ of veterinary inspection as provided in section 163.30, unless swine are otherwise exempted from this requirement by this section.

Sec. 31. Section 172B.3, subsection 2, paragraph 1, Code 2003, is amended to read as follows:

l. The form number and state of issuance of any ~~health~~ certificate of veterinary inspection accompanying the livestock.

Approved May 14, 2004

CHAPTER 1164

FAILURE TO OBEY SCHOOL BUS WARNING DEVICES — CITATIONS

S.F. 2154

AN ACT relating to parties to whom traffic citations are issued for failure to obey school bus warning devices.

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

Section 1. Section 321.372A, Code 2003, is amended to read as follows:

321.372A PROMPT INVESTIGATION OF REPORTED VIOLATION OF FAILING TO OBEY SCHOOL BUS WARNING DEVICES — CITATION ISSUED TO DRIVER OR OWNER.

1. The driver of a school bus who observes a violation of section 321.372, subsection 3, may prepare a written report on a form provided by the department of public safety indicating that a violation has occurred. The school bus driver or a school official may deliver the report not more than seventy-two hours after the violation occurred to a peace officer of the state or a peace officer of the county or municipality in which the violation occurred. The report shall state the time and the location at which the violation occurred and shall include the registration plate number and a description of the vehicle involved in the violation.

2. Not more than seven calendar days after receiving a report of a violation of section 321.372, subsection 3, from a school bus driver or a school official, the peace officer shall initiate an investigation of the reported violation and contact the owner of the motor vehicle involved in the reported violation and request that the owner supply information identifying the driver in accordance with section 321.484.

a. If, from the investigation, the peace officer is able to identify the driver and has reasonable cause to believe a violation of section 321.372, subsection 3, has occurred, the peace officer shall prepare a uniform traffic citation for the violation and shall serve it personally or by certified mail to the driver of the vehicle.

b. If, from the investigation, the peace officer has reasonable cause to believe that a violation of section 321.372, subsection 3, occurred but is unable to identify the driver, the peace officer shall serve a uniform traffic citation for the violation to the owner of the motor vehicle. Notwithstanding section 321.484, in a proceeding where the peace officer who conducted the investigation was not able to identify the driver of the motor vehicle, proof that the motor vehicle described in the uniform traffic citation was used to commit the violation of section 321.372, subsection 3, together with proof that the defendant named in the citation was the registered owner of the motor vehicle at the time the violation occurred, constitutes a permissible inference that the registered owner was the driver who committed the violation.

Approved May 15, 2004

CHAPTER 1165

DEVELOPMENT AND REHABILITATION OF REAL PROPERTY
— LOCAL GOVERNMENT ACTIVITIES

S.F. 2291

AN ACT relating to local government authority to encourage development and rehabilitation of certain real property and including effective date and applicability date provisions.

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

Section 1. Section 404.2, subsection 2, paragraph h, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Any tax exemption schedule authorized in section 404.3, subsection 4A, that shall be used in lieu of the schedule set out in section 404.3, subsection 1, 2, 3 or 4. ~~This schedule shall not allow a greater exemption, but may allow a smaller exemption, than allowed in the schedule specified in the corresponding subsection of section 404.3.~~

Sec. 2. Section 404.3, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4A. A city or county may adopt a different tax exemption schedule than those allowed in subsection 1, 2, 3, or 4. The different schedule adopted shall not allow a greater exemption, but may allow a smaller exemption, in a particular year, than allowed in the schedule specified in the corresponding subsection of this section. A different schedule adopted by a city or county shall apply to every revitalization area within the city or county, unless the qualified property is eligible for an exemption pursuant to section 404.3A or 404.3B, and except in areas of the city or county which have been designated as both urban renewal and urban revitalization areas. In an area designated for both urban renewal and urban revitalization, a city or county may adopt a different schedule than has been adopted for revitalization areas which have not been designated as urban renewal areas.

Sec. 3. Section 404.3, subsections 5 and 6, Code 2003, are amended to read as follows:

5. The owners of qualified real estate eligible for the exemption provided in this section or section 404.3A or 404.3B shall elect to take the applicable exemption ~~provided in subsection 1, 2, 3 or 4~~ or shall elect to take the applicable exemption provided in the different schedule authorized by subsection 4A and adopted in the city or county plan if a different schedule has been adopted. Once the election has been made and the exemption granted, the owner is not permitted to change the method of exemption.

6. The tax exemption schedule specified in subsection 1, 2, 3 or 4 shall apply to every revitalization area within a city or county unless a different schedule is adopted in the city or county plan as provided in section 404.2 and authorized by subsection 4A. ~~However, a city or county shall not adopt a different schedule unless every revitalization area within the city or county has the same schedule applied to it, except in areas of the city or county which have been designated as both urban renewal and urban revitalization areas. In an area designated for both urban renewal and urban revitalization, a city or county may adopt a different schedule than has been adopted for revitalization areas which have not been designated as urban renewal areas. The different schedule adopted shall not provide for a larger tax exemption in a particular year than is provided for that year in the schedule specified in the corresponding subsection of this section.~~

Sec. 4. NEW SECTION. 404.3B ABANDONED REAL PROPERTY EXEMPTION.

1. Notwithstanding the schedules provided for in section 404.3, a city or county may provide that all qualified real estate that meets the definition of abandoned as stated in section 657A.1 is eligible to receive an exemption from taxation based on the schedule set forth in subsection 2 or 3.

2. All qualified real estate described in subsection 1 is eligible to receive a partial exemption from taxation on the actual value added by the improvements. The exemption is for a period of fifteen years. The amount of the partial exemption is equal to a percent of the actual value added by the improvements, determined as follows:

a. For the first year, eighty percent.
b. For the second year, seventy-five percent.
c. For the third year, seventy percent.
d. For the fourth year, sixty-five percent.
e. For the fifth year, sixty percent.
f. For the sixth year, fifty-five percent.
g. For the seventh year, fifty percent.
h. For the eighth year, forty-five percent.
i. For the ninth year, forty percent.
j. For the tenth year, thirty-five percent.
k. For the eleventh year, thirty percent.
l. For the twelfth year, twenty-five percent.
m. For the thirteenth year, twenty percent.
n. For the fourteenth year, twenty percent.
o. For the fifteenth year, twenty percent.

3. All qualified real estate described in subsection 1 is eligible to receive a one hundred percent exemption from taxation on the actual value added by the improvements. The exemption is for a period of five years.

Sec. 5. Section 446.19A, subsection 2, Code 2003, is amended to read as follows:

2. On the day of the regular tax sale or any continuance or adjournment of the tax sale, the county or a city may bid for abandoned property assessed as residential property or as commercial multifamily housing property a sum equal to the total amount due. Money shall not be paid by the county or city for the purchase, but each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price. Prior to the purchase, the county or city shall file with the county treasurer a verified statement that a parcel to be purchased is abandoned and deteriorating in condition or is, or is likely to become, a public nuisance, and that the parcel is suitable for use ~~for low or moderate income~~ as housing following rehabilitation.

Sec. 6. Section 446.19A, subsection 4, paragraph a, Code 2003, is amended to read as follows:

a. The city or county may assign the tax sale certificate obtained pursuant to this section. ~~Preference shall be given to purchasers who are low or moderate income families or organizations which assist low or moderate income families to obtain housing.~~ Persons who purchase certificates from the city or county under this subsection are liable for the total amount due the certificate holder pursuant to section 447.1.

Sec. 7. Section 446.19A, subsection 5, Code 2003, is amended to read as follows:

5. For the purposes of this section, "abandoned" means the same as in section 657A.1. ~~For the purposes of this section, "low or moderate income families" has the same meaning as in section 403.17.~~

Sec. 8. Section 447.9, subsection 1, Code 2003, is amended to read as follows:

1. After one year and nine months from the date of sale, or after nine months from the date of a sale made under section 446.18~~, 446.19A,~~ or 446.39, or after three months from the date of a sale made under section 446.19A, 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, 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 service 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. 9. Section 657A.2, subsection 6, Code 2003, is amended by striking the subsection.

Sec. 10. NEW SECTION. 657A.10A PETITION BY CITY FOR TITLE TO ABANDONED PROPERTY.

1. In lieu of the procedures in sections 657A.2 through 657A.10, a city in which an abandoned building is located may petition the court to enter judgment awarding title to the abandoned property to the city. If more than one abandoned building is located on a parcel of real estate, the city may combine the actions into one petition. The owner of the building and grounds, mortgagees of record, lienholders of record, or other known persons who hold an interest in the property shall be named as respondents on the petition.

The petition shall be filed in the district court of the county in which the property is located. Service on the owner and any other named respondents shall be by certified mail and by posting the notice in a conspicuous place on the building. The action shall be in equity.

2. Not sooner than sixty days after the filing of the petition, the city may request a hearing on the petition.

3. In determining whether a property has been abandoned, the court shall consider the following for each building that is located on the property and named in the petition and the building grounds:

a. Whether any property taxes or special assessments on the property were delinquent at the time the petition was filed.

b. Whether any utilities are currently being provided to the property.

c. Whether the building is unoccupied by the owner or lessees or licensees of the owner.

d. Whether the building meets the city's housing code for being fit for human habitation, occupancy, or use.

e. Whether the building is exposed to the elements such that deterioration of the building is occurring.

f. Whether the building is boarded up.

g. Past efforts to rehabilitate the building and grounds.

h. The presence of vermin, accumulation of debris, and uncut vegetation.

i. The effort expended by the petitioning city to maintain the building and grounds.

j. Past and current compliance with orders of the local housing official.

k. Any other evidence the court deems relevant.

4. In lieu of the considerations in subsection 3, if the city can establish to the court's satisfaction that all parties with an interest in the property have received proper notice and either consented to the entry of an order awarding title to the property to the city or did not make a good faith effort to comply with the order of the local housing official within sixty days after the filing of the petition, the court shall enter judgment against the respondents granting the city title to the property.

5. If the court determines that the property has been abandoned or that subsection 4 applies, the court shall enter judgment awarding title to the city. The title awarded to the city shall be free and clear of any claims, liens, or encumbrances held by the respondents.

Sec. 11. IMMEDIATE EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Sec. 12. APPLICABILITY DATE.

1. The sections of this Act amending sections 404.2 and 404.3 and enacting section 404.3B apply to urban revitalization property tax exemptions allowed on or after the effective date of this Act.

2. The sections of this Act amending sections 446.19A and 447.9 apply to delinquent property taxes sold at a tax sale held on or after the effective date of this Act.

Approved May 17, 2004

CHAPTER 1166

MEDICAL ASSISTANCE TRUSTS — PAYMENT RATES

H.F. 2378

AN ACT relating to the disposition of medical assistance special needs trusts, including the payment rate for nursing facility levels of care.

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

Section 1. Section 633.707, subsections 10 and 11, Code 2003, are amended by striking the subsections.

Sec. 2. Section 633.709, subsection 3, Code 2003, is amended to read as follows:

3. Subsections 1 and 2 shall apply to the following beneficiaries; however, the following amounts indicated shall be applied in lieu of the statewide average charge for nursing facility services:

a. For a beneficiary who meets the medical assistance level of care requirements for services in an intermediate care facility for persons with mental retardation and who either resides in an intermediate care facility for persons with mental retardation or is eligible for medical assistance home and community-based waiver services except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the maximum monthly medical assistance payment rate for services in an intermediate care facility for persons with mental retardation.

~~b. For a beneficiary who meets the medical assistance level of care requirements for hospital-based, medicare-certified, skilled nursing facility care and who either resides in a hospital-based, medicare-certified, skilled nursing facility or is eligible for medical assistance home and community-based waiver services except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the statewide average charge to private-pay patients for hospital-based, medicare-certified, skilled nursing facility care.~~

~~c. For a beneficiary who meets the medical assistance level of care requirements for nonhospital-based, medicare-certified, skilled nursing facility care and who either resides in a nonhospital-based, medicare-certified, skilled nursing facility or is eligible for medical assistance home and community-based waiver services except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the statewide average charge to private-pay patients for nonhospital-based, medicare-certified, skilled nursing facility care.~~

~~d.~~ b. For a beneficiary who meets the medical assistance level of care requirements for services in a psychiatric medical institution for children and who resides in a psychiatric medical institution for children, the applicable rate is the statewide average charge to private-pay patients for psychiatric medical institution for children care.

~~e.~~ c. For a beneficiary who meets the medical assistance level of care requirements for services in a state mental health institute and who either resides in a state mental health institute or is eligible for medical assistance home and community-based waiver services except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the statewide average charge for state mental health institute care.

d. For a beneficiary who meets the medical assistance level of care requirements for services in a nursing facility and is receiving care or is receiving specialized care such as an adult receiving Alzheimer's care, a child receiving skilled nursing facility care, or an adult or child receiving skilled nursing facility care for neurological disorders, the applicable rate is the statewide average charge for nursing facility services for the services or specialized services provided.

Approved May 17, 2004

CHAPTER 1167

PUBLIC HEALTH PROGRAMS AND REGULATION
— MISCELLANEOUS CHANGES

H.F. 2551

AN ACT relating to programs under the authority of the department of public health.

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

Section 1. Section 135.11, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 29. Administer annual grants to county boards of health for the purpose of conducting programs for the testing of private water supply wells, the closing of abandoned private water supply wells, and the renovation or rehabilitation of private water supply wells. Grants shall be funded through moneys transferred to the department from the agriculture management account of the groundwater protection fund pursuant to section 455E.11, subsection 2, paragraph "b", subparagraph (3), subparagraph subdivision (b). The department shall adopt rules relating to the awarding of the grants.

Sec. 2. Section 135.105A, Code 2003, is amended to read as follows:

135.105A LEAD INSPECTOR AND LEAD ABATER TRAINING AND CERTIFICATION ESTABLISHED — CIVIL PENALTY.

1. The department shall establish a program for the training and certification of lead inspectors and lead abaters. The department shall maintain a listing, available to the public and to city and county health departments, of lead inspector and lead abater training programs that have been approved by the department, and of lead inspectors and lead abaters who have successfully completed the training program and have been certified by the department. A person may be certified as both a lead inspector and a lead abater. However, a person who is certified as both a lead inspector and a lead abater shall not provide both inspection and abatement

services at the same site unless a written consent or waiver, following full disclosure by the person, is obtained from the owner or manager of the site.

2. The department shall also establish a program for the training of painting, demolition, and remodeling contractors and those who ~~provide mitigation control services~~ conduct interim controls of lead-based paint hazards. The training shall be completed on a voluntary basis.

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 who are not required to be certified to complete the training course to ensure the use of appropriate and safe ~~mitigation~~ inspection and abatement procedures.

4. 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. All lead abatement and lead inspections, and lead inspector and lead abater training programs, shall be performed and conducted in accordance with work practice standards established by the department. A person shall not conduct a training program for lead inspectors or lead abaters unless the program has been submitted to and approved by the department. A person who violates this section is subject to a civil penalty not to exceed five thousand dollars for each offense.

5. The department shall adopt rules regarding minimum requirements for training programs, certification, work practice standards, and suspension and revocation requirements, and shall implement the training and certification programs. The department shall seek federal funding and shall establish fees in amounts sufficient to defray the cost of the programs. Fees received shall be considered repayment receipts as defined in section 8.2.

Sec. 3. Section 136C.10, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The department may establish and collect a fee related to transporting radioactive material if the fee is used for a purpose related to transporting radioactive material, including enforcement and planning, developing, and maintaining a capability for emergency response. The fees shall be established by rules adopted pursuant to chapter 17A, and shall be deposited into a special fund within the state treasury under the exclusive authority of the department. Amounts deposited in the special fund shall be considered repayment receipts as defined in section 8.2, and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this section. Repayment receipts collected and deposited pursuant to this section that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated in future fiscal years.

Sec. 4. Section 147.153, subsection 2, Code 2003, is amended to read as follows:

2. For a license as an audiologist:

a. Possess a master's degree or its equivalent from an accredited school, college or university with a major in audiology.

b. Show evidence of completion of not less than three hundred hours of supervised clinical training in audiology as a student in an accredited school, college or university.

c. Show evidence of completion of not less than nine months clinical experience under the supervision of a licensed audiologist following the receipt of the master's degree.

d. In lieu of paragraphs "a" through "c", hold a doctoral degree in audiology, or its equivalent, from an accredited school, college, or university which incorporates the academic coursework and the minimum hours of supervised training required by rules adopted by the board.

Sec. 5. Section 148.10, unnumbered paragraphs 2 and 3, Code 2003, are amended by striking the unnumbered paragraphs and inserting in lieu thereof the following:

The temporary certificate shall be issued for a period not to exceed one year and may be

renewed, but a person shall not practice medicine and surgery or osteopathic medicine and surgery in excess of three years while holding a temporary certificate. The fee for this license and the fee for renewal of this license shall be set by the medical examiners. The fees shall be based on the administrative costs of issuing and renewing the licenses.

Sec. 6. Section 148B.5, subsection 3, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

3. Pass an examination, either in electronic or written form, satisfactory to the board and in accordance with rules.

Sec. 7. Section 153.19, subsection 2, Code 2003, is amended to read as follows:

2. A temporary permit shall be issued for a period determined by the board and may be renewed at the discretion of the board. The fee for a temporary permit and the fee for renewal shall be set by the board. The fees shall be based on the administrative costs of issuing and renewing the permits. ~~The board may revoke a temporary permit at any time, without a hearing, for reasons deemed sufficient by the board.~~

Sec. 8. Section 153.19, subsection 3, Code 2003, is amended by striking the subsection.

Sec. 9. Section 155A.3, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 15A. "Electronic signature" means a confidential personalized digital key, code, or number used for secure electronic transmissions which identifies and authenticates the signatory.

Sec. 10. Section 155A.37, subsection 4, Code 2003, is amended to read as follows:

4. The board shall establish a procedure for receiving and investigating complaints of violations of this code. The board shall investigate all complaints of violations. ~~The results of an investigation shall be forwarded to the complainant.~~

Sec. 11. Section 455B.172, subsection 5, Code 2003, is amended to read as follows:

5. The department shall maintain jurisdiction over and regulate the direct discharge to a water of the state. The department shall retain concurrent authority to enforce state standards for private water supply and private sewage disposal facilities within a county, and exercise departmental authority if the county board of health fails to fulfill board responsibilities pursuant to this section.

The department shall by rule adopt standards for the commercial cleaning of private sewage disposal facilities, including but not limited to septic tanks and pits used to collect waste in livestock confinement structures, and for the disposal of waste from the facilities. The standards shall not be in conflict with the state building code. A person shall not commercially clean such facilities or dispose of waste from such facilities unless the person has been issued a license by the department. The department shall be exclusively responsible for adopting the standards and issuing licenses. However, county boards of health shall enforce the standards and licensing requirements established by the department. Application for the license shall be made in the manner provided by the department. Licenses expire one year from the date of issue unless revoked and may be renewed in the manner provided by the department. The license or license renewal fee is twenty-five dollars. A person violating this section or the rules adopted pursuant to this section, is subject to a civil penalty of not more than twenty-five dollars. Each day that a violation continues constitutes a separate offense. However, the total civil penalty shall not exceed five hundred dollars per year. The penalty shall be assessed for a violation occurring ten days following written notice of the violation delivered to the person by the department or a county board of health. Moneys collected by the department or a county board of health from the imposition of civil penalties shall be deposited in the general fund of the state.

~~The commission shall make grants to counties for the purpose of conducting programs for the testing of private, rural water supply wells and for the proper closing of abandoned, rural,~~

~~private water supply wells within the jurisdiction of the county. Grants shall be funded through allocation of the agriculture management account of the groundwater protection fund. Grants awarded, continued, or renewed shall be subject to the following conditions:~~

~~a. An application for a grant shall be in a form and shall contain information as prescribed by rule of the commission.~~

~~b. Nothing in this section shall be construed to prohibit the department from making grants to one or more counties to carry out the purpose of the grant on a joint, multicounty basis.~~

~~c. A grant shall be awarded on an annual basis to cover a fiscal year from July 1 to June 30 of the following calendar year.~~

~~d. The continuation or renewal of a grant shall be contingent upon the county's acceptable performance in carrying out its responsibilities, as determined by the director. The director, subject to approval by the commission, may deny the awarding of a grant or withdraw a grant awarded if, by determination of the director, the county has not carried out the responsibilities for which the grant was awarded, or cannot reasonably be expected to carry out the responsibilities for which the grant would be awarded.~~

Sec. 12. Section 455B.173, subsection 10, Code 2003, is amended by striking the subsection.

Approved May 17, 2004

CHAPTER 1168

PUBLIC HEALTH PROGRAMS AND REGULATION
— ADDITIONAL PROVISIONS

H.F. 2555

AN ACT providing for specified changes regarding programs under the purview of the department of public health, providing a penalty, and making an appropriation.

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

Section 1. NEW SECTION. 135.39A GIFTS AND GRANTS FUND — APPROPRIATION.

The department is authorized to accept gifts, grants, or allotments of funds from any source to be used for programs authorized by this chapter or any other chapter which the department is responsible for administering. A public health gifts and grants fund is created as a separate fund in the state treasury under the control of the department. The fund shall consist of gift or grant moneys obtained from any source, including the federal government. The moneys collected under this section and deposited in the fund are appropriated to the department for the public health purposes specified in the gift or grant. Moneys in the fund shall not be subject to appropriation or expenditure for any other purpose. Notwithstanding section 8.33, moneys in the public health gifts and grants fund at the end of each fiscal year shall not revert to any other fund but shall remain in the public health gifts and grants fund for expenditure for subsequent fiscal years.

Sec. 2. Section 135.103, Code 2003, is amended to read as follows:

135.103 GRANT PROGRAM.

The department shall implement a childhood lead poisoning prevention grant program

which provides ~~matching~~ federal, state, or other funds to local boards of health or cities for the program after standards and requirements for the local program are developed. ~~The state shall provide funds to approved programs on the basis of three dollars for each one dollar designated by the local board of health or city for the program for the first two years of a program, and funds on the basis of one dollar for each one dollar designated by the local board of health or city for the program for the third and subsequent years of the program if such funding is determined necessary by the department for such subsequent years.~~ The department may also use federal, state, or other funds provided for the childhood lead poisoning prevention grant program to purchase environmental and blood testing services from a public health laboratory.

Sec. 3. Section 135.104, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The program by a local board of health or city receiving ~~matching~~ funding for an approved childhood lead poisoning prevention grant program shall include:

Sec. 4. Section 136B.1, subsection 2, Code 2003, is amended to read as follows:

2. The department shall establish programs and adopt rules for the certification of persons who test for the presence of radon gas and radon progeny in ~~buildings and for~~ buildings, the credentialing of persons abating the level of radon in buildings, and standards for radon abatement systems.

Sec. 5. Section 136B.3, Code 2003, is amended to read as follows:

136B.3 TESTING AND REPORTING OF RADON LEVEL.

The department or its duly authorized agents shall from time to time perform inspections and testing of the premises of a property to determine the level at which it is contaminated with radon gas or radon progeny as a spot-check of the validity of measurements or the adequacy of abatement measures performed by persons certified or credentialed under section 136B.1. Following testing the department shall provide the owner of the property with a written report of its results including the concentration of radon gas or radon progeny contamination present, an interpretation of the results, and recommendation of appropriate action. A person certified or credentialed under section 136B.1 shall also be advised of the department's results, discrepancies revealed by the spot-check, actions required of the person, and actions the department intends to take with respect to the person's continued certification or credentialing.

Sec. 6. Section 139A.2, subsection 20, Code Supplement 2003, is amended to read as follows:

20. "Quarantine" means the limitation of freedom of movement of persons or animals that have been exposed to a ~~communicable~~ quarantinable disease within specified limits marked by placards for a period of time equal to the longest usual incubation period of the disease in such manner as to prevent the spread of a ~~communicable~~ quarantinable disease which affects people.

Sec. 7. Section 148.3, subsection 3, Code 2003, is amended to read as follows:

3. Present to the medical examiners satisfactory evidence that the applicant has successfully completed one year of postgraduate internship or resident training in a hospital approved for such training by the medical examiners. Beginning July 1, 2006, an applicant who holds a valid certificate issued by the educational commission for foreign medical graduates shall submit satisfactory evidence of successful completion of two years of such training.

Sec. 8. Section 152.1, subsection 6, paragraph b, Code Supplement 2003, is amended to read as follows:

b. Execute regimen prescribed by a physician, an advanced registered nurse practitioner, or a physician assistant.

Sec. 9. Section 154A.18, Code 2003, is amended to read as follows:

154A.18 DISPLAY OF LICENSE.

A person shall not engage in business as a hearing aid dispenser, or display a sign, or in any other way advertise or claim to be a hearing aid dispenser after January 1, 1975, unless the person holds a valid license issued by the department as provided in this chapter. The license shall be conspicuously posted in the person's ~~office or place of business~~ primary location of practice. ~~The department shall issue duplicate licenses to valid license holders operating more than one office.~~ A license confers upon the holder the right to ~~operate a business~~ practice as a hearing aid dispenser.

Sec. 10. Section 155.9, subsection 3, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The board may also accept the voluntary surrender of such license without necessity of a hearing. In the event of the inability of the regular administrator of a nursing home to perform the administrator's duties or through death or other cause the nursing home is without a licensed administrator, a provisional administrator may be appointed on a temporary basis by the nursing home owner or owners, to perform such duties for a period not to exceed ~~six months~~ one year.

Sec. 11. NEW SECTION. 156.16 UNLICENSED PRACTICE — INJUNCTIONS, CIVIL PENALTIES, CONSENT AGREEMENTS.

1. If the board has reasonable grounds to believe that a person or establishment which is not licensed under this chapter has engaged, or is about to engage, in an act or practice which requires licensure under this chapter, or otherwise violates a provision of this chapter, the board may issue an order to require the unlicensed person or establishment to comply with the provisions of this chapter, and may impose a civil penalty not to exceed one thousand dollars for each violation of this chapter by an unlicensed person or establishment. Each day of a continued violation constitutes a separate offense.

2. The board may conduct an investigation as needed to determine whether probable cause exists to initiate the proceedings described in this section. To aid in such an investigation or in connection with any other proceeding under this section, the board may issue subpoenas to compel witnesses to testify or persons to produce evidence consistent with the provisions of section 272C.6, subsection 3.

3. The board, in determining the amount of a civil penalty to be imposed, may consider any of the following:

a. Whether the amount imposed will be a substantial economic deterrent to the violation.

b. The circumstances leading to the violation.

c. The severity of the violation and the risk of harm to the public.

d. The economic benefits gained by the violator as a result of noncompliance.

e. The interest of the public.

4. The board, before issuing an order under this section, shall provide the person or establishment written notice and the opportunity to request a hearing. The hearing must be requested within thirty days after receipt of the notice and shall be conducted in the same manner as provided for disciplinary proceedings involving a licensee under this chapter.

5. The board may request the attorney general to bring an action to enforce the subpoena.

6. A person or establishment aggrieved by the issuance of an order or the imposition of a civil penalty under this section may seek judicial review pursuant to section 17A.19.

7. If a person or establishment fails to pay a civil penalty within thirty days after entry of an order imposing the civil penalty, or, if the order is stayed pending an appeal, within ten days after the court enters a final judgment in favor of the board, the board shall notify the attorney general. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

8. An action to enforce an order under this section may be joined with an action for an injunction pursuant to section 147.83.

9. The board, in its discretion and in lieu of issuing or enforcing an order or imposing a civil penalty for an initial violation under this section, may enter into a consent agreement with a violator, or with a person who aided or abetted a violator, which acknowledges the violation and the violator's agreement to refrain from any further violation.

Approved May 17, 2004

CHAPTER 1169

CUSTODY AND CARE OF CHILDREN
— AWARDS OF PHYSICAL CARE

H.F. 22

AN ACT relating to the awarding of joint physical care of a child.

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

Section 1. Section 598.41, subsection 5, Code 2003, is amended to read as follows:

5. a. ~~Joint physical care may be in the best interest of the child, but~~ If joint legal custody ~~does not require~~ is awarded to both parents, the court may award joint physical care~~. When the court determines such action would be in the best interest of the child and would preserve the relationship between each parent and the child, joint physical care may be awarded~~ to both joint custodial parents ~~or physical care may be awarded to one joint custodial parent~~ upon the request of either parent. If the court denies the request for joint physical care, the determination shall be accompanied by specific findings of fact and conclusions of law that the awarding of joint physical care is not in the best interest of the child.

b. If joint physical care is not awarded under paragraph "a", and only one joint custodial parent is awarded physical care, the parent responsible for providing physical care shall support the other parent's relationship with the child. Physical care awarded to one parent does not affect the other parent's rights and responsibilities as a joint legal custodian of the child. Rights and responsibilities as joint legal custodian of the child include, but are not limited to, equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.

Approved May 19, 2004

CHAPTER 1170

STATE BUDGET ADJUSTMENTS —
CASH RESERVE AND SENIOR LIVING TRUST FUNDS

H.F. 2039

AN ACT relating to state budget provisions involving the ending balance in the general fund of the state and the state general fund expenditure limitation by transferring funds from the cash reserve fund and by revising the percentage amount used for the limitation, providing for a standing limited appropriation to the senior living trust fund, and including effective date and applicability provisions.

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

Section 1. CASH RESERVE TRANSFER TO GENERAL FUND. Notwithstanding any conflicting provisions of section 8.56, there is transferred from the cash reserve fund created in section 8.56, to the general fund of the state for the fiscal year beginning July 1, 2002, and ending June 30, 2003, the following amount:

. . . . . $ 45,828,000

**Sec. 2. Section 8.54, subsections 2 and 3, Code 2003, are amended to read as follows:*

2. There is created a state general fund expenditure limitation for each fiscal year ~~beginning on or after July 1, 1993~~, calculated as provided in this section.

*3. Except as otherwise provided in this section, the state general fund expenditure limitation for a fiscal year shall be ~~ninety-nine~~ ninety-eight percent of the adjusted revenue estimate.**

Sec. 3. Section 8.57, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. a. There is appropriated from the surplus existing in the general fund of the state at the conclusion of the fiscal year beginning July 1, 2005, and ending June 30, 2006, and at the conclusion of each succeeding fiscal year for distribution to the senior living trust fund, an amount equal to one percent of the adjusted revenue estimate for the current fiscal year. However, if the amount of the surplus existing in the general fund of the state at the conclusion of a fiscal year is less than two percent of the adjusted revenue estimate for that fiscal year, the amount of the appropriation made in this paragraph shall be equal to fifty percent of the surplus amount. The appropriation made in this paragraph shall be distributed to the senior living trust fund in the succeeding fiscal year. For the purposes of this subsection, "surplus" means the same as defined in subsection 1, paragraph "b".

b. The appropriation made in paragraph "a" shall be made before the appropriations are made pursuant to subsections 1, 2, and 3, of the surplus existing in the general fund of the state at the conclusion of the fiscal year beginning July 1, 2005, and ending June 30, 2006, and each succeeding fiscal year.

c. The appropriation made in paragraph "a" shall continue until the aggregate of the appropriations made or transferred to the senior living trust fund pursuant to paragraph "a" of this subsection and section 8.55, subsection 2, paragraph "c", is equal to one hundred eighteen million dollars.

d. The aggregate amount of the appropriations to be transferred from the Iowa economic emergency fund to the senior living trust fund pursuant to section 8.55, subsection 2, paragraph "c", shall be reduced by the appropriations made pursuant to paragraph "a" of this subsection.

e. This subsection is repealed when the aggregate amount of appropriations specified in paragraph "c" has been distributed or transferred to the senior living trust fund. The director of the department of management shall notify the Iowa Code editor when the aggregate amount has been distributed or transferred.

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* Item veto; see message at end of the Act

Sec. 4. EFFECTIVE DATE — APPLICABILITY.

1. Section 1 of this Act, providing a cash reserve transfer to the general fund of the state, being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to June 30, 2003.

*2. *Section 2 of this Act, amending section 8.54, takes effect December 15, 2004, or the date the revenue estimating conference agrees to the revenue estimate for the fiscal year beginning July 1, 2005, and ending June 30, 2006, that is required to be used by the governor and the general assembly for preparation and passage of the state budget for that fiscal year pursuant to section 8.22A, subsections 3 and 4, whichever date is earlier. Section 2 of this Act is first applicable to the expenditure limitation calculated in accordance with section 8.54 for the fiscal year beginning July 1, 2005, and ending June 30, 2006.*

Approved February 12, 2004, with exceptions noted.

THOMAS J. VILSACK, *Governor*

Dear Speaker Rants:

I hereby transmit House File 2039, an Act relating to state budget provisions involving the ending balance in the general fund of the state and the state general fund expenditure limitation by transferring funds from the cash reserve fund and by revising the percentage amount used for the limitation, providing for a standing limited appropriation to the senior living trust fund, and including effective date and applicability provisions.

House File 2039 is approved on this date with the following exceptions, which I hereby disapprove:

I am unable to approve the item designated as Section 2 in its entirety. This section establishes a 98 percent expenditure limitation for the state general fund, which will compromise the state's ability to protect Iowans' priorities and fund essential services. Putting an additional 1 percent of the state's budget in a savings account will shortchange our commitment to excellence in education, impede our ability to provide basic health care for seniors and veterans, and jeopardize efforts to ensure the safety and security of all Iowans. Furthermore, the state currently maintains healthy reserve accounts with over $160 million in reserves following the appropriation of $45.8 million from the cash reserve fund. I am disappointed that legislative leadership rejected my efforts to find a compromise on this issue. I am more than willing to work with you on establishing a 98 percent expenditure limitation if it applies to a larger budget where priority services would not be compromised and if the income generated from the interest on the one percent were devoted to early childhood education.

I am unable to approve the item designated as Section 4, subsection 2 in its entirety. This subsection establishes the effective date for Section 2 of this act. By vetoing Section 2, this subsection is no longer relevant.

For the above reasons, I respectfully disapprove these items in accordance with Article 3 Section 16 of the Constitution of the State of Iowa. All other items in House File 2039 are hereby approved as of this date.

Sincerely,
THOMAS J. VILSACK, *Governor*

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* Item veto; see message at end of the Act

CHAPTER 1171

BIRTH CERTIFICATE FEES — APPROPRIATION

S.F. 2059

AN ACT relating to and making appropriations of birth certificate fees for the birth defects registry and child abuse prevention programs, and providing an effective date.

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

Section 1. Section 144.13A, subsection 4, paragraph a, Code Supplement 2003, is amended to read as follows:

a. ~~It is the intent of the general assembly that the funds generated from the registration fees be appropriated and used as follows:~~

~~(1)~~ Beginning July 1, 2003, and ending June 30, 2005, ten dollars of each registration fee is appropriated and shall be used for primary and secondary child abuse prevention programs pursuant to section 235A.1, and five dollars of each registration fee is appropriated and shall be used for the birth defects institute central registry established pursuant to section 136A.6.

~~(2)~~ Beginning July 1, 2005, ten dollars of each registration fee is appropriated and shall be used for primary and secondary child abuse prevention programs pursuant to section 235A.1, and ten dollars of each registration fee is appropriated and shall be used for the birth defects institute central registry established pursuant to section 136A.6.

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

Approved March 18, 2004

CHAPTER 1172

CASH RESERVE, INFRASTRUCTURE,
AND ENVIRONMENT FIRST FUNDS — TRANSFERS

H.F. 2538

AN ACT providing a transfer from the cash reserve fund to the rebuild Iowa infrastructure fund for purposes of the standing appropriation to the environment first fund and providing an effective date.

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

Section 1. TRANSFER FOR ENVIRONMENT FIRST FUND. Notwithstanding any conflicting provisions of section 8.56, there is transferred from the cash reserve fund created in section 8.56, to the rebuild Iowa infrastructure fund created in section 8.57 for the fiscal year beginning July 1, 2003, and ending June 30, 2004, the following amount for the purpose designated:

To be used for the appropriation made in section 8.57A, subsection 4, from the rebuild Iowa infrastructure fund to the environment first fund created in section 8.57A:

. . . . . $ 17,500,000

Sec. 2. RACETRACK TAX PROCEEDS — CASH RESERVE FUND TRANSFER. If a tax on the adjusted gross receipts from gambling games at racetrack enclosures conducting gambling games is enacted by the Eightieth General Assembly, 2004 Regular Session, that is applicable to the period beginning July 1, 2002, and ending June 30, 2004, from the tax proceeds which are credited to the rebuild Iowa infrastructure fund, $17,500,000 shall be transferred to the cash reserve fund.

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

Approved April 2, 2004

CHAPTER 1173

WASTE TIRE MANAGEMENT FUND APPROPRIATIONS

H.F. 2549

AN ACT relating to expenditures from the waste tire management fund.

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

Section 1. Section 455D.11C, subsections 2 and 3, Code 2003, are amended by striking the subsections and inserting in lieu thereof the following:

2. Moneys in the waste tire management fund are appropriated and shall be used for the following purposes:

a. Thirty percent of the moneys shall be used for all of the following positions:

(1) One full-time equivalent position for the administration of permits and registrations for tire processing, storage, and hauling activities, and tire program initiatives.

(2) One and one-half full-time equivalent positions for waste tire-related compliance checks and inspections. The full-time equivalent positions shall be divided equally between the field offices in the state.

b. Ten percent of the moneys shall be used for a public education and awareness initiative related to the proper tire disposal options and environmental and health hazards posed by improper tire storage.

c. Thirty percent of the moneys shall be used for market development initiatives for waste tires.

d. Thirty percent of the moneys shall be used for waste tire stockpile abatement initiatives which would require a cost-share agreement with the landowner.

Sec. 2. Sections 455D.11D, 455D.11E, 455D.11F, and 455D.11H, Code 2003, are repealed.

Sec. 3. UNENCUMBERED OR UNOBLIGATED MONEYS — APPROPRIATION. On July 1, 2004, any unencumbered or unobligated moneys that were awarded from the waste tire management fund pursuant to section 455D.11C, subsection 2, Code 2003, shall revert to the waste tire management fund and shall be reallocated and appropriated pursuant to section 455D.11C, subsection 2, paragraph "a", as amended in this Act. Commencing with the fiscal year ending June 30, 2005, and each subsequent fiscal year through June 30, 2007, any unencumbered or unobligated moneys that were awarded from the waste tire management fund

pursuant to section 321.52A, subsection 2, shall remain in the waste tire management fund and shall be used as appropriated pursuant to section 455D.11C, subsection 2, as amended in this Act.

Approved May 14, 2004

CHAPTER 1174

FEDERAL BLOCK GRANT APPROPRIATIONS

S.F. 2288

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, 2004, and ending September 30, 2005, the following amount:

. . . . . $ 12,915,707

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 the state fiscal year beginning July 1, 2003, 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.

2. At least 20 percent of the funds remaining from the appropriation made in subsection 1 shall be allocated for prevention programs.

3. In implementing the federal substance abuse prevention and treatment block grant under 42 U.S.C., chapter 6A, subchapter XVII, and any other applicable provisions of the federal Public Health Service Act under 42 U.S.C., chapter 6A, subchapter III-A, the department shall apply the provisions of Pub. L. No. 106-310, § 3305, as codified in 42 U.S.C. § 300x-65, relating to services under such federal law being provided by religious and other nongovernmental organizations.

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, 2004, and ending September 30, 2005, the following amount:

. . . . . $ 3,704,898

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 department 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.

d. Of the amount allocated to eligible services providers under paragraph "c", 70 percent shall be distributed to the state's accredited community mental health centers established or designated by counties in accordance with law or administrative rule. If a county has not established or designated a community mental health center and has received a waiver from the mental health and developmental disabilities commission, the mental health services provider designated by that county is eligible to receive funding distributed pursuant to this paragraph in lieu of a community mental health center. The funding distributed shall be used by recipients of the funding for the purpose of developing and providing evidence-based practices and emergency services to adults with a serious mental illness and children with a serious emotional disturbance. The distribution amounts shall be announced at the beginning of the federal fiscal year and distributed on a quarterly basis according to the formulas used in previous fiscal years. Recipients shall submit quarterly reports containing data consistent with the performance measures approved by the federal substance abuse and mental health services administration.

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 department 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 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, 2004, and ending September 30, 2005, the following amount:

. . . . . $ 7,115,676

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, $300,291 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 disabled 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, 2004, and ending September 30, 2005, the following amount:

. . . . . $ 1,505,162

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 the block grant award shall be allocated for services to victims of sex offenses and for rape prevention education.

3. After deducting the funds allocated in subsections 1 and 2, an amount not exceeding $94,670 of the remaining funds appropriated in subsection 1 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 2010/healthy Iowans 2010 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 an amount not exceeding $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 by section 8.41 to the office of the governor for the drug policy coordinator for the federal fiscal year beginning October 1, 2004, and ending September 30, 2005, the following amount:

. . . . . $ 5,432,952

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, section 3751, which provides for the drug control and system improvement grant program. The drug policy 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 10 percent of the funds appropriated in subsection 1 shall be used by the drug policy coordinator for administrative expenses. From the funds set aside by this subsection for administrative expenses, the drug policy 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 by section 8.41 to the department of justice for the federal fiscal year beginning October 1, 2004, and ending September 30, 2005, the following amount:

. . . . . $ 1,614,000

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, section 3796gg-1, which provides for grants to combat violent crimes against women. The department of justice 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 department of justice for administrative expenses. From the funds set aside by this subsection for administrative expenses, the department 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. 7. LOCAL LAW ENFORCEMENT BLOCK GRANT APPROPRIATION.

1. There is appropriated from the fund created by section 8.41 to the office of the governor for the drug policy coordinator for the federal fiscal year beginning October 1, 2004, and ending September 30, 2005, the following amount:

. . . . . $ 150,000

Funds appropriated in this subsection are the funds anticipated to be received from the federal government for the designated federal fiscal year under annual federal appropriations which provide for grants to reduce crime and improve public safety. The drug policy 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 policy coordinator for administrative expenses. From the funds set aside by this subsection for administrative expenses, the drug policy 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. 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, 2004, and ending September 30, 2005, the following amount:

. . . . . $ 6,955,510

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. 9. COMMUNITY DEVELOPMENT APPROPRIATIONS.

1. There is appropriated from the fund created by section 8.41 to the Iowa department of economic development for the federal fiscal year beginning October 1, 2004, and ending September 30, 2005, the following amount:

. . . . . $ 30,981,000

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 Iowa 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 $1,438,520 for the federal fiscal year beginning October 1, 2004, shall be used by the Iowa department of economic development for administrative expenses for the community development block grant. The total amount used for administrative expenses includes $719,260 for the federal fiscal year beginning October 1, 2004, of funds appropriated in subsection 1 and a matching contribution from the state equal to $719,260 from the appropriation of state funds for the community development block grant and state appropriations for related activities of the Iowa department of economic development. From the funds set aside for administrative expenses by this subsection, the Iowa 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. 10. 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, 2004, and ending September 30, 2005, the following amount:

. . . . . $ 32,792,887

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. Up to 15 percent of the amount appropriated in this section that is actually received shall be used for residential weatherization or other related home repairs for low-income households. Of this allocation amount, not more than 10 percent may be used for administrative expenses.

3. After subtracting the allocation in subsection 2, up to $2,645,721 is allocated for administrative expenses of the low-income home energy assistance program of which $290,000 is allocated for administrative expenses of the division. The costs of auditing the use and administration of the portion of the appropriation in this section that is retained by the state shall be paid from the amount allocated in this subsection to the division. The auditor of state shall bill the division for the audit costs.

4. The remainder of the appropriation in this section following the allocations made in subsections 2 and 3, shall be used to help eligible households as defined in 42 U.S.C., chapter 94, subchapter II, to meet home energy costs.

5. Not more than 10 percent of the amount appropriated in this section that is actually received may be carried forward for use in the succeeding federal fiscal year.

6. Expenditures for assessment and resolution of energy problems shall be limited to 5 percent of the amount appropriated in this section that is actually received.

Sec. 11. 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, 2004, and ending September 30, 2005, the following amount:

..... $ 17,216,209

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 $1,094,737 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, 2004, for the following programs within the department of human services:

a. Field operations:

..... $ 6,547,743

b. Child and family services:

..... $ 979,361

c. Local administrative costs and other local services:

..... $ 694,407

d. Volunteers:

..... $ 75,893

e. Community-based services:

..... $ 87,275

f. MH/MR/DD/BI community services (local purchase):

..... $ 7,736,793

Sec. 12. 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. 13. PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS.

1. 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, for the federal fiscal year beginning October 1, 2004, and ending September 30, 2005, 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 have chronic mental illness and are homeless or who are subject to a significant probability of becoming homeless shall do all of the following:

a. Provide community mental health services, diagnostic services, crisis intervention services, and habilitation and rehabilitation services.

b. Refer clients to medical facilities for necessary hospital services, and to entities that provide primary health services and substance abuse services.

c. Provide appropriate training to persons who provide services to persons targeted by the grant.

d. Provide case management to homeless persons.

e. Provide supportive and supervisory services to certain homeless persons living in residential settings which are not otherwise supported.

2. 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.

3. If the department has data indicating that a geographic area has a substantial number of persons with mental illness who are homeless and are not being served by an existing grantee for that area under the formula grant and the existing grantee has expressed a desire to no longer provide services or the grantee's contract was terminated by the department for nonperformance, the department shall issue a request for proposals to replace the grantee. Otherwise, the department shall maximize available funding by continuing to contract to the extent possible with those persons who are grantees as of the effective date of this subsection. The department shall issue a request for proposals if additional funding becomes available for expansion to persons who are not being served and it is not possible to utilize existing grantees.

Sec. 14. CHILD CARE AND DEVELOPMENT APPROPRIATION. 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, 2004, and ending September 30, 2005, the following amount:

. . . . . $ 42,310,187

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 block grant. 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.

If the amount of the child care and development block grant to be received exceeds the amount appropriated in this section and the excess amount is sufficient to fund both the purposes identified by the department for the excess amount and the purpose described in this sentence, notwithstanding contrary provisions of 2004 Iowa Acts, Senate File 2298,[1] if enacted, the department shall, to the extent sufficient funds are available, set child care provider reimbursement rates based on the most recently completed rate reimbursement survey. Moneys appropriated in this section that remain unencumbered or unobligated at the close of the fiscal year shall revert to be available for appropriation for purposes of the child care and development block grant in the succeeding fiscal year.

Sec. 15. 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

[1] Chapter 1175, §122 herein

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, and the director of the legislative services agency 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 and ranking members notified shall be allowed at least two weeks to review and comment on the proposed action before the action is taken.

Sec. 16. 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, 9, and 11 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 actual funds received from the federal government from block grants exceed the amount appropriated in section 10 of this Act for the low-income home energy assistance program, not more than 15 percent of the excess may be allocated to the low-income residential weatherization program and not more than 5 percent of the excess may be used for administrative costs.

3. If funds received from the federal government from community services block grants exceed the amount appropriated in section 8 of this Act, 100 percent of the excess is allocated to the community services block grant program.

Sec. 17. 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, 2004, and ending June 30, 2005, 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. 18. DEPARTMENT OF ADMINISTRATIVE SERVICES. Federal grants, receipts, and funds and other nonstate grants, receipts, and funds, available in whole or in part of the fiscal year beginning July 1, 2004, and ending June 30, 2005, are appropriated to the department of administrative services for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

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, 2004, and ending June 30, 2005, 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.

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, 2004, and ending June 30, 2005, 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, 2004, and ending June 30, 2005, 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.

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, 2004, and ending June 30, 2005, 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.

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, 2004, and ending June 30, 2005, 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.

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, 2004, and ending June 30, 2005, 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, 2004, and ending June 30, 2005, 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.

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, 2004, and ending June 30, 2005, 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.

Sec. 27. IOWA 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, 2004, and ending June 30, 2005, are appropriated to the Iowa 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.

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, 2004, and ending June 30, 2005, 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.

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, 2004, and ending June 30, 2005, 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.

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, 2004, and ending June 30, 2005, 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. 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, 2004, and ending June 30, 2005, 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. 32. GOVERNOR — DRUG POLICY 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, 2004, and ending June 30, 2005, are appropriated to the office of the governor for the drug policy coordinator for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 33. 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, 2004, and ending June 30, 2005, 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.

Sec. 34. 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, 2004, and ending June 30, 2005, 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.

Sec. 35. 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, 2004, and ending June 30, 2005, 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.

Sec. 36. JUDICIAL BRANCH. 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, 2004, and ending June 30, 2005, are appropriated to the judicial branch for the purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 37. 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, 2004, and ending June 30, 2005, 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.

Sec. 38. 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, 2004, and ending June 30, 2005, 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. 39. 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, 2004, and ending June 30, 2005, 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. 40. 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, 2004, and ending June 30, 2005, 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.

Sec. 41. 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, 2004, and ending June 30, 2005, 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. 42. 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, 2004, and ending June 30, 2005, 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.

Sec. 43. 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, 2004, and ending June 30, 2005, 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. 44. 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, 2004, and ending June 30, 2005, 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.

Sec. 45. 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, 2004, and ending June 30, 2005, 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.

Sec. 46. 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, 2004, and ending June 30, 2005, 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.

Sec. 47. DEPARTMENT OF REVENUE. 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, 2004, and ending June 30, 2005, are appropriated to the department of revenue for the

purposes set forth in the grants, receipts, or conditions accompanying the receipt of the funds, unless otherwise provided by law.

Sec. 48. 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, 2004, and ending June 30, 2005, 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. 49. 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, 2004, and ending June 30, 2005, 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. 50. 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, 2004, and ending June 30, 2005, 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. 51. 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, 2004, and ending June 30, 2005, 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.

Sec. 52. 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, 2004, and ending June 30, 2005, 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. 53. 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, 2004, and ending June 30, 2005, 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.

Sec. 54. 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, 2004, and ending June 30, 2005, 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. 55. 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, 2004, and ending June 30, 2005, 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.

Approved May 17, 2004

CHAPTER 1175

GOVERNMENT FUNDING, ADMINISTRATION, AND REGULATION
— APPROPRIATIONS AND MISCELLANEOUS CHANGES

S.F. 2298

AN ACT making, reducing, and transferring appropriations, providing for government and economic development-related taxation, surcharge, and fee matters, providing for other properly related matters, and including penalty and effective and retroactive and other applicability date provisions.

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

DIVISION I
ADMINISTRATION AND REGULATION

Section 1. DEPARTMENT OF ADMINISTRATIVE SERVICES. There is appropriated from the general fund of the state to the department of administrative services for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

. . . . . $ 4,616,351
. . . . . FTEs 233.95

UTILITY COSTS

2. For the payment of utility costs:

. . . . . $ 2,576,000

Notwithstanding section 8.33, any excess funds appropriated for utility costs in this subsection shall not revert to the general fund of the state at the end of the fiscal year but shall remain available for expenditure for the purposes of this subsection during the fiscal year beginning July 1, 2005.

3. For distribution to other departments:

. . . . . $ 10,802,911

Moneys appropriated in this subsection shall be separately accounted for in a distribution account and shall be distributed to other governmental entities based upon formulas established by the department to pay for services provided governmental entities by the department as described in chapter 8A.

4. 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.

5. Any funds and premiums collected by the department for workers' compensation shall be segregated into a separate workers' compensation fund in the state treasury to be used for payment of state employees' workers' compensation claims and administrative costs. 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. 2. REVOLVING FUNDS.

1. There is appropriated from the general fund of the state to the department of administrative services for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For start-up funding for revolving funds under the control of the department of administrative services and for salaries, support, maintenance, and miscellaneous purposes:

. . . . . $ 1,889,610

*Notwithstanding any provision of this section to the contrary, the department of administrative services shall deposit $1,889,610 in the general fund of the state from moneys in departmental revolving funds and internal service funds at the end of the fiscal year.**

2. There is appropriated to the department of administrative services for the fiscal year beginning July 1, 2004, and ending June 30, 2005, from the revolving funds designated in chapter 8A and from internal service funds created by the department, such amounts as the department deems necessary for the operation of the department consistent with the requirements of chapter 8A.

Sec. 3. READY TO WORK PROGRAM COORDINATOR. There is appropriated from the workers' compensation trust fund to the department of administrative services for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For the salary, support, and miscellaneous expenses for the ready to work program and coordinator:

..... $ 89,416

Sec. 4. FUNDING FOR IOWACCESS.

1. Notwithstanding section 321A.3, subsection 1, for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the first $1,000,000 collected and transferred by the department of transportation to the treasurer of state with respect to the fees for transactions involving the furnishing of a certified abstract of a vehicle operating record under section 321A.3, subsection 1, shall be transferred to the IowAccess revolving fund established by section 8A.224 and administered by the department of administrative services for the purposes of developing, implementing, maintaining, and expanding electronic access to government records as provided by law.

2. All fees collected with respect to transactions involving IowAccess shall be deposited in the IowAccess revolving fund and shall be used only for the support of IowAccess projects.

Sec. 5. STATE EMPLOYEE HEALTH INSURANCE ADMINISTRATION CHARGE. For the fiscal year beginning July 1, 2004, and ending June 30, 2005, the monthly per contract administrative charge which may be assessed by the department of administrative services shall be $2.00 per contract on all health insurance plans administered by the department.

Sec. 6. 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, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 1,092,755
..... FTEs 106.30

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 services agency of the additional full-time equivalent positions retained.

Sec. 7. 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, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, for the purposes designated:

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* Item veto; see message at end of the Act

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

	$	411,296
	FTEs	6.00

Sec. 8. 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, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, for the purposes designated:

1. ALCOHOLIC BEVERAGES DIVISION

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

	$	1,876,497
	FTEs	33.00

2. BANKING DIVISION

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

	$	6,344,805
	FTEs	65.00

3. CREDIT UNION DIVISION

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

	$	1,377,364
	FTEs	19.00

4. INSURANCE DIVISION

a. For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

	$	3,850,498
	FTEs	95.00

b. 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:

(1) Notifies the department of management, the legislative services agency, and the legislative fiscal committee of the need for the expenditures.

(2) Files with each of the entities named in subparagraph (1) the legislative and regulatory justification for the expenditures, along with an estimate of the expenditures.

c. The insurance division shall allocate $10,000 from the examination receipts for the payment of its fees to the national council of insurance legislators.

5. PROFESSIONAL LICENSING AND REGULATION DIVISION

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

	$	766,766
	FTEs	12.00

6. UTILITIES DIVISION

a. For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

	$	6,877,319
	FTEs	79.00

b. 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 and the expenditures are fully reimbursable. Before the division expends or encumbers an amount in excess of the funds budgeted for regulation, the division shall first do both of the following:

(1) Notify the department of management, the legislative services agency, and the legislative fiscal committee of the need for the expenditures.

(2) File with each of the entities named in subparagraph (1) the legislative and regulatory justification for the expenditures, along with an estimate of the expenditures.

7. CHARGES — TRAVEL

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, and any state-assessed indirect costs determined by the department of administrative services. The director of the department of commerce shall review on a quarterly basis all out-of-state travel for the previous quarter for officers and employees of each division of the department if the travel is not already authorized by the executive council.

**Sec. 9. ALCOHOLIC BEVERAGES DIVISION — STATE LIQUOR WAREHOUSE FUNCTIONS. Notwithstanding sections 7J.1 and 123.20, subsection 4, and any other applicable provision of law, the alcoholic beverages division of the department of commerce shall not add full-time equivalent positions for purposes of the state assuming the state liquor warehouse functions performed by a private contractor as of April 1, 2004. The division shall issue a request for proposals or otherwise utilize a competitive process to select a successor private contractor to perform the state liquor warehouse functions. **

**Sec. 10. IOWA HEALTH INSURANCE VALUE INITIATIVE. If 2004 Iowa Acts, House File 2521, is enacted, there is appropriated from the general fund of the state to the department of commerce for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:*

For the insurance division to conduct a study regarding the costs of health insurance premiums for businesses and individual customers in this state, in accordance with 2004 Iowa Acts, House File 2521:

..... *$ 150,000**

Sec. 11. DEPARTMENT OF COMMERCE — PROFESSIONAL LICENSING AND REGULATION. There is appropriated from the housing improvement fund of the Iowa department of economic development to the division of professional licensing and regulation of the department of commerce for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, and miscellaneous purposes:

..... $ 62,317

Sec. 12. 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, 2004, and ending June 30, 2005, 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:

..... $ 1,536,949
..... FTEs 19.25

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:

..... $ 343,149
..... FTEs 8.00

* Item veto; see message at end of the Act

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

..... $ 136,458
..... FTEs 3.00

4. NATIONAL GOVERNORS ASSOCIATION

For payment of Iowa's membership in the national governors association:

..... $ 64,393

5. STATE-FEDERAL RELATIONS

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 111,236
..... FTEs 2.00

Sec. 13. GOVERNOR'S OFFICE OF DRUG CONTROL POLICY.

1. There is appropriated from the general fund of the state to the governor's office of drug control policy for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, and miscellaneous purposes including statewide coordination of the drug abuse resistance education (D.A.R.E.) programs or similar programs, and for not more than the following full-time equivalent positions:

..... $ 254,386
..... FTEs 9.00

2. The governor's office of drug control policy, in consultation with the Iowa department of public health, and after discussion and collaboration with all interested agencies, shall coordinate substance abuse treatment and prevention efforts in order to avoid duplication of services.

Sec. 14. 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, 2004, and ending June 30, 2005, 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, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 264,102
..... FTEs 7.00

2. DEAF SERVICES DIVISION

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 362,710
..... FTEs 6.00

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, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 184,971
..... FTEs 3.50

4. LATINO AFFAIRS DIVISION

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 166,718
..... FTEs 3.00

5. STATUS OF WOMEN DIVISION

For salaries, support, maintenance, and miscellaneous purposes, including the Iowans in transition program, and the domestic violence and sexual assault-related grants, and for not more than the following full-time equivalent positions:

.....	$	329,530
.....	FTEs	3.00

6. STATUS OF AFRICAN-AMERICANS DIVISION

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	118,296
.....	FTEs	2.00

7. CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	403,774
.....	FTEs	6.96

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.

8. SHARED STAFF. The divisions of the department of human rights shall retain their individual administrators, but shall share staff to the greatest extent possible.

Sec. 15. 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, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, for the purposes designated:

1. ADMINISTRATION DIVISION

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	1,489,090
.....	FTEs	32.25

2. ADMINISTRATIVE HEARINGS DIVISION

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	614,114
.....	FTEs	23.00

3. INVESTIGATIONS DIVISION

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	1,407,295
.....	FTEs	41.00

4. HEALTH FACILITIES DIVISION

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	2,276,836
.....	FTEs	108.75

5. EMPLOYMENT APPEAL BOARD

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	35,215
.....	FTEs	15.00

The employment appeal board shall be reimbursed by the labor services division of the department of workforce development 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.

6. CHILD ADVOCACY BOARD

For foster care review and the court appointed special advocate program, including salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 1,952,780
..... FTEs 38.99

a. The department of human services, in coordination with the child advocacy 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 child advocacy board, administrative review costs.

b. The court appointed special advocate program shall investigate and develop opportunities for expanding fund-raising for the program.

c. Administrative costs charged by the department of inspections and appeals for items funded under this subsection shall not exceed 4 percent of the amount appropriated in this subsection.

Sec. 16. RACING AND GAMING COMMISSION.

1. 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, 2004, and ending June 30, 2005, 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 regulation of parimutuel racetracks, and for not more than the following full-time equivalent positions:

..... $ 2,201,453
..... FTEs 27.53

Of the funds appropriated in this subsection, $85,576 shall be used to conduct an extended harness racing season.

2. 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, 2004, and ending June 30, 2005, 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:

..... $ 1,806,048
..... FTEs 30.22

Sec. 17. USE TAX APPROPRIATION. There is appropriated from the use tax receipts collected pursuant to sections 423.26 and 423.27 as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, sections 119 and 120 prior to their deposit in the road use tax fund pursuant to section 423.43 as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 136, to the administrative hearings division of the department of inspections and appeals for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, for the purposes designated:

For salaries, support, maintenance, and miscellaneous purposes:

..... $ 1,325,632

Sec. 18. 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, 2004,

and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. GENERAL OFFICE — STATEWIDE PROPERTY TAX ADMINISTRATION

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 2,137,824
..... FTEs 32.00

2. ENTERPRISE RESOURCE PLANNING

If funding is provided for the redesign of the enterprise resource planning budget system for the fiscal year beginning July 1, 2004, then there is appropriated from the general fund of the state to the department of management for the fiscal year beginning July 1, 2004, and ending June 30, 2005, 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 of the enterprise resource planning system, and for not more than the following full-time equivalent positions:

..... $ 57,435
..... FTEs 1.00

3. SALARY MODEL ADMINISTRATOR

For salary, support, and miscellaneous purposes of the salary model administrator, and for not more than the following full-time equivalent positions:

..... $ 123,598
..... FTEs 1.00

The salary model administrator shall work in conjunction with the legislative services agency 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 department of revenue, the department of administrative services, the five institutions under the jurisdiction of the state board of regents, the judicial district departments of correctional services, and the state department of transportation shall provide salary data to the department of management and the legislative services agency to operate the state's salary model. The format and frequency of provision of the salary data shall be determined by the department of management and the legislative services agency. 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.

4. FEDERAL OVERRECOVERY

For providing matching funds for information technology services provided by the department of administrative services to the department of human services:

..... $ 3,000,000

Sec. 19. 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, 2004, and ending June 30, 2005, 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. 20. 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, 2004, and ending June 30, 2005, 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, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	660,233
.....	FTEs	10.00

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, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	1,615,893
.....	FTEs	32.00

Sec. 21. SECRETARY OF STATE FILING FEES REFUND. Notwithstanding the obligation to collect fees pursuant to the provisions of section 490.122, subsection 1, paragraphs "a" and "s", and section 504A.85, subsections 1 and 9, for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the secretary of state may refund these fees to the filer pursuant to rules established by the secretary of state. The decision of the secretary of state not to issue a refund under rules established by the secretary of state is final and not subject to review pursuant to the provisions of the Iowa administrative procedure Act.

Sec. 22. 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, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	800,564
.....	FTEs	28.80

The office of treasurer of state shall supply clerical and secretarial support for the executive council.

Sec. 23. IPERS — GENERAL OFFICE. There is appropriated from the Iowa public employees' retirement system fund to the Iowa public employees' retirement system for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, and other operational purposes to pay the costs of the Iowa public employees' retirement system, and for not more than the following full-time equivalent positions:

.....	$	8,879,900
.....	FTEs	90.13

Sec. 24. DEPARTMENT OF REVENUE. There is appropriated from the general fund of the state to the department of revenue for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. COMPLIANCE — INTERNAL RESOURCES MANAGEMENT — STATEWIDE PROPERTY TAX ADMINISTRATION

For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	24,776,391
.....	FTEs	389.66

Of the funds appropriated pursuant to this subsection, $400,000 shall be used to pay the

direct costs of compliance related to the collection and distribution of local sales and services taxes imposed pursuant to chapters 422B and 422E or successor chapters.

The director of revenue shall prepare and issue a state appraisal manual and the revisions to the state appraisal manual as provided in section 421.17, subsection 17, without cost to a city or county.

2. COLLECTION COSTS AND FEES

For payment of collection costs and fees pursuant to section 422.26:

. . . . . $ 27,462

**3. STATE TAX IMPLEMENTATION COMMITTEE*

To administer the state tax implementation committee and to purchase data deemed necessary by the committee:

. . . . . *$ 50,000**

Sec. 25. MOTOR VEHICLE FUEL TAX APPROPRIATION. There is appropriated from the motor fuel tax fund created by section 452A.77 to the department of revenue for the fiscal year beginning July 1, 2004, and ending June 30, 2005, 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:

. . . . . $ 1,181,082

Sec. 26. Section 7J.1, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 7A. EXECUTIVE COUNCIL FLEXIBILITY. Notwithstanding any provision of law to the contrary, a charter agency shall not be required to obtain executive council approval for claims for expenses of attending conventions, out-of-state travel requests, and memberships in professional organizations.

Sec. 27. Section 8.63, subsection 5, Code Supplement 2003, is amended to read as follows:

5. A state agency seeking a loan from the innovations fund shall complete an application form designed by the state innovations fund committee which employs, for projects, a return on investment concept and demonstrates how state general fund expenditures will be reduced or how state general fund revenues will increase, or for enterprises, a business plan that shows how the enterprise will meet customer needs, provide value to customers, and demonstrate financial viability. Minimum loan requirements for state agency requests shall be determined by the committee. As an incentive to increase state general fund revenues, an agency may retain up to fifty percent of savings realized in connection with a project loan from the innovations fund. The amount retained shall be determined by the innovations fund committee. Savings realized but not retained by an agency shall not be deposited in the innovations fund.

Sec. 28. Section 8.63, subsection 6, paragraph b, Code Supplement 2003, is amended to read as follows:

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

Sec. 29. Section 543B.14, Code 2003, is amended to read as follows:

543B.14 FEES AND EXPENSES — FUNDS.

All fees and charges collected by the real estate commission under this chapter shall be paid

* Item veto; see message at end of the Act

into the general fund of the state, except that ~~the equivalent of the greater of ten dollars or forty percent per year of the fees for~~ fifty dollars from each real estate salesperson's license~~, plus the equivalent of the greater of ten dollars or twenty-five percent per year of the fees for~~ and each broker's license shall be paid into the Iowa real estate education fund created in section 543B.54. All expenses incurred by the commission under this chapter, including compensation of staff assigned to the commission, shall be paid from funds appropriated for those purposes, except for expenses incurred and compensation paid for the real estate education director, which shall be paid out of the real estate education fund.

Sec. 30. Section 543B.54, Code 2003, is amended to read as follows:

543B.54 REAL ESTATE EDUCATION FUND.

The Iowa real estate education fund is created as a financial assurance mechanism to assist in the establishment and maintenance of a real estate education program at the university of northern Iowa and to assist the real estate commission in providing an education director. The fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund, but shall remain in the Iowa real estate education fund. ~~Seventy percent of the moneys in the fund~~ Twenty-five dollars per license from fees deposited for each real estate salesperson's license and each broker's license shall be distributed and are appropriated to the board of regents for the purpose of establishing and maintaining a real estate education program at the university of northern Iowa. ~~Thirty percent of the~~ The remaining moneys in the fund shall be distributed and are appropriated to the professional licensing and regulation division of the department of commerce for the purpose of hiring and compensating a real estate education director and regulatory compliance personnel.

Sec. 31. SPAN OF CONTROL. The department of administrative services, in consultation with the department of management and after discussion and collaboration with executive branch agencies, shall pursue a goal of increasing the ratio of the number of employees per supervisor for executive branch agencies in the aggregate to twelve employees for one supervisor by December 31, 2005.

Sec. 32. *EFFECTIVE DATE. The section of this division of this Act relating to the state liquor warehouse functions, being deemed of immediate importance, takes effect upon enactment.

DIVISION II
AGRICULTURE AND NATURAL RESOURCES
DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP
GENERAL APPROPRIATIONS

Sec. 33. GENERAL DEPARTMENT 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, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

1. For purposes of supporting the department, including its divisions, for administration, regulation, and programs, for salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 16,946,668
..... FTEs 410.64

2. Of the amount appropriated in subsection 1, the department shall not expend less than $50,000 for salaries, support, maintenance, and miscellaneous purposes of administering the senior farmers market nutrition program under the jurisdiction of the United States department of agriculture.

* Item veto; see message at end of the Act

DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP
DESIGNATED APPROPRIATIONS

Sec. 34. RIVER AUTHORITY. 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, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For purposes of supporting the department's membership in the state interagency Missouri river authority, created in section 28L.1, in the Missouri river basin association:

. . . . . $ 9,535

Sec. 35. HORSE AND DOG RACING. There is appropriated from the moneys available under section 99D.13 to the department of agriculture and land stewardship for the fiscal year beginning July 1, 2004, and ending June 30, 2005, 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:

. . . . . $ 305,516

Sec. 36. DAIRY PRODUCTS CONTROL BUREAU. 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, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For purposes of supporting the operations of the dairy products control bureau, including salaries, support, maintenance, and miscellaneous purposes:

. . . . . $ 632,170

Sec. 37. AVIAN INFLUENZA. 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, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For the support of testing and monitoring avian influenza:

. . . . . $ 50,000

Notwithstanding section 8.33, moneys appropriated pursuant to this section which are unencumbered or unobligated on June 30, 2005, shall not revert as provided in section 8.33. After June 30, 2005, the department shall retain any such unobligated or unencumbered moneys for the continued testing and monitoring of avian influenza.

Sec. 38. SALE AND PURCHASE OF LABORATORY EQUIPMENT — APPROPRIATIONS. Notwithstanding chapter 8A, the department of administrative services shall conduct a sale of equipment or devices owned by the department of agriculture and land stewardship and used by laboratories operated by the department of agriculture and land stewardship. The department of administrative services shall conduct the sale upon authorization of the department of agriculture and land stewardship. The sale shall only include equipment and devices that the department does not move to its new laboratory building. The moneys from the sale are appropriated to the department of agriculture and land stewardship for the fiscal period beginning July 1, 2004, and ending June 30, 2006. The moneys shall only be used to replace, update, enhance, or supplement equipment or devices used by laboratories operated by the department of agriculture and land stewardship. However, the department shall not enter into a lease-purchase agreement to obtain the equipment or devices. Unencumbered and unobligated moneys remaining on June 30, 2006, shall be deposited in the general fund of the state in the same manner as a reversion under section 8.33.

DEPARTMENT OF NATURAL RESOURCES
GENERAL APPROPRIATIONS

Sec. 39. GENERAL DEPARTMENT APPROPRIATION. There is appropriated from the general fund of the state to the department of natural resources for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For purposes of supporting the department, including its divisions, for administration, regulation, and programs, for salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 16,569,282
..... FTEs 1080.12

Sec. 40. 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 department of natural resources for the fiscal year beginning July 1, 2004, and ending June 30, 2005, 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:

..... $ 30,715,335

b. Notwithstanding section 455A.10, the department may use the unappropriated balance remaining in the fish and game protection fund to provide for the funding of health and life insurance premium payments from unused sick leave balances of conservation peace officers employed in a protection occupation who retire, pursuant to section 97B.49B.

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 services agency and the chairpersons and ranking members of the joint appropriations subcommittee on agriculture and natural resources concerning the commission's approval.

DEPARTMENT OF NATURAL RESOURCES
RELATED TRANSFERS

Sec. 41. SNOWMOBILE FEES — TRANSFER FOR ENFORCEMENT PURPOSES. There is transferred on July 1, 2004, from the fees required to be deposited in the special conservation fund 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, 2004, and ending June 30, 2005, 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. 42. VESSEL FEES — TRANSFER FOR ENFORCEMENT PURPOSES. There is transferred on July 1, 2004, from the fees required to be deposited in the special conservation fund 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, 2004, and ending June 30, 2005, 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:

..... $ 1,400,000

Notwithstanding section 8.33, moneys transferred and appropriated in this section that remain unencumbered or unobligated at the close of the fiscal year shall not revert to the credit of the fish and game protection fund but shall be credited to the special conservation fund established by section 462A.52 to be used as provided in that section.

DEPARTMENT OF NATURAL RESOURCES
DESIGNATED APPROPRIATIONS

Sec. 43. 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, 2004, and ending June 30, 2005, 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:

. . . . . $ 200,000

Sec. 44. FLOODPLAIN PERMIT BACKLOG. Notwithstanding any contrary provision of state law, for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the department of natural resources may use additional funds available to the department from stormwater discharge permit fees for the staffing of the following additional full-time staff members to reduce the department's floodplain permit backlog:

. . . . . FTEs 2.00

Sec. 45. IMPLEMENTATION OF THE FEDERAL TOTAL MAXIMUM DAILY LOAD PROGRAM. Notwithstanding any contrary provision of state law, for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the department of natural resources may use additional funds available to the department from stormwater discharge permit fees for the staffing of the following additional full-time equivalent positions for implementation of the federal total maximum daily load program:

. . . . . FTEs 2.00

MISCELLANEOUS PROVISIONS

Sec. 46. Section 424.19, Code Supplement 2003, is amended to read as follows:

424.19 FUTURE REPEAL.

This chapter is repealed effective June 30, ~~2014~~ 2016.

Sec. 47. CONTINGENT EFFECTIVENESS. The moneys appropriated from the general fund of the state to the department of agriculture and land stewardship for purposes of supporting the testing and monitoring of avian influenza as provided in this division of this Act shall not be effective if 2004 Iowa Acts, Senate File 2194,[1] is enacted.

Sec. 48. CONTINGENT EFFECTIVENESS. The amendment to section 424.19, as provided in this division of this Act, is effective only if 2004 Iowa Acts, House File 2401,[2] is enacted.

DIVISION III
ECONOMIC DEVELOPMENT

Sec. 49. GOALS AND ACCOUNTABILITY.

1. The goals for the department of economic development shall be to expand and stimulate the state economy, increase the wealth of Iowans, and increase the population of the state.

[1] Not enacted
[2] Chapter 1094 herein

2. To achieve the goals in subsection 1, the department of economic development shall do all of the following:

a. Concentrate its efforts on programs and activities that result in commercially viable products and services.

b. Adopt practices and services consistent with free market, private sector philosophies.

c. Ensure economic growth and development throughout the state.

*3. *The department of economic development shall demonstrate accountability by using performance measures appropriate to show the attainment of the goals in subsection 1 for the state and by measuring the effectiveness and results of the department's programs and activities. The performance measures and associated benchmarks shall be developed or identified in cooperation with the legislative services agency and approved by the joint appropriations subcommittee on economic development. The data demonstrating accountability collected by the department shall be made readily available and maintained in computer-readable format.**

Sec. 50. DEPARTMENT OF ECONOMIC DEVELOPMENT. There is appropriated from the general fund of the state to the department of economic development for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. ADMINISTRATION DIVISION

a. General administration

For salaries, support, maintenance, miscellaneous purposes, programs, for the transfer to the Iowa state commission grant program, and for not more than the following full-time equivalent positions:

..... $ 1,562,332
..... FTEs 28.75

b. The department shall work with businesses and communities to continually improve the economic development climate along with the economic well-being and quality of life for Iowans. The administration division shall coordinate with other state agencies ensuring that all state departments are attentive to the needs of an entrepreneurial culture.

2. BUSINESS DEVELOPMENT DIVISION

a. Business development operations

For business development operations and programs, international trade, export assistance, workforce recruitment, the partner state program, for transfer to the strategic investment fund, for transfer to the value-added agricultural products and processes financial assistance fund, salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 6,084,500
..... FTEs 57.00

b. The department shall establish a strong and aggressive marketing image to showcase Iowa's workforce, existing industry, and potential. A priority shall be placed on recruiting new businesses, business expansion, and retaining existing Iowa businesses. Emphasis shall also be placed on entrepreneurial development through helping to secure capital for entrepreneurs, and developing networks and a business climate conducive to entrepreneurs and small business.

c. Notwithstanding section 8.33, moneys appropriated in this subsection that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year.

3. COMMUNITY DEVELOPMENT DIVISION

a. Community development programs

For salaries, support, maintenance, miscellaneous purposes, community economic development programs, tourism operations, community assistance, the film office, the mainstreet and rural mainstreet programs, the school-to-career program, the community development block

* Item veto; see message at end of the Act

grant, and housing and shelter-related programs and for not more than the following full-time equivalent positions:

. . . . . $ 5,505,725
. . . . . FTEs 61.75

b. The department shall encourage development of communities and quality of life to foster economic growth. The department shall prepare communities for future growth and development through development, expansion, and modernization of infrastructure.

c. The department shall develop 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.

d. Notwithstanding section 8.33, moneys appropriated in this subsection that remain unencumbered or unobligated at the close of the fiscal year shall not revert to any fund but shall remain available for expenditure for the designated purposes during the succeeding fiscal year.

4. For allocating moneys for the world food prize:

. . . . . $ 285,000

Sec. 51. VISION IOWA PROGRAM — FTE AUTHORIZATION. For purposes of administrative duties associated with the vision Iowa program, the department of economic development is authorized an additional 2.25 full-time equivalent positions above those otherwise authorized in this division of this Act.

Sec. 52. RURAL COMMUNITY 2000 PROGRAM. There is appropriated from loan repayments on loans under the former rural community 2000 program, sections 15.281 through 15.288, Code 2001, to the department of economic development for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For providing financial assistance to Iowa's councils of governments that provide technical and planning assistance to local governments:

. . . . . $ 150,000

2. For the rural development program for the purposes of the program including the rural enterprise fund and collaborative skills development training:

. . . . . $ 120,000

Sec. 53. 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 of economic development for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, for insurance economic development and international insurance economic development:

. . . . . $ 100,000

Sec. 54. COMMUNITY DEVELOPMENT LOAN FUND. Notwithstanding section 15E.120, subsection 5, there is appropriated from the Iowa community development loan fund all the moneys available during the fiscal year beginning July 1, 2004, and ending June 30, 2005, to the department of economic development for the community development program to be used by the department for the purposes of the program.

Sec. 55. 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, 2004, and ending June 30,

2005, the following amount, for the purposes of the workforce development fund, and for not more than the following full-time equivalent positions:

.....	$	4,000,000
.....	FTEs	4.00

Sec. 56. WORKFORCE DEVELOPMENT ADMINISTRATION. From funds appropriated or transferred to or receipts credited to the workforce development fund created in section 15.343, up to $400,000 for the fiscal year beginning July 1, 2004, and ending June 30, 2005, may be used for the administration of workforce development activities including salaries, support, maintenance, and miscellaneous purposes and for not more than 4.00 full-time equivalent positions.

Sec. 57. JOB TRAINING FUND. Notwithstanding section 15.251, all remaining moneys in the job training fund on July 1, 2004, and any moneys appropriated or credited to the fund during the fiscal year beginning July 1, 2004, shall be transferred to the workforce development fund established pursuant to section 15.343.

Sec. 58. IOWA STATE UNIVERSITY.

1. 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, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for small business development centers, the science and technology research park, the institute for physical research, and for not more than the following full-time equivalent positions:

.....	$	2,363,557
.....	FTEs	56.53

2. Of the moneys appropriated in subsection 1, Iowa state university shall allocate at least $550,000 for purposes of funding small business development centers. **Small business development centers shall be located equally throughout the different regions of the state.** Iowa state university may allocate moneys appropriated in subsection 1 to the various small business development centers in any manner necessary to achieve the purposes of this subsection.

3. Iowa state university of science and technology shall do all of the following:

a. Direct expenditures for research toward projects that will provide economic stimulus for Iowa.

b. *Emphasize that a business and an individual that creates a business and receives benefits from a program funded, in part, through moneys appropriated in this section have a commercially viable product or service.

c. Provide emphasis to providing services to Iowa-based companies.

4. It is the intent of the general assembly that the industrial 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 the legislative services agency the total amount 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 in this section that remain unencum-

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* Item veto; see message at end of the Act

bered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year.

Sec. 59. UNIVERSITY OF IOWA.

1. There is appropriated from the general fund of the state to the state university of Iowa for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the university of Iowa research park and for the advanced drug development program at the Oakdale research park, including salaries, support, maintenance, equipment, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	247,005
.....	FTEs	6.00

2. The university of Iowa shall do all of the following:

a. Direct expenditures for research toward projects that will provide economic stimulus for Iowa.

*b. *Emphasize that a business and an individual that creates a business and receives benefits from a program funded, in part, through moneys appropriated in this section have a commercially viable product or service.**

c. Provide emphasis to providing services to Iowa-based companies.

3. 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 secretary of the senate, the chief clerk of the house of representatives, and the legislative services agency by January 15, 2005.

4. Notwithstanding section 8.33, moneys appropriated in this section that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year.

Sec. 60. UNIVERSITY OF NORTHERN IOWA.

1. There is appropriated from the general fund of the state to the university of northern Iowa for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the metal casting institute, and for the institute of decision making, including salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	361,291
.....	FTEs	4.75

2. The university of northern Iowa shall do all of the following:

a. Direct expenditures for research toward projects that will provide economic stimulus for Iowa.

*b. *Emphasize that a business and an individual that creates a business and receives benefits from a program funded, in part, through moneys appropriated in this section have a commercially viable product or service.**

c. Provide emphasis to providing services to Iowa-based companies.

3. Notwithstanding section 8.33, moneys appropriated in this section that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year.

Sec. 61. DEPARTMENT OF WORKFORCE DEVELOPMENT.

1. There is appropriated from the general fund of the state to the department of workforce development for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, for the division of labor services, the division of workers' compensation, the workforce development state and regional boards, the new employment opportunity fund, salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	4,889,124
.....	FTEs	94.20

* Item veto; see message at end of the Act

2. 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.

3. The division of workers' compensation 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. Of the moneys generated by the filing fee allowed under this subsection, the first $225,000 is appropriated to the department of workforce development to be used for purposes of administering the division of workers' compensation.

4. Notwithstanding section 8.33, moneys appropriated in this section that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year.

Sec. 62. ADMINISTRATIVE CONTRIBUTION SURCHARGE FUND. Notwithstanding section 96.7, subsection 12, paragraph "c", 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, 2004, and ending June 30, 2005, any moneys remaining in the administrative contribution surcharge fund on June 30, 2004, and the entire amount collected during the fiscal year beginning July 1, 2004, and ending June 30, 2005, or so much thereof as is necessary, for salaries, support, maintenance, conducting labor market surveys, miscellaneous purposes, and for workforce development regional advisory board member expenses.

Sec. 63. 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, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, for the purposes designated:

1. DIVISION OF WORKERS' COMPENSATION

For salaries, support, maintenance, and miscellaneous purposes:

..... $ 471,000

2. IMMIGRATION SERVICE CENTERS

For salaries, support, maintenance, and miscellaneous purposes for the pilot immigration service centers:

..... $ 160,000

The department of workforce development shall maintain pilot immigration service centers that offer one-stop services to deal with the multiple issues related to immigration and employment. The pilot centers shall be designed to support workers, businesses, and communities with information, referrals, job placement assistance, translation, language training, resettlement, as well as technical and legal assistance on such issues as forms and documentation. Through the coordination of local, state, and federal service providers, and through the development of partnerships with public, private, and nonprofit entities with established records of international service, these pilot centers shall seek to provide a seamless service delivery system for new Iowans.

Any remaining additional penalty and interest revenue may be allocated and used to accomplish the mission of the department.

Sec. 64. 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, 2004, and ending June 30, 2005, 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:

..... $ 895,752
..... FTEs 10.00

Sec. 65. Section 96.7, subsection 2, paragraph d, subparagraph (1), Code Supplement 2003, is amended to read as follows:

(1) The current reserve fund ratio is computed by dividing the total funds available for payment of benefits, on the computation date, by the total wages paid in covered employment excluding reimbursable employment wages during the first four calendar quarters of the five calendar quarters immediately preceding the computation date. However, in computing the current reserve fund ratio the following amounts shall be added to the total funds available for payment of benefits on the following computation dates:

(a) Twenty million dollars on July 1, 2004.

(b) Seventy million dollars on July 1, 2005.

(c) One hundred twenty million dollars on July 1, 2006.

(d) One hundred fifty million dollars on July 1, 2007, and on each subsequent computation date.

Sec. 66. Section 96.19, subsection 18, paragraph a, subparagraph (7), subparagraph subdivision (a), Code 2003, is amended to read as follows:

(a) A person in agricultural labor when such labor is performed for an employing unit which during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor excluding labor performed before January 1, 1980, by an alien referred to in this subparagraph; or on each of some twenty days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor for some portion of the day ten or more individuals, excluding labor performed before January 1, 1980, by an alien referred to in this subparagraph; and such labor is not agricultural labor performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1184(c), 1101(a)(15)(H) (1976). For purposes of this subparagraph subdivision, "employed" shall not include services performed by agricultural workers who are aliens admitted to the United States to perform labor pursuant to section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act and who are not covered under the Federal Unemployment Tax Act.

Sec. 67. IOWA COMMUNITY COLLEGE ONE SOURCE TRAINING INITIATIVE. In the interest of putting an emphasis on the software and information technology sector in this state, the Iowa community college one source training initiative is encouraged to explore a partnership with software and information technology of Iowa to identify methods of funding the training and retraining needs of the software and information technology sector in Iowa. To the extent possible, funding from the workforce training and economic development moneys in the grow Iowa values fund should be considered as a potential funding source for these purposes.

Sec. 68. VALUE-ADDED AGRICULTURAL PRODUCTS AND PROCESSES FINANCIAL ASSISTANCE FUND MONEYS. The office of renewable fuels and coproducts may apply to the department of economic development for moneys in the value-added agricultural products and processes financial assistance fund for deposit in the renewable fuels and coproducts fund created in section 159A.7.

Sec. 69. IOWA FINANCE AUTHORITY AUDIT. The auditor of state is requested to review the audit of the Iowa finance authority performed by the auditor hired by the authority. The auditor of state is also requested to conduct a performance audit of the authority to determine the effectiveness of the authority and the programs of the authority.

Sec. 70. APPLICATION FOR DEPARTMENT OF ECONOMIC DEVELOPMENT MONEYS. For the fiscal year beginning July 1, 2004, any entity that was specifically identified in 2001 Iowa Acts, chapter 188, to receive funding from the department of economic develop-

* Item veto; see message at end of the Act

ment, excluding any entity identified to receive a direct appropriation beginning July 1, 2004, may apply to the department for assistance through the appropriate program. The department shall provide application criteria necessary to implement this section.

Sec. 71. EXPENDITURE AND ALLOCATION REPORTS. The department of economic development, the department of workforce development, and the regents institutions receiving an appropriation pursuant to this division of this Act shall file a written report on a quarterly basis with the chairpersons and ranking members of the joint appropriations subcommittee on economic development and the legislative services agency regarding all expenditures of moneys appropriated pursuant to this division of this Act during the quarter, allocations of moneys appropriated pursuant to this Act during the quarter, and full-time equivalent positions allocated during the quarter.

Sec. 72. SHELTER ASSISTANCE FUND. In providing moneys from the shelter assistance fund to homeless shelter programs in the fiscal year beginning July 1, 2004, and ending June 30, 2005, 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. 73. FEDERAL GRANTS. All federal grants to and the federal receipts of agencies appropriated funds under this division of 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. 74. UNEMPLOYMENT COMPENSATION PROGRAM. 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 beginning after December 31, 2004.

Sec. 75. PAYROLL EXPENDITURE REFUNDS. There is appropriated from the general fund of the state to the department of economic development for the fiscal year beginning July 1, 2004, and ending June 30, 2005, $27,786, or so much thereof as is necessary, to pay refunds as provided under section 15.365.

DIVISION IV
EDUCATION
COLLEGE STUDENT AID COMMISSION

Sec. 76. There is appropriated from the general fund of the state to the college student aid commission for the fiscal year beginning July 1, 2004, and ending June 30, 2005, 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:

..... $ 298,825
..... FTEs 4.30

2. STUDENT AID PROGRAMS

For payments to students for the Iowa grant program:

..... $ 1,029,784

3. DES MOINES UNIVERSITY — OSTEOPATHIC MEDICAL CENTER

For the Des Moines university — osteopathic medical center for an initiative in primary health care to direct primary care physicians to shortage areas in the state:

..... $ 396,451

* Item veto; see message at end of the Act

From the funds appropriated in this subsection, $50,000 shall be used for forgivable loans in accordance with section 261.19, subsection 2.

4. NATIONAL GUARD EDUCATIONAL ASSISTANCE PROGRAM

For purposes of providing national guard educational assistance under the program established in section 261.86:

..... $ 2,900,000

5. TEACHER SHORTAGE FORGIVABLE LOAN PROGRAM

For the teacher shortage forgivable loan program established in section 261.111:

..... $ 460,472

Sec. 77. WORK-STUDY APPROPRIATION NULLIFICATION FOR FY 2004-2005. Notwithstanding section 261.85, for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the amount appropriated for the work-study program under section 261.85 shall be zero.

DEPARTMENT FOR THE BLIND

Sec. 78. ADMINISTRATION. There is appropriated from the general fund of the state to the department for the blind for the fiscal year beginning July 1, 2004, and ending June 30, 2005, 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:

..... $ 1,541,907
..... FTEs 109.51

DEPARTMENT OF CULTURAL AFFAIRS

Sec. 79. There is appropriated from the general fund of the state to the department of cultural affairs for the fiscal year beginning July 1, 2004, and ending June 30, 2005, 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:

..... $ 214,475
..... FTEs 1.17

The department of cultural affairs shall coordinate activities with the tourism office of the department of economic development to promote attendance at the state historical building and at this state's historic sites.

2. COMMUNITY CULTURAL GRANTS

For planning and programming for the community cultural grants program established under section 303.3:

..... $ 299,240

3. HISTORICAL DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 2,868,725
..... FTEs 54.78

4. HISTORIC SITES

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 526,459
..... FTEs 8.00

5. 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:

.....	$	1,157,486
.....	FTEs	7.55

DEPARTMENT OF EDUCATION

Sec. 80. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 2004, and ending June 30, 2005, 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:

.....	$	5,168,114
.....	FTEs	85.65

The director of the department of education shall ensure that all school districts are aware of the state education resources available on the state website for listing teacher job openings and shall make every reasonable effort to enable qualified practitioners to post their resumes on the state website. The department shall administer the posting of job vacancies for school districts, accredited nonpublic schools, and area education agencies on the state website. The department may coordinate this activity with the Iowa school board association or other interested education associations in the state. The department shall strongly encourage school districts to seek direct claiming under the medical assistance program for funding of school district nursing services for students.

2. VOCATIONAL EDUCATION ADMINISTRATION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	514,828
.....	FTEs	18.25

3. VOCATIONAL REHABILITATION SERVICES DIVISION

a. For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	4,278,784
.....	FTEs	281.50

The division of vocational rehabilitation services shall seek funding from other sources, such as local funds, for purposes of matching the state's federal vocational rehabilitation allocation, as well as for matching other federal vocational rehabilitation funding that may 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 lettered paragraph, for the fiscal year ending June 30, 2005, 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 4.00 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.

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 position:

.....	$	54,150
.....	FTEs	1.00

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.

4. STATE LIBRARY

a. For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 1,262,603
..... FTEs 18.00

b. For the enrich Iowa program:

..... $ 1,698,432

(1) Funds allocated for purposes of the enrich Iowa program as provided in this lettered paragraph shall be distributed by the division of libraries and information services to provide support for Iowa's libraries. The commission of libraries shall develop rules governing the allocation of funds provided by the general assembly for the enrich Iowa program to provide direct state assistance to public libraries and to fund the open access and access plus programs. Direct state assistance to eligible public libraries is provided as an incentive to improve library services and to reduce inequities among communities in the delivery of library services based on recognized and adopted performance measures. Funds distributed as direct state assistance shall be distributed to eligible public libraries that are in compliance with performance measures adopted by rule by the commission of libraries. The funds allocated as provided in this lettered paragraph shall not be used for the costs of administration by the division. The amount of direct state assistance distributed to each eligible public library shall be based upon the following:

(a) The level of compliance by the eligible public library with the performance measures adopted by the commission as provided in this subparagraph.

(b) The number of people residing within an eligible library's geographic service area for whom the library provides services.

(c) The amount of other funding the eligible public library received in the previous fiscal year for providing services to rural residents and to contracting communities.

(2) Moneys received by a public library under this lettered paragraph shall supplement, not supplant, any other funding received by the library.

(3) For purposes of this section, "eligible public library" means a public library that meets all of the following requirements:

(a) Submits to the division all of the following:

(i) The report provided for under section 256.51, subsection 1, paragraph "h".

(ii) An application and accreditation report, in a format approved by the commission, that provides evidence of the library's compliance with at least one level of the standards established in accordance with section 256.51, subsection 1, paragraph "k".

(iii) Any other application or report the division deems necessary for the implementation of the enrich Iowa program.

(b) Participates in the library resource and information sharing programs established by the state library.

(c) Is a public library established by city ordinance or a library district as provided in chapter 336.

(4) Each eligible public library shall maintain a separate listing within its budget for payments received and expenditures made pursuant to this lettered paragraph, and shall annually submit this listing to the division.

(5) By January 15, 2006, the division shall submit a program evaluation report to the general assembly and the governor detailing the uses and the impacts of funds allocated under this lettered paragraph.

(6) A public library that receives funds in accordance with this lettered paragraph shall have an internet use policy in place, which may or may not include internet filtering. The library shall submit a report describing the library's internet use efforts to the division.

(7) A public library that receives funds in accordance with this lettered paragraph shall

provide open access, the reciprocal borrowing program, as a service to its patrons, at a reimbursement rate determined by the state library.

5. LIBRARY SERVICE AREA SYSTEM

For state aid:

. . . . . $ 1,376,558

6. PUBLIC BROADCASTING DIVISION

For salaries, support, maintenance, capital expenditures, miscellaneous purposes, and for not more than the following full-time equivalent positions:

. . . . . $ 6,568,514
. . . . . FTEs 78.00

7. REGIONAL TELECOMMUNICATIONS COUNCILS

For state aid and for not more than the following full-time equivalent positions:

. . . . . $ 1,600,806
. . . . . FTEs 6.00

a. Of the amount appropriated in this subsection, $360,328 shall be allocated to the public broadcasting division for purposes of providing support for functions related to the Iowa communications network, including but not limited to the following functions: 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.

b. Of the amount appropriated in this subsection, $1,240,478 shall be allocated 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.

8. VOCATIONAL EDUCATION TO SECONDARY SCHOOLS

For reimbursement for vocational education expenditures made by secondary schools:

. . . . . $ 2,936,904

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, and miscellaneous purposes:

. . . . . $ 2,509,683

10. IOWA EMPOWERMENT FUND

For deposit in the school ready children grants account of the Iowa empowerment fund created in section 28.9:

. . . . . $ 13,381,594

a. From the moneys deposited in the school ready children grants account for the fiscal year beginning July 1, 2004, and ending June 30, 2005, not more than $200,000 is allocated for the community empowerment office and other technical assistance activities. It is the intent of the general assembly that regional technical assistance teams will be established and will include staff from various agencies, as appropriate, including the area education agencies, community colleges, and the Iowa state university of science and technology cooperative extension service in agriculture and home economics. The Iowa empowerment board shall direct staff to work with the advisory council to inventory technical assistance needs. Funds allocated under this lettered paragraph may be used by the Iowa empowerment board for the purpose of skills development and support for ongoing training of the regional technical assistance teams. However, funds shall not be used for additional staff or for the reimbursement of staff.

b. Notwithstanding any other provision of law to the contrary, the community empowerment office shall use the documentation created by the legislative services agency to continue the implementation of the four-year phase-in period of the distribution formula approved by the community empowerment board.

c. As a condition of receiving funding appropriated in this subsection, each community empowerment area board shall report to the Iowa empowerment board progress on each of the state indicators approved by the state board, as well as progress on local indicators. The community empowerment area board must also submit a written plan amendment extending by one year the area's comprehensive school ready children grant plan developed for providing services for children from birth through five years of age and provide other information specified by the Iowa empowerment board. The amendment may also provide for changes in the programs and services provided under the plan. The Iowa empowerment board shall establish a submission deadline for the plan amendment that allows a reasonable period of time for preparation of the plan amendment and for review and approval or request for modification of the plan amendment by the Iowa empowerment board. In addition, the community empowerment board must continue to comply with reporting provisions and other requirements adopted by the Iowa empowerment board in implementing section 28.8.

11. 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:

. . . . . $ 590,458

12. STUDENT ACHIEVEMENT AND TEACHER QUALITY PROGRAM

For purposes, as provided in law, of the student achievement and teacher quality program established pursuant to chapter 284:

. . . . . $ 45,283,894

13. JOBS FOR AMERICA'S GRADUATES

For school districts to provide direct services to the most at-risk senior high school students enrolled in school districts through direct intervention by a jobs for America's graduates specialist:

. . . . . $ 400,000

14. CLOSING THE ACHIEVEMENT GAP GRANTS

For competitive grants to be awarded in no more than four school districts:

. . . . . $ 500,000

a. The department shall establish a competitive grant program that supports school district efforts to address the achievement gap. Priority shall be given to school districts using research-based strategies that have the highest probability of improving student achievement. A grant in the amount of $125,000 shall be awarded no later than October 1, 2004, to a school district in each of the following size school districts:

(1) A school district with an enrollment of 1199 or less.

(2) A school district with an enrollment of more than 1199, but not more than 4749.

(3) A school district with an enrollment of more than 4749.

(4) A school district with any enrollment.

b. Grant moneys may be used by recipient school districts for purposes including, but not limited to, assigning highly skilled teachers to high-need students and highly skilled administrators to high-need buildings, maintaining a commitment to cultural competency training, sustaining high expectations for all children, and creating partnerships between schools, communities, and businesses.

15. COMMUNITY COLLEGES

For general state financial aid to merged areas as defined in section 260C.2 in accordance with chapters 258 and 260C:

. . . . . $ 139,779,244

The funds appropriated in this subsection shall be allocated as follows:

a. Merged Area I . . . . . $ 6,717,353

b.	Merged Area II	$	7,859,917
c.	Merged Area III	$	7,295,985
d.	Merged Area IV	$	3,569,332
e.	Merged Area V	$	7,499,287
f.	Merged Area VI	$	6,918,909
g.	Merged Area VII	$	10,008,601
h.	Merged Area IX	$	12,311,409
i.	Merged Area X	$	19,369,288
j.	Merged Area XI	$	20,524,506
k.	Merged Area XII	$	8,084,396
l.	Merged Area XIII	$	8,298,918
m.	Merged Area XIV	$	3,612,936
n.	Merged Area XV	$	11,362,216
o.	Merged Area XVI	$	6,346,191

Sec. 81. WHOLE-GRADE SHARING AGREEMENT DEADLINE WAIVER. Notwithstanding sections 282.10 and 282.11, the department of education may, at the department's discretion, waive any of the deadline requirements of sections 282.10 and 282.11, relating to the signing of a whole-grade sharing agreement by the boards of two or more school districts involved in the agreement and the public notice and hearing requirements, if one of the districts involved in the agreement has an enrollment of less than three hundred. This section is repealed July 1, 2004.

Sec. 82. STATEWIDE TEACHER INTERN PROGRAM FEASIBILITY STUDY — FEDERAL GRANT APPLICATION COORDINATION.

*1. *The department of education shall work cooperatively with the state board of regents and other accredited postsecondary institutions with approved practitioner preparation programs to assess the feasibility of the offering of a teacher intern program that will be available statewide and which will meet the standards as provided in 281 IAC 77. The department shall, at minimum, collaborate with the state board of regents and the colleges of education at board's institutions of higher learning, and with other accredited postsecondary institutions with approved practitioner preparation programs. The study shall include the projected enrollment, cost, delivery of the program via technology, and possible time lines for implementation of a statewide teacher intern program. The study shall, at minimum, consider the establishment of a program operated through a regents institution under a cooperative arrangement with other postsecondary institutions, including institutions that do not have approved practitioner preparation programs, or with one or more area education agencies. The department shall submit a report summarizing the results of the study and making recommendations to the chairpersons and ranking members of the house and senate committees on education and the chairpersons and rankings members of the joint appropriations subcommittee on education by January 15, 2005.**

2. The department shall work cooperatively with the state board of regents and other appropriate eligible grantees to obtain any available federal funding, including grants that may be available for the establishment and operation of a teacher intern program.

Sec. 83. BOARD OF EDUCATIONAL EXAMINERS LICENSING FEES. Notwithstanding section 272.10, up to 85 percent of any funds received annually resulting from an increase in fees approved and implemented for licensing by the state board of educational examiners after July 1, 1997, and before June 30, 2003, and up to 70 percent of any funds received annually resulting from an increase in fees approved and implemented for licensing by the state board after July 1, 2003, shall be available for the fiscal year beginning July 1, 2004, 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 the department of administrative services shall draw warrants upon the treasurer of state from the funds appropriated as provided in this section

* Item veto; see message at end of the Act

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. 84. MINIMUM TEACHER SALARY REQUIREMENTS — FY 2004-2005.

1. Notwithstanding section 284.7, subsection 1, paragraph "a", subparagraph (2), the minimum teacher salary paid by a school district or area education agency for purposes of teacher compensation in accordance with chapter 284, for the fiscal year beginning July 1, 2004, and ending June 30, 2005, shall be the minimum salary amount the school district or area education agency paid to a first-year beginning teacher or, the minimum salary amount the school district or area education agency would have paid a first-year beginning teacher if the school district or area education agency had participated in the program in the 2001-2002 school year, in accordance with section 284.7, subsection 1, Code Supplement 2001. If the school district or area education agency did not employ a first-year beginning teacher in the 2001-2002 school year, the minimum salary is the amount that the district would have paid a first-year beginning teacher under chapter 284 in the 2001-2002 school year.

2. Notwithstanding section 284.7, subsection 1, paragraph "b", subparagraph (2), the minimum career teacher salary paid to a career teacher who was a beginning teacher in the 2003-2004 school year, by a school district or area education agency participating in the student achievement and teacher quality program, for the school year beginning July 1, 2004, and ending June 30, 2005, shall be, unless the school district has a minimum career teacher salary that exceeds thirty thousand dollars, one thousand dollars greater than the minimum salary amount the school district or area education agency paid to a first-year beginning teacher if the school district or area education agency participated in the program during the 2001-2002 school year, or the minimum salary amount the school district or area education agency would have paid a first-year beginning teacher if the school district or area education agency had participated in the program in the 2001-2002 school year, in accordance with section 284.7, subsection 1, Code Supplement 2001.

3. Notwithstanding section 284.7, subsection 1, paragraph "b", subparagraph (2), and except as provided in subsection 2, the minimum career teacher salary paid by a school district or area education agency participating in the student achievement and teacher quality program, for purposes of teacher compensation in accordance with chapter 284, for the school year beginning July 1, 2004, and ending June 30, 2005, shall be the minimum salary amount the school district or area education agency paid to a career teacher if the school district or area education agency participated in the program during the 2001-2002 school year, or, the minimum salary amount the school district or area education agency would have paid a career teacher if the school district or area education agency had participated in the program in the 2001-2002 school year, in accordance with section 284.7, subsection 1, Code Supplement 2001.

Sec. 85. SUPPLEMENTAL AID FOR THE IOWA PUBLIC BROADCASTING DIVISION. Notwithstanding the provisions of section 8.33, or any other provision of law to the contrary, $158,000 from the moneys from the appropriation made in section 284.13, subsection 1, paragraph "d", as amended by this division of this Act, which remain unexpended or unencumbered on June 30, 2004, shall not revert but shall remain available for expenditure in the succeeding fiscal year by the department of education for the public broadcasting division to supplement the appropriation made in this division of this Act for the public broadcasting division.

STATE BOARD OF REGENTS

Sec. 86. There is appropriated from the general fund of the state to the state board of regents for the fiscal year beginning July 1, 2004, and ending June 30, 2005, 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:

..... $ 1,160,398
..... FTEs 16.00

The state board of regents, the department of management, and the legislative services agency shall cooperate to determine and agree upon, by November 15, 2004, the amount that needs to be appropriated for tuition replacement for the fiscal year beginning July 1, 2005.

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 services agency.

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:

..... $ 13,009,474

Notwithstanding section 8.33, funds appropriated for the purposes in this lettered paragraph remaining unencumbered or unobligated at the end of the fiscal year shall not revert to the general fund of the state but shall be available for expenditure for the purposes specified in this lettered paragraph during the subsequent fiscal year.

c. For funds to be allocated to the southwest Iowa graduate studies center:

..... $ 105,956

d. For funds to be allocated to the siouxland interstate metropolitan planning council for the tristate graduate center under section 262.9, subsection 21:

..... $ 77,941

e. For funds to be allocated to the quad-cities graduate studies center:

..... $ 157,144

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:

..... $ 219,937,344
..... FTEs 4,055.62

It is the intent of the general assembly that the university continue progress on the school of public health and the public health initiative for the purposes of establishing an accredited school of public health and for funding an initiative for the health and independence of elderly Iowans. From the funds appropriated in this lettered paragraph, the university may use up to $2,100,000 for the school of public health and the public health initiative.

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:

..... $ 27,284,584
..... FTEs 5,471.01

Of the amount appropriated in this lettered paragraph, $25,950,166 shall be considered encumbered and shall not be expended for any purpose until January 1, 2005.

(1) However, if the department of human services adjusts hospital payments to provide an increased base rate to offset the high cost incurred for providing services to medical assistance patients prior to January 1, 2005, a portion of the amount specified in this unnumbered paragraph equal to the increased Medicaid payment shall revert to the general fund of the state. Notwithstanding section 8.54, subsection 7, the amount required to revert under this subparagraph shall not be considered to be appropriated for purposes of the state general fund expenditure limitation for the fiscal year beginning July 1, 2004.

* Item veto; see message at end of the Act

(2) If the adjustment described in subparagraph (1) to increase the base rate is not made prior to January 1, 2005, the amount specified in this unnumbered paragraph shall no longer be considered encumbered, may be expended, and shall be available for the purposes originally specified.

(3) Any incremental increase in the base rate made pursuant to subparagraph (1) shall not be used in determining the university of Iowa hospital and clinics disproportionate share rate or when determining the statewide average base rate for purposes of calculating indirect medical education rates.

The university of Iowa hospitals and clinics shall, within the context of chapter 255 and when medically appropriate, make reasonable efforts to extend the university of Iowa hospitals and clinics' use of home telemedicine and other technologies to reduce the frequency of visits to the hospital required by the indigent patients.

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 services agency, and the department of management, and shall delineate the expenditures and purposes of the funds.

*(4) *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:*

(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 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) 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, 2004, shall not be lower than the total quota allocated to the counties for the fiscal year commencing July 1, 1998. The total quota shall be allocated among the counties on the basis of the 2000 census pursuant to section 255.16.

The university of Iowa hospitals and clinics, in cooperation with the department of corrections, shall study the utilization of the indigent patient care program by department of corrections' inmates and shall submit a report to the governor and the general assembly on or before January 1, 2005, regarding recommendations to improve the efficiency and cost-effectiveness of the care provided to the inmates.

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:

.....	$	7,043,056
.....	FTEs	272.11

d. Center for disabilities and development

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	6,363,265
.....	FTEs	143.34

* Item veto; see message at end of the Act

From the funds appropriated in this lettered paragraph, $200,000 shall be allocated for purposes of the employment policy group.

e. Oakdale campus

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

	$	2,657,335
	FTEs	43.25

f. State hygienic laboratory

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

	$	3,802,520
	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:

	$	2,075,948
	FTEs	192.40

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:

	$	649,066
	FTEs	53.46

i. Statewide cancer registry

For the statewide cancer registry, and for not more than the following full-time equivalent positions:

	$	178,739
	FTEs	2.40

j. 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:

	$	64,871
	FTEs	1.50

k. Center for biocatalysis

For the center for biocatalysis, and for not more than the following full-time equivalent positions:

	$	881,384
	FTEs	5.20

l. Primary health care initiative

For the primary health care initiative in the college of medicine and for not more than the following full-time equivalent positions:

	$	759,875
	FTEs	7.75

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.

m. Birth defects registry

For the birth defects registry and for not more than the following full-time equivalent positions:

	$	44,636
	FTEs	1.30

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:

. . . . . $ 173,189,751
. . . . . FTEs 3,647.42

It is the intent of the general assembly that the university continue progress on the center for excellence in fundamental plant sciences. From the funds appropriated in this lettered paragraph, the university may use up to $4,670,000 for the center for excellence in fundamental plant sciences.

b. Agricultural experiment station

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

. . . . . $ 31,019,520
. . . . . FTEs 546.98

c. Cooperative extension service in agriculture and home economics

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

. . . . . $ 19,738,432
. . . . . FTEs 383.34

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:

. . . . . $ 464,319
. . . . . FTEs 11.25

e. Livestock disease research

For deposit in and the use of the livestock disease research fund under section 267.8:

. . . . . $ 220,708

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:

. . . . . $ 77,804,507
. . . . . FTEs 1,398.01

It is the intent of the general assembly that the university continue progress on the implementation of a masters in social work program. From the funds appropriated in this lettered paragraph, the university may use up to $450,000 for the implementation of the masters in social work program, up to $100,000 for the roadside vegetation project, and up to $200,000 for the Iowa office for staff development.

b. Recycling and reuse center

For purposes of the recycling and reuse center, and for not more than the following full-time equivalent positions:

. . . . . $ 211,858
. . . . . FTEs 3.00

5. STATE SCHOOL FOR THE DEAF

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

. . . . . $ 8,468,249
. . . . . FTEs 126.60

6. IOWA BRAILLE AND SIGHT SAVING SCHOOL

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

. . . . . $ 4,737,675
. . . . . FTEs 81.00

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* Item veto; see message at end of the Act

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, prescription, and transportation costs for students at these schools pursuant to section 270.5:

. . . . . $ 15,020

Sec. 87. MEDICAL ASSISTANCE — SUPPLEMENTAL AMOUNTS. For the fiscal year beginning July 1, 2004, and ending June 30, 2005, 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 these funds in the department's medical assistance account. 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, 2004, and ending September 30, 2005, 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. 88. For the fiscal year beginning July 1, 2004, and ending June 30, 2005, 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. 89. Notwithstanding section 270.7, the department of administrative services 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, 2004, 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. 90. Section 256.44, subsection 7, Code 2003, is amended to read as follows:

7. The department shall prorate the amount of the annual awards paid in accordance with this section when the number of award recipients exceeds one thousand one hundred individuals. The department may prorate the amount of an annual award when a teacher who meets the qualifications of subsection 1 is employed on a less than full-time basis by a school district. The state board shall adopt rules under chapter 17A establishing criteria for the proration of annual awards.

Sec. 91. Section 261.19, subsection 2, Code 2003, is amended to read as follows:

2. a. Notwithstanding the administration provisions of subsection 1, the forgivable loan program established pursuant to subsection 1 shall be administered by the commission in conjunction with Des Moines university. Des Moines university shall match on an equal basis state aid appropriated for purposes of the forgivable loan program.

b. Des Moines university shall provide recommendations to the commission for students who meet the eligibility requirements of the forgivable loan program. A forgivable loan may be awarded to a resident of Iowa who is enrolled at Des Moines university — osteopathic medical center if the student agrees to practice in this state for a period of time to be determined by the commission at the time the loan is awarded. Forgivable loans to eligible students shall not become due until after the student completes a residency program. Interest on the loans shall begin to accrue the day following the student's graduation date. If the student completes the period of practice established by the commission and agreed to by the student, the loan amount shall be forgiven. The loan amount shall not be forgiven if the osteopathic physician fails to complete the required time period of practice in this state or fails to satisfactorily continue in the university's program of medical education.

Sec. 92. Section 257B.1B, subsection 1, Code 2003,[3] is amended to read as follows:

1. Fifty-five percent of the moneys deposited in the fund to the department of education for allocation to the reading recovery center to assist school districts in developing reading recovery programs. ~~From the moneys allocated in this subsection, one hundred thousand dollars 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~~

[3] "Code Supplement 2003" probably intended

~~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. 93. Section 261.25, subsections 1, 2, and 3, Code Supplement 2003, 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-six~~ forty-seven million ~~four~~ one hundred ~~seventeen~~ fifty-seven thousand ~~nine~~ five hundred ~~sixty-four~~ fifteen dollars for tuition grants. From the funds appropriated in this subsection, not more than three million four hundred thousand dollars may be distributed to private institutions whose income is not exempt from taxation under section 501(c) of the Internal Revenue Code and whose students were eligible to receive Iowa tuition grant moneys in the fiscal year beginning July 1, 2003.

2. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of four hundred ~~seventy-seven~~ sixty-five thousand one hundred ~~three~~ seventy-five dollars for scholarships.

3. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of two million ~~three~~ five hundred ~~seventy-five~~ thirty-three thousand ~~six~~ one hundred ~~fifty-seven~~ fifteen dollars for vocational-technical tuition grants.

Sec. 94. Section 279.20, Code 2003, is amended to read as follows:

279.20 SUPERINTENDENT — TERM.

1. The board of directors of a school district may employ a superintendent of schools for a term of not to exceed three years. However, the board's initial contract with a superintendent shall not exceed one year if the board is obligated to pay a former superintendent under an unexpired contract. The superintendent shall be the executive officer of the board and have such powers and duties as may be prescribed by rules adopted by the board or by law. Boards of directors may jointly exercise the powers conferred by this section.

2. The board of directors of a school district may delegate the authority to hire support personnel and sign the support personnel employment contracts, if applicable, if the board adopts a policy authorizing the superintendent to perform such duties and specifying the positions the superintendent is authorized to fill. For purposes of this subsection, the term "support personnel" includes, but is not limited to, bus drivers, custodians, educational associates, and clerical and food service employees.

Sec. 95. Section 284.10, subsection 3, Code Supplement 2003, is amended by striking the subsection.

**Sec. 96. Section 284.10, subsection 6, Code Supplement 2003, is amended to read as follows:*

*6. By July 1, ~~2005~~ 2006, the director shall develop and implement an evaluator training certification renewal program for administrators and other practitioners who need to renew a certificate issued pursuant to this section.**

Sec. 97. Section 284.13, subsection 1, paragraphs b, c, d, and e, Code Supplement 2003, are amended to read as follows:

b. For the fiscal year beginning July 1, ~~2003~~ 2004, and ending June 30, ~~2004~~ 2005, to the department of education, the amount of ~~seven~~ one million one hundred thousand dollars for the issuance of national board certification awards in accordance with section 256.44.

c. For the fiscal year beginning July 1, ~~2003~~ 2004, and succeeding fiscal years, an amount

* Item veto; see message at end of the Act

up to ~~four~~ three million ~~two~~ five hundred thousand dollars for first-year and second-year beginning teachers, to the department of education for distribution to school districts for purposes of the beginning teacher mentoring and induction programs. A school district shall receive one thousand three hundred dollars per beginning teacher participating in the program. If the funds appropriated for the program are insufficient to pay mentors and school districts as provided in this paragraph, the department shall prorate the amount distributed to school districts based upon the amount appropriated. Moneys received by a school district pursuant to this paragraph shall be expended to provide each mentor with an award of five hundred dollars per semester, at a minimum, for participation in the school district's beginning teacher mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system or a pension and annuity retirement system established under chapter 294, for such amounts paid by the district.

d. For the fiscal year beginning July 1, 2003, and ending June 30, 2004, up to one million dollars to the department of education for purposes of ~~establishing~~ maintaining the evaluator training program~~, including but not limited to an evaluation process; the training of providers; development of a provider approval process; training materials and costs; for payment to practitioners under section 284.10, subsection 3, and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system or a pension and annuity retirement system established under chapter 294, for such amounts paid by the district; and for subsidies to school districts for training costs~~. A portion of the funds allocated to the department for purposes of this paragraph may be used by the department for administrative purposes. Notwithstanding section 8.33, from the moneys allocated under this paragraph for the fiscal year beginning July 1, 2003, that remain unobligated or unexpended at the end of the fiscal year, three hundred thousand dollars shall not revert but shall remain available for expenditure to maintain the evaluator training program, and up to five hundred thousand dollars shall remain available to supplement moneys allocated pursuant to paragraph "f" of this subsection.

e. For the fiscal year beginning July 1, ~~2003~~ 2004, and ending June 30, ~~2004~~ 2005, up to ~~three~~ two hundred ~~seventy-five~~ fifty thousand dollars to the department of education for purposes of implementing the career development program requirements of section 284.6, and the review panel requirements of section 284.9. From the moneys allocated to the department pursuant to this paragraph, not less than seventy-five thousand dollars shall be used to administer the ambassador to education position in accordance with section 256.45. A portion of the funds allocated to the department for purposes of this paragraph may be used by the department for administrative purposes. Notwithstanding section 8.33, moneys allocated for purposes of this paragraph prior to July 1, 2004, which remain unobligated or unexpended at the end of the fiscal year for which the moneys were appropriated, shall remain available for expenditure for the purposes for which they were allocated, for the fiscal year beginning July 1, 2004, and ending June 30, 2005.

Sec. 98. Section 284.13, subsection 1, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. i. For the fiscal year beginning July 1, 2004, and ending June 30, 2005, moneys made available for the purposes of implementing paragraphs "d" and "e" may be allocated in the amounts, as determined by the department, needed to implement the purposes of paragraphs "d" and "e".

Sec. 99. Section 294A.22, Code Supplement 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If funds appropriated are insufficient to pay phase II allocations in full, the department of administrative services shall prorate payments to school districts and area education agencies.

Sec. 100. EFFECTIVE DATES.

1. The provisions of this division of this Act providing for supplemental aid for the Iowa public broadcasting division and amending section 284.13, subsection 1, paragraphs "d" and "e", relating to moneys carried over to the 2004-2005 fiscal year, being deemed of immediate importance, take effect upon enactment.

2. The section of this division of this Act, relating to a waiver for whole-grade sharing agreement deadlines, being deemed of immediate importance, takes effect upon enactment and applies from the date of enactment to June 30, 2004.

DIVISION V
HEALTH AND HUMAN SERVICES
ELDER AFFAIRS

Sec. 101. 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, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For aging programs for the department of elder affairs and area agencies on aging to provide citizens of Iowa who are 60 years of age and older with case management for the frail elderly, the retired and senior volunteer program, resident advocate committee coordination, employment, and other services which may include, but are not limited to, adult day services, 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, and for salaries, support, administration, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions with the department of elder affairs:

.....	$	2,625,146
.....	FTEs	26.75

1. Funds appropriated in this section may be used to supplement federal funds under federal regulations. To receive funds appropriated in this section, 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 section may be used for elderly services not specifically enumerated in this section only if approved by an area agency on aging for provision of the service within the area.

2. Of the funds allocated in this section and any other state funds allocated for aging programs of the area agencies on aging not more than 7.5 percent of the total amount allocated shall be used for area agencies on aging administrative purposes.

3. Of the funds appropriated in this section, $49,000 shall be used, in addition to any other funds appropriated in this Act, for provision of training to resident advocate committees for elder group homes, as defined in section 231B.1, and licensed health care facilities as defined in section 135C.1.

4. It is the intent of the general assembly that the Iowa chapters of the Alzheimer's association and the case management program for the frail elderly 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.

5. The department shall maintain policies and procedures regarding Alzheimer's support and the retired and senior volunteer program.

HEALTH

Sec. 102. 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, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. ADDICTIVE DISORDERS

For reducing the prevalence of use of tobacco, alcohol, and other drugs, and treating individuals affected by addictive behaviors, including gambling, and for not more than the following full-time equivalent positions:

..... $ 1,267,111
..... FTEs 15.75

a. The department 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.

b. The commission on substance abuse, in conjunction with the department, 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.

c. The department and any grantee or subgrantee of the department shall not discriminate against a nongovernmental organization that provides substance abuse treatment and prevention services or applies for funding to provide those services on the basis that the organization has a religious character. **The department shall report to the governor and the general assembly on or before February 1, 2005, regarding the number of religious or other nongovernmental organizations that applied for funds in the preceding fiscal year, the amounts awarded to those organizations, and the basis for any refusal by the department or grantee or subgrantee of the department to award funds to any of those organizations that applied.**

2. ADULT WELLNESS

For maintaining or improving the health status of adults, with target populations between the ages of 18 through 60, and for not more than the following full-time equivalent positions:

..... $ 304,067
..... FTEs 20.85

3. CHILD AND ADOLESCENT WELLNESS

For promoting the optimum health status for children and adolescents from birth through 21 years of age, and for not more than the following full-time equivalent positions:

..... $ 915,803
..... FTEs 44.10

4. CHRONIC CONDITIONS

For serving individuals identified as having chronic conditions or special health care needs, and for not more than the following full-time equivalent positions:

..... $ 845,863
..... FTEs 10.00

5. COMMUNITY CAPACITY

For strengthening the health care delivery system at the local level, and for not more than the following full-time equivalent positions:

..... $ 1,267,359
..... FTEs 21.60

Of the funds appropriated in this subsection, $100,000 is allocated for a child vision screening program implemented through the university of Iowa hospitals and clinics in collaboration with community empowerment areas.

6. ELDERLY WELLNESS

For optimizing the health of persons 60 years of age and older, and for not more than the following full-time equivalent positions:

..... $ 9,233,985
..... FTEs 4.95

The department shall implement elderly wellness services in a manner that ensures that the services provided are not payable by a third-party source. The department shall submit a report by December 1, 2004, to the persons in this division of this Act designated to receive reports regarding the provision of services and expenditures for the services.

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* Item veto; see message at end of the Act

7. ENVIRONMENTAL HAZARDS

For reducing the public's exposure to hazards in the environment, primarily chemical hazards, and for not more than the following full-time equivalent positions:

..... $ 251,808
..... FTEs 8.30

8. INFECTIOUS DISEASES

For reducing the incidence and prevalence of communicable diseases, and for not more than the following full-time equivalent positions:

..... $ 1,079,703
..... FTEs 38.25

9. INJURIES

For providing support and protection to victims of abuse or injury, or programs that are designed to prevent abuse or injury, and for not more than the following full-time equivalent positions:

..... $ 1,379,358
..... FTEs 9.10

Of the funds appropriated in this subsection, $660,000 shall be credited to the emergency medical services fund created in section 135.25.

10. PUBLIC PROTECTION

For protecting the health and safety of the public through establishing standards and enforcing regulations, and for not more than the following full-time equivalent positions:

..... $ 6,598,873
..... FTEs 158.05

a. The department may expend funds received from licensing fees in addition to amounts appropriated in this subsection, if those additional expenditures are directly the result of any unanticipated litigation or scope of practice review committee expense. Before the department expends or encumbers funds for a scope of practice review committee or for an amount in excess of the funds budgeted for an examining board, the director of the department of management shall approve the expenditure or encumbrance. The amounts necessary to fund any unanticipated litigation or scope of practice review committee expense in the fiscal year beginning July 1, 2004, shall not exceed 5 percent of the average annual fees generated by the boards for the previous two fiscal years. The funds authorized for expenditure pursuant to this lettered paragraph are appropriated to the department for the purposes described in this paragraph.

b. For the fiscal year beginning July 1, 2004, the department shall retain fees collected from the certification of lead inspectors and lead abaters pursuant to section 135.105A to support the certification program; and shall retain fees collected from the licensing, registration, authorization, accreditation, and inspection of x-ray machines used for mammographically guided breast biopsy, screening, and diagnostic mammography, pursuant to section 136C.10 to support the administration of the chapter. The department may also retain fees collected pursuant to section 136C.10 on all shippers of radioactive material waste containers transported across Iowa if the department does not obtain funding to support the oversight and regulation of this activity, and for x-ray radiology examination fees collected by the department and reimbursed to a private organization conducting the examination. Fees retained by the department pursuant to this lettered paragraph are appropriated to the department for the purposes described in this lettered paragraph.

c. The department may retain and expend not more than $297,961 for lease and maintenance expenses from fees collected pursuant to section 147.80 by the board of dental examiners, the board of pharmacy examiners, the board of medical examiners, and the board of nursing in the fiscal year beginning July 1, 2004, and ending June 30, 2005. Fees retained by the department pursuant to this lettered paragraph are appropriated to the department for the purposes described in this lettered paragraph.

d. The department may retain and expend not more than $100,000 for reduction of the number of days necessary to process medical license requests and for reduction of the number of

days needed for consideration of malpractice cases from fees collected pursuant to section 147.80 by the board of medical examiners in the fiscal year beginning July 1, 2004, and ending June 30, 2005. Fees retained by the department pursuant to this lettered paragraph are appropriated to the department for the purposes described in this lettered paragraph.

e. The board of dental examiners may retain and expend not more than $148,060 from revenues generated pursuant to section 147.80. Fees retained by the board pursuant to this lettered paragraph are appropriated to the department to be used for the purposes of regulating dental assistants.

f. The board of medical examiners, the board of pharmacy examiners, the board of dental examiners, and the board of nursing 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.

g. The board of medical examiners, the board of pharmacy examiners, the board of dental examiners, and the board of nursing shall retain their individual executive officers, but are strongly encouraged to share administrative, clerical, and investigative staffs to the greatest extent possible. The department shall submit a status report regarding the sharing of staff under this paragraph to the persons designated in this division of this Act to receive reports by December 1, 2004.

h. For the fiscal year beginning July 1, 2004, the board of nursing may retain and expend 90 percent of the revenues generated from any increase in licensing fees pursuant to section 147.80 for purposes related to the state board's duties, including but not limited to the addition of full-time equivalent positions for program services and investigations. Fees retained by the board pursuant to this lettered paragraph are appropriated to the board of nursing for the purposes described in this paragraph.

i. For the fiscal year beginning July 1, 2004, and ending June 30, 2005, the board of pharmacy examiners may retain and expend 90 percent of the revenues generated from any increase after July 1, 2004, in licensing fees pursuant to sections 124.301 and 147.80, and chapter 155A, for purposes related to the state board's duties, including but not limited to the addition of full-time equivalent positions. Fees retained by the board pursuant to this lettered paragraph are appropriated to the board of pharmacy examiners for the purposes described in this lettered paragraph.

11. RESOURCE MANAGEMENT

For establishing and sustaining the overall ability of the department to deliver services to the public, and for not more than the following full-time equivalent positions:

.....	$	680,707
.....	FTEs	47.30

12. The university of Iowa hospitals and clinics under the control of the state board of regents shall not receive indirect costs from the funds appropriated in this section.

13. 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.

14. a. The department shall apply for available federal funds for sexual abstinence education programs.

b. It is the intent of the general assembly to comply with the United States Congress' intent to provide education that promotes abstinence from sexual activity outside of marriage and reduces pregnancies, by focusing efforts on those persons most likely to father and 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.

d. It is the intent of the general assembly that the Iowa department of public health and the department of human services shall coordinate programs regarding pregnancy prevention to the greatest extent possible.

Sec. 103. GAMBLING TREATMENT FUND — APPROPRIATION.

1. There is appropriated from funds available in the gambling treatment fund established in the office of the treasurer of state to the Iowa department of public health for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

a. Addictive disorders

To be utilized for the benefit of persons with addictions:

..... $ 1,690,000

The appropriation made in this paragraph shall be made from proceeds credited to the gambling treatment fund due to an increase in the percentage of gambling proceeds credited to the gambling treatment fund if any enactment of legislation by the 2004 Eightieth General Assembly in the Regular or Extraordinary Legislative Session increases the percentage of gambling proceeds credited to the gambling treatment fund.

It is the intent of the general assembly that from the moneys appropriated in this section, persons with a dual diagnosis of substance abuse and gambling addictions shall be given priority in treatment services.

b. Gambling treatment program

The funds in the gambling treatment fund after the appropriation in paragraph "a" is made are appropriated and shall be used for funding of 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, education and preventive services, and financial management services.

2. Unless legislation enacted by the Eightieth General Assembly in 2004 otherwise provides for the deposit of tax revenue received by the state racing and gaming commission pursuant to section 99D.15 in the gambling treatment fund, for the fiscal year beginning July 1, 2004, and ending June 30, 2005, from the tax revenue received by the state racing and gaming commission pursuant to section 99D.15, subsections 1, 3, and 4, an amount equal to three-tenths of one percent of the gross sum wagered by the pari-mutuel method is to be deposited into the gambling treatment fund.

Sec. 104. 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, as amended by 1997 Iowa Acts, chapter 203, section 9, 1998 Iowa Acts, chapter 1221, section 9, and 1999 Iowa Acts, chapter 201, section 17, and as continued by 2000 Iowa Acts, chapter 1222, section 10, 2001 Iowa Acts, chapter 182, section 13, 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, section 104, and 2003 Iowa Acts, chapter 175, section 4, shall be extended until June 30, 2005, and the increased fees to be collected pursuant to that project shall continue to be collected and are appropriated to the Iowa department of public health until June 30, 2005. The department shall submit a report to the persons designated by this Act to receive reports no later than September 1, 2004, concerning the status of the modernization project, the fees collected, and a target date for the project's completion.

Sec. 105. SCOPE OF PRACTICE REVIEW PROJECT. The scope of practice review committee pilot project as enacted in 1997 Iowa Acts, chapter 203, section 6, as continued by 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, section 107, and 2003 Iowa Acts, chapter 175, section 5, shall be extended until June 30, 2005. The Iowa department of public health shall submit an annual progress report to the governor and the general assembly by January 15 and shall include any recommendations for legislative action as a result of review committee activities. The department may contract with a school or college of public health in Iowa to assist in implementing the project.

Sec. 106. AIDS DRUG ASSISTANCE PROGRAM. The Iowa department of public health and the department of human services shall collaborate to identify funding within the funds available for the fiscal year beginning July 1, 2004, to use in leveraging the maximum amount of federal funding through the federal Ryan White Care Act, Title II, AIDS drug assistance program for AIDS drug assistance program supplemental drug treatment grants. **The Iowa department of public health shall submit a report regarding the results of this directive to the persons specified in this Act to receive reports.**

Sec. 107. TOBACCO USE PREVENTION AND CONTROL — ADMINISTRATOR. The director of the Iowa department of public health shall employ a division administrator for the division of tobacco use prevention and control as a full-time equivalent position with a salary commensurate with the full-time position.

Sec. 108. LEGISLATIVE INTENT — THE STATE OF IOWA, A HEALTHY COMMUNITY.

1. It is the intent of the general assembly that state agencies, local communities, and individuals begin exploring strategies and partnerships to create a statewide community network that supports health promotion, prevention, and chronic disease management.

2. It is the expectation of the general assembly that such strategies and partnerships will energize local communities to transform their cultures into those which promote healthy lifestyles and which, collectively, transform the state of Iowa into one healthy community.

COMMISSION OF VETERANS AFFAIRS

Sec. 109. 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, 2004, and ending June 30, 2005, 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, including the war orphans educational aid fund established pursuant to chapter 35, and for not more than the following full-time equivalent positions:

.....	$	293,971
.....	FTEs	4.00

Of the funds appropriated in this subsection, $100,000 shall be used by the commission to contract with the department of elder affairs to utilize local veterans affairs commissions and the retired senior volunteers program to increase the utilization by eligible individuals of benefits available through the federal department of veterans affairs.

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. IOWA VETERANS HOME

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	16,189,139
.....	FTEs	843.50

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. 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.

c. The chairpersons and ranking members of the joint appropriations subcommittee on health and human services shall be notified by January 15 of any calendar year during which

* Item veto; see message at end of the Act

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.

d. The Iowa veterans home shall operate with a net state general fund appropriation. The amount appropriated in this subsection is the net amount of state moneys projected to be needed for the Iowa veterans home. The purposes of operating with a net state general fund appropriation are to encourage the Iowa veterans home to operate with increased self-sufficiency, to improve quality and efficiency, and to support collaborative efforts among all funders of services available from the Iowa veterans home. Moneys appropriated in this subsection 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 Iowa veterans home may temporarily draw more than the amount appropriated, provided the amount appropriated is not exceeded at the close of the fiscal year.

e. Revenues attributable to the Iowa veterans home for the fiscal year beginning July 1, 2004, shall be deposited into the Iowa veterans home account and shall be treated as repayment receipts, including but not limited to all of the following:

(1) Federal veterans administration payments.

(2) 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 Iowa veterans home is authorized to provide.

f. For the purposes of allocating the salary adjustment fund moneys appropriated in another Act, the Iowa veterans home shall be considered to be funded entirely with state moneys.

g. Notwithstanding section 8.33, up to $500,000 of the Iowa veterans home revenues that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available to be used in the succeeding fiscal year.

HUMAN SERVICES

Sec. 110. 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, 2004, and ending June 30, 2005, from moneys received under the federal temporary assistance for needy families (TANF) block grant pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and successor legislation, which are federally appropriated for the federal fiscal years beginning October 1, 2003, and ending September 30, 2004, and beginning October 1, 2004, and ending September 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

If the total amount of federal government appropriations received for Iowa's portion of the TANF block grant amounts for the federal fiscal years beginning October 1, 2003, and ending September 30, 2004, and beginning October 1, 2004, and ending September 30, 2005, is less than $131,524,959, it is the intent of the general assembly to act expeditiously during the 2005 legislative session to adjust appropriations or take other actions to address the reduced amount. 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:

1. To be credited to the family investment program account and used for assistance under the family investment program under chapter 239B:

..... $ 45,277,569

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:

..... $ 13,412,794

3. For field operations:
. . . . . $ 16,280,254
4. For general administration:
. . . . . $ 3,660,030
5. For local administrative costs:
. . . . . $ 2,136,565
6. For state child care assistance:
. . . . . $ 18,073,746

a. Of the funds appropriated in this subsection, $200,000 shall be used for provision of educational opportunities to registered child care home providers in order to improve services and programs offered by this category of providers and to increase the number of providers. The department may contract with institutions of higher education or child care resource and referral centers to provide the educational opportunities. Allowable administrative costs under the contracts shall not exceed 5 percent. The application for a grant shall not exceed two pages in length.

b. Of the funds appropriated in this subsection, the maximum amount allowed under Pub. L. No. 104-193 and successor legislation shall be transferred to the child care and development block grant appropriation. Funds appropriated in this subsection that remain following the transfer shall be used to provide direct spending for the child care needs of working parents in families eligible for the family investment program.

7. For mental health and developmental disabilities community services:
. . . . . $ 4,500,610
8. For child and family services:
. . . . . $ 33,475,728
9. For child abuse prevention grants:
. . . . . $ 250,000
10. For pregnancy prevention grants on the condition that family planning services are funded:
. . . . . $ 2,514,413

a. If the department receives approval of a waiver from the centers for Medicare and Medicaid services of the United States department of health and human services to provide family planning services, of the amount appropriated in this subsection, $533,580 shall be transferred to the appropriation in this Act for child and family services.

b. Pregnancy prevention grants shall be awarded to programs in existence on or before July 1, 2004, if the programs are comprehensive in scope and have demonstrated positive outcomes. Grants shall be awarded to pregnancy prevention programs which are developed after July 1, 2004, if the programs are comprehensive in scope and are based on existing models that have demonstrated positive outcomes. Grants shall comply with the requirements provided in 1997 Iowa Acts, chapter 208, section 14, subsections 1 and 2, including the requirement that grant programs must emphasize sexual abstinence. Priority in the awarding of grants shall be given to programs that serve areas of the state which demonstrate the highest percentage of unplanned pregnancies of females age 13 or older but younger than age 18 within the geographic area to be served by the grant.

c. In addition to the full-time equivalent positions funded in this Act, the department may use a portion of the funds appropriated in this subsection to employ up to an additional 1.00 FTE for the administration of programs specified in this subsection.

11. For technology needs and other resources necessary to meet federal welfare reform reporting, tracking, and case management requirements:
. . . . . $ 1,037,186
12. For the healthy opportunities for parents to experience success (HOPES) program administered by the Iowa department of public health to target child abuse prevention:
. . . . . $ 200,000
13. To be credited to the state child care assistance appropriation made in this section to be

used for funding of community-based early childhood programs targeted to children from birth through five years of age, developed by community empowerment areas as provided in this subsection:

. . . . . $ 7,350,000

a. The department may transfer TANF block grant funding appropriated and allocated in this subsection to the child care and development block grant appropriation in accordance with federal law as necessary to comply with the provisions of this subsection. The funding shall then be provided to community empowerment areas for the fiscal year beginning July 1, 2004, in accordance with all of the following:

(1) The area must be approved as a designated community empowerment area by the Iowa empowerment board.

(2) 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 for fiscal year 2004-2005 from the TANF block grant to fund community-based programs targeted to children from birth through five years of age developed by community empowerment areas.

(3) 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.

(4) The availability of funding provided under this subsection is subject to changes in federal requirements and amendments to Iowa law.

b. The moneys distributed in accordance with this subsection shall be used by communities for the purposes of enhancing quality child 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. In addition to the full-time equivalent positions authorized in this division of this Act, 1.00 FTE position is authorized and the department may use funding appropriated in this subsection for provision of technical assistance and other support to communities developing and implementing strategies with moneys distributed in accordance with this subsection.

c. Moneys that are subject to this subsection 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.

14. For a pilot program to be established in a judicial district, selected by the department and the judicial council, to provide employment and support services to delinquent child support obligors as an alternative to commitment to jail as punishment for contempt of court:

. . . . . $ 200,000

Of the amounts appropriated in this section, $11,904,734 for the fiscal year beginning July 1, 2004, shall be transferred to the appropriation of the federal social services block grant for that fiscal year. If the federal government revises requirements to reduce the amount that may be transferred to the federal social services block grant, it is the intent of the general assembly to act expeditiously during the 2005 legislative session to adjust appropriations or the transfer amount or take other actions to address the reduced amount.

Eligible funding available under the TANF block grant that is not appropriated or not otherwise expended shall be considered reserved for economic downturns and welfare reform purposes and is subject to further state appropriation to support families in their movement toward self-sufficiency.

Federal funding received that is designated for activities supporting marriage or two-parent families is appropriated to the Iowa marriage initiative grant fund created in section 234.45.

**Sec. 111. IOWA MARRIAGE INITIATIVE GRANT FUND.*

1. Moneys credited to the Iowa marriage initiative grant fund under 2003 Iowa Acts, chapter 175, section 7, subsection 15, and any other moneys credited to the fund are appropriated to the department for the fiscal year beginning July 1, 2004, and ending June 30, 2005, to be used in accordance with this section.

2. The department shall establish an Iowa fatherhood and family initiative grant program utilizing funds credited to the Iowa marriage initiative grant fund created in section 234.45 to fund services to support fatherhood and to encourage the formation and maintenance of two-parent families that are secure and nurturing. The department of human services shall adopt rules pursuant to chapter 17A to administer the grant fund and to establish procedures for awarding of grants.

3. The program shall require that a grantee be a nonprofit organization incorporated in this state with demonstrated successful experience in facilitating fatherhood promotion activities, marriage and family promotion activities, in using media resources to promote fatherhood and marriage and family formation, in making presentations to service or faith-based organizations, and in raising private funding for activities that support fatherhood, marriage, and families.

4. Preference in awarding grants may be given to those nonprofit organizations working with faith-based groups and those groups targeting young fathers.

5. The program activities funded by a grant shall include but are not limited to all of the following:

a. Working with individuals who have a demonstrated ability in working with at-risk fathers or working with those who may solemnize marriages pursuant to section 595.10 to utilize premarital diagnostic tools, to implement marriage agreements developed by the individuals who may solemnize marriages pursuant to section 595.10 that provide for an appropriate engagement period and premarital and post marital counseling, and to use volunteer mentors in program activities.

b. Provision of a series of meetings sharing best practices that encourage young fathers to fulfill their responsibilities to the expectant mother of the child during the pregnancy, and to the mother of the child following the birth of the child, that promote happy and healthy marriages, and that offer counseling to determine the father's level of commitment to the child and the child's mother.

6. The program activities funded by a grant shall be privately funded at no less than fifty percent of the grant amount.

7. Grants shall be awarded in a manner that results in provision of services throughout the state in an equal number of urban and rural geographic areas.

8. The department shall implement the grant program so that the initial request for proposals is issued on or before October 1, 2004, and so that any grants are awarded on or before January 1, 2005.

9. A grantee shall submit a quarterly financial report to the department and to the legislative services agency and shall be subject to an annual independent evaluation to assess accomplishment of the purposes of the program.

10. The department shall provide a copy of the request for proposals and shall submit a report concerning the proposals received and grants awarded to those persons designated by this division of this Act to receive reports.

*11. The department may adopt emergency rules to implement the provisions of this section.**

Sec. 112. FAMILY INVESTMENT PROGRAM ACCOUNT.

1. Moneys credited to the family investment program (FIP) account for the fiscal year beginning July 1, 2004, and ending June 30, 2005, shall be used in accordance with the following requirements:

a. The department of human services shall provide assistance in accordance with chapter 239B.

b. The department shall continue the special needs program under FIP.

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* Item veto; see message at end of the Act

c. The department shall continue to comply with federal welfare reform data requirements pursuant to the appropriations made for that purpose.

2. The department may use a portion of the moneys credited to the FIP account under this section, as necessary for salaries, support, maintenance, and miscellaneous purposes for not more than the following full-time equivalent positions which are in addition to any other full-time equivalent positions authorized by this division of this Act:

. . . . . FTEs 9.98

3. The department may transfer funds in accordance with section 8.39, either federal or state, to or from the child care appropriations made for the fiscal year beginning July 1, 2004, 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.

4. Moneys appropriated in this division of this Act and credited to the FIP account for the fiscal year beginning July 1, 2004, and ending June 30, 2005, are allocated as follows:

a. For the family development and self-sufficiency grant program as provided under section 217.12:

. . . . . $ 5,133,042

(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 funding allocated in this lettered paragraph, the council shall give consideration, in addition to other criteria established by the council, to a grantee's intended use of local funds with a grant and to whether approval of a grant proposal would expand the availability of the program's services.

(3) The department may continue to implement the family development and self-sufficiency grant program statewide during FY 2004-2005.

b. For the diversion subaccount of the FIP account:

. . . . . $ 2,814,000

(1) Moneys allocated to the diversion subaccount shall be used to implement FIP diversion statewide while continuing the local flexibility in program design. A family that meets income eligibility requirements for FIP may receive a one-time payment to remedy an immediate need in order to permit the family to maintain self-sufficiency without providing ongoing cash assistance. A FIP participant family may receive diversion assistance to overcome barriers to obtaining employment and to assist in stabilizing employment in order to increase the likelihood of the family leaving FIP more quickly. The department shall assess and screen individuals who would most likely benefit from the assistance. In addition to the full-time equivalent positions authorized in this division of this Act, 1.00 FTE is authorized for purposes of diversion. 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 FIP if diversion incentives would not be provided.

(2) A portion of the moneys allocated for the subaccount may be used for field operations salaries, data management system development, and implementation costs and support deemed necessary by the director of human services in order to administer the FIP diversion program.

(3) Of the funds allocated in this lettered paragraph, not more than $250,000 shall be used to develop or continue community-level parental obligation pilot projects. The requirements established under 2001 Iowa Acts, chapter 191, section 3, subsection 5, paragraph "c", subparagraph (3), shall remain applicable to the parental obligation pilot projects for fiscal year 2004-2005.

c. For the food stamp employment and training program:

. . . . . $ 64,278

5. Of the child support collections assigned under FIP, an amount equal to the federal share of support collections shall be credited to the child support recovery appropriation. Of the remainder of the assigned child support collections received by the child support recovery unit, a portion shall be credited to the FIP account and a portion may be used to increase recoveries.

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.

7. The department may continue the initiative to 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.

Sec. 113. 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, 2004, and ending June 30, 2005, 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 (FIP) account and used for family investment program assistance under chapter 239B:

..... $ 39,045,438

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 FIP recipients.

2. 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 FIP 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, $9,274,143 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, and successor legislation. 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. 114. FOOD STAMP HEALTHY CHOICES. The department of human services, in cooperation with the Iowa department of public health, shall identify means by which the food stamp program may be utilized to promote good nutrition and healthy choices among recipients of food stamps. **The departments shall submit a report of their findings to the general assembly by December 15, 2004.**

Sec. 115. 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, 2004, and ending June 30, 2005, 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:

..... $ 5,715,656
..... FTEs 407.00

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,

* Item veto; see message at end of the Act

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.

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.

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. a. 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.

b. Employees in full-time positions that transition from county government to state government employment under this subsection are exempt from testing, selection, and appointment provisions of chapter 19A and from the provisions of collective bargaining agreements relating to the filling of vacant positions.

5. 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.

6. The department shall expend up to $31,000, including federal financial participation, for the fiscal year beginning July 1, 2004, 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. Federal access and visitation grant moneys shall be issued directly to private not-for-profit agencies that provide services designed to increase compliance with the child access provisions of court orders, including but not limited to neutral visitation site and mediation services.

Sec. 116. 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, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For medical assistance reimbursement and associated costs as specifically provided in the reimbursement methodologies in effect on June 30, 2004, except as otherwise expressly authorized by law, including reimbursement for abortion services, which shall be available under the medical assistance program only for those abortions which are medically necessary:

. . . . . $ 352,794,101

**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 mentally deficient or afflicted with a congenital illness.

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* Item veto; see message at end of the Act

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 services waiver that would otherwise be approved for provision in an intermediate care facility for persons with mental retardation (ICFMR), 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 services waiver. 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 services 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 ICFMR services, 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.

e. Unless a county has paid or is paying for the nonfederal share of the cost of a person's home and community-based waiver services or ICFMR placement under the county's mental health, mental retardation, and developmental disabilities services fund, or unless a county of legal settlement would become liable for the costs of services at the ICFMR level of care for a person due to the person reaching the age of majority, the state shall pay the nonfederal share of the costs of an eligible person's services under the home and community-based waiver for persons with brain injury.

4. 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.

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* Item veto; see message at end of the Act

5. Of the funds appropriated to the Iowa department of public health for addictive disorders, $950,000 for the fiscal year beginning July 1, 2004, shall be transferred to the department of human services for an integrated substance abuse managed care system.

6. In administering the medical assistance home and community-based services waivers, the total number of openings at any one time shall be limited to the number approved for a waiver by the secretary of the United States department of health and human services. The openings shall be available on a first-come, first-served basis.

7. 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.

8. If the federal centers for Medicare and Medicaid services approves a waiver request from the department, the department shall provide a period of 12 months of guaranteed eligibility for medical assistance family planning services only, regardless of the change in circumstances of a woman who was a medical assistance recipient when a pregnancy ended. The department shall also provide this guaranteed eligibility to women who are at least 13 years of age but less than 45 years of age with countable income at or below 200 percent of the federal poverty level.

9. a. The department shall aggressively pursue options for providing medical assistance or other assistance to individuals with special needs who become ineligible to continue receiving services under the early and periodic screening, diagnosis, and treatment program under the medical assistance program due to becoming 21 years of age, who have been approved for additional assistance through the department's exception to policy provisions, but who have health care needs in excess of the funding available through the exception to policy process.

b. Of the funds appropriated in this section, $100,000 shall be used for participation in one or more pilot projects operated by a private provider to allow the individual or individuals to receive service in the community in accordance with principles established in the Olmstead v. L.C. 527 U.S. 581 (1999) for the purpose of providing medical assistance or other assistance to individuals with special needs who become ineligible to continue receiving services under the early and periodic screening, diagnosis, and treatment program under the medical assistance program due to becoming twenty-one years of age, who have been approved for additional assistance through the department's exception to policy provisions, but who have health care needs in excess of the funding available through the exception to the policy provisions.

10. The Iowa medical assistance drug utilization review commission shall submit copies of the board's[4] annual review, including facts and findings, of the drugs on the department's prior authorization list to the department and to the members of the joint appropriations subcommittee on health and human services.

11. The department of human services shall submit a Medicaid state plan amendment to the centers for Medicare and Medicaid services of the United States department of health and human services to provide that for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the department of human services shall adjust hospital payments to state-owned acute-care hospitals with over 500 beds to offset the high cost incurred by such facilities for providing services to medical assistance patients. The amendment shall provide that adjustments shall be made to the payments for inpatient hospital services to which the hospital would otherwise be entitled under the medical assistance program. Additionally, the amendment shall provide that the adjustments shall be established at the level intended to increase the medical assistance payments to qualifying hospitals up to the lesser of the categorical Medicare upper payment limit for inpatient services, or the hospital-specific limit, as defined under 42 C.F.R. 447.272, 42 C.F.R. 447.321, and 42 U.S.C. § 1396r-4(g), as applicable.

12. The department shall assist school districts in applying for direct claiming under the medical assistance program for funding of school district nursing services for students.

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[4] The word "commission's" probably intended

Sec. 117. 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, 2004, and ending June 30, 2005, 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, and for not more than the following full-time equivalent positions:

.....	$	606,429
.....	FTEs	20.95

Sec. 118. 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, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For medical contracts, including salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	9,725,035
.....	FTEs	1.00

1. In any managed care contract for mental health or substance abuse services entered into or extended by the department on or after July 1, 2004, the request for proposals shall provide for coverage of dual diagnosis mental health and substance abuse treatment provided at the state mental health institute at Mount Pleasant. To the extent possible, the department shall also amend any such contract existing on July 1, 2004, to provide for such coverage.

2. Up to $665,000 of the moneys deposited in the pharmaceutical settlement account created pursuant to section 249A.33 is appropriated to the department for the fiscal year beginning July 1, 2004, and ending June 30, 2005, to be used for the procurement of and transition to the new medical assistance program fiscal agent vendors.

Sec. 119. MEDICAL ASSISTANCE PROGRAM — REQUIREMENTS.

1. The department of human services shall do all of the following:

a. Consistent with applicable state and federal law, issue one or more requests for proposals to purchase certain durable medical equipment or supplies if such a procurement strategy will reduce the costs of these items to the medical assistance program while maintaining appropriate access and quality standards.

b. Expand the recipient lock-in program, surveillance and utilization review activities, and program audit activities to the greatest extent possible. Any savings realized from the expansion may be used to the extent necessary to pay the costs associated with implementation of this subsection. The department shall report the amount of any savings realized and the amount of any costs paid to the persons designated in this Act to receive reports.

c. Implement a health insurance data match program with insurance carriers to be used to match insureds against a listing of medical assistance recipients. The information submitted shall be used solely to identify third-party payors for medical assistance recipients and shall be kept confidential. The department, in consultation with insurance carriers, shall adopt rules to implement this paragraph. The rules shall be published as emergency rules to take effect no later than June 30, 2004. Insurance carriers shall begin providing the information required upon the adoption of the rules.

d. Notwithstanding any provision of law to the contrary, institute a process whereby home health agencies are required to bill the Medicare program for appropriate home health services. The process shall require that as a condition of receiving payment under the medical assistance program, the home health agency must attach a Medicare denial of benefits form to the Medicaid program claim form.

e. Identify and initiate a process for reducing reliance on intermediate care facilities for persons with mental retardation level of care and substituting community-based care.

f. Provide that under the Iowa preferred drug list requirements, any newly released generic

drug product shall only be considered to be a preferred drug and therefore not subject to prior authorization if the generic product's cost to the medical assistance program is less than the brand name product's cost to the medical assistance program. In determining the medical assistance program cost of each drug product, the drug product cost shall be the net amount derived following inclusion of all medical assistance program drug rebates and after the impact of all Iowa-specific supplemental rebates are taken into account.

g. Determine or enter a contract to identify the incidence of chronic disease within the Iowa medical assistance program population in order to most effectively utilize disease management programs under the medical assistance program. The department may procure a sole source contract to implement this subsection.

2. The department may adopt emergency rules and shall apply for any federal waivers or plan amendments necessary to implement the provisions of this section.

Sec. 120. STATE SUPPLEMENTARY ASSISTANCE.

1. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For state supplementary assistance and the medical assistance home and community-based services waiver rent subsidy program:

. . . . . $ 19,273,135

2. 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.

3. If during the fiscal year beginning July 1, 2004, 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 division of this Act to ensure that federal requirements are met. In addition, the department may make other programmatic and rate adjustments necessary to remain within the amount appropriated in this section while ensuring compliance with federal requirements. The department may adopt emergency rules to implement the provisions of this subsection.

Sec. 121. CHILDREN'S HEALTH INSURANCE PROGRAM. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For maintenance of the healthy and well kids in Iowa (hawk-i) program pursuant to chapter 514I for receipt of federal financial participation under Title XXI of the federal Social Security Act, which creates the state children's health insurance program:

. . . . . $ 12,118,275

1. The department may transfer funds appropriated in this section to be used for the purpose of expanding health care coverage to children under the medical assistance program. The department shall provide periodic updates to the general assembly of expenditures of funds appropriated in this section.

2. Moneys in the hawk-i trust fund are appropriated to the department of human services and shall be used to offset any program costs for the fiscal year beginning July 1, 2004, and ending June 30, 2005.

Sec. 122. CHILD 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, 2004, and ending

June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For child care programs:

. . . . . $ 5,050,752

1. a. Of the funds appropriated in this section, $4,525,228 shall be used for state child care assistance in accordance with section 237A.13.

b. During the 2004-2005 fiscal year, the moneys deposited in the child care credit fund created in section 237A.28 are appropriated to the department to be used for state child care assistance in accordance with section 237A.13, in addition to the moneys allocated for that purpose in paragraph "a".

2. 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 waiting list requirements of section 237A.13. Any state obligation to provide services pursuant to this section is limited to the extent of the funds appropriated in this section.

3. Of the funds appropriated in this section, $525,524 is allocated for the statewide program for child care resource and referral services under section 237A.26.

4. The department may use any of the funds appropriated in this section as a match to obtain federal funds for use in expanding child care assistance and related programs. For the purpose of expenditures of state and federal child care funding, funds shall be considered obligated at the time expenditures are projected or are allocated to the department's service areas. 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.

5. A portion of the state match for the federal child care and development block grant shall be provided through the state general fund appropriation for child development grants and other programs for at-risk children in section 279.51.[5]

6. If the department receives additional funding from the federal government designated for purposes of improving child care quality, the funding shall be used for additional child care consultant positions within the department's field operations.

Sec. 123. CHILD CARE QUALITY RATING SYSTEM.

1. By December 15, 2004, the department of human services shall submit to the governor and general assembly a plan for implementation of a voluntary child care provider quality rating system. In developing the implementation plan for the quality rating system, the department of human services shall partner with the community empowerment office in the department of management and the state child care advisory council. The department shall also coordinate with the state agencies represented on the Iowa empowerment board, child care resource and referral service grantees under section 237A.26, and other agencies and organizations that focus on community-based early childhood services.

2. The implementation plan shall detail the rating system structure, including the number of quality levels, outline the manner in which the system will be administered, identify the statutory and rule changes needed, identify implementation costs and funding strategies, include a communication plan targeted to both providers and parents, and propose an implementation timeline.

3. Each quality rating level in the proposed system may address one or more of the following quality variables: staff education, training, and credentials; director education and training; an environmental rating scale or other means to assess or evaluate the physical, health, and safety aspects of a child care facility; parental involvement; staff-to-child ratios; national accreditation; compliance history; curriculum; business practices; staff retention; staff compensation and benefits; provider membership in early childhood professional organizations; and other appropriate quality variables.

4. In providing support and recognition for providers who seek to attain higher quality

[5] See chapter 1174, §14 herein

rating levels, the plan may propose payment of a reimbursement differential under the state child care assistance program. In addition, the plan may provide for supplying provider quality ratings on the department's internet site and in other consumer information distributed pursuant to section 237A.25 and in information supplied to parents by child care resource and referral services.

Sec. 124. 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, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For operation of the Iowa juvenile home at Toledo and for salaries, support, maintenance, and for not more than the following full-time equivalent positions:

..... $ 6,061,266
..... FTEs 130.54

The department is requested to convene a group to review the programs and services of the Iowa juvenile home and to present the governor and general assembly with suggestions for improvements. The group should review previous studies and reports on the institution. The membership of the group should include but is not limited to representatives of departmental field staff, juvenile judges, juvenile court officers, alumni of the institution, other departmental institutions, community-based providers, and other interested parties.

2. For operation of the state training school at Eldora and for salaries, support, maintenance, and for not more than the following full-time equivalent positions:

..... $ 9,570,563
..... FTEs 218.53

3. During the fiscal year beginning July 1, 2004, 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 subsequent changes in capacity 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, 2004.

5. Within the amounts appropriated in this section, the department may transfer funds as necessary to best fulfill the needs of the institutions provided for in the appropriation.

Sec. 125. CHILD AND FAMILY SERVICES.

1. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For child and family services:

..... $ 96,935,253

In order to address a reduction of $6,200,000 from the amount allocated under this appropriation in prior years for purposes of juvenile delinquent graduated sanction services, up to $6,200,000 of the amount of federal temporary assistance for needy families block grant funding appropriated in this division of this Act for child and family services, shall be made available for purposes of juvenile delinquent graduated sanction services.

2. The department may transfer funds 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 division of this Act for general administration and for field operations for resources necessary to implement and operate the services funded in this section.

3. a. Of the funds appropriated in this section, up to $34,653,383 is allocated as the statewide expenditure target under section 232.143 for group foster care maintenance and services.

b. If at any time after September 30, 2004, annualization of a service area's current expenditures indicates a service area is at risk of exceeding its group foster care expenditure target

* Item veto; see message at end of the Act

under section 232.143 by more than 5 percent, the department and juvenile court services shall examine all group foster care placements in that service area 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.

c. Of the funds allocated in this subsection, $1,398,403 is allocated as the state match funding for 50 highly structured juvenile program beds. If the number of beds provided for in this lettered paragraph is not utilized, the remaining funds allocated may be used for group foster care.

d. For the fiscal year beginning July 1, 2004, 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 service area shall establish the plan in a manner so as to ensure the moneys allocated to the service area under section 232.143 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.

4. In accordance with the provisions of section 232.188, the department shall continue the program to decategorize child welfare services funding. Of the funds appropriated in this section, $1,000,000 is allocated specifically for expenditure through the decategorization of child welfare funding pools and governance boards established pursuant to section 232.188. In addition, up to $2,000,000 of the amount of federal temporary assistance for needy families block grant funding appropriated in this division of this Act for child and family services shall be made available for purposes of decategorization of child welfare services as provided in this subsection. Notwithstanding section 8.33, moneys allocated in this subsection that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year. It is the intent of the general assembly that the department continue its practice of providing strong support for Iowa's nationally recognized initiative of decategorization of child welfare funding.

5. Of the funds appropriated in this section, up to $915,892 is allocated for additional funding of the family preservation program.

6. The department shall continue the 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.

7. A portion of the funding 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, 2004, state funding for shelter care paid pursuant to section 234.35, subsection 1, paragraph "h", shall be limited to $6,926,718.

9. 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.

10. Federal funds received by the state during the fiscal year beginning July 1, 2004, 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, are appropriated to the department to be used as additional funding for services and purposes provided for under this section. Notwithstanding section 8.33, moneys received in accordance with this subsection that remain unencumbered or unobligated at the close of the fiscal year shall not revert to any fund but shall remain available for the purposes designated until the close of the succeeding fiscal year.

11. Of the moneys appropriated in this section, not more than $442,100 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.

12. Of the funding appropriated in this section, $3,696,285 shall be used for protective child care assistance.

13. Of the moneys appropriated in this section, up to $2,859,851 is allocated for the 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. Of the amount allocated in this subsection, up to $1,431,597 shall be made available to provide school-based supervision of children adjudicated under chapter 232, of which not more than $15,000 may be used for the purpose of training. A portion of the cost of each school-based liaison officer shall be paid by the school district or other funding source as approved by the chief juvenile court officer.

a. Notwithstanding section 232.141 or any other provision of law to the contrary, the amount allocated in this subsection shall be distributed to the judicial districts as determined by the state court administrator. The state court administrator shall make the determination of the distribution amounts on or before June 15, 2004.

b. Notwithstanding chapter 232 or any other provision of law to the contrary, a district or juvenile court 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 court distribution amount to pay for the service. The chief juvenile court officer shall encourage use of the funds allocated in this subsection such that there are sufficient funds to pay for all court-related services during the entire year. The chief juvenile court officers shall attempt to anticipate potential surpluses and shortfalls in the distribution amounts and shall cooperatively request the state court administrator to transfer funds between the districts' distribution amounts as prudent.

c. 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.

d. Of the funding allocated in this subsection, not more than $100,000 may be used by the judicial branch for administration of the requirements under this subsection and for travel associated with court-ordered placements which are a charge upon the state pursuant to section 232.141, subsection 4.

14. The department shall maximize the capacity to draw federal funding under Title IV-E of the federal Social Security Act.

15. Notwithstanding section 234.39, subsection 5, and 2000 Iowa Acts, chapter 1228, section 43, the department may operate a subsidized guardianship program if the United States department of health and human services approves a waiver under Title IV-E of the federal Social Security Act or the federal Social Security Act is amended to allow Title IV-E funding to be used for subsidized guardianship, and the subsidized guardianship program can be operated without loss of Title IV-E funds.

16. The department shall work with foster and adoptive families, private child welfare agencies, and advocates to identify savings alternatives in the adoption subsidy program. The department may adopt emergency rules to implement this subsection.

*17. *The department shall develop a plan for privatizing the administration of the foster care and adoption programs. The plan shall be submitted to the governor and the general assembly on or before December 15, 2004.**

18. Of the amount appropriated in this section, $100,000 shall be transferred to the Iowa department of public health to be used for the child protection center grant program in accordance with section 135.118.

19. Of the amount appropriated in this section, $148,000 shall be used for funding of one or more child welfare diversion and mediation pilot projects as provided in House File 2462.[6]

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* Item veto; see message at end of the Act

[6] "2004 Iowa Acts, House File 2462" probably intended; chapter 1130 herein

Sec. 126. JUVENILE DETENTION HOME FUND. Moneys deposited in the juvenile detention home fund created in section 232.142 during the fiscal year beginning July 1, 2004, and ending June 30, 2005, are appropriated to the department of human services for the fiscal year beginning July 1, 2004, and ending June 30, 2005, for distribution as follows:

1. An amount equal to ten percent of the costs of the establishment, improvement, operation, and maintenance of county or multicounty juvenile detention homes in the fiscal year beginning July 1, 2003. Moneys appropriated for distribution in accordance with 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 fiscal year beginning July 1, 2003. Notwithstanding section 232.142, subsection 3, the financial aid payable by the state under that provision for the fiscal year beginning July 1, 2004, shall be limited to the amount appropriated for the purposes of this subsection.

2. For renewal of a grant to a county with a population between 189,000 and 196,000 for implementation of the county's runaway treatment plan under section 232.195:
..... $ 80,000

3. For continuation and expansion of the community partnership for child protection sites:
..... $ 318,000

4. For grants to counties implementing a runaway treatment plan under section 232.195.

5. The remainder for additional allocations to county or multicounty juvenile detention homes, in accordance with the distribution requirements of subsection 1.

Sec. 127. 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, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For the family support subsidy program:
..... $ 1,936,434

1. The department may use up to $333,312 of the moneys appropriated in this section to continue the children-at-home program in current counties, of which not more than $20,000 shall be used for administrative costs.

2. Notwithstanding section 225C.38, subsection 1, the monthly family support payment amount for the fiscal year beginning July 1, 2004, shall remain the same as the payment amount in effect on June 30, 2004.

Sec. 128. 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, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For building community capacity through the coordination and provision of training opportunities in accordance with the consent decree of Conner v. Branstad, No. 4-86-CV-30871 (S.D. Iowa, July 14, 1994):
..... $ 42,623

Sec. 129. 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, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For the state mental health institute at Cherokee for salaries, support, maintenance, and miscellaneous purposes and for not more than the following full-time equivalent positions:
..... $ 12,927,556
..... FTEs 227.65

2. For the state mental health institute at Clarinda for salaries, support, maintenance, and miscellaneous purposes and for not more than the following full-time equivalent positions:
..... $ 7,410,346
..... FTEs 113.15

3. For the state mental health institute at Independence for salaries, support, maintenance, and miscellaneous purposes and for not more than the following full-time equivalent positions:

. . . . . $ 17,239,768
. . . . . FTEs 317.80

The state mental health institute at Independence shall continue the 30 psychiatric medical institution for children (PMIC) beds authorized in section 135H.6, in a manner which results in no net state expenditure amount in excess of the amount appropriated in this subsection. Counties are not responsible for the costs of PMIC services described in this subsection. Subject to the approval of the department, with the exception of revenues required under section 249A.11 to be credited to the appropriation in this division of this Act for medical assistance, revenues attributable to the PMIC beds described in this subsection for the fiscal year beginning July 1, 2004, and ending June 30, 2005, 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.

4. For the state mental health institute at Mount Pleasant for salaries, support, maintenance, and miscellaneous purposes and for not more than the following full-time equivalent positions:

. . . . . $ 6,109,205
. . . . . FTEs 100.44

a. Funding is provided in this subsection for the state mental health institute at Mount Pleasant to continue the dual diagnosis mental health and substance abuse program on a net budgeting basis in which 50 percent of the actual per diem and ancillary services costs are 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, 2004, and ending June 30, 2005, shall be deposited in the institute's account, including but not limited to all of the following revenues:

(1) Moneys received by the state from billings to counties under section 230.20.

(2) Moneys received from billings to the Medicare program.

(3) Moneys received from a managed care contractor providing services under contract with the department or any private third-party payor.

(4) Moneys received through client participation.

(5) Any other revenues directly attributable to the dual diagnosis program.

b. The following additional provisions are applicable in regard to the dual diagnosis program:

(1) 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.

(2) 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.

(3) Prior to an individual's 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.

(4) 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.

(5) Notwithstanding section 8.33, state mental health institute revenues related to the dual diagnosis program that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available up to the amount which would allow the state mental health institute to meet credit obligations owed to counties as a result of year-end per diem adjustments for the dual diagnosis program.

5. Within the funds appropriated in this section, the department may transfer funds as necessary to best fulfill the needs of the institutes provided for in the appropriation.

6. 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 or a county.

Sec. 130. STATE RESOURCE CENTERS. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For the state resource center at Glenwood for salaries, support, maintenance, and miscellaneous purposes:

. . . . . $ 8,550,280

2. For the state resource center at Woodward for salaries, support, maintenance, and miscellaneous purposes:

. . . . . $ 4,520,459

3. a. The department shall continue operating the state resource centers at Glenwood and Woodward with a net general fund appropriation. The amounts allocated in this section are the net amounts of state moneys projected to be needed for the state resource centers. The purposes of operating with a net general fund appropriation are to encourage the state resource centers to operate with increased self-sufficiency, to improve quality and efficiency, and to support collaborative efforts between the state resource centers and counties and other funders of services available from the state resource centers. The state resource centers shall not be operated under the net appropriation 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 resource centers. Moneys appropriated in this section 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 state resource centers may temporarily draw more than the amounts appropriated, provided the amounts appropriated are not exceeded at the close of the fiscal year.

b. Subject to the approval of the department, except for revenues under section 249A.11, revenues attributable to the state resource centers for the fiscal year beginning July 1, 2004, shall be deposited into each state resource center'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 resource center is authorized to provide.

c. For the purposes of allocating the salary adjustment fund moneys appropriated in another division of this Act or another Act, the state resource centers shall be considered to be funded entirely with state moneys.

d. Notwithstanding section 8.33, up to $500,000 of a state resource center's revenues that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available to be used in the succeeding fiscal year.

4. Within the funds appropriated in this section, the department may transfer funds as necessary to best fulfill the needs of the institutions provided for in the appropriation.

5. The department may continue to bill for state resource center 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 resource centers.

6. The state resource centers may expand the time limited assessment and respite services during the fiscal year.

7. If the department's administration and the department of management concur with a finding by a state resource center's superintendent that projected revenues can reasonably be expected to pay the salary and support costs for a new employee position, or that such costs for adding a particular number of new positions for the fiscal year would be less than the overtime costs if new positions would not be added, the superintendent may add the new position or positions. If the vacant positions available to a resource center do not include the position classification desired to be filled, the state resource center's superintendent may reclassify any vacant position as necessary to fill the desired position. The superintendents of the state resource centers may, by mutual agreement, pool vacant positions and position classifications during the course of the fiscal year in order to assist one another in filling necessary positions.

8. If existing capacity limitations are reached in operating units, a waiting list is in effect for a service or a special need for which a payment source or other funding is available for the service or to address the special need, and facilities for the service or to address the special need can be provided within the available payment source or other funding, the superintendent of a state resource center may authorize opening not more than two units or other facilities and to begin implementing the service or addressing the special need during fiscal year 2004-2005.

Sec. 131. 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, 2004, and ending June 30, 2005, 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:

. . . . . $ 11,014,619

The general assembly encourages the department to continue discussions with the Iowa state association of counties and administrators of county central point of coordination offices regarding proposals for moving state cases to county budgets.

Sec. 132. 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, 2004, and ending June 30, 2005, 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 division of this Act:

. . . . . $ 17,757,890

1. Of the funds appropriated in this section, $17,727,890 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. 133. 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, 2004, and ending June 30, 2005, 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:

. . . . . $ 205,748

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 10 percent of the amount appropriated shall be used for administrative costs. The pilot project 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.

2. In accordance with 2001 Iowa Acts, chapter 191, section 25, subsection 2, new applicants shall not be accepted into the pilot project. An individual receiving services under the pilot project as of June 30, 2004, shall continue receiving services until the individual voluntarily leaves the project or until another program with similar services exists.

Sec. 134. SEXUALLY VIOLENT PREDATORS.

1. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For costs associated with the commitment and treatment of sexually violent predators in the unit located at the state mental health institute at Cherokee, including costs of legal services and other associated costs, including salaries, support, maintenance, and miscellaneous purposes:

. . . . . $ 2,833,646

2. Unless specifically prohibited by law, if the amount charged provides for recoupment of at least the entire amount of direct and indirect costs, the department of human services may contract with other states to provide care and treatment of persons placed by the other states at the unit for sexually violent predators at Cherokee. The moneys received under such a contract shall be considered to be repayment receipts and used for the purposes of the appropriation made in this section.

Sec. 135. 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, 2004, and ending June

30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

1. For field operations, including salaries, support, maintenance, and miscellaneous purposes and for not more than the following full-time equivalent positions:

..... $ 53,097,364
..... FTEs 1,844.49

Priority in filling full-time equivalent positions shall be given to those positions related to child protection services.

2. In operating the service area system established pursuant to 2001 Iowa Acts, Second Extraordinary Session, chapter 4, for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the department shall utilize the service areas and service area administrators in lieu of regions and regional administrators, notwithstanding the references to department regions or regional administrators in sections 232.2, 232.52, 232.68, 232.72, 232.102, 232.117, 232.127, 232.143, 232.188, and 234.35, or other provision in law. **The department shall submit proposed legislation under section 2.16 for consideration by the Eighty-first General Assembly, 2005 Session, to correct the references in the necessary Code sections.**

Sec. 136. 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, 2004, and ending June 30, 2005, 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:

..... $ 11,089,434
..... FTEs 292.00

Of the funds appropriated in this section, $57,000 is allocated for the prevention of disabilities policy council established in section 225B.3.

Sec. 137. VOLUNTEERS. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For development and coordination of volunteer services:

..... $ 109,568

Sec. 138. MEDICAL ASSISTANCE, STATE SUPPLEMENTARY ASSISTANCE, AND SOCIAL SERVICE PROVIDERS REIMBURSED UNDER THE DEPARTMENT OF HUMAN SERVICES.

1. a. (1) For the fiscal year beginning July 1, 2004, nursing facilities shall be reimbursed at 100 percent of the modified price-based case-mix reimbursement rate. Nursing facilities reimbursed under the medical assistance program shall submit annual cost reports and additional documentation as required by rules adopted by the department.

(2) For the fiscal year beginning July 1, 2004, the total state funding amount for the nursing facility budget shall not exceed $156,013,248. For the fiscal year beginning July 1, 2004, and ending June 30, 2005, nursing facilities reimbursed under the case-mix reimbursement system shall have their allowable cost calculations adjusted by applying the most recently published HCFA/SNF index. For the purpose of this subparagraph, the HCFA/SNF index means the HCFA total skilled nursing facility market basket index published by data resources, inc. The department, in cooperation with nursing facility representatives, shall review projections for state funding expenditures for reimbursement of nursing facilities on a quarterly basis and the department shall determine if an adjustment to the medical assistance reimbursement rate is necessary in order to provide reimbursement within the state funding amount. Any temporary enhanced federal financial participation that may become available to the Iowa medical

* Item veto; see message at end of the Act

assistance program during the fiscal year shall not be used in projecting the nursing facility budget. Notwithstanding 2001 Iowa Acts, chapter 192, section 4, subsection 2, paragraph "c", and subsection 3, paragraph "a", subparagraph (2), if the state funding expenditures for the nursing facility budget for the fiscal year beginning July 1, 2004, is projected to exceed the amount specified in this subparagraph, the department shall adjust the inflation factor of the reimbursement rate calculation for only the nursing facilities reimbursed under the case-mix reimbursement system to maintain expenditures of the nursing facility budget within the specified amount.

b. For the fiscal year beginning July 1, 2004, the department shall reimburse pharmacy dispensing fees using a single rate of $4.26 per prescription, or the pharmacy's usual and customary fee, whichever is lower.

c. For the fiscal year beginning July 1, 2004, reimbursement rates for inpatient and outpatient hospital services shall remain at the rates in effect on June 30, 2004. 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. Any rebasing of hospital inpatient or outpatient rates shall not increase total payments for inpatient and outpatient services.

d. For the fiscal year beginning July 1, 2004, reimbursement rates for rural health clinics, hospices, independent laboratories, 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. (1) For the fiscal year beginning July 1, 2004, reimbursement rates for home health agencies shall remain at the rates in effect on June 30, 2004.

(2) Notwithstanding 2003 Iowa Acts, chapter 112, section 7, subsection 7, the department shall establish a fixed-fee reimbursement schedule for home health agencies under the medical assistance program beginning July 1, 2005. The department shall submit a status report regarding the development of the fixed-fee schedule to the fiscal committee of the legislative council no later than September 1, 2004.

f. For the fiscal year beginning July 1, 2004, federally qualified health centers shall receive cost-based reimbursement for 100 percent of the reasonable costs for the provision of services to recipients of medical assistance.

g. Beginning July 1, 2004, the reimbursement rates for dental services shall remain at the rates in effect on June 30, 2004.

h. Beginning July 1, 2004, the reimbursement rates for community mental health centers shall remain at the rates in effect on June 30, 2004.

i. For the fiscal year beginning July 1, 2004, the maximum reimbursement rate for psychiatric medical institutions for children shall remain at the rate in effect on June 30, 2004, based on per day rates for actual costs.

j. For the fiscal year beginning July 1, 2004, unless otherwise specified in this Act, all noninstitutional medical assistance provider reimbursement rates shall remain at the rates in effect on June 30, 2004, except for area education agencies, local education agencies, infant and toddler services providers, and those providers whose rates are required to be determined pursuant to section 249A.20.

k. Notwithstanding section 249A.20, the average reimbursement rates for health care providers eligible for use of the federal Medicare resource-based relative value scale reimbursement methodology under that section shall remain at the rate in effect on June 30, 2004; however, this rate shall not exceed the maximum level authorized by the federal government.

2. For the fiscal year beginning July 1, 2004, the reimbursement rate for residential care facilities shall not be less than the minimum payment level as established by the federal

government to meet the federally mandated maintenance of effort requirement. The flat reimbursement rate for facilities electing not to file semiannual cost reports shall not be less than the minimum payment level as established by the federal government to meet the federally mandated maintenance of effort requirement.

3. For the fiscal year beginning July 1, 2004, the reimbursement rate for providers reimbursed under the in-home-related care program shall not be less than the minimum payment level as established by the federal government to meet the federally mandated maintenance of effort requirement.

4. 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, 2002.

5. Notwithstanding section 234.38, in the fiscal year beginning July 1, 2004, the foster family basic daily maintenance rate and the maximum adoption subsidy rate for children ages 0 through 5 years shall be $14.28, the rate for children ages 6 through 11 years shall be $15.07, the rate for children ages 12 through 15 years shall be $16.83, and the rate for children ages 16 and older shall be $16.83.

6. For the fiscal year beginning July 1, 2004, the maximum reimbursement rates for social service providers shall remain at the rates in effect on June 30, 2004. However, the rates may be adjusted under any of the following circumstances:

a. If a new service was added after June 30, 2004, 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.

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 of human services or the director's designee 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, 2004, the reimbursement rates for rehabilitative treatment and support services providers shall remain at the rates in effect on June 30, 2004.

9. For the fiscal year beginning July 1, 2004, the combined service and maintenance components of the reimbursement rate paid for shelter care services purchased under a contract shall be based on the financial and statistical report submitted to the department. The maximum reimbursement rate shall be $83.69 per day. The department shall reimburse a shelter care provider at the provider's actual and allowable unit cost, plus inflation, not to exceed the maximum reimbursement rate. Notwithstanding section 232.141, subsection 8, for the fiscal year beginning July 1, 2004, the amount of the statewide average of the actual and allowable rates for reimbursement of juvenile shelter care homes that is utilized for the limitation on recovery of unpaid costs shall remain at the same amount in effect for this purpose in the preceding fiscal year.

10. For the fiscal year beginning July 1, 2004, the department shall calculate reimbursement rates for intermediate care facilities for persons with mental retardation at the 80th percentile.

11. For the fiscal year beginning July 1, 2004, for child care providers, the department shall set provider reimbursement rates based on the rate reimbursement survey completed in December 1998. The department shall set rates in a manner so as to provide incentives for a nonregistered provider to become registered.

12. For the fiscal year beginning July 1, 2004, reimbursements for providers reimbursed by the department of human services may be modified if appropriated funding is allocated for that purpose from the senior living trust fund created in section 249H.4, or as specified in appropriations from the healthy Iowans tobacco trust created in section 12.65.

13. The department may adopt emergency rules to implement this section.

Sec. 139. ADOPTION SUBSIDY PROGRAM.

1. a. It is the intent of the general assembly that the department of human services maximize receipt of the federal funding available for the adoption subsidy program. The department may renegotiate existing adoption agreements solely for the purpose of maximizing federal funding. However, any revision of the existing adoption monthly maintenance payment agreement shall not result in the reduction of benefits to these adoptive families.

b. The limitation on attorney fees under the program shall be $500 per recipient.

c. The department of human services shall attempt to develop a method to obtain federal matching funds for adoption subsidy program recipients' out-of-pocket payments to attorneys for the portion of attorney fees that exceed the limitation on attorney fees under the program.

d. The department of human services shall attempt to obtain federal matching funds for adoption subsidy program recipients' out-of-pocket payments for child care fees that exceed the applicable reimbursement rate established under the child care assistance program.

e. If cost-effective and in compliance with federal law and regulation, the department of human services may implement a sliding benefit scale based upon income, for all or a portion of the adoption presubsidy or preadoptive subsidy agreements entered into on or after July 1, 2004.

2. It is the intent of the general assembly that beginning July 1, 2004, adoption subsidy agreements entered into on or after that date shall be administered uniformly throughout the state.

3. a. Beginning July 1, 2004, the child care subsidy payments for individuals who enter into presubsidy or preadoptive subsidy agreements shall be governed by the provisions of the department of human services' child care assistance programs.

b. (1) Individuals who entered into presubsidy or preadoptive subsidy agreements on or before June 30, 2004, shall continue to receive a child care subsidy, notwithstanding any income guidelines specified under the child care assistance program, and shall not be required to meet the specifications of a specialized program as specified in the administrative rules, but beginning July 1, 2004, the child care subsidy rate shall be governed by the rate ceilings under the department of human services' child care assistance program.

(2) The department shall notify these individuals within thirty days of the effective date of this section of this Act of the potential change in the determination of the child care subsidy rate described under this subsection, and the process for requesting an exception to policy.

(3) If an individual requests an exception to policy and the exception is approved, the individual shall continue to receive the child care subsidy rate in effect for the individual prior to July 1, 2004, and shall be reimbursed the difference between the prior rate and the new rate for the period of time that the new rate was applied.

4. It is the intent of the general assembly that any rules relating to the adoption subsidy program for which the effective date of the rules is delayed pursuant to section 17A.8, subsection 9, shall take effect unless legislation enacted by the general assembly conflicts with such rules.

5. The legislative council is requested to establish an interim study committee to review the adoption subsidy program, which includes a review of current practices regarding the determination of subsidy levels, disparities in subsidy levels among regions of the state, program cost and benefits, the fiscal and programmatic impact of projected future program growth, a thorough analysis of the demographic factors of the adoptive families as well as the adoptive children's special needs, and quantification of savings in other programs and services resulting from the utilization of the adoption subsidy program. The interim study committee shall seek input from the department of human services, adoptive parents, and others with experience or expertise relating to the adoption subsidy program and related services and supports. The interim study committee shall submit a report of findings and recommendations to the general assembly not later than December 1, 2004.

Sec. 140. TRANSFER AUTHORITY. Subject to the provisions of section 8.39, for the fiscal year beginning July 1, 2004, 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 or to meet cash flow needs resulting from delays in receiving federal funding or to implement, in accordance with this division of this Act, targeted case management for child protection and for activities currently funded with juvenile court services, county, or community moneys and state moneys used in combination with such moneys, the department of human services may transfer within or between any of the appropriations made in this division of 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 child care assistance.
3. For child and family services.
4. For field operations.
5. For general administration.
6. MH/MR/DD/BI community services (local purchase).

This section shall not be construed to prohibit existing state transfer authority for other purposes.

Sec. 141. FRAUD AND RECOUPMENT ACTIVITIES. During the fiscal year beginning July 1, 2004, notwithstanding the restrictions in section 239B.14, recovered moneys generated through fraud and recoupment activities are appropriated to the department of human services to be used for additional fraud and recoupment activities performed by the department of human services or the department of inspections and appeals, and the department of human services may add not more than five full-time equivalent positions, in addition to those funded in this division of this Act, subject to both of the following conditions:

1. The director of human services 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. 142. MEDICAL ASSISTANCE PROGRAM — NONREVERSION FOR FY 2003-2004. Notwithstanding section 8.33, if moneys appropriated in 2003 Iowa Acts, chapter 175, for the medical assistance program from the general fund of the state, the senior living trust fund, or the hospital trust fund, or in 2003 Iowa Acts, chapter 183, from the healthy Iowans tobacco trust are in excess of actual expenditures for the medical assistance program and remain unencumbered or unobligated at the close of the fiscal year, the excess moneys shall not revert, and notwithstanding any provision of law to the contrary, shall not be transferred to any other appropriation but shall remain available for expenditure for the purpose designated until the close of the succeeding fiscal year. Of the amount remaining available, the department of human services may use up to $2,300,000 to draw down the maximum amount of disproportionate share hospital reimbursement under the medical assistance program as provided in the federal Prescription Drug and Medicare Improvement Act of 2003. Any amounts received shall be distributed in accordance with the regular disproportionate share hospital program paid out of the graduate medical education and disproportionate share fund. To the extent allowed under Title XIX of the federal Social Security Act, any hospital qualifying for disproportionate share hospital reimbursement shall provide evidence to the department that the hospital provides or participates in a disease management program.

Sec. 143. EMERGENCY RULES. If specifically authorized by a provision of this division of this Act, the department of human services or the mental health and developmental disabilities 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 or on a later effective date specified in the rules, unless the

* Item veto; see message at end of the Act

effective date is delayed by the administrative rules review committee. Any rules adopted in accordance with this section shall not take effect before the rules are reviewed by the administrative rules review committee. The delay authority provided to the administrative rules review committee under section 17A.4, subsection 5, and section 17A.8, subsection 9, shall be applicable to a delay imposed under this section, notwithstanding a provision in those sections making them inapplicable to section 17A.5, subsection 2, paragraph "b". 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. 144. REPORTS.

1. Any reports or information required to be compiled and submitted under this division of this Act shall be submitted to the chairpersons and ranking members of the joint appropriations subcommittee on health and human services, the legislative services agency, and the legislative caucus staffs on or before the dates specified for submission of the reports or information.

2. In order to reduce mailing and paper processing costs, the department shall provide, to the extent feasible, reports, notices, minutes, and other documents by electronic means to those persons who have the capacity to access the documents in that manner.

Sec. 145. LAW INAPPLICABLE FOR FISCAL YEAR 2004-2005.

1. The following provisions in Code or rule shall be suspended for the period beginning July 1, 2004, and ending June 30, 2005:

a. The requirements of section 239B.2A, relating to school attendance by children participating in the family investment program.

b. For a case permanency plan, as defined in section 232.2, the requirement for a six-month case permanency plan review for an intact family.

2. The department may adopt emergency rules to implement the provisions of this section.

Sec. 146. NEW SECTION. 217.14 REFUGEE SERVICES FOUNDATION.

1. The department of human services shall cause a refugee services foundation to be created for the sole purpose of engaging in refugee resettlement activities to promote the welfare and self-sufficiency of refugees who live in Iowa and who are not citizens of the United States. The foundation may establish an endowment fund to assist in the financing of its activities. The foundation shall be incorporated under chapter 504A.

2. The foundation shall be created in a manner so that donations and bequests to the foundation qualify as tax deductible under federal and state income tax laws. The foundation is not a state agency and shall not exercise sovereign power of the state. The state is not liable for any debts of the foundation.

3. The refugee services foundation shall have a board of directors of five members. One member shall be appointed by the governor and four members shall be appointed by the director of human services. Members of the board shall serve three-year terms beginning on July 1, and ending on June 30. A vacancy on the board shall be filled in the same manner as the original appointment for the remainder of the term. Not more than two members appointed by the director of human services shall be of the same gender or of the same political party.

4. The refugee services foundation may accept and administer trusts deemed by the board to be beneficial. Notwithstanding section 633.63, the foundation may act as trustee of such a trust.

**Sec. 147. NEW SECTION. 217.45 FAITH-BASED AND COMMUNITY-BASED ORGANIZATIONS NETWORK.*

1. A statewide, nonprofit agency that receives a subgrant to assist faith-based and community-based organizations to develop coalitions and partnerships shall be designated as the central office for faith-based and community-based initiatives.

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* Item veto; see message at end of the Act

2. The department shall designate one department employee in each of the service areas to act as a liaison to faith-based and community-based organizations in the service area.

3. The primary functions of a liaison for a service area under this section are as follows:

a. To communicate with faith-based and community-based organizations regarding the need for private community services to benefit persons in need of assistance who would otherwise require financial or other assistance under public programs administered by state or local government.

b. To promote the involvement of faith-based and community-based organizations in working to meet community needs for assistance.

c. To coordinate efforts to promote involvement of faith-based and community-based organizations in providing community services with efforts similar to those of state agencies.

d. To promote cooperation and coordination among public agencies and faith-based and community-based organizations.

e. To provide technical assistance to faith-based and community-based organizations in writing grant applications, training, mentoring, financial management, and obtaining not-for-profit designations.

*4. The department shall submit a report annually by January 15 to the governor and the general assembly regarding the activities of the faith-based and community-based organizations network provided for in this section.**

Sec. 148. Section 232.141, subsection 1, Code 2003, is amended to read as follows:

1. Except as otherwise provided by law, the court shall inquire into the ability of the child or the child's parent to pay expenses incurred pursuant to ~~subsection~~ subsections 2, ~~and subsection~~ 4, and~~, after~~ 8. After giving the parent a reasonable opportunity to be heard, the court may order the parent to pay all or part of the costs of the child's care, examination, treatment, legal expenses, or other expenses. An order entered under this section does not obligate a parent paying child support under a custody decree, except that part of the monthly support payment may be used to satisfy the obligations imposed by the order entered pursuant to this section. If a parent fails to pay as ordered, without good reason, the court may proceed against the parent for contempt and may inform the county attorney who shall proceed against the parent to collect the unpaid amount. Any payment ordered by the court shall be a judgment against each of the child's parents and a lien as provided in section 624.23. If all or part of the amount that the parents are ordered to pay is subsequently paid by the county or state, the judgment and lien shall thereafter be against each of the parents in favor of the county to the extent of the county's payments and in favor of the state to the extent of the state's payments.

Sec. 149. Section 234.39, Code 2003, is amended by adding the following new subsection:[7]

NEW SUBSECTION. 6. A support obligation for a shelter care placement shall be determined under section 232.141.

**Sec. 150. NEW SECTION. 249A.34 MEDICAL ASSISTANCE MENTAL HEALTH QUALITY OF CARE IMPROVEMENT COMMITTEE.*

1. The department shall establish a medical assistance mental health quality of care improvement committee. The committee membership shall include members of the public representing mental health advocates, mental health care consumers, and mental health care providers, including providers in private psychiatric practice, as well as geriatric psychiatry, institutional psychiatry, and child psychiatry disciplines. The membership shall also include a designee of each of the following: the medical assistance pharmaceutical and therapeutics committee created pursuant to section 249A.20A, the university of Iowa hospitals and clinics department of psychiatry, the Iowa medical assistance drug utilization review commission created in section 249A.24, the contractor for the medical assistance program managed care mental health contract, the director of public health, and the director of human services.

2. The medical assistance mental health quality of care improvement committee shall advise the department in the implementation of all of the following:

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[7] See chapter 1176, §12 herein

a. Clinical treatment algorithms for schizophrenia, major depressive disorder, and bipolar disorder. The algorithms shall be utilized in lieu of policies restricting access to care and medication and shall not be subject to prior authorization requirements or medication preferences. This paragraph shall not apply to any prior authorization provision in force on June 30, 2004, imposed under the existing managed care mental health care contract or any extension of that contract.

b. A mental health polypharmacy review process, including but not limited to data collection and analysis and medical service provider education.

3. The medical assistance mental health quality of care improvement committee shall, on an ongoing basis, review and after a cost-benefit analysis may recommend other mechanisms to promote medical assistance patient access to improved quality of care and the use of other cost saving mechanisms, including but not limited to implementing disease management programs for mental health disorders, expanding assertive community treatment programs, improving methods for gathering and analyzing data regarding the delivery of mental health care, and implementing other effective treatment programs.

*4. This section is repealed July 1, 2007.**

Sec. 151. NEW SECTION. 249A.35 MEDICAL ASSISTANCE CRISIS INTERVENTION TEAM.

1. A medical assistance crisis intervention team is created. The team shall consist of the following members:

a. The president of the university of Iowa.

b. A representative of the Iowa hospital association.

c. A representative of the Iowa medical society.

d. A representative of the Iowa pharmacy association.

e. A representative of the Iowa health care association.

f. A representative of the federation of Iowa insurers.

g. A representative of the Iowa association of community providers.

h. A representative of the medical assistance advisory council established pursuant to section 249A.4, subsection 8.

i. Two members selected by the president of the university of Iowa.

2. The president of the university of Iowa shall act as the chairperson of the team. Members of the team are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties.

3. The department of human services shall provide staff to the team as determined by the division administrator of the division of medical services.

4. The team shall do all of the following:

a. Provide a projection of medical assistance program and administrative costs through June 30, 2008, based on services provided as of June 30, 2004.

b. Hold at least four monthly public meetings, beginning in July 2004, in at least four geographically balanced venues around the state. The team shall submit a report of its findings from these meetings to the general assembly on or before December 1, 2004.

5. The team may provide any additional recommendations to the general assembly at any time regarding the medical assistance program including but not limited to recommendations regarding services, eligibility, rates, care management, and program administration.

6. The department of human services shall assist the team as follows:

a. On or before July 1, 2004, the department shall submit to the team and make available to the public an initial analysis which includes all of the following data:

(1) The number of medical assistance program enrolled eligibles by cohort grouped on the basis of factors such as age, income, disability, and optional eligibility, for the period beginning July 1, 1999, and ending June 30, 2004.

(2) A projection of the number of medical assistance program enrolled eligibles in each of the cohorts identified in subparagraph (1), for the period beginning July 1, 2005, and ending June 30, 2008. The projection shall be accompanied by a statement of the underlying assumptions.

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(3) The actual cost of all services and of each service for each cohort described in subparagraph (1), for the period beginning July 1, 1999, and ending June 30, 2004. The analysis of the data shall identify the total cost for each cohort, the cost per member per month for each cohort, and the twenty most utilized medical procedures or services and the ten most prevalent diagnoses associated within each cohort. The analysis of the data shall identify, to the greatest extent possible, the reason for changes in total costs and the costs per member, per month during the period, including but not limited to rate adjustments, service utilization, and eligibility growth.

(4) To the extent practical, a comparison of the rates paid by commercial insurers to their Iowa provider network and the rates paid by Medicare, with the rates paid by the medical assistance program for the same services, for the fiscal year beginning July 1, 2003, and ending June 30, 2004.

(5) An estimate of the program costs for the medical assistance program for the period beginning July 1, 2005, and ending June 30, 2008, based on all of the following assumptions:

(a) The enrollment projections described in subparagraph (2) and assuming reasonable change in service utilization patterns, but no change in provider rates in effect on June 30, 2004. The projection shall include total and total program costs per member, per month for each cohort and total cost and the program cost per member per month for each cohort for the period beginning July 1, 2005, and ending June 30, 2008. The assumptions used in developing the projections shall be clearly stated.

(b) The enrollment projections described in subparagraph (2) and assuming reasonable change in service utilization patterns, and additionally assuming that all medical assistance program fee for service rates are equal to ninety-eight percent of the usual and customary charges for such service in the fiscal year beginning July 1, 2003, and ending June 30, 2004, and grow at an annual rate of two percent annually through June 30, 2008, and assuming that commensurate changes are made in rates paid to medical assistance program managed care organizations.

(6) If the projections for later years exceed the spending standard established in subparagraph (5), subparagraph subdivision (b), a base rate and the annual inflation adjustments that would result in spending being limited to the spending standard established in that paragraph.

(7) A description of the cost, member, provider, and service quality impact of all of the following:

(a) Application of medical assistance program allowable limits on optional services.

(b) Service utilization control strategies including managed care and prior authorization in the pharmacy, medical and behavioral, and long-term care areas that have been utilized in other states or jurisdictions that could potentially be utilized in Iowa. The department shall identify the administrative costs associated with each strategy.

(c) Accessible disease management and enhanced primary care case management strategies with particular attention to the timing of costs and benefits.

(d) Accessible health promotion strategies and disease prevention activities with particular attention to the timing of costs and benefits.

(e) Enhanced surveillance and utilization review, revenue collection, estate recovery, and cost avoidance activities in future years.

(f) The federal Prescription Drug and Medicare Improvement Act of 2003.

(g) The program options and cost savings potentially associated with reducing the populations of intermediate care facilities for the mentally retarded and nursing facilities due to the availability of home and community-based services, including consumer-directed home care.

b. The department shall present the analysis described in paragraph "a" at the initial meeting of the team in July 2004. The department shall adjust, expand, or otherwise modify its analysis based on the requests of the team at its subsequent monthly meetings and shall assist the team in compiling the team's final report to the general assembly.

Sec. 152. REPORT — MEDICAID PROGRAM FINANCING. On or before August 1, 2004, the department of human services shall submit a report to the chairpersons and ranking

members of the joint appropriations subcommittee on health and human services, the legislative services agency, the legislative caucus staffs, and the medical assistance crisis intervention team created in section 249A.35, providing recommendations to reduce costs or provide revenue enhancements to reduce the projected program and administrative costs of the medical assistance program by $130,000,000 for the fiscal year beginning July 1, 2005, and ending June 30, 2006.

Sec. 153. NEW SECTION. 505.25 INFORMATION PROVIDED TO MEDICAL ASSISTANCE PROGRAM.

A carrier, as defined in section 514C.13, shall enter into a health insurance data match program with the department of human services for the sole purpose of comparing the names of the carrier's insureds with the names of recipients of the medical assistance program.

Sec. 154. 2001 Iowa Acts, chapter 192, section 4, subsection 3, paragraphs e and f, are amended to read as follows:

e. The department shall calculate the rate ceiling for the direct-care cost component at 120 percent of the median of case-mix adjusted costs. Nursing facilities with case-mix adjusted costs at 95 percent of the median or greater, shall receive an amount equal to their costs not to exceed 120 percent of the median. Nursing facilities with case-mix adjusted costs below 95 percent of the median shall receive an excess payment allowance by having their payment rate for the direct-care cost component calculated as their case-mix adjusted cost plus 100 percent of the difference between 95 percent of the median and their case-mix adjusted cost, not to exceed 10 percent of the median of case-mix adjusted costs. Beginning July 1, 2004, nursing facilities with case-mix adjusted costs below 95 percent of the median shall receive an excess payment allowance by having their payment rate for the direct-care cost component calculated as their case-mix adjusted cost plus 50 percent of the difference between 95 percent of the median and their case-mix adjusted cost, not to exceed 10 percent of the median of case-mix adjusted costs. Any excess payment allowance realized from the direct care cost component of the modified price-based case-mix reimbursement shall be expended to increase the compensation of direct care workers or to increase the ratio of direct care workers to residents. The department of human services shall implement a new monitoring and reporting system to assess compliance with the provisions of this paragraph.

f. The department shall calculate the rate ceiling for the nondirect care cost component at 110 percent of the median of non-case-mix adjusted costs. Nursing facilities with non-case-mix adjusted costs at 96 percent of the median or greater shall receive an amount equal to their costs not to exceed 110 percent of the median. Nursing facilities with non-case-mix adjusted costs below 96 percent of the median shall receive an excess payment allowance that is their costs plus 65 percent of the difference between 96 percent of the median and their non-case-mix adjusted costs, not to exceed 8 percent of the median of non-case-mix adjusted costs. Beginning July 1, 2004, nursing facilities with non-case-mix adjusted costs below 96 percent of the median shall receive an excess payment allowance that is their costs plus 32.5 percent of the difference between 96 percent of the median and their non-case-mix adjusted costs, not to exceed 8 percent of the median of non-case-mix adjusted costs. Any excess payment allowance realized from the nondirect care cost component of the modified price-based case-mix reimbursement shall be used to fund quality of life improvements. The department of human services shall implement a new monitoring and reporting system to assess compliance with the provisions of this paragraph.

Sec. 155. 2002 Iowa Acts, chapter 1174, section 4, unnumbered paragraph 3, as amended by 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, section 244, is amended to read as follows:

Notwithstanding section 8.33, moneys appropriated under this section that are unobligated or unencumbered at the end of the fiscal year beginning July 1, 2002, and ending June 30, 2003,

shall not revert, but shall remain available for the specific purposes designated in this section until June 30, ~~2004~~ 2005.

Sec. 156. 2003 Iowa Acts, chapter 175, section 13, subsection 2, as amended by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 6, is amended to read as follows:

2. The department may either continue or reprocure the contract existing on June 30, 2003, with the department's fiscal agent. If the department initiates reprocurement of the contract, of the amount appropriated in this Act for the medical assistance program, up to $500,000 may be used to begin the implementation process.

Notwithstanding section 8.33, moneys appropriated in this subsection that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the specific purposes designated in this subsection until the close of the succeeding fiscal year.

Sec. 157. 2003 Iowa Acts, chapter 175, section 9, is amended by adding the following new subsection:

NEW SUBSECTION. 5. Notwithstanding section 8.33, moneys appropriated in this section that were allocated by the department for the purpose of meeting federal food stamp electronic benefit transfer requirements that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purpose designated until the close of the succeeding fiscal year.

Sec. 158. 2003 Iowa Acts, chapter 175, section 18, subsection 9, is amended to read as follows:

9. Notwithstanding section 234.35, subsection 1, for the fiscal year beginning July 1, 2003, state funding for shelter care paid pursuant to section 234.35, subsection 1, paragraph "h", shall be limited to ~~$6,922,509~~ $10,122,509.

Sec. 159. 2003 Iowa Acts, chapter 175, section 56, subsection 2, paragraph g, is amended to read as follows:

g. Notwithstanding section 8.33, up to ~~$500,000~~ $1,000,000 of the Iowa veterans home revenues that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available to be used in the succeeding fiscal year.

Sec. 160. 2003 Iowa Acts, chapter 178, section 45, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Notwithstanding section 8.33, moneys appropriated in this section that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the child and family services until the close of the succeeding fiscal year.

Sec. 161. 2003 Iowa Acts, chapter 179, section 2, subsection 2, paragraph b, is amended to read as follows:

b. ~~For deposit in the risk pool created in the property tax relief fund and for distribution in accordance with section 426B.5, subsection 2~~ For medical assistance reimbursement, in addition to other appropriations made for purposes of the medical assistance program for the fiscal year beginning July 1, 2004, and ending June 30, 2005:

..... $ 2,000,000

Sec. 162. EFFECTIVE DATES. The following provisions of this division of this Act, being deemed of immediate importance, take effect upon enactment:

1. The provision under the appropriation for child and family services, relating to requirements of section 232.143 for representatives of the department of human services and juvenile

court services to establish a plan for continuing group foster care expenditures for the 2004-2005 fiscal year.

2. The provision under the appropriation for child and family services, relating to the state court administrator determining allocation of court-ordered services funding by June 15, 2004.

*3. *The provision relating to nonreversion and prohibited transfer of the appropriations for the medical assistance program for the fiscal year beginning July 1, 2003, and ending June 30, 2004.**

4. The section of this division of this Act creating section 249A.35, relating to the medical assistance crisis intervention team, takes effect upon enactment.

5. The provisions in this division of this Act relating to insurance carriers providing listings of insureds to the department of human services including the provision creating section 505.25.

6. The section of this division of this Act relating to the adoption subsidy program.

7. The provision amending 2002 Iowa Acts, chapter 1174, section 4, unnumbered paragraph 3, as amended by 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, section 244.

8. The provision amending 2003 Iowa Acts, chapter 175, section 13, subsection 2, as amended by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 6.

9. The provisions amending 2003 Iowa Acts, chapter 175, section 9, section 18, subsection 9, and section 56.

10. The provision amending 2003 Iowa Acts, chapter 178, section 45.

11. The provision amending 2003 Iowa Acts, chapter 179, section 2, subsection 2, paragraph "b".

DIVISION VI
SENIOR LIVING AND HOSPITAL TRUST FUNDS

Sec. 163. DEPARTMENT OF ELDER AFFAIRS. There is appropriated from the senior living trust fund created in section 249H.4 to the department of elder affairs for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For the development and implementation of a comprehensive senior living program, including program administration and costs associated with implementation, salaries, support, maintenance, and miscellaneous purposes and for not more than the following full-time equivalent positions:

.....	$	8,222,118
.....	FTEs	2.00

1. It is the intent of the general assembly that the department not transfer moneys appropriated to the department for purposes of the assisted living program and adult day care for the fiscal year beginning July 1, 2004.

2. Notwithstanding section 249H.7, the department of elder affairs shall distribute up to $300,000 of the funds appropriated in this section in a manner that will supplement and maximize federal funds under the federal Older Americans Act and shall not use the amount distributed for any administrative purposes of either the department of elder affairs or the area agencies on aging.

3. Of the moneys appropriated in this section, $60,000 shall be used for the provision of training to resident advocate committees for elder group homes, as defined in section 231B.1, and licensed health care facilities as defined in section 135C.1.

4. Of the moneys appropriated in this section, $140,000 shall be used to provide two additional state long-term care resident advocates.

5. Of the moneys appropriated in this section, $500,000 shall be used to provide case management services to elders who are not eligible for the medical assistance program.

Sec. 164. DEPARTMENT OF INSPECTIONS AND APPEALS. There is appropriated from the senior living trust fund created in section 249H.4 to the department of inspections and

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* Item veto; see message at end of the Act

appeals for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For the inspection and certification of assisted living facilities and adult day care services, including program administration and costs associated with implementation, salaries, support, maintenance, and miscellaneous purposes and for not more than the following full-time equivalent positions:

..... $ 800,000
..... FTEs 6.00

Sec. 165. DEPARTMENT OF HUMAN SERVICES. There is appropriated from the senior living trust fund created in section 249H.4 to the department of human services for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. To provide grants to nursing facilities for conversion to assisted living programs or to provide long-term care alternatives, to provide grants to intermediate care facilities for persons with mental retardation for conversion to assisted living programs or home and community-based services, to provide grants to long-term care providers for development of long-term care alternatives, to develop less restrictive community-based services for placement of persons currently residing in state resource centers, and for other purposes specified in this subsection:

..... $ 20,000,000

a. Up to 25 percent of the amount appropriated in this subsection may be used for development of less restrictive community-based services, including community residential living alternatives, with a significant focus on reducing the numbers of persons served in state resource centers and other intermediate care facilities for persons with mental retardation as well as for activities designed to facilitate the planning for or placement of such services and persons. Services provided under this paragraph are not intended to require the closure of nursing facilities.

b. Five million dollars of the moneys appropriated in this subsection shall be transferred to the senior living revolving loan program fund created in section 16.182 for the purposes of that section.

c. Two million dollars of the moneys appropriated in this subsection shall be transferred to the home and community-based services revolving loan program fund created in section 16.183 for the purposes of that section.

d. Two million dollars of the moneys appropriated in this subsection shall be transferred to the appropriation in this Act from the general fund of the state for the medical assistance program to be used to implement nursing facility provider reimbursements as provided in 2001 Iowa Acts, chapter 192, section 4, subsection 2, paragraph "c".

2. To supplement the medical assistance appropriation, including program administration and costs associated with implementation, salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 101,600,000
..... FTEs 5.00

3. To provide reimbursement for health care services and rent expenses to eligible persons through the home and community-based services waiver and the state supplementary assistance program, including program administration and data system costs associated with implementation, salaries, support, maintenance, and miscellaneous purposes:

..... $ 1,733,406

Participation in the rent subsidy program shall be limited to only those persons who are at risk for nursing facility care.

4. To implement nursing facility provider reimbursements as provided in 2001 Iowa Acts, chapter 192, section 4, subsection 2, paragraph "c":

..... $ 29,950,000

In order to carry out the purposes of this section, the department shall transfer funds appropriated in this section to supplement other appropriations made to the department of human services.

5. Notwithstanding sections 249H.4 and 249H.5, the department of human services may use moneys from the senior living trust fund for cash flow purposes to make payments under the nursing facility or hospital upper payment limit methodology. The amount of any moneys so used shall be refunded to the senior living trust fund within the same fiscal year and in a prompt manner.

6. Notwithstanding section 8.33, moneys committed to grantees under contract to provide for conversion to assisted living programs or for development of long-term care alternatives that remain unexpended at the close of the fiscal year shall not revert to any fund but shall remain available for expenditure for purposes of the contract.

**Sec. 166. INSURANCE DIVISION OF THE DEPARTMENT OF COMMERCE. There is appropriated from the senior living trust fund created in section 249H.4 to the insurance division of the department of commerce for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:*

For administration of the long-term care insurance partnership program including program administration and costs associated with implementation, salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	*$*	*265,000*
.....	*FTEs*	*4.00**

Sec. 167. CONVERSION GRANT PROJECTS — RULES.

1. For the fiscal year beginning July 1, 2004, and ending June 30, 2005, the department of human services shall continue to give greater weight in the scoring methodology to nursing facility conversion projects that are primarily for the renovation and remodeling of the existing nursing facility structure and give less weight to conversion projects that are primarily for new construction. The department of human services shall encourage cooperative efforts between the department of inspections and appeals, the state fire marshal, and the grant applicant to promote the acceptance of nursing facility conversion projects that are primarily renovation and remodeling of the existing nursing facility structure.

2. For the fiscal year beginning July 1, 2004, and ending June 30, 2005, the department of inspections and appeals shall certify all assisted living programs established through nursing facility conversion grants. The department of inspections and appeals shall consult with conversion grant applicants and recipients to establish and monitor occupancy agreements and assisted living program residents shall be allowed access to third-party payors.

Sec. 168. HOSPITAL TRUST FUND. There is appropriated from the hospital trust fund created in section 249I.4 to the department of human services for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

To supplement the appropriations made for the medical assistance program for that fiscal year:

.....	$	37,500,000

Sec. 169. MEDICAL ASSISTANCE PROGRAM — REVERSION TO SENIOR LIVING TRUST FUND FOR FY 2004-2005. Notwithstanding section 8.33, if moneys appropriated in this Act for purposes of the medical assistance program for the fiscal year beginning July 1, 2004, and ending June 30, 2005, from the general fund of the state, the senior living trust fund, the hospital trust fund, or the healthy Iowans tobacco trust fund are in excess of actual expenditures for the medical assistance program and remain unencumbered or unobligated at the

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close of the fiscal year, the excess moneys shall not revert but shall be transferred to the senior living trust fund created in section 249H.4.

Sec. 170. NEW SECTION. 16.182 SENIOR LIVING REVOLVING LOAN PROGRAM FUND.

1. A senior living revolving loan program fund is created within the authority to further the goal of the senior living program as specified in section 249H.2. The moneys in the senior living revolving loan program fund shall be used by the authority for the development and operation of a revolving loan program to provide financing to construct affordable assisted living and service-enriched affordable housing for seniors and persons with disabilities, including through new construction or acquisition and rehabilitation.

2. Moneys received by the authority from the senior living trust fund, transferred by the authority for deposit in the senior living revolving loan program fund, moneys appropriated to the senior living revolving loan program, and any other moneys available to and obtained or accepted by the authority for placement in the senior living revolving loan program fund shall be deposited in the fund. Additionally, payment of interest, recaptures of awards, and other repayments to the senior living revolving loan program fund shall be deposited in the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the senior living revolving loan program fund shall be credited to the fund. Notwithstanding section 8.33, moneys that remain unencumbered or unobligated at the end of the fiscal year shall not revert but shall remain available for the same purpose in the succeeding fiscal year.

3. The authority shall annually allocate moneys available in the senior living revolving loan program fund for the development of affordable assisted living and service-enriched affordable housing for seniors and persons with disabilities. The authority shall develop a joint application process for the allocation of federal low-income housing tax credits and funds available under this section. Moneys allocated to such developments may be in the form of loans, grants, or a combination of loans and grants.

4. The authority shall adopt rules pursuant to chapter 17A to administer this section.

Sec. 171. NEW SECTION. 16.183 HOME AND COMMUNITY-BASED SERVICES REVOLVING LOAN PROGRAM FUND.

1. A home and community-based services revolving loan program fund is created within the authority to further the goals specified in section 231.3, adult day services, respite services, and congregate meals. The moneys in the home and community-based services revolving loan program fund shall be used by the authority for the development and operation of a revolving loan program to develop and expand facilities and infrastructure that provide adult day services, respite services, and congregate meals that address the needs of persons with low incomes.

2. Moneys received by the authority from the senior living trust fund, transferred by the authority for deposit in the home and community-based services revolving loan program fund, moneys appropriated to the home and community-based services revolving loan program, and any other moneys available to and obtained or accepted by the authority for placement in the home and community-based services revolving loan program fund shall be deposited in the fund. Additionally, payment of interest, recaptures of awards, and other repayments to the senior living revolving loan program fund shall be deposited in the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the home and community-based services revolving loan program fund shall be credited to the fund. Notwithstanding section 8.33, moneys that remain unencumbered or unobligated at the end of the fiscal year shall not revert but shall remain available for the same purpose in the succeeding fiscal year.

3. The authority, in cooperation with the department of elder affairs, shall annually allocate moneys available in the home and community-based services revolving loan program fund to develop and expand facilities and infrastructure that provide adult day services, respite services, and congregate meals that address the needs of persons with low incomes.

4. The authority shall adopt rules pursuant to chapter 17A to administer this section.

DIVISION VII
MENTAL HEALTH, MENTAL RETARDATION, DEVELOPMENTAL DISABILITIES, AND BRAIN INJURY SERVICES

Sec. 172. COUNTY HOSPITALS. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, for the purpose designated:

For support of mental health care services provided to persons who are elderly or poor by county hospitals in counties having a population of two hundred twenty-five thousand or more:

. . . . . $ 200,000

Sec. 173. COUNTY MENTAL HEALTH, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES ALLOWED GROWTH FACTOR ALLOCATIONS — FISCAL YEAR 2005-2006.

1. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 2005, and ending June 30, 2006, 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, as provided in this section in lieu of the provisions of section 331.438, subsection 2, and section 331.439, subsection 3, and chapter 426B:

. . . . . $ 28,507,362

2. The funding appropriated in this section is the allowed growth factor adjustment for fiscal year 2005-2006, and is allocated as follows:

a. For distribution to counties for fiscal year 2005-2006 in accordance with the formula in section 331.438, subsection 2, paragraph "b":

. . . . . $ 12,000,000

b. For deposit in the per capita expenditure target pool created in the property tax relief fund and for distribution in accordance with section 426B.5, subsection 1:

. . . . . $ 14,507,362

c. For deposit in the risk pool created in the property tax relief fund and for distribution in accordance with section 426B.5, subsection 2:

. . . . . $ 2,000,000

Sec. 174. Section 331.438, subsection 4, paragraph b, Code 2003, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (16) Develop a procedure for each county to disclose to the department of human services information approved by the commission concerning the mental health, mental retardation, developmental disabilities, and brain injury services provided to the individuals served through the county central point of coordination process. The procedure shall incorporate protections to ensure that if individually identified information is disclosed, it is disclosed and maintained in compliance with applicable Iowa and federal confidentiality laws, including but not limited to federal Health Insurance Portability and Accountability Act requirements.

Sec. 175. 2003 Iowa Acts, chapter 179, section 2, is amended by adding the following new subsections:

NEW SUBSECTION. 3. The following formula amounts shall be utilized only to calculate preliminary distribution amounts for fiscal year 2004-2005 under this section by applying the indicated formula provisions to the formula amounts and producing a preliminary distribution total for each county:

a. For calculation of an allowed growth factor adjustment amount for each county in accordance with the formula in section 331.438, subsection 2, paragraph "b":
. . . . . $ 12,000,000
b. For calculation of a distribution amount for eligible counties from the per capita expenditure target pool created in the property tax relief fund in accordance with the requirements in section 426B.5, subsection 1:
. . . . . $ 19,157,111
c. For calculation of a distribution amount for counties from the mental health and developmental disabilities (MH/DD) community services fund in accordance with the formula provided in the appropriation made for the MH/DD community services fund for the fiscal year beginning July 1, 2003:
. . . . . $ 17,727,890

NEW SUBSECTION. 4. After applying the applicable statutory distribution formulas to the amounts indicated in subsection 3 for purposes of producing preliminary distribution totals, the department of human services shall apply a withholding factor to adjust an eligible individual county's preliminary distribution total. An ending balance percentage for each county shall be determined by expressing the county's ending balance on a modified accrual basis under generally accepted accounting principles for the fiscal year beginning July 1, 2003, in the county's mental health, mental retardation, and developmental disabilities services fund created under section 331.424A, as a percentage of the county's gross expenditures from that fund for that fiscal year. The withholding factor for a county shall be the following applicable percent:

a. For an ending balance percentage of less than 10 percent, a withholding factor of 0 percent. In addition to the county's adjusted distribution total, a county that is subject to this paragraph "a" shall receive an inflation adjustment equal to 2.6 percent of the gross expenditures reported for the county's services fund for that fiscal year.

b. For an ending balance percentage of 10 through 24 percent, a withholding factor of 25 percent. However, the amount withheld shall be limited to the amount by which the county's ending balance was in excess of the ending balance percentage of 10 percent.

c. For an ending balance percentage of 25 percent or more, a withholding factor of 100 percent.

NEW SUBSECTION. 5. The total withholding amounts applied pursuant to subsection 4 shall be equal to a withholding target amount of $9,418,362. If the department of human services determines that the amount to be withheld in accordance with subsection 4 is not equal to the target withholding amount, the department shall adjust the withholding factors listed in subsection 4 as necessary to achieve the withholding target amount. However, in making such adjustments to the withholding factors, the department shall strive to minimize changes to the withholding factors for those ending balance percentage ranges that are lower than others and shall not adjust the zero withholding factor or the inflation adjustment percentage specified in subsection 4, paragraph "a".

NEW SUBSECTION. 6. Each county shall submit a report to the Iowa state association of counties to be shared with the legislative services agency on or before January 31, 2005, regarding the unaudited expenditures from the county's mental health, mental retardation, and developmental disabilities services fund.

DIVISION VIII
JUDICIAL BRANCH

Sec. 176. JUDICIAL BRANCH. There is appropriated from the general fund of the state to the judicial branch for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

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, 2004, and maintenance, equipment, and miscellaneous purposes:

. . . . . $ 117,837,862

1. The judicial branch, 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.

2. The judicial branch shall submit monthly financial statements to the legislative services agency 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 administrative services. The monthly financial statements 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.

3. The judicial branch shall focus efforts upon the collection of delinquent fines, penalties, court costs, fees, surcharges, or similar amounts.

4. 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.

5. The judicial branch shall study the best practices and efficiencies of each judicial district. In identifying the most efficient judicial districts and the districts using best practices, the judicial branch shall consider the average cost to the judicial branch for processing each classification of criminal offense or civil action and the overall number of cases filed. The judicial branch shall file a report regarding the study made and actions taken pursuant to this subsection with the cochairpersons and ranking members of the joint appropriations subcommittee on the justice system and to the legislative services agency by December 15, 2004.

6. In addition to the requirements for transfers under section 8.39, the judicial branch shall not change the appropriations from the amounts appropriated to the judicial branch in this division of this Act, unless notice of the revisions is given prior to their effective date to the legislative services agency. The notice shall include information on the branch's rationale for making the changes and details concerning the workload and performance measures upon which the changes are based.

7. The judicial branch shall submit a semiannual update to the legislative services agency specifying the amounts of fines, surcharges, and court costs collected using the Iowa court information system since the last report. The judicial branch shall continue to facilitate the sharing of vital sentencing and other information with other state departments and governmental agencies involved in the criminal justice system through the Iowa court information system.

8. The judicial branch shall provide a report to the general assembly by January 1, 2005, 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 5, during the fiscal year beginning July 1, 2003, and ending June 30, 2004, and the plans for expenditures from each fund during the fiscal year beginning July 1, 2004, and ending June 30, 2005. A copy of the report shall be provided to the legislative services agency.

Sec. 177. 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, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

Notwithstanding section 602.9104, for the state's contribution to the judicial retirement fund in the amount of 9.71 percent of the basic salaries of the judges covered under chapter 602, article 9:

. . . . . $ 2,039,664

Sec. 178. APPOINTMENT OF CLERK OF COURT. The appointment of a clerk of the district court shall not occur unless the state court administrator approves the appointment.

Sec. 179. POSTING OF REPORTS IN ELECTRONIC FORMAT — LEGISLATIVE SERVICES AGENCY. All reports or copies of reports required to be provided by the judicial branch for fiscal year 2004-2005 to the legislative services agency shall be provided in an electronic format. The legislative services agency shall post the reports on its internet site and shall notify by electronic means all the members of the joint appropriations subcommittee on the justice system when a report is posted. Upon request, copies of the reports may be mailed to members of the joint appropriations subcommittee on the justice system.

DIVISION IX
JUSTICE SYSTEM

Sec. 180. DEPARTMENT OF JUSTICE.

1. There is appropriated from the general fund of the state to the department of justice for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

a. For the general office of attorney general for salaries, support, maintenance, miscellaneous purposes including the prosecuting attorneys training program, victim assistance grants, office of drug control policy (ODCP) prosecuting attorney program, legal services for persons in poverty grants as provided in section 13.34, odometer fraud enforcement, and for not more than the following full-time equivalent positions:

.....	$	7,565,245
.....	FTEs	208.50

It is the intent of the general assembly that as a condition of receiving the appropriation provided in this lettered paragraph, the department of justice shall maintain a record of the estimated time incurred representing each agency or department.

b. For victim assistance grants:

.....	$	5,000

The funds appropriated in this lettered paragraph 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.

2. 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, 2004, and ending June 30, 2005, 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. The department of justice shall report the department's actual costs and an estimate of the time incurred enforcing the competition law, to the cochairpersons and ranking members of the joint appropriations subcommittee on the justice system, and to the legislative services agency by November 15, 2004.

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, 2004, and ending June 30, 2005, an amount not exceeding $1,125,000 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 $1,200,000, the excess funds shall not be appropriated to the department of justice pursuant to this subsection. The department of justice shall report to the cochairpersons and ranking members of the joint appropriations subcommittee on the justice system, and to the legislative services agency by November 15, 2004, the department's actual costs and an estimate of the time incurred in providing education pursuant to and enforcing this subsection.

4. The balance of the victim compensation fund established in section 915.94 may be used to provide salary and support of not more than 20.00 FTEs and to provide maintenance for the victim compensation functions of the department of justice.

5. a. The department of justice, in submitting budget estimates for the fiscal year commencing July 1, 2005, 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, 2003, and actual and expected reimbursements for the fiscal year commencing July 1, 2004.

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 cochairpersons and ranking members of the joint appropriations subcommittee on the justice system and the legislative services agency. The department of justice shall submit the report on or before January 15, 2005.

Sec. 181. 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, 2004, and ending June 30, 2005, 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 that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purpose designated until the close of the succeeding fiscal year.

Sec. 182. 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, 2004, and ending June 30, 2005, 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:

.....	$	2,803,862
.....	FTEs	27.00

Sec. 183. DEPARTMENT OF CORRECTIONS — FACILITIES.

1. There is appropriated from the general fund of the state to the department of corrections for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

For the operation of adult correctional institutions, reimbursement of counties for certain confinement costs, and federal prison reimbursement, to be allocated as follows:

a. For the operation of the Fort Madison correctional facility, including salaries, support, maintenance, and miscellaneous purposes:

. . . . . $ 38,009,504

b. For the operation of the Anamosa correctional facility, including salaries, support, maintenance, and miscellaneous purposes:

. . . . . $ 26,913,551

Moneys are provided within this appropriation for one full-time substance abuse counselor for the Luster Heights facility, for the purpose of certification of a substance abuse program at that facility.

c. For the operation of the Oakdale correctional facility, including salaries, support, maintenance, and miscellaneous purposes:

. . . . . $ 23,536,936

d. For the operation of the Newton correctional facility, including salaries, support, maintenance, and miscellaneous purposes:

. . . . . $ 24,533,794

e. For the operation of the Mt. Pleasant correctional facility, including salaries, support, maintenance, and miscellaneous purposes:

. . . . . $ 22,464,361

f. For the operation of the Rockwell City correctional facility, including salaries, support, maintenance, and miscellaneous purposes:

. . . . . $ 7,772,369

g. For the operation of the Clarinda correctional facility, including salaries, support, maintenance, and miscellaneous purposes:

. . . . . $ 22,518,204

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, and miscellaneous purposes:

. . . . . $ 13,190,260

i. For the operation of the Fort Dodge correctional facility, including salaries, support, maintenance, and miscellaneous purposes:

. . . . . $ 25,880,530

j. 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:

. . . . . $ 674,954

k. For federal prison reimbursement, reimbursements for out-of-state placements, and miscellaneous contracts:

. . . . . $ 241,293

The department of corrections shall use funds appropriated in this subsection to continue to contract for the services of a Muslim imam.

Sec. 184. DEPARTMENT OF CORRECTIONS — ADMINISTRATION.

1. There is appropriated from the general fund of the state to the department of corrections for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

a. For general administration, including salaries, support, maintenance, employment of an

education director to administer a centralized education program for the correctional system, and miscellaneous purposes:

. . . . . $ 2,784,393

(1) It is the intent of the general assembly that as a condition of receiving the appropriation provided in this lettered paragraph, the department of corrections shall not, except as otherwise provided in subparagraph (3), 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, 2004, for the privatization of services performed by the department using state employees as of July 1, 2004, 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 cochairpersons and ranking members of the joint appropriations subcommittee on the justice system.

(2) 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.

(3) It is the intent of the general assembly that as a condition of receiving the appropriation provided in this lettered paragraph, 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.

b. For educational programs for inmates at state penal institutions:

. . . . . $ 1,008,358

It is the intent of the general assembly that moneys appropriated in this lettered paragraph 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 lettered paragraph 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.

The director of the department of corrections may transfer moneys from Iowa prison industries for use in educational programs for inmates.

Notwithstanding section 8.33, moneys appropriated in this lettered paragraph that remain unobligated or unexpended at the close of the fiscal year shall not revert but shall remain available for expenditure only for the purpose designated in this lettered paragraph until the close of the succeeding fiscal year.

c. For the development of the Iowa corrections offender network (ICON) data system:

. . . . . $ 427,700

2. 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, 2004, shall not enter into any rental agreement or contract concerning any farmland under the control of the department that is not subject to a rental agreement or contract as of January 1, 2004, without prior legislative approval, and shall further attempt to provide job opportunities at the farms for inmates. The department shall attempt to provide job opportunities at the farms for inmates by encouraging labor-intensive farming or gardening where appropriate, using inmates to grow produce

and meat for institutional consumption, researching the possibility of instituting food canning and cook-and-chill operations, and exploring opportunities for organic farming and gardening, livestock ventures, horticulture, and specialized crops.

3. The department shall work to increase produce gardening by inmates under the control of the correctional institutions, and, if appropriate, may use the central distribution network at the Woodward state resource center. The department shall file a report with the cochairpersons and ranking members of the joint appropriations subcommittee on the justice system by December 1, 2004, regarding the feasibility of expanding the number of acres devoted to organic gardening and to the growing of organic produce for sale.

4. The department of corrections shall submit a report to the general assembly by January 1, 2005, concerning moneys recouped from inmate earnings for the reimbursement of operational expenses of the applicable facility during the fiscal year beginning July 1, 2003, for each correctional institution and judicial district department of correctional services. In addition, each correctional institution and judicial district department of correctional services shall continue to submit a report to the legislative services agency on a monthly basis concerning moneys recouped from inmate earnings pursuant to sections 904.702, 904.809, and 905.14.

5. The department of corrections, in consultation with the board of parole, shall study the feasibility of establishing a mentoring program using unpaid volunteers to mentor persons who are on probation or parole. The department of corrections shall file a report regarding the study with the cochairpersons and ranking members of the joint appropriations subcommittee on the justice system, and the legislative services agency by December 15, 2004. The report shall detail the feasibility of establishing such a mentoring program.

Sec. 185. 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, 2004, and ending June 30, 2005, 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:

. . . . . $ 10,090,207

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:

. . . . . $ 7,755,402

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:

. . . . . $ 4,631,423

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:

. . . . . $ 4,248,965

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:

. . . . . $ 12,982,837

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:

. . . . . $ 10,064,717

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:

. . . . . $ 5,677,314

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:

. . . . . $ 5,574,865

2. Each judicial district department of correctional services, within the funding available, shall continue programs and plans established within that district to provide for intensive supervision, sex offender treatment, diversion of low-risk offenders to the least restrictive sanction available, job development, and expanded use of intermediate criminal sanctions.

3. Each judicial district department of correctional services shall provide alternatives to prison consistent with chapter 901B. The alternatives to prison shall ensure public safety while providing maximum rehabilitation to the offender. A judicial district department may also establish a day program.

4. The governor's office of drug control policy 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.

Sec. 186. INTENT — REPORTS.

1. The department of corrections shall submit a report on inmate labor to the general assembly, to the cochairpersons and the ranking members of the joint appropriations subcommittee on the justice system, and to the legislative services agency by January 15, 2005. The report shall specifically address the progress the department has made in implementing the requirements of section 904.701, inmate labor on capital improvement projects, community work crews, inmate produce gardening, and private-sector employment.

2. The department in cooperation with townships, the Iowa cemetery associations, and other nonprofit or governmental entities may use inmate labor to restore or preserve rural cemeteries and historical landmarks. The department in cooperation with the counties may also use inmate labor to clean up roads, major water sources, and other water sources around the state. **Any governmental entity or nonprofit agency using inmate labor pursuant to this subsection shall be immune from civil or employer liability.**

3. The department shall provide a report that details the inmate capacity for each county jail, detention facility, or municipal jail. The report shall also include population data of the jails and detention facilities, and options for integrating jails and detention facilities into the department of corrections. The department shall file the report with the cochairpersons and ranking members of the joint appropriations subcommittee on the justice system and the legislative services agency by December 15 of each year. The department shall also coordinate and provide information to the counties regarding available inmate bed space in each county jail, detention facility, or municipal jail.

4. Each month the department shall provide a status report regarding private-sector employment to the legislative services agency beginning on July 1, 2004. The report shall include the number of offenders employed in the private sector, the combined number of hours worked by the offenders, and the total amount of allowances, and the distribution of allowances pursuant to section 904.702, including any moneys deposited in the general fund of the state.

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* Item veto; see message at end of the Act

Sec. 187. 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 branch departments, agencies, boards, bureaus, and commissions, the judicial branch, 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. State agencies shall obtain bids from Iowa state industries for purchases of office furniture exceeding $5,000 or in accordance with applicable administrative rules related to purchases for the agency.

Sec. 188. 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, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be allocated as follows for the purposes designated:

1. For salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	$	16,663,446
.....	FTEs	202.00

2. For the fees of court-appointed attorneys for indigent adults and juveniles, in accordance with section 232.141 and chapter 815:

.....	$	19,355,297

Sec. 189. IOWA LAW ENFORCEMENT ACADEMY.

1. There is appropriated from the general fund of the state to the Iowa law enforcement academy for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, miscellaneous purposes, including jailer training and technical assistance, and for not more than the following full-time equivalent positions:

.....	$	1,066,890
.....	FTEs	30.05

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.

2. The Iowa law enforcement academy may 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 department of administrative services 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. 190. 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, 2004, and ending June 30, 2005, 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:

.....	$	1,067,910
.....	FTEs	16.50

Sec. 191. 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, 2004, and ending June 30, 2005, 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:

..... $ 5,084,143
..... FTEs 310.80

If there is a surplus in the general fund of the state for the fiscal year ending June 30, 2005, 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. HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

..... $ 1,123,400
..... FTEs 25.25

Sec. 192. 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, 2004, and ending June 30, 2005, 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:

..... $ 2,654,732
..... FTEs 37.00

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:

..... $ 14,058,510
..... FTEs 221.50

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, 2004, and one special agent for each racing facility which becomes operational during the fiscal year which begins July 1, 2004. One additional gaming enforcement officer, up to a total of four per riverboat, 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 otherwise 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:

..... $ 3,930,089
..... FTEs 59.00

b. For the division of narcotics enforcement for undercover purchases:

..... $ 123,343

4. a. 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:

. . . . . $ 2,181,998
. . . . . FTEs 39.00

b. For the state fire marshal's office, for fire protection services as provided through the state fire service and emergency response council as created in the department, and for not more than the following full-time equivalent positions:

. . . . . $ 638,021
. . . . . FTEs 12.00

5. For the division of the Iowa state patrol of the department of public safety, 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:

. . . . . $ 42,517,133
. . . . . FTEs 536.00

It is the intent of the general assembly that members of the Iowa state patrol be assigned to patrol the highways and roads in lieu of assignments for inspecting school buses for the school districts.

It is the intent of the general assembly that approximately one-half of the members of the Iowa state patrol assigned to District 16 be reassigned to patrol duties on the highways and roads, and that candidates from the department of public safety's training school fill vacant positions at District 16 due to the reassignment.

In addition to the amount appropriated in this subsection, there is transferred from the moneys credited during the fiscal year beginning July 1, 2004, to the depreciation fund maintained by the department of administrative services pursuant to section 8A.365, for purposes of the motor pool, to the vehicle depreciation account maintained by the department of public safety for vehicles utilized by the division of the Iowa state patrol. During the fiscal year the department of administrative services shall credit to the depreciation fund at least $475,000 for purposes of the motor pool. The moneys shall be transferred to the department of public safety on a monthly basis. Moneys transferred pursuant to this paragraph are appropriated to the department of public safety for purposes of vehicle replacement for the division of the Iowa state patrol. Notwithstanding section 8.33, moneys transferred in this paragraph that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure from the department of public safety's vehicle depreciation account for the purposes designated until the close of the fiscal year that begins July 1, 2005.

6. For deposit in the public safety law enforcement sick leave benefits fund established under section 80.42, for all departmental employees eligible to receive benefits for accrued sick leave under the collective bargaining agreement:

. . . . . $ 316,179

An employee of the department of public safety who retires after July 1, 2004, but prior to June 30, 2005, 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.

7. For costs associated with the training and equipment needs of volunteer fire fighters and for not more than the following full-time equivalent position:

. . . . . $ 559,587
. . . . . FTEs 1.00

* Item veto; see message at end of the Act

Notwithstanding section 8.33, moneys appropriated in this subsection that remain unobligated or unexpended at the close of the fiscal year shall not revert but shall remain available for expenditure only for the purpose designated in this subsection until the close of the succeeding fiscal year.

Sec. 193. 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, 2004, and ending June 30, 2005, 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:

..... $ 825,752
..... FTEs 28.00

The Iowa state civil rights commission may enter into a contract with a nonprofit organization to provide legal assistance to resolve civil rights complaints.

Sec. 194. Section 8D.9, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4. A community college receiving federal funding to conduct first responder training and testing regarding homeland security first responder communication and technology-related research and development projects shall be authorized to utilize the network for testing purposes.

Sec. 195. Section 13B.4, subsection 2, Code Supplement 2003, as amended by 2004 Iowa Acts, House File 2138,[8] section 1, if enacted, is amended to read as follows:

2. The state public defender shall file a notice with the clerk of the district court in each county served by a public defender designating which public defender office shall receive notice of appointment of cases. The state public defender may also designate a nonprofit organization which ~~contracts~~ has a contract with the state public defender to provide legal services to eligible indigent persons prior to July 1, 2004. Except as otherwise provided, in each county in which the state public defender files a designation, the state public defender's designee shall be appointed by the court to represent all eligible indigents, in all of the cases and proceedings specified in the designation. The appointment shall not be made if the state public defender notifies the court that the public defender designee will not provide legal representation in certain cases as identified in the designation by the state public defender.

Sec. 196. Section 85.66, Code 2003, is amended to read as follows:

85.66 SECOND INJURY FUND — CREATION — CUSTODIAN.

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 collected in the "Second Injury Fund" 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 workers' compensation commissioner. The attorney general shall be reimbursed up to fifty thousand dollars annually from the fund for services provided related to the fund. 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

[8] Chapter 1040 herein

remaining to its credit. The statement shall be open to public inspection in the office of the treasurer of state.

Sec. 197. Section 85.67, Code 2003, is amended to read as follows:

85.67 ADMINISTRATION OF FUND — SPECIAL COUNSEL — PAYMENT OF AWARD.

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. The attorney general shall be reimbursed up to fifty thousand dollars annually from the fund for services provided related to the fund. The commissioner of insurance shall consider the reimbursement to the attorney general as an outstanding liability when making a determination of funding availability under section 85.65A, subsection 2. In making an award under this division, the workers' compensation 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. 198. NEW SECTION. 564.9 DEPARTMENT OF NATURAL RESOURCES — ACCESS.

1. The department of natural resources shall grant the owner of a parcel of land access to a public road if any of the following applies:

a. It is otherwise impossible for the owner to access the public road because the parcel is surrounded by land held by the department.

b. The parcel is otherwise surrounded by land with a topography that makes access unreasonable.

c. Access by another way would cause degradation or destroy the integrity of the land.

2. The department may grant access to the owner by the sale, exchange, or other transfer of land or by the grant of an easement.

3. A person entitled to access as provided in this section may construct a road for automobile traffic from the parcel to the public road. The owner shall be responsible for constructing and maintaining any private road from the parcel to the public road which shall not be more than twenty feet in width unless otherwise agreed to by the parties.*

Sec. 199. Section 602.8107, subsection 4, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

All fines, penalties, court costs, fees, surcharges, and restitution for court-appointed attorney fees or for expenses of a public defender which are deemed delinquent by the clerk pursuant to subsection 3 may be collected by the county attorney or the county attorney's designee. Thirty-five percent of the amounts collected by the county attorney or the person procured or designated by the county attorney shall be deposited in the general fund of the county if the county attorney has filed the notice required in section 331.756, subsection 5, unless the county attorney has discontinued collection efforts on a particular delinquent amount. ~~The~~ Up to one million two hundred thousand dollars of the remainder shall be paid each fiscal year to the ~~clerk~~ clerks for distribution under section 602.8108. If the threshold amount of one million two hundred thousand dollars has been distributed under section 602.8108, the remainder shall be distributed as provided in subsection 4A. The state court administrator shall notify the clerks that the threshold amount has been distributed under section 602.8108, and that the distribution of any additional moneys collected by the county attorney shall be as provided in subsection 4A.

Sec. 200. Section 602.8107, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4A. After the threshold amount has been distributed under section 602.8108 as provided in subsection 4, thirty-five percent of any additional moneys collected

* Item veto; see message at end of the Act

by the county attorney or the person procured or designated by the county attorney shall be deposited in the general fund of the county, and thirty-three percent of any additional moneys collected by the county attorney or the person procured or designated by the county attorney shall be deposited with the office of the county attorney. The remainder shall be paid to the clerk for distribution under section 602.8108.

**Sec. 201. Section 815.9, subsection 1, paragraphs a and b, Code 2003, are amended to read as follows:*

a. A person is entitled to an attorney appointed by the court to represent the person if the person has an income level at or below one hundred ~~twenty-five~~ percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services, unless the court determines that the person is able to pay for the cost of an attorney to represent the person on the pending case. In making the determination of a person's ability to pay for the cost of an attorney, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the seriousness of the charge or nature of the case.

*b. A person with an income level greater than one hundred ~~twenty-five percent, but at or below two hundred~~ percent~~,~~ of the most recently revised poverty income guidelines published by the United States department of health and human services shall not be entitled to an attorney appointed by the court, unless the court makes a written finding that not appointing counsel on the pending case would cause the person substantial hardship. In determining whether substantial hardship would result, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the seriousness of the charge or nature of the case.**

Sec. 202. NEW SECTION. 904.118 IOWA CORRECTIONS OFFENDER NETWORK — FUND.

An Iowa corrections offender network fund is established under the control of the department. All sales, gifts, and donations related to the Iowa offender network data system shall be credited to the fund and the moneys in the fund are appropriated to the department to be used for further development and general maintenance of the Iowa corrections offender network data system. Notwithstanding section 8.33, moneys credited to the fund shall not revert to any other fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

Sec. 203. Section 904.809, subsection 5, paragraph c, Code 2003, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (2A) The department may retain up to fifty percent of any remaining balance after deductions made under subparagraphs (1) and (2) if the remaining balance is from an inmate employed in a new job created on or after July 1, 2004. The funds shall be used to[9] staff supervision costs of private sector employment of inmates at correctional institutions. Funds retained pursuant to this subparagraph shall not be used for administrative costs of the Iowa state industries.

Sec. 204. Section 904.809, subsection 5, paragraph c, subparagraph (3), Code 2003, is amended to read as follows:

(3) Any balance remaining after the deductions made under subparagraphs (1)~~,~~ ~~and~~ (2)~~,~~ and (2A) shall represent the costs of the inmate's incarceration and shall be deposited~~, effective July 1, 2000,~~ in the general fund of the state.

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* Item veto; see message at end of the Act

[9] The phrase "shall be used to pay" probably intended

Sec. 205. Section 907.9, subsections 1, 2, and 4, Code Supplement 2003, are amended to read as follows:

1. At any time that the court determines that the purposes of probation have been fulfilled and ~~the~~ any fees imposed under ~~section~~ sections 815.9 and 905.14 have been paid ~~or on condition that unpaid supervision fees be paid~~, 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~~ any fees imposed under ~~section~~ sections 815.9 and 905.14 have been paid ~~or on condition that unpaid supervision fees be paid~~, the officer may order the discharge of a person from probation after approval of the district director and notification of the sentencing court and the county attorney who prosecuted the case.

4. At the expiration of the period of probation and if the fees imposed under ~~section~~ sections 815.9 and 905.14 have been paid or on condition that unpaid supervision fees be paid, the court shall order the discharge of the person from probation, and the court 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. 206. 1998 Iowa Acts, chapter 1101, section 15, subsection 2, as amended by 1999 Iowa Acts, chapter 202, section 25, as amended by 2000 Iowa Acts, chapter 1229, section 25, as amended by 2001 Iowa Acts, chapter 186, section 21, as amended by 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, section 170, and as amended by 2003 Iowa Acts, chapter 174, section 17, is amended to read as follows:

2. a. There is appropriated from surcharge moneys received by the E911 administrator and deposited into the wireless E911 emergency communications fund, for each fiscal year in the fiscal period beginning July 1, 1998, and ending June 30, ~~2004~~ 2005, 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[10] 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 each fiscal year in the fiscal period beginning July 1, 1998, and ending June 30, ~~2004~~ 2005, an amount is appropriated to the division of emergency management[11] 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.

Sec. 207. IOWA LAW ENFORCEMENT ACADEMY — FEES. Notwithstanding section 80B.11B, the Iowa law enforcement academy may charge more than one-half the cost of providing the basic training course if a majority of the Iowa law enforcement academy council authorizes charging more than one-half of the cost of providing basic training. This section is repealed on June 30, 2005.

Sec. 208. STATE PUBLIC DEFENDER STUDY. The state public defender in consultation with the indigent defense advisory commission, the supreme court, the Iowa state bar association, the Iowa association of criminal defense lawyers, and other interested organizations, shall study cost saving methods that can be implemented to deliver legal representation to indigent defendants in a more efficient manner. The state public defender, in cooperation with the entities consulted with, shall file a report with the general assembly by December 15, 2004.

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[10] Division of "homeland security and emergency management" probably intended

[11] Division of "homeland security and emergency management" probably intended

The report shall include recommendations for achieving efficiencies in the delivery of indigent defense services including but not limited to the advisability of the state public defender entering into indigent defense contracts for a predetermined fee in specific types of cases.

Sec. 209. EFFECTIVE DATE. The provisions of this division of this Act amending sections 85.66, 85.67, and 904.118, and 1998 Iowa Acts, chapter 1101, being deemed of immediate importance, take effect upon enactment.

DIVISION X
STANDING APPROPRIATIONS, SALARIES, AND MISCELLANEOUS PROVISIONS

Sec. 210. GENERAL ASSEMBLY. The appropriations made pursuant to section 2.12 for the expenses of the general assembly and legislative agencies for the fiscal year beginning July 1, 2004, and ending June 30, 2005, are reduced by the following amount:

. . . . . $ 2,000,000

Sec. 211. Notwithstanding the standing appropriations in the following designated sections for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the amounts appropriated from the general fund of the state pursuant to those sections for the following designated purposes shall not exceed the following amounts:

1. For compensation of officers and enlisted persons and their expenses while on state active duty as authorized in section 29A.27:

. . . . . $ 421,639

2. For payment for nonpublic school transportation under section 285.2:

. . . . . $ 7,955,541

If total approved claims for reimbursement for nonpublic school pupil transportation claims exceed the amount appropriated in this section, the department of education shall prorate the amount of each claim.

3. For printing cigarette tax stamps under section 453A.7:

. . . . . $ 107,304

4. For the state's share of the cost of the peace officers' retirement benefits under section 411.20:

. . . . . $ 2,745,784

5. For payment of livestock production credit refunds under section 422.121:

. . . . . $ 1,770,342

6. For instructional support state aid under section 257.20:

. . . . . $ 14,428,271

7. For at-risk children programs under section 279.51, subsection 1:

. . . . . $ 11,271,000

The amount of any reduction in this subsection shall be prorated among the programs specified in section 279.51, subsection 1, paragraphs "a", "b", and "c".

8. For paying claims against the state under section 25.2:

. . . . . $ 4,387,500

9. For administration expenses of the state unemployment compensation law under chapter 96:

. . . . . $ 538,750

10. For payment of certain interest costs due the federal government under the federal Cash Management and Improvement Act under section 421.31:[12]

. . . . . $ 436,250

11. For funding the state's deferred compensation program established for state employees under section 509A.12:

. . . . . $ 55,088

[12] Section 421.31 was repealed by 2003 Iowa Acts, chapter 145, §291; section 8A.502 probably intended

12. For the educational excellence program under section 294A.25, subsection 1:
. . . . . $ 55,469,053

Sec. 212. HELP US STOP HUNGER. There is appropriated from the general fund of the state of[13] the department of natural resources for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used as follows:

To expand the help us stop hunger pilot project:
. . . . . $ 17,000

Sec. 213. STATE APPEAL BOARD STREAMLINING. For the fiscal year beginning July 1, 2004, the state appeal board may pay out of any moneys in the state treasury not otherwise appropriated for costs associated with streamlining and improving the state appeal board process.

Sec. 214. Section 8.22A, subsection 3, Code Supplement 2003, is amended to read as follows:

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

Sec. 215. Section 8.54, subsection 2, Code 2003, is amended to read as follows:

2. There is created a state general fund expenditure limitation for each fiscal year ~~beginning on or after July 1, 1993,~~ calculated as provided in this section. An expenditure limitation shall be used for the portion of the budget process commencing on the date the revenue estimating conference agrees to a revenue estimate for the following fiscal year in accordance with section 8.22A, subsection 3, and ending with the governor's final approval or disapproval of the appropriations bills applicable to that fiscal year that were passed prior to July 1 of that fiscal year in a regular or extraordinary legislative session.

Sec. 216. Section 8.55, subsection 2, paragraph d, Code Supplement 2003, is amended to read as follows:

d. Notwithstanding paragraph "a", any moneys in excess of the maximum balance in the economic emergency fund after the distribution of the surplus in the general fund of the state at the conclusion of each fiscal year and after the appropriate amounts have been transferred pursuant to paragraphs "b" and "c" shall not be transferred to the general fund of the state but shall be transferred to the endowment for Iowa's health account of the tobacco settlement trust fund. The total amount transferred, in the aggregate, under this paragraph for all fiscal years shall not exceed the difference between one hundred ~~one~~ thirty-one million ~~seven~~ five hundred ~~fifty-one~~ thirty-six thousand dollars and the amounts transferred to the endowment for Iowa's health account to repay the amounts transferred or appropriated from the endowment for Iowa's health account in 2002 Iowa Acts, chapter 1165, 2002 Iowa Acts, chapter 1166, 2002

[13] The word "to" probably intended

Iowa Acts, chapter 1167, 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, and 2003 Iowa Acts, chapter 183, and 2004 Iowa Acts, Senate File 2298.[14]

*Sec. 217. *Section 8.62, Code Supplement 2003, is amended by adding the following new subsection:*

*NEW SUBSECTION. 4. Notwithstanding any provision of this section and sections 8.33 and 8.39 to the contrary, if a full-time equivalent position budgeted for within an appropriation from the general fund of the state to a department or establishment other than the state board of regents is vacant for all or a portion of the fiscal year, an amount equal to the salary and benefits associated with the time of vacancy of the position shall be considered to be encumbered for the period of the vacancy, shall not be used for any other purpose, and the encumbered amount shall revert to the general fund of the state at the close of the fiscal year.**

Sec. 218. Section 10C.5, Code 2003, is amended to read as follows:

10C.5 REPEAL.

Sections 10C.1 through 10C.4 and this section are repealed July 1, ~~2004~~ 2008.

Sec. 219. Section 10C.6, subsection 1, paragraph a, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A life science enterprise may acquire or hold agricultural land, notwithstanding section 10C.5 as that section exists in the ~~2003~~ 2005 Code ~~or 2003 Code Supplement~~, if all of the following apply:

Sec. 220. Section 10C.6, subsection 1, paragraph a, subparagraphs (1) and (2), Code 2003, are amended to read as follows:

(1) The life science enterprise acquires the agricultural land on or before June 30, ~~2004~~ 2008.

(2) The enterprise acquires or holds the agricultural land pursuant to chapter 10C as that chapter exists in the ~~2003~~ 2005 Code ~~or 2003 Code Supplement~~.

Sec. 221. Section 28.3, subsection 2, Code 2003, is amended to read as follows:

2. The Iowa board shall consist of ~~seventeen~~ eighteen voting members with thirteen citizen members and ~~four~~ five state agency members. The ~~four~~ five state agency members shall be the directors of the following departments: economic development, education, human rights, human services, and public health. The thirteen citizen members shall be appointed by the governor, subject to confirmation by the senate. The governor's appointments of citizen members shall be made in a manner so that each of the state's congressional districts is represented by two citizen members and so that all the appointments as a whole reflect the ethnic, cultural, social, and economic diversity of the state. The governor's appointees shall be selected from individuals nominated by community empowerment area boards. The nominations shall reflect the range of interests represented on the community boards so that the governor is able to appoint one or more members each for education, health, human services, business, faith, and public interests. At least one of the citizen members shall be a service consumer or the parent of a service consumer. Terms of office of all citizen members are three years. A vacancy on the board shall be filled in the same manner as the original appointment for the balance of the unexpired term.

Sec. 222. Section 35A.2, Code 2003, is amended to read as follows:

35A.2 COMMISSION OF VETERANS AFFAIRS.

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

2. ~~Six~~ Eight commissioners shall be honorably discharged members of the armed forces of

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[14] This chapter

* Item veto; see message at end of the Act

the United States. The American legion of Iowa, disabled American veterans department of Iowa, veterans of foreign wars department of Iowa, American veterans of World War II, Korea, and Vietnam, the Vietnam veterans of America, and the military order of the purple heart, through their department commanders, shall submit two names respectively from their organizations to the governor. The adjutant general and the Iowa affiliate of the reserve officers association shall submit names to the governor of persons to represent the Iowa national guard and the association. The governor shall appoint from the group of names submitted by the adjutant general and reserve officers association two representatives and from each of the other organizations one representative to serve as a member of the commission, unless the appointments would conflict with the bipartisan and gender balance provisions of sections 69.16 and 69.16A. In addition, the governor shall appoint one member of the public, knowledgeable in the general field of veterans affairs, to serve on the commission.

Sec. 223. Section 35A.3, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 14. To establish and operate a state veterans cemetery and to make application to the government of the United States or any subdivision, agency, or instrumentality thereof, for funds for the purpose of establishing such a cemetery. The state may enter into agreements with any subdivision of the state for assistance in operating the cemetery. The state shall own the land on which the cemetery is located. The commission shall have the authority to accept federal grant funds, funding from state subdivisions, donations from private sources, and federal "plot allowance" payments. All such funds shall be deposited into an account dedicated to the establishment, operation, and maintenance of a veterans cemetery and these funds shall be expended only for those purposes. The commission through the executive director shall have the authority to accept suitable cemetery land, in accordance with federal veterans cemetery grant guidelines, from the federal government, state government, state subdivisions, private sources, and any other source wishing to transfer land for use as a veterans cemetery.

Sec. 224. Section 35D.13, subsection 2, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

2. The commandant shall be a resident of the state of Iowa who served in the armed forces of the United States and was honorably discharged, and is a licensed nursing home administrator.

**Sec. 225. Section 85.36, Code 2003, is amended by adding the following new subsection:*

*NEW SUBSECTION. 5A. In the case of a school district employee who is employed pursuant to a contract for a specific period of time, and whose earnings are paid pursuant to a contract for a different period of time than the period of time during which the services are performed, the employee's weekly earnings shall be based on the period of time for which the earnings are paid rather than on the period of time during which the services are performed.**

Sec. 226. Section 135C.31A, Code Supplement 2003, is amended to read as follows:

135C.31A ASSESSMENT OF RESIDENTS — PROGRAM ELIGIBILITY.

Beginning July 1, 2003, a health care facility receiving reimbursement through the medical assistance program under chapter 249A shall assist the Iowa commission of veterans affairs in identifying, upon admission of a resident, the resident's eligibility for benefits through the federal department of veterans affairs. The health care facility shall also assist the Iowa commission of veterans affairs in determining such eligibility for residents residing in the facility on July 1, 2003. The department of inspections and appeals, in cooperation with the department of human services, shall adopt rules to administer this section, including a provision that ensures that if a resident is eligible for benefits through the federal department of veterans affairs or other third-party payor, the payor of last resort for reimbursement to the health care facility is the medical assistance program. This section shall not apply to the admission of an

* Item veto; see message at end of the Act

individual to a state mental health institute for acute psychiatric care or to the admission of an individual to the Iowa veterans home.

Sec. 227. NEW SECTION. 153.40 MOBILE DENTAL DELIVERY SYSTEM.

The Iowa department of public health shall establish and implement a mobile dental delivery system to make available dental supplies, portable dental equipment, and vans to be used in transporting the equipment to provide oral health services to and improve the oral health of low-income persons who live in federal or state-designated health professional shortage areas and have the least access to oral health services. The department shall coordinate the program. Funds available for improving oral health may also be used for loan forgiveness for dental providers or to develop oral health training modules for nursing home staff or other suitable staff who provide oral health services to persons described in this section.

Sec. 228. Section 208.16, subsection 2, Code 2003, is amended to read as follows:

2. The division may establish procedures for transferring the responsibility for reclamation of a mine site to a state agency or political subdivision, or to a private entity, which intends to use the site for other purposes. The division, with agreement from the receiving agency or subdivision, or from a private entity, to complete adequate reclamation, may approve the transfer of responsibility, release the bond or security, and terminate or amend the operator's authorization to conduct mining on the site.

*Sec. 229. *Section 256.7, Code Supplement 2003, is amended by adding the following new subsection:*

*NEW SUBSECTION. 26. Adopt rules directing the school districts and area education agencies to submit annually data regarding the salaries and benefits of administrators and from the most recent contract settlement increases for salaries and group health insurance plans provided under collective bargaining agreements negotiated pursuant to chapter 20. The department shall compile the data in a report to be submitted by January 15 of each year to the chairpersons and ranking members of the house and senate standing committees on education and appropriations and of the joint appropriations subcommittee on education.**

*Sec. 230. *Section 256D.3, subsection 3, Code 2003, is amended to read as follows:*

*3. Beginning January 15, ~~2001~~ 2005, the department shall submit an annual report to the chairpersons and ranking members of the senate and house education committees that includes the statewide average school district class size in basic skills instruction in kindergarten through grade three, by grade level and by district size, and describes school district progress toward achieving early intervention block grant program goals and the ways in which school districts are using moneys received pursuant to ~~section 256D.4~~ this chapter and expended as provided in section 256D.2.**

Sec. 231. Section 256D.4, subsection 2, Code Supplement 2003, is amended to read as follows:

2. Moneys appropriated pursuant to section 256D.5, subsection ~~3~~ 4, shall be allocated to school districts as follows:

a. Allocation of the sum of ~~twenty~~ nineteen million five hundred thousand dollars shall be based upon the proportion that the kindergarten through grade three enrollment of a district bears to the sum of the kindergarten through grade three enrollments of all school districts in the state as reported for the base year.

b. Allocation of the sum of ~~ten~~ nine million seven hundred fifty thousand dollars shall be based upon 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 grades one through three of a school district bears to the sum of the number of children who are eligible for free or reduced price meals under the federal

* Item veto; see message at end of the Act

National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in grades one through three in all school districts in the state for the base year.

Sec. 232. Section 256D.5, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4. For the fiscal year beginning July 1, 2004, and ending June 30, 2005, the sum of twenty-nine million two hundred fifty thousand dollars.

Sec. 233. Section 256D.9, Code Supplement 2003, is amended to read as follows:

256D.9 FUTURE REPEAL.

This chapter is repealed effective July 1, ~~2004~~ 2005.

Sec. 234. Section 257.8, subsection 1, Code Supplement 2003, is amended to read as follows:

1. STATE PERCENT OF GROWTH. ~~The state percent of growth for the budget year beginning July 1, 2003, is two percent.~~ The state percent of growth for the budget year beginning July 1, 2004, is two percent. The state percent of growth for the budget year beginning July 1, 2005, is four percent. The state percent of growth for each subsequent budget year shall be established by statute which shall be enacted within thirty days of the submission in the year preceding the base year of the governor's budget under section 8.21. The establishment of the state percent of growth for a budget year shall be the only subject matter of the bill which enacts the state percent of growth for a budget year.

Sec. 235. Section 257.14, subsection 3, unnumbered paragraph 1, Code 2003, is amended to read as follows:

For the budget year commencing July 1, 2004, and succeeding budget years, ~~if the department of management determines that the regular program district cost of a school district for a budget year is less than one hundred one percent of the regular program district cost for the base year for that school district,~~ a district shall be eligible for a budget adjustment corresponding to the following schedule:

Sec. 236. Section 257.35, Code Supplement 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 4. Notwithstanding subsection 1, and in addition to the reduction applicable pursuant to subsection 2, the state aid for area education agencies and the portion of the combined district cost calculated for these agencies for the fiscal year beginning July 1, 2004, shall be reduced by the department of management by eleven million seven hundred ninety-eight thousand seven hundred three dollars. The reduction for each area education agency shall be equal to the reduction that the agency received in the fiscal year beginning July 1, 2003.

NEW SUBSECTION. 5. Notwithstanding section 257.37, an area education agency may use the funds determined to be available under this section in a manner which the area education agency determines is appropriate to best maintain the level of required area education agency special education services. An area education agency may also use unreserved fund balances for media services or education services in a manner which the area education agency determines is appropriate to best maintain the level of required area education agency special education services.

Sec. 237. Section 261.9, subsection 1, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

"Accredited private institution" means an institution of higher learning located in Iowa which is operated privately and not controlled or administered by any state agency or any subdivision of the state~~, except for county hospitals as provided in paragraph "c" of this subsection,~~ and which meets ~~at least one of~~ the criteria in paragraphs "a" ~~through "c"~~ and "b" and all

of the criteria in paragraphs "d" through "g", except that institutions defined in paragraph "c" of this subsection are exempt from the requirements of paragraphs "a" and "b":

Sec. 238. Section 261.9, subsection 1, paragraphs b and c, Code Supplement 2003, are amended by striking the paragraphs and inserting in lieu thereof the following:

b. Is accredited by the north central association of colleges and secondary schools accrediting agency based on their requirements, are exempt from taxation under section 501(c)(3) of the Internal Revenue Code, and annually provide a matching aggregate amount of institutional financial aid equal to at least seventy-five percent of the amount received in a fiscal year by the institution's students for Iowa tuition grant assistance under this chapter. Commencing with the fiscal year beginning July 1, 2005, the matching aggregate amount of institutional financial aid shall increase by the percentage of increase each fiscal year of funds appropriated for Iowa tuition grants under section 261.25, subsection 1, to a maximum match of one hundred percent. The institution shall file annual reports with the commission prior to receipt of tuition grant moneys under this chapter. An institution whose income is not exempt from taxation under section 501(c) of the Internal Revenue Code and whose students were eligible to receive Iowa tuition grant money in the fiscal year beginning July 1, 2003, shall meet the match requirements of this paragraph no later than June 30, 2005.

c. Is a specialized college that is accredited by the north central association of colleges and secondary schools accrediting agency, and which offers health professional programs that are affiliated with health care systems located in Iowa.

*Sec. 239. Section 273.3, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 23. Submit annually to the department of education data regarding the salaries and benefits of administrators and from the most recent contract settlement increases for salaries and group health insurance plans provided under collective bargaining agreements negotiated pursuant to chapter 20.*

*Sec. 240. Section 279.12, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

The board shall carry into effect any instruction from the regular election upon matters within the control of the voters, and shall elect all teachers and make all contracts necessary or proper for exercising the powers granted and performing the duties required by law, and may establish and pay all or any part thereof from school district funds the cost of group health insurance plans, nonprofit group hospital service plans, nonprofit group medical service plans and group life insurance plans adopted by the board for the benefit of employees of the school district, but the board may authorize any subdirector to employ teachers for the school in the subdirector's subdistrict; but no such employment by a subdirector shall authorize a contract, the entire period of which is wholly beyond the subdirector's term of office. The board shall submit annually to the department of education data regarding the salaries and benefits of administrators and from the most recent contract settlement increases for salaries and group health insurance plans provided under collective bargaining agreements negotiated pursuant to chapter 20.*

*Sec. 241. Section 280.14, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 3. The board of directors of each school district shall annually review school district expenditures and identify and examine potential cost savings that can be achieved in the delivery of administrative services and other costs involved in the operation of the school district, including but not limited to health insurance, maintenance of facilities and buses, the acquisition of and distribution of materials and supplies used by the school district, and the delivery of transportation, human resource and financial services, computer support services, and data management. The school district shall consider cost saving partnership opportunities with other school districts, area education agencies, community colleges, libraries, cities, counties, or other public or private entities. The results of the study shall be presented

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*to the public at a regularly scheduled board meeting. The school district shall annually report the cost savings to the department of education in a manner prescribed by the department. The department shall annually compile the information submitted by the school districts in a report which the department shall submit to the general assembly by December 31.**

Sec. 242. NEW SECTION. 280A.1 IOWA LEARNING TECHNOLOGY INITIATIVE.

1. INITIATIVE. The Iowa learning technology initiative is created to provide training and learning opportunities to public and accredited nonpublic school students in grade seven and their administrators and teachers.

**2. PILOT PROGRAM. The Iowa learning technology commission created in section 280A.2 shall develop and administer the Iowa learning technology initiative, which shall include a pilot program. Upon the receipt or pledge of sufficient moneys, as determined by the commission, for deposit in the Iowa learning technology fund created in section 280A.4, the pilot program shall be implemented. A school district or accredited nonpublic school may submit an application to participate in the pilot program to the commission no later than sixty days following receipt or pledge of moneys into the Iowa learning technology fund. The application shall include a written statement that indicates a dedicated willingness to participate. School districts or accredited nonpublic schools chosen to participate in the pilot program shall have demonstrated to the commission administrative leadership, teacher willingness to participate, and community support, and shall represent geographically distinct rural, urban, and suburban areas of the state. The commission shall notify applicants of approval or disapproval of applications no later than seventy-five days after the application deadline.*

3. PUBLIC-PRIVATE PARTNERSHIP.

a. The Iowa learning technology commission shall, in consultation with the department of education and the department of administrative services, develop and issue no later than forty-five days after the receipt or pledge of moneys into the Iowa learning technology fund, a request for proposals for one or more private providers who shall partner with the state to implement the pilot program phase of the initiative. No later than forty-five days after the issuance of the request for proposals, the commission shall select finalists from among the proposals submitted. No later than forty-five days after the selection of finalists, the commission shall select one or more private providers.

b. One or more private providers shall be selected by the commission through a request for proposals process for a total solutions learning technology package that includes, but is not limited to, hardware, software, professional development, and service and support, which shall be managed by a single point of contact responsible for the overall implementation. The proposal selected by the commission shall achieve significant efficiencies and economies of scale, be interoperable with existing technologies, and be consistent with the state's economic development and education policies. In selecting a private provider, the commission shall consider all of the following with respect to the private provider:

(1) Experience in the development and successful implementation of large-scale, school-based wireless and other learning technology projects, and the technical ability to deliver a total solutions package of learning technology for elementary and secondary students and teachers.

(2) Demonstrated financial capability and long-term stability to partner with the state over the term of the private provider contract.

(3) Expertise, experience, and capabilities in education practice and evaluation methods.

c. The commission shall conduct, in cooperation with the attorney general, contract negotiations to establish a public-private partnership on behalf of the commission and enter into a contract negotiated with one or more private providers to establish a four-year learning technology pilot program to provide a wireless laptop computer to each student, teacher, and relevant administrator in a participating school and implement the use of software, on-line courses, and other appropriate learning technologies that have been shown to improve academic achievement and specified progress measures. The term of the contract shall include the

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deployment of computers to students and teachers in participating school districts and accredited nonpublic schools in accordance with subsection 2.

*4. EVALUATION. To measure the effectiveness of the pilot program established pursuant to subsection 2, the Iowa learning technology commission shall, at a minimum, establish standards and methods of measuring progress in the areas of increased student engagement, decreased disciplinary problems, increased use of computers for writing, analysis, and research, movement toward student-centered classrooms, increased parental involvement, and increases in standardized test scores. The commission shall work cooperatively with the department of education and the state board of regents in establishing an evaluation process pursuant to this subsection.**

[15]***Sec. 243. NEW SECTION. 280A.2 COMMISSION — MEMBERS.***

1. COMMISSION CREATED. An Iowa learning technology commission is created to establish the policies and determine the necessary budget for implementation of the Iowa learning technology initiative.

2. MEMBERS. The commission shall initially be appointed no later than July 1, 2004, and shall consist of eighteen members appointed as follows:

a. Nine voting members who shall be members of the general public and shall be appointed as follows:

(1) Two members shall be appointed by the governor.

(2) Two members shall be appointed by the president of the senate.

(3) One member shall be appointed by the minority leader of the senate.

(4) Two members shall be appointed by the speaker of the house of representatives.

(5) One member shall be appointed by the minority leader of the house of representatives.

(6) One member who is a member of the state board of education shall be appointed by the chairperson of the state board.

b. Nine ex officio, nonvoting members who shall be appointed as follows:

(1) One member representing public postsecondary education institutions who is employed by a public postsecondary education institution shall be appointed by the governor.

(2) Three members representing three different school districts shall be appointed by the governor as follows:

(a) One member shall be a teacher employed by a school district or area education agency who is appointed from a list of three names submitted by a certified employee organization representing teachers licensed under chapter 272.

(b) One member shall be an administrator employed by a school district who is appointed from a list of three names submitted by a statewide organization representing administrators licensed under chapter 272.

(c) One member shall be a member of a board of directors of a school district who is appointed by a statewide organization representing school boards.

(3) One member representing area education agencies shall be appointed by the governor from a list of three names submitted by area education agency administrators.

(4) One member who is a member of the senate shall be appointed by the president of the senate.

(5) One member who is a member of the senate shall be appointed by the minority leader of the senate.

(6) One member who is a member of the house of representatives shall be appointed by the speaker of the house of representatives.

(7) One member who is a member of the house of representatives shall be appointed by the minority leader of the house.

3. EXPERIENCE AND SPECIAL KNOWLEDGE. In appointing members to the commission, proper consideration shall be given to persons with experience or special knowledge in one or more of the following areas: education, business, economic development, technology, and finance.

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* Item veto; see message at end of the Act

15 The governor's message at the end of this Act indicates this section is item vetoed; however, this section was not initialed and bracketed as item vetoed on the original enrolled Act

4. BALANCE. Commission members shall be appointed in compliance with sections 69.16 and 69.16A. Appointments of public members shall be made to provide broad representation of the various geographical areas of the state insofar as possible.

5. CHAIRPERSONS. The commission shall elect a chairperson and a vice chairperson annually from among the voting members of the commission. A member shall not serve as a chairperson or vice chairperson for more than three consecutive years.

6. MEETINGS. The commission shall meet at least three times each year.

7. QUORUM. A majority of the voting members constitutes a quorum for the transaction of any official business.

8. TERMS OF MEMBERS. The members shall be appointed to three-year staggered terms and the terms shall commence and end as provided by section 69.19. If a vacancy occurs, a successor shall be appointed to serve the unexpired term. A successor shall be appointed in the same manner and subject to the same qualifications as the original appointment to serve the unexpired term.

9. EXPENSES. Members of the commission are entitled to receive reimbursement for actual expenses incurred while engaged in the performance of official duties from the Iowa learning technology fund created in section 280A.4, except that legislators' expenses shall be paid from funds appropriated by section 2.12.

[16]***Sec. 244. <u>NEW SECTION</u>. 280A.3 COMMISSION PLAN — GUIDING PRINCIPLES.***

1. The Iowa learning technology commission created in section 280A.2 shall develop a learning technology plan to achieve the goal of preparing students for an economy that is increasingly dependent on technology and innovation. The commission shall examine the use of technology in Iowa's and the nation's elementary and secondary classrooms.

2. The plan developed by the commission shall include, but not be limited to, the following:

a. The costs and benefits of each component of the plan.

b. The professional development needed to integrate learning technology into classroom technology.

c. Strategies for implementation of the plan, including, at a minimum, phasing in the plan over a term of years.

d. Strategies that coordinate the learning technology in kindergarten through grade twelve with the initiatives and resources of the department of education, Iowa communications network, area education agencies, higher education institutions providing approved practitioner preparation programs, and other accredited postsecondary institutions in the state.

e. Procedures for data tracking and assessment of the progress in implementing the goals of the initiative and the plan.

f. Strategies to establish a public-private partnership between state government and a private sector business having relevant knowledge and experience.

3. The plan shall be consistent with the following guiding principles:

a. The plan shall promote equal opportunity for and provide meaningful access to wireless and other learning technology resources for all Iowa students regardless of geographic location or economic means.

b. The plan shall support student achievement through the integration of learning technologies that are content-focused and that add value to existing instructional methods.

c. The plan shall provide for the future sustainability of learning technology resources by adapting to future educational needs and technological changes.

d. The plan shall provide professional development and training programs for administrators, teachers and other educators in the use and integration of learning technology tools in curriculum development, instructional methods, and student assessment systems.

e. The plan shall foster economic development across all regions of the state and the preparation of students for an economy that embraces technology and innovation.

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[16] The governor's message at the end of this Act indicates this section is item vetoed; however, this section was not initialed and bracketed as item vetoed on the original enrolled Act

4. The plan shall be submitted to the general assembly on or before December 15, 2004.

[17]***Sec. 245. NEW SECTION. 280A.4 FUND.***

1. An Iowa learning technology fund is created in the state treasury. The fund shall consist of moneys including, but not limited to, moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the fund.

2. Moneys in the fund are appropriated to the Iowa learning technology commission created in section 280A.2 for purposes of an Iowa learning technology initiative created pursuant to section 280A.1. Moneys in the fund shall not be subject to appropriation for any other purpose by the general assembly. However, moneys in the fund may be used for necessary audit services, legal expenses, investment management fees and services, and general administrative expenses related to the management and administration of the Iowa learning technology initiative.

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

4. The fund shall be administered by the commission, which shall make expenditures from the fund consistent with the purposes of the initiative without further appropriation. The fund shall be administered in a manner that provides for the financially sustainable support, use, and integration of learning technology in Iowa schools through a public-private partnership. Expenditures from the fund shall be made consistent with the purposes of the Iowa learning technology initiative to ensure one-to-one access to and ubiquitous use of fully configured laptop computers in grade seven in public and accredited nonpublic school classrooms located initially in a number of school districts and accredited nonpublic schools in Iowa as determined by the Iowa learning technology commission.

[18]***Sec. 246. NEW SECTION. 280A.5 REPEAL.***

This chapter is repealed effective July 1, 2009.

Sec. 247. Section 346.27, subsection 10, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

After the incorporation of an authority, and before the sale of any issue of revenue bonds, except refunding bonds, the authority shall call an election to decide the question of whether the authority shall issue and sell revenue bonds. The ballot shall state the amount of the bonds and the purposes for which the authority is incorporated. ~~Registered voters of the city and the unincorporated area~~ All registered voters of the county shall be entitled to vote on the question. The question may be submitted at a general election or at a special election. An affirmative vote of a majority of the votes cast on the question is required to authorize the issuance and sale of revenue bonds.

Sec. 248. Section 346.27, subsection 25, unnumbered paragraph 2, Code Supplement 2003, is amended to read as follows:

The question of whether a conveyance shall be made shall be submitted to the registered voters of the ~~city and the unincorporated area of the~~ county. An affirmative vote equal to at least a majority of the total votes cast on the question shall be required to authorize the conveyance. If the question does not carry, the authority shall continue to operate, maintain, and manage the building under a lease arrangement with the incorporating units.

Sec. 249. Section 372.13, subsection 10, Code 2003, is amended to read as follows:

10. A council member, during the term for which that member is elected, is not precluded from holding the office of chief of the volunteer fire department if the fire department serves

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17 The governor's message at the end of this Act indicates this section is item vetoed; however, this section was not initialed and bracketed as item vetoed on the original enrolled Act

18 The governor's message at the end of this Act indicates this section is item vetoed; however, this section was not initialed and bracketed as item vetoed on the original enrolled Act

an area with a population of not more than two thousand~~, and if no other candidate who is not a city council member is available to hold the office of chief of the volunteer fire department~~. A person holding the office of chief of such a volunteer fire department at the time of the person's election to the city council may continue to hold the office of chief of the fire department during the city council term for which that person was elected.

Sec. 250. Section 404A.2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The amount of the credit equals twenty-five percent of the qualified rehabilitation costs made to eligible property. In the case of commercial property, rehabilitation costs must equal at least fifty percent of the assessed value of the property, excluding the land, prior to the rehabilitation. In the case of residential property or barns, the rehabilitation costs must equal at least twenty-five thousand dollars or twenty-five percent of the fair market value, excluding the land, prior to the rehabilitation, whichever is less. In computing the tax credit for eligible property that is classified as residential or as commercial with multifamily residential units, the rehabilitation costs used shall not exceed one hundred thousand dollars per residential unit. In computing the tax credit, the only costs which may be included are the rehabilitation costs incurred between the period ending on the project completion date and beginning on the ~~later of either the date of issuance of the approval of the project as provided in section 404A.3 or~~ date two years prior to the project completion date, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project as provided in section 404A.3 must be qualified rehabilitation expenditures under the federal rehabilitation credit in section 47 of the Internal Revenue Code.

Sec. 251. Section 422E.1, subsection 2, Code Supplement 2003, is amended to read as follows:

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 unless the period is extended as provided in section 422E.2, subsection 5. However, all local option sales and services taxes for school infrastructure purposes are repealed December 31, 2022.

Sec. 252. Section 422E.2, subsection 4, paragraph a, Code Supplement 2003, is amended to read as follows:

a. Each school district located within the county may submit a revenue purpose statement to the county commissioner of elections no later than sixty days prior to the election indicating the specific purpose or purposes for which the local sales and services tax for school infrastructure revenue and supplemental school infrastructure amount revenue will be expended. The revenues received pursuant to this chapter shall be expended for the purposes indicated in the revenue purpose statement. The revenue purpose statement may include information regarding the school district's use of the revenues to provide for property tax relief or debt reduction. A copy of the revenue purpose statement shall be made available for public inspection in accordance with chapter 22, shall be posted at the appropriate polling places of each school district during the hours that the polls are open, and be published in a newspaper of general circulation in the school district no sooner than twenty days and no later than ten days prior to the election. Notwithstanding the requirements for a revenue purpose statement in this paragraph, for elections occurring after April 1, 2003, but before August 1, 2003, a revenue purpose statement submitted not later than April 1, 2004, shall be considered to have met the requirements of this paragraph.

Sec. 253. Section 422E.2, subsection 5, paragraphs a and b, Code Supplement 2003, are amended to read as follows:

a. The tax may be repealed, the period of imposition of the tax may be extended for addition-

al periods up to ten years each, or the rate increased, but not above one percent, or decreased, or the use of the revenues changed after an election at which a majority of those voting on the question of repeal, extension, rate change, or change in use favored the repeal, extension, rate change, or change in use. The election at which the question of repeal, extension, rate change, or change in use 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. However, an election on the change in use shall only be held in the school district where the change in use is proposed to occur. 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, extension, or change in the rate of the tax, the county auditor shall give written notice of the result of the election by sending a copy of the abstract of the votes from the favorable election to the director of revenue. 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 who reside within the county and the total number of registered voters within the county.

Sec. 254. Section 422E.3, subsection 1, Code Supplement 2003, is amended to read as follows:

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~~ the period provided in section 422E.1, subsection 2 on the gross receipts taxed by the state under chapter 422, division IV.

Sec. 255. Section 422E.3A, subsection 2, paragraph a, Code Supplement 2003, is amended to read as follows:

a. A school district that is located in whole or in part in a county that voted on and approved prior to April 1, 2003, the local sales and services tax for school infrastructure purposes and that has a sales tax capacity per student above the guaranteed school infrastructure amount shall receive for the remainder of the unextended term of the tax an amount equal to its pro rata share of the local sales and services tax receipts as provided in section 422E.3, subsection 5, paragraph "d", unless the school board passes a resolution by October 1, 2003, agreeing to receive a distribution pursuant to paragraph "b", subparagraph (1).

Sec. 256. Section 422E.3A, subsection 2, paragraph b, subparagraphs (1) and (3), Code Supplement 2003, are amended to read as follows:

(1) A school district that is located in whole or in part in a county that voted on and approved prior to April 1, 2003, the local sales and services tax for school infrastructure purposes and that has a sales tax capacity per student below its guaranteed school infrastructure amount shall receive for the remainder of the unextended term of the tax an amount equal to its pro rata share of the local sales and services tax receipts as provided in section 422E.3, subsection 5, paragraph "d", plus an amount equal to its supplemental school infrastructure amount, unless the school district passes a resolution by October 1, 2003, agreeing to receive only an amount equal to its pro rata share as provided in section 422E.3, subsection 5, paragraph "d", in all subsequent years.

(3) A school district that is located in whole or in part in a county that voted on and approved the ~~continuation~~ extension of the tax pursuant to section 422E.2, subsection 5, on or after April 1, 2003, the local sales and services tax for school infrastructure purposes shall receive for any extended period an amount equal to its pro rata share of the local sales and services tax receipts as provided in section 422E.3, subsection 5, paragraph "d", not to exceed its guaranteed school infrastructure amount. However, if the school district's pro rata share is less than its guaranteed school infrastructure amount, the district shall receive an additional amount equal to its supplemental school infrastructure amount.

Sec. 257. Section 422E.3A, subsection 2, paragraph b, subparagraph (4), Code Supplement 2003, is amended by striking the subparagraph.

Sec. 258. Section 422E.4, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

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 and the supplemental school infrastructure amount distributed pursuant to section 422E.3A, subsection 2, paragraph "b", 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 the date of repeal stated on the ballot proposition.~~ Bonds issued under this section may be sold at public or private sale as provided in chapter 75 without notice and hearing as provided in section 73A.l2. Bonds may bear dates, bear interest at rates not exceeding that permitted by chapter 74A, mature in one or more installments, be in registered form, carry registration and conversion privileges, be payable as to principal and interest at times and places, be subject to terms of redemption prior to maturity with or without premium, and be in one or more denominations, all as provided by the resolution of the board of directors authorizing their issuance. The resolution may also prescribe additional provisions, terms, conditions, and covenants which the board of directors deems advisable, including provisions for creating and maintaining reserve funds, the issuance of additional bonds ranking on a parity with such bonds and additional bonds junior and subordinate to such bonds, and that such bonds shall rank on a parity with or be junior and subordinate to any bonds which may be then outstanding. Bonds may be issued to refund outstanding and previously issued bonds under this section. Local option sales and services tax revenue bonds are a contract between the school district and holders, and the resolution issuing the bonds and pledging local option sales and services tax revenues to the payment of principal and interest on the bonds is a part of the contract. Bonds issued pursuant to this section shall not constitute indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to any other law relating to the authorization, issuance, or sale of bonds.

Sec. 259. PAYMENTS IN LIEU OF GENERAL FUND REIMBURSEMENT. Notwithstanding the amount of the standing appropriation from the general fund of the state in the following designated sections and notwithstanding any conflicting provisions or voting requirements of section 8.56, there is appropriated from the cash reserve fund in lieu of the appropriations in the following designated sections for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts for the following designated purposes:

1. For reimbursement for the homestead property tax credit under section 425.1:
. . . . . $ 102,945,379

2. For reimbursement for the agricultural land and family farm tax credits under sections 425A.1 and 426.1:
. . . . . $ 34,610,183

3. For reimbursement for the military service tax credit under section 426A.1A:
. . . . . $ 2,568,402

4. For implementing the elderly and disabled credit and reimbursement pursuant to sections 425.16 through 425.40:
. . . . . $ 19,540,000

If the sum of the amount of claims for credit for property taxes due plus the amount of claims for reimbursement for rent constituting property tax paid which are to be paid during the fiscal year beginning July 1, 2004, exceeds the amount appropriated in this subsection, the director

of revenue shall prorate the payments for the property tax credit and for reimbursement for rent constituting property tax paid. In order for the director to carry out the requirements of this subsection, notwithstanding any provision to the contrary in chapter 425, claims for reimbursement for rent constituting property taxes paid filed before May 1, 2005, shall be eligible to be paid during the fiscal year ending June 30, 2005, and those claims filed on or after May 1, 2005, shall be eligible to be paid during the fiscal year beginning July 1, 2005, and the director is not required to make payments to counties for the property tax credit before June 15, 2005.

Sec. 260. Section 455B.174, subsection 4, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. If a public water supply has a groundwater source that contains petroleum, a fraction of crude oil, or their degradation products, or is located in an area deemed by the department as likely to be contaminated by such materials, and after consultation with the public water supply and consideration of all applicable rules relating to remediation, the department may require the public water supply to replace that groundwater source in order to receive a permit to operate. The requirement to replace the source shall only be made by the department if the public water supply is fully compensated for any additional design, construction, operation, and monitoring costs from the Iowa comprehensive petroleum underground storage tank fund created by chapter 455G or from any other funds that do not impose a financial obligation on the part of the public water supply. Funds available to or provided by the public water supply may be used for system improvements made in conjunction with replacement of the source. The department cannot require a public water supply to replace its water source with a less reliable water source or with a source that does not meet federal primary, secondary, or other health-based standards unless treatment is provided to ensure that the drinking water meets these standards. Nothing in this paragraph shall affect the public water supply's right to pursue recovery from a responsible party.

*Sec. 261. Section 455B.310, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 10. Nonmetallic material processed by an industrial shredder, and commonly referred to as shredder fluff, which is disposed of as solid waste or otherwise used by a sanitary landfill is exempt from the imposition of the tonnage fee under this section.*

Sec. 262. Section 535.8, subsection 2, paragraph b, unnumbered paragraph 2, Code 2003, as amended by 2004 Iowa Acts, House File 2484,[19] if enacted, is amended to read as follows:

The lender shall not charge the borrower for the cost of revenue stamps or real estate commissions which are paid by the seller.

The collection of any costs other than as expressly permitted by this paragraph "b" is prohibited. However, additional costs incurred in connection with a loan under this paragraph "b", if bona fide and reasonable, may be collected by a state-chartered financial institution licensed under chapter 524, 533, or 534, to the extent permitted under applicable federal law as determined by the office of the comptroller of the currency of the United States department of treasury, the national credit union ~~association~~ administration, or the office of thrift supervision of the United States department of treasury. Such costs shall apply only to the same type of ~~state chartered~~ state-chartered entity as the federally chartered entity affected and to[20] an insurer organized under chapter 508 or 515, or otherwise authorized to conduct the business of insurance in this state.

*Sec. 263. Section 668B.2, subsection 1, if enacted by 2004 Iowa Acts, House File 2440, section 2, is amended to read as follows:

1. "Health care provider" means a physician as defined in section 135.1, a licensed physician assistant as defined in section 148C.1, a nurse, including an advanced registered nurse practitioner, licensed pursuant to chapter 152, a hospital as defined in section 135B.1, ~~and~~ a health care facility as defined in section 135C.1, and a federally licensed, regulated, or registered non-

* Item veto; see message at end of the Act

19 Chapter 1141, §74 herein

20 According to enrolled Act; but see 2004 Iowa Acts, chapter 1141, §74 herein

*profit blood bank, blood center, or plasma center that is collecting, processing, or distributing whole human blood, blood components, plasma, blood fractions, or blood derivatives for use by a licensed health care provider.**

Sec. 264. COLLECTIVE BARGAINING AGREEMENTS FUNDED — GENERAL FUND. The various state departments, boards, commissions, councils, and agencies, including the state board of regents, for the fiscal year beginning July 1, 2004, and ending June 30, 2005, shall provide from available sources pay adjustments, expense reimbursements, and related benefits to fully fund the following:

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 clerical bargaining unit.
7. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the professional social services bargaining unit.
8. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the community-based corrections bargaining unit.
9. The collective bargaining agreements negotiated pursuant to chapter 20 for employees in the judicial branch of government bargaining units.
10. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the patient care bargaining unit.
11. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the science bargaining unit.
12. The collective bargaining agreement negotiated pursuant to chapter 20 for employees in the university of northern Iowa faculty 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 collective bargaining agreement negotiated pursuant to chapter 20 for employees in the state university of Iowa hospital and clinics tertiary health care bargaining unit.
15. The annual pay adjustments, related benefits, and expense reimbursements referred to in section 265 of this division of this Act for employees not covered by a collective bargaining agreement.

Sec. 265. NONCONTRACT STATE EMPLOYEES — GENERAL.

1. a. For the fiscal year beginning July 1, 2004, the maximum salary levels of all pay plans provided for in section 8A.413, subsection 2, as they exist for the fiscal year ending June 30, 2004, shall be increased by 2 percent for the pay period beginning December 31, 2004, and any additional changes in the pay plans shall be approved by the governor.

b. For the fiscal year beginning July 1, 2004, 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 8A, Article 4,[21] and who are included in the department of administrative service's centralized payroll system shall be increased in the same manner as provided in subsection 1, and any additional changes in any executive branch pay plans shall be approved by the governor.

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 division of

* Item veto; see message at end of the Act

[21] The phrase "chapter 8A, subchapter IV" probably intended

this Act or set by the governor, employees designated under section 8A.412, subsection 5, and employees covered by 11 IAC 53.6(3).

4. The pay plans for the bargaining eligible employees of the state other than the employees of the state board of regents shall be increased in the same manner as provided in subsection 1, and any additional changes in such executive branch pay plans shall be approved by the governor. 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. 266. 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, 2004, and ending June 30, 2005, 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:

..... $ 3,000,000

2. There is appropriated from the primary road fund to the salary adjustment fund, for the fiscal year beginning July 1, 2004, and ending June 30, 2005, 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:

..... $ 12,000,000

3. Except as otherwise provided in this division of 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 division of this Act.

Sec. 267. 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 division of this Act.

Sec. 268. FEDERAL FUNDS APPROPRIATED. All federal grants to and the federal receipts of the agencies affected by this division of this Act which are received and may be expended for purposes of pay adjustments and related benefits as covered in this division of this Act are appropriated for those purposes and as set forth in the federal grants or receipts.

Sec. 269. 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 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.

Sec. 270. 2001 Iowa Acts, chapter 174, section 1, subsection 2, as amended by 2002 Iowa Acts, chapter 1174, section 8, and 2003 Iowa Acts, chapter 179, section 38, is amended to read as follows:

2. There is appropriated from the general fund of the state to the endowment for Iowa's health account of the tobacco settlement trust fund created in section 12E.12, for the designated fiscal years, the following amounts, to be used for the purposes specified in section 12E.12 for the endowment for Iowa's health account:

FY 2001-2002	$	7,248,000
FY 2003-2004	$	0
FY 2004-2005	$	~~29,785,000~~ 0
FY 2005-2006	$	29,562,000
FY 2006-2007	$	17,773,000

Sec. 271. 2003 Iowa Acts, chapter 178, section 28,[22] unnumbered paragraph 3, is amended to read as follows:

Notwithstanding section 8.64, subsection 4, as enacted by this division of this Act, the local government innovation fund committee may provide ~~up to 20 percent of the~~ any amount appropriated in this section in the form of forgivable loans or as grants for those projects that propose a new and innovative sharing initiative that would serve as an important model for cities and counties.

Sec. 272. Notwithstanding section 8.33, moneys appropriated in 2003 Iowa Acts, chapter 178, section 62, and 2003 Iowa Acts, chapter 181, section 11, subsection 3, which remain unencumbered or unobligated at the close of the fiscal year beginning July 1, 2003, shall not revert but shall remain available for expenditure for the purposes for which they were appropriated for the fiscal year beginning July 1, 2004.

Sec. 273. 2004 Iowa Acts, House File 2490,[23] section 8, if enacted, is repealed.

Sec. 274. 2003 Iowa Acts, chapter 179, section 21, unnumbered paragraph 5, is amended to read as follows:

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2003, from the appropriation made in this section shall not revert but shall remain available to be used for the purposes designated ~~in the following fiscal year~~ until the end of the fiscal year beginning July 1, 2004. Funds appropriated in this section remaining unencumbered or unobligated at the end of the fiscal year beginning July 1, 2004, shall not revert but shall remain available to be used for the purposes designated and for a home ownership assistance program for eligible members of the national guard and reserves of the armed forces of the United States and the members' immediate families.

Sec. 275. 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 4, unnumbered paragraph 3, is amended to read as follows:

Notwithstanding section 8.64, subsection 4, if enacted by 2003 Iowa Acts, Senate File 453,[24] section 27, the local government innovation fund committee may provide ~~up to 20 percent of the~~ any amount appropriated in this section in the form of forgivable loans or as grants for those projects that propose a new and innovative sharing initiative that would serve as an important model for cities and counties.

Sec. 276. UNFILLED VACANCIES — STATE BOARD OF REGENTS. The state board of regents shall report on the policies of the institutions under the authority of the state board for addressing the budget ramifications associated with unfilled vacant positions. If a policy does not exist, the state board shall provide for implementation of such a policy and report concerning the policy to the government oversight committees of the senate and house of representatives. The report shall be submitted on or before December 15, 2004.

Sec. 277. STATE BOARD OF REGENTS BONDING.

1. FINDINGS. The general assembly finds that:

a. Pursuant to section 262A.3, the state board of regents prepared and within seven days after the convening of the Eightieth General Assembly of the State of Iowa, Second Session, submitted to the Eightieth General Assembly, Second Session, for approval the proposed five-year building program for each institution of higher learning under the jurisdiction of the board, containing a list of the buildings and facilities which the board deems necessary to further the educational objectives of the institutions, together with an estimate of the cost of each of the buildings and facilities and an estimate of the maximum amount of revenue bonds which the board expects to issue under chapter 262A to finance the costs of the projects.

b. The projects contained in the capital improvement program are deemed necessary for the proper performance of the instructional, research, and service functions of the institutions.

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22 2003 Iowa Acts, chapter 178, §28, was repealed by 2003 Iowa Acts, chapter 179, §42

23 Chapter 1067 herein

24 2003 Iowa Acts, chapter 178

* Item veto; see message at end of the Act

c. Section 262A.4 provides that the state board of regents, after authorization by a constitutional majority of each house of the general assembly and approval by the governor, may undertake and carry out at the institutions of higher learning under the jurisdiction of the board any project as defined in chapter 262A.

d. Chapter 262A authorizes the state board of regents to borrow moneys and to issue and sell negotiable revenue bonds to pay all or any part of the cost of carrying out projects at any institution payable solely from and secured by an irrevocable pledge of a sufficient portion of the student fees and charges and institutional income received by the particular institution.

e. To further the educational objectives of the institutions, the state board of regents requests authorization to undertake and carry out certain projects at this time and to finance their costs by borrowing moneys and issuing negotiable bonds under chapter 262A in a total amount as provided in this section, with the remaining costs of the projects to be financed by appropriations or by federal or other funds lawfully available.

2. APPROVAL — LIMITS.

a. The proposed five-year building program submitted by the state board of regents for each institution of higher learning under its jurisdiction is approved and no commitment is implied or intended by approval to fund any portion of the proposed five-year building program submitted by the state board of regents beyond the portion that is financed and approved by the Eightieth General Assembly, Second Session, and the governor.

b. The maximum amount of bonds which the state board of regents expects to issue under chapter 262A, unless additional bonding is authorized, is set forth in this section, and this plan of financing is approved.

3. PROJECTS. The state board of regents is authorized to undertake, plan, construct, improve, repair, remodel, furnish, and equip, and otherwise carry out the following projects at the institutions of higher learning under the jurisdiction of the board, and the general assembly authorizes the state board of regents to borrow moneys and to issue and sell negotiable revenue bonds in the amount of $120,000,000 in the manner provided in sections 262A.5 and 262A.6 in order to pay all or any part of the costs of carrying out the projects at the institutions as follows:

a. Iowa state university of science and technology

For the veterinary teaching hospital — diagnostic lab, Coover hall — information science, and for fire safety costs:

. . . . . $ 48,000,000

b. State university of Iowa

For the chemistry building renovation, phase II of the art building renovation, and for fire safety costs:

. . . . . $ 50,000,000

c. University of northern Iowa

For the science buildings renovation project and for the Russell hall renovation:

. . . . . $ 22,000,000

Total . . . . . $ 120,000,000

4. Notwithstanding the limitation established in subsection 3, the amount of bonds issued as authorized in subsection 3 may be exceeded by the amount the state board of regents determines to be necessary to capitalize bond reserves, interest during construction, and issuance costs.

**Sec. 278. COMMERCIAL VEHICLE REGISTRATION FEES — REFUND. Notwithstanding the provisions relating to the registration of commercial vehicles, as defined in section 321.1, the requirement of the return of the registration plate and registration receipt to the state department of transportation, and the time limit for applying for a refund, any person that sold a commercial vehicle between January 1, 2002, and April 1, 2002, shall receive a refund of any registration fees, penalties, or interest assessed related to the registration of such vehicle for a registration year beginning in the 2002 calendar year if all of the following apply:*

* Item veto; see message at end of the Act

1. The person failed to register the commercial vehicle for the registration year beginning in the 2002 calendar year.

2. The commercial vehicle was sold by the person to another during the period beginning January 1, 2002, and ending April 1, 2002, and the purchaser registered the vehicle for all or part of the registration year beginning in the 2002 calendar year.

*3. A claim for refund pursuant to this section is filed with the state department of transportation after the effective date of this section and prior to August 1, 2004.**

Sec. 279. ACCESS TO NECESSARY PRESCRIPTION DRUGS — FREE CLINIC TEST PROGRAM FOR PERSONS WHO ARE UNINSURED OR UNDERINSURED. There is appropriated from the general fund of the state to the Iowa department of public health for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For the bureau of health care access to issue a grant in accordance with this section:

. . . . . $ 10,000

The entire amount appropriated in this section shall be issued by the bureau as a grant to a free clinic, as defined in section 135.24, operating in one county. The grant shall be used by the free clinic to establish a partnership and test program for a buying cooperative approach for purchasing prescription drugs at a price less than retail. The prescription drugs purchased through the approach shall be provided to patients of the free clinic who are uninsured or underinsured.

Sec. 280. MODIFIED ADDITIONAL ALLOWABLE GROWTH. For the fiscal year beginning July 1, 2004, and ending June 30, 2005, notwithstanding anything contrary in section 257.18, subsection 2, if the board adopts a resolution, not later than April 15, 2004, to increase its participation in the instructional support program under section 257.18 and a petition is not filed or if the question is submitted to the registered voters of the school district and the question is approved, the school budget review committee shall establish modified allowable growth for the school district for the fiscal year beginning July 1, 2004, for the amount of increased spending authority. The modified allowable growth shall equal the sum of the increased state aid, income surtax, and property tax portion of the instructional support program requested by the district. The district is not eligible for state aid as determined under section 257.20 due to increased participation percent.

Sec. 281. CHARTER AGENCIES — FULL-TIME EQUIVALENT EMPLOYEE LIMITS — REVERSIONS.

1. Notwithstanding any limitation on the number of full-time equivalent employees for the fiscal year beginning July 1, 2004, and ending June 30, 2005, stated in this Act or any other Act, the personnel management provisions of section 7J.1, subsection 4, shall remain applicable to those state departments or agencies designated as a charter agency under chapter 7J.

2. The provisions of section 7J.1, subsection 3, paragraph "c", relating to reversions, are not applicable to any appropriation made to a charter agency that this Act or any other Act provides is not subject to reversion.

Sec. 282. PREVAILING LEGISLATION. If 2004 Iowa Acts, Senate File 399[25] is enacted and includes a provision increasing the criminal penalty surcharge to thirty-two percent of a fine or forfeiture, the following shall be the consequence:

1. The thirty percent surcharge set out in the amendment to section 911.1, Code 2003, in 2004 Iowa Acts, House File 2530,[26] section 10, if enacted, is null and void, and 2004 Iowa Acts, House File 2530,[27] section 10, if enacted, is amended to provide for the surcharge at thirty-two percent to conform to the thirty-two percent provision included in 2004 Iowa Acts, Senate File 399.[28]

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* Item veto; see message at end of the Act

[25] Not enacted

[26] Chapter 1111 herein

[27] Chapter 1111 herein

[28] Not enacted

2. As a result of including the thirty-two percent provision in 2004 Iowa Acts, House File 2530,[29] section 10, if enacted, the section of 2004 Iowa Acts, Senate File 399[30] amending section 911.2, Code 2003, is null and void.

Sec. 283. Section 266.31, Code 2003, is repealed.

Sec. 284. Section 266.39D, Code Supplement 2003, is repealed.

Sec. 285. STATE PERCENT OF GROWTH DEADLINES AND RESTRICTIONS — INAPPLICABILITY. The thirty-day deadline and restrictions for the enactment of the state percent of growth provided in section 257.8 do not apply to this Act.

Sec. 286. APPOINTMENTS. The new appointees to the commission of veterans affairs, pursuant to the increase in the membership of the commission as provided in this division of this Act, shall be appointed by the governor, with one member being appointed for an initial term of two years and one member being appointed for an initial term of four years.

Sec. 287. EFFECTIVE AND APPLICABILITY DATE PROVISIONS.

1. The section of this division of this Act enacting section 153.40 takes effect upon receipt of the Iowa department of public health of federal funding to establish a mobile dental delivery system. The director of public health shall notify the Iowa code editor that the funding has been received.

2. The sections of this division of this Act amending sections 257.8 and 257.35 are applicable for computing state aid under the state school foundation program for the school budget year beginning July 1, 2004.

3. The sections of this division of this Act amending sections 257.14, 346.27, and 422E.2, being deemed of immediate importance, take effect upon enactment.

4. The section relating to the refund for commercial vehicle registration fees, penalties, and interest, being deemed of immediate importance takes effect upon enactment.

5. The section of this division of this Act amending section 404A.2, being deemed of immediate importance, takes effect upon enactment and applies retroactively to July 1, 2002.

6. The section of this division of this Act providing modified allowable growth for school districts to participate in an instructional support program, being deemed of immediate importance, takes effect upon enactment.

7. The section of the division of this Act amending 2003 Iowa Acts, chapter 179, section 21, being deemed of immediate importance, takes effect upon enactment.

8. The section of this division of this Act relating to the nonreversion of moneys appropriated pursuant to 2003 Iowa Acts, chapter 178, section 62, and 2003 Iowa Acts, chapter 181, section 11, being deemed of immediate importance, takes effect upon enactment.

9. The sections of this division of this Act relating to the increase in membership of the commission of veterans affairs, being deemed of immediate importance, take effect upon enactment.

10. The section of this division of this Act repealing 2004 Iowa Acts, House File 2490,[31] section 8, if enacted, being deemed of immediate importance, takes effect upon enactment.

11. The sections of this division of this Act amending sections 8.22A and 8.54, being deemed of immediate importance, take effect upon enactment.

DIVISION XI
REBUILD IOWA INFRASTRUCTURE FUND

Sec. 288. There is appropriated from the rebuild Iowa infrastructure fund to the following

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[29] Chapter 1111 herein

[30] Not enacted

* Item veto; see message at end of the Act

[31] Chapter 1067 herein

departments and agencies for the designated fiscal years, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. DEPARTMENT OF ADMINISTRATIVE SERVICES

a. For routine maintenance of state buildings and facilities, notwithstanding section 8.57, subsection 5, paragraph "c":

FY 2004-2005 ..... $ 2,000,000

b. For relocation costs directly associated with remodeling projects on the capitol complex and for facility lease payments for the department of corrections, the Iowa department of public health, and the department of public safety, notwithstanding section 8.57, subsection 5, paragraph "c":

FY 2004-2005 ..... $ 2,271,617

c. For technology improvement projects, notwithstanding section 8.57, subsection 5, paragraph "c":

FY 2004-2005 ..... $ 1,861,496

Of the amount appropriated in this lettered paragraph, $288,496 is allocated to maintain and operate the enterprise warehouse technology project and $73,000 is allocated to the division of criminal and juvenile justice planning of the department of human rights for 1.00 full-time equivalent position to provide support for the justice data warehouse technology project.

d. For major renovation and major repair needs, including health, life, and fire safety needs, and for compliance with the federal Americans With Disabilities Act, for state buildings and facilities under the purview of the department:

FY 2004-2005 ..... $ 4,300,000

(1) Of the amount appropriated in this lettered paragraph, up to $375,000 may be used for costs associated with project management services in the division of design and construction within the general services enterprise of the department, notwithstanding section 8.57, subsection 5, paragraph "c".

(2) Of the amount appropriated in this lettered paragraph, $200,000 may be used for costs associated with the vertical infrastructure program, notwithstanding section 8.57, subsection 5, paragraph "c".

e. For costs associated with the remodeling of the records and property center:

FY 2004-2005 ..... $ 5,000,000
FY 2005-2006 ..... $ 4,700,000

f. For accent lighting systems for the soldiers and sailors monument and the Allison monument on the capitol complex:

FY 2004-2005 ..... $ 35,000

**g. For capitol interior restoration:*

*FY 2004-2005 ..... $ 1,770,000**

h. For costs associated with the purchase of laboratory equipment for and the maintenance and operation of the state laboratories facility located in Ankeny, notwithstanding section 8.57, subsection 5, paragraph "c":

FY 2004-2005 ..... $ 355,500

2. DEPARTMENT FOR THE BLIND

For the remodeling of the orientation center:

FY 2004-2005 ..... $ 67,000

3. STATE BOARD OF REGENTS

For maintenance at the Iowa school for the deaf and the Iowa braille and sight saving school:

FY 2004-2005 ..... $ 500,000

4. DEPARTMENT OF CORRECTIONS

a. For costs of entering into a lease-purchase agreement to connect the electrical system supporting the special needs unit at Fort Madison:

FY 2004-2005 ..... $ 333,168

* Item veto; see message at end of the Act

b. For construction of a community-based correctional facility, including district offices, in Davenport:

FY 2004-2005 ..... $ 3,000,000
FY 2005-2006 ..... $ 3,750,000
FY 2006-2007 ..... $ 3,750,000

It is the intent of the general assembly that the department of management allocate the entire appropriation for the fiscal year beginning July 1, 2006, to the department of corrections by July 31, 2006.

5. DEPARTMENT OF CULTURAL AFFAIRS

a. For historical site preservation grants, to be used for the restoration, preservation, and development of historical sites:

FY 2004-2005 ..... $ 500,000

Historical site preservation grants shall only be awarded for projects which meet the definition of "vertical infrastructure" in section 8.57, subsection 5, paragraph "c".

In making grants pursuant to this lettered paragraph, the department shall consider the existence and amount of other funds available to an applicant for the designated project. A grant awarded from moneys appropriated in this lettered paragraph shall not exceed $100,000 per project. Not more than two grants may be awarded in the same county.

b. For continuation of the project recommended by the Iowa battle flag advisory committee to stabilize the condition of the battle flag collection, notwithstanding section 8.57, subsection 5, paragraph "c":

FY 2004-2005 ..... $ 100,000

6. DEPARTMENT OF ECONOMIC DEVELOPMENT

a. For accelerated career education program capital projects at community colleges that are authorized under chapter 260G and that meet the definition of "vertical infrastructure" in section 8.57, subsection 5, paragraph "c":

FY 2004-2005 ..... $ 5,500,000

The moneys appropriated in this paragraph shall be allocated equally among the community colleges in the state. If any portion of the equal allocation to a community college is not obligated or encumbered by April 1, 2005, the unobligated and unencumbered portions shall be available for use by other community colleges.

b. For sole source grant costs associated with the hosting of the national special Olympics in Iowa by a special Olympics nonprofit entity, notwithstanding section 8.57, subsection 5, paragraph "c":

FY 2004-2005 ..... $ 500,000

c. To provide a grant for the planning, design, and construction of a not-for-profit family recreational facility that will also include a cardiac rehabilitation center and a family indoor aquatic center and which will be located in a county with a population between 150,000 and 185,000:

FY 2004-2005 ..... $ 200,000

d. To be used for the Iowa Lewis and Clark bicentennial commission established pursuant to section 15.221, notwithstanding section 8.57, subsection 5, paragraph "c":

FY 2004-2005 ..... $ 50,000

7. DEPARTMENT OF EDUCATION

a. To provide resources for structural and technological improvements to local libraries and for the enrich Iowa program, notwithstanding section 8.57, subsection 5, paragraph "c":

FY 2004-2005 ..... $ 600,000

Funds allocated for purposes of the enrich Iowa program as provided in this lettered paragraph shall be distributed by the division of libraries and information services to provide support for Iowa's libraries.

b. For maintenance and lease costs associated with part III connections, notwithstanding section 8.57, subsection 5, paragraph "c":

FY 2004-2005 ..... $ 2,727,000

c. For costs associated with the remodeling of the Jessie Parker building:
FY 2004-2005 ..... $ 303,632

d. For allocation to the public broadcasting division for costs of installation of digital and analog television for Iowa public television facilities, notwithstanding section 8.57, subsection 5, paragraph "c":
FY 2004-2005 ..... $ 8,000,000
FY 2005-2006 ..... $ 8,000,000
FY 2006-2007 ..... $ 2,300,000

*8. *DEPARTMENT OF HUMAN SERVICES*

To provide a grant for the planning, design, and construction of a residential treatment facility for youth with emotional and behavioral disorders located in a central Iowa county with a population of approximately 80,000:
FY 2004-2005 ..... *$ 250,000**

9. IOWA STATE FAIR AUTHORITY

For vertical infrastructure projects on the state fairgrounds:
FY 2004-2005 ..... $ 250,000

For purposes of this subsection, "vertical infrastructure" means the same as defined in section 8.57, subsection 5, paragraph "c".

10. NATIONAL PROGRAM FOR PLAYGROUND SAFETY AT THE UNIVERSITY OF NORTHERN IOWA

For the Iowa safe surfacing initiative, notwithstanding section 8.57, subsection 5, paragraph "c":
..... $ 500,000

Not more than 2.5 percent of the funds appropriated in this subsection shall be used by the national program for playground safety for administrative costs associated with the Iowa safe surfacing initiative.

The crumb rubber playground tiles for the initiative shall be international play equipment manufacturers association (IPEMA)-certified to the American society for testing and materials (ASTM) F1292 standard.

11. DEPARTMENT OF NATURAL RESOURCES

For costs associated with the planning, design, and construction of a premier destination state park, notwithstanding section 8.57, subsection 5, paragraph "c":
FY 2004-2005 ..... $ 500,000

12. DEPARTMENT OF PUBLIC DEFENSE

a. For planning, design, and construction of a national guard readiness center in or near Iowa City:
FY 2004-2005 ..... $ 2,150,000

b. For maintenance and repair of national guard armories and facilities:
FY 2004-2005 ..... $ 1,269,636

c. For construction of a new national guard armory at Boone:
FY 2004-2005 ..... $ 1,096,000

13. DEPARTMENT OF PUBLIC SAFETY

a. For capitol building and judicial building security, notwithstanding section 8.57, subsection 5, paragraph "c":
FY 2004-2005 ..... $ 800,000

b. For capitol complex security notwithstanding section 8.57, subsection 5, paragraph "c":
FY 2004-2005 ..... $ 300,000

c. For costs of entering into a lease-purchase agreement to upgrade the automated fingerprint identification system, notwithstanding section 8.57, subsection 5, paragraph "c":
FY 2004-2005 ..... $ 550,000

d. For costs associated with improvements to Iowa's electronic criminal information records system to comply with national crime information center standards, notwithstanding section 8.57, subsection 5, paragraph "c":
FY 2004-2005 ..... $ 500,000

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* Item veto; see message at end of the Act

e. To the division of fire safety of the department for allocation to the fire service training bureau for the planning, design, and construction of regional training facilities in the state:
FY 2004-2005 ..... $ 150,000

f. To the division of fire safety of the department for allocation to the fire service training bureau to be used for the revolving loan program for equipment purchases by local fire departments, notwithstanding section 8.57, subsection 5, paragraph "c":
FY 2004-2005 ..... $ 500,000

14. STATE DEPARTMENT OF TRANSPORTATION

a. For operation and maintenance of the network of automated weather observation and data transfer systems associated with the Iowa aviation weather system, the runway marking program for public airports, the windsock program for public airports, and the aviation improvement program, notwithstanding section 8.57, subsection 5, paragraph "c":
FY 2004-2005 ..... $ 500,000

b. For vertical infrastructure improvements at the commercial air service airports within the state:
FY 2004-2005 ..... $ 1,100,000

One-half of the funds appropriated in this lettered paragraph shall be allocated equally between each commercial service airport, 40 percent of the funds shall be allocated based on the percentage that the number of enplaned passengers at each commercial service airport bears to the total number of enplaned passengers in the state during the previous fiscal year, and 10 percent of the funds shall be allocated based on the percentage that the air cargo tonnage at each commercial service airport bears to the total air cargo tonnage in the state during the previous fiscal year. In order for a commercial service airport to receive funding under this lettered paragraph, the airport shall be required to submit applications for funding of specific projects to the department for approval by the state transportation commission.

c. For a vertical infrastructure improvement grant program for improvements at general aviation airports within the state:
FY 2004-2005 ..... $ 581,400

15. OFFICE OF TREASURER OF STATE

For county fair infrastructure improvements for distribution in accordance with chapter 174 to qualified fairs which belong to the association of Iowa fairs:
FY 2004-2005 ..... $ 1,060,000

16. COMMISSION OF VETERANS AFFAIRS

For deposit in the veterans trust fund established in section 35A.13, notwithstanding section 8.57, subsection 5, paragraph "c":
FY 2004-2005 ..... $ 1,000,000

Of the amount appropriated in this subsection, notwithstanding contrary provisions of section 35A.13, $500,000 is appropriated to and shall be used by the commission of veterans affairs for the establishment and operation of a veterans cemetery as required by section 35A.3, subsection 14, if enacted by this Act. Notwithstanding section 8.33, moneys appropriated in this unnumbered paragraph that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year or when the project is completed, whichever is later.

Sec. 289. PAYMENTS IN LIEU OF TUITION. There is appropriated from the rebuild Iowa infrastructure fund to the state board of regents for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as may be necessary, to be used for the purpose designated:

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, notwithstanding section 8.57, subsection 5, paragraph "c":
. . . . . $ 858,764

Sec. 290. REVERSION. Notwithstanding section 8.33, moneys appropriated from the rebuild Iowa infrastructure fund in this division of this Act shall not revert at the close of the fiscal year for which they were appropriated but shall remain available for the purposes designated until the close of the fiscal year that begins July 1, 2007, or until the project for which the appropriation was made is completed, whichever is earlier. This section does not apply to the sections in this division of this Act that were previously enacted and are amended in this division of this Act.

Sec. 291. 2003 Iowa Acts, chapter 177, section 6, subsection 2, is amended to read as follows:

2. For costs associated with the ~~planning for the vacation and demolition~~ disposition of the Wallace building:
. . . . . $ 50,000

The amount appropriated in this subsection shall be used to conduct a complete evaluation and analysis regarding the condition of the Wallace building, including structural, mechanical, and environmental systems and building air quality, and to make a recommendation to the general assembly no later than January 31, 2005, as to whether the Wallace building should be renovated for future use or vacated and demolished. The recommendation shall include cost estimates for renovation of the building and for its demolition.

Sec. 292. 2003 Iowa Acts, chapter 177, section 14, is amended to read as follows:

SEC. 14. REVERSION. Notwithstanding section 8.33, moneys appropriated in this division of this Act shall not revert at the close of the fiscal year for which they were appropriated but shall remain available for the purposes designated until the close of the fiscal year that begins July 1, ~~2006~~ 2007, or until the project for which the appropriation was made is completed, whichever is earlier.

Sec. 293. 2003 Iowa Acts, chapter 179, section 140, is amended to read as follows:

SEC. 140. Notwithstanding section 8.33, unencumbered and unobligated funds remaining from the appropriation made in 1996 Iowa Acts, chapter 1218, section 13, subsection 2, paragraph "a", subparagraph (2), as amended by 1997 Iowa Acts, chapter 215, section 3, and from the appropriation made in 1997 Iowa Acts, chapter 215, section 4, subsection 1, shall not revert but shall be available for the purposes designated in those provisions until the close of the fiscal year beginning July 1, ~~2003~~ 2004.

Of the amount of unencumbered and unobligated funds identified in this section, $180,000 shall be used for the purposes described in 2003 Iowa Acts, chapter 177, section 6, subsection 2, as amended by this 2004 Act.

Sec. 294. 2002 Iowa Acts, chapter 1173, section 18, as amended by 2003 Iowa Acts, chapter 179, section 39, is amended to read as follows:

SEC. 18. POOLED TECHNOLOGY FUNDING — PRIOR ALLOCATIONS — NONREVERSION. Notwithstanding section 8.33, moneys appropriated and allocated in 2001 Iowa Acts, chapter 189, section 5, subsection 1, which remain unobligated or unexpended at the close of the fiscal year for which they were appropriated shall not revert, but shall remain available for expenditure for the purposes for which they were appropriated and allocated, for the fiscal period beginning July 1, 2002, and ending June 30, ~~2004~~ 2005. Notwithstanding the expenditure limitation in this section, the information technology enterprise within the department of administrative services may expend available moneys in the pooled technology account established in the office of the treasurer of state to complete the comprehensive study required under 2003 Iowa Acts, chapter 145, section 290, subsection 2, paragraph "c".

Sec. 295. 2000 Iowa Acts, chapter 1225, section 2, as amended by 2001 Iowa Acts, chapter 185, section 2, is amended to read as follows:

SEC. 2. There is appropriated from the rebuild Iowa infrastructure fund to the department of corrections for the fiscal year beginning July 1, 2000, and ending June 30, 2001, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. To supplement funds appropriated in 1998 Iowa Acts, chapter 1219, section 2, subsection 3, for construction of a 200-bed facility at the Iowa state penitentiary at Fort Madison:
. . . . . $ 3,000,000

2. For community-based corrections projects:
. . . . . $ 900,000

The first $300,000 of the amount appropriated in this subsection shall be allocated for community-based corrections projects in Council Bluffs. The next $600,000 of the amount appropriated in this subsection shall be allocated for community-based corrections projects in the judicial district in which the city of Davenport is located. These moneys may be used by the department to enter into lease-purchasing agreements or the payment of rent for such projects.

Notwithstanding section 8.33 and section 20 of this Act, moneys appropriated in subsection 2 that remain unencumbered or unobligated at the close of the fiscal year that begins July 1, 2003, shall revert at the close of the fiscal year that begins July 1, 2006. However, if the projects for which the moneys are appropriated are completed in an earlier fiscal year, unencumbered or unobligated moneys shall revert at the close of that fiscal year.

Sec. 296. 2000 Iowa Acts, chapter 1225, section 19, unnumbered paragraph 2, is amended to read as follows:

To supplement moneys appropriated in prior fiscal years for construction of a new dining hall and food services facility and renovation of the former Sheeler food preparation area:
. . . . . $ 992,000

Sec. 297. 2000 Iowa Acts, chapter 1225, section 20, is amended to read as follows:

SEC. 20. REVERSION. Notwithstanding section 8.33, moneys appropriated in this division of this Act that remain unencumbered or unobligated at the close of the fiscal year that begins July 1, ~~2003~~ 2004, shall revert at the close of that fiscal year. However, if the projects for which the moneys are appropriated are completed in an earlier fiscal year, unencumbered or unobligated moneys shall revert at the close of that fiscal year.

Sec. 298. EXAMINATION OF DEPARTMENT OF ADMINISTRATION[32] — FY 2003-2004. Notwithstanding section 11.5B, for the fiscal year beginning July 1, 2003, and ending June 30, 2004, the auditor of state shall not be entitled to reimbursement for performing any examination of the department of administrative services or funds received by the department of administrative services, except for an examination of the information technology enterprise within the department of administrative services and funds received by the information technology enterprise.

Sec. 299. SECURE AN ADVANCED VISION FOR EDUCATION FUND. Notwithstanding the maximum amount of the appropriation from the rebuild Iowa infrastructure fund to the secure an advanced vision for education fund specified in section 8.57, subsection 5, paragraph "f", the maximum amount of such appropriation for the fiscal year beginning July 1, 2004, and ending June 30, 2005, shall not exceed $8,160,000.

Sec. 300. The following sections of this division of this Act, being deemed of immediate importance, take effect upon enactment:

1. The section amending 2003 Iowa Acts, chapter 177, section 6.
2. The section amending 2003 Iowa Acts, chapter 179, section 140.

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[32] "DEPARTMENT OF ADMINISTRATIVE SERVICES" probably intended

* Item veto; see message at end of the Act

3. The section amending 2002 Iowa Acts, chapter 1173, section 18, as amended by 2003 Iowa Acts, chapter 179, section 39.

4. The section amending 2000 Iowa Acts, chapter 1225, section 2, as amended by 2001 Iowa Acts, chapter 185, section 2.

5. The section amending 2000 Iowa Acts, chapter 1225, section 19.

6. The section amending 2000 Iowa Acts, chapter 1225, section 20.

7. The section addressing the examination of the department of administration[33] in fiscal year 2003-2004.

DIVISION XII
ENVIRONMENT FIRST FUND

Sec. 301. There is appropriated from the environment first fund to the following departments and agencies for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

a. For the conservation reserve enhancement program to restore and construct wetlands for the purposes of intercepting tile line runoff, reducing nutrient loss, improving water quality, and enhancing agricultural production practices:

. . . . . $ 1,500,000

Not more than 5 percent of the moneys appropriated in this lettered paragraph may be used for costs of administration and implementation of soil and water conservation practices.

b. For continuation of a program that provides multiobjective resource protections for flood control, water quality, erosion control, and natural resource conservation:

. . . . . $ 2,700,000

Not more than 5 percent of the moneys appropriated in this lettered paragraph may be used for costs of administration and implementation of soil and water conservation practices.

c. For continuation of a statewide voluntary farm management demonstration program to demonstrate the effectiveness and adaptability of emerging practices in agronomy that protect water resources and provide other environmental benefits:

. . . . . $ 850,000

Not more than 5 percent of the moneys appropriated in this lettered paragraph may be used for costs of administration and implementation of soil and water conservation practices.

Of the amount appropriated in this lettered paragraph, $400,000 shall be allocated to the Iowa soybean association's agriculture and environment performance program.

d. For deposit in the alternative drainage system assistance fund created in section 460.303 to be used for purposes of supporting the alternative drainage system assistance program as provided in section 460.304:

. . . . . $ 500,000

Not more than 5 percent of the moneys appropriated in this lettered paragraph may be used for costs of administration and implementation of soil and water conservation practices.

e. To provide financial assistance for the establishment of permanent soil and water conservation practices:

. . . . . $ 5,500,000

(1) Not more than 5 percent of the moneys appropriated in this lettered paragraph may be allocated for cost-sharing to abate complaints filed under section 161A.47.

(2) Of the moneys appropriated in this lettered paragraph, 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

[33] Department of "administrative services" probably intended

appropriated in this lettered paragraph 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.

(6) Not more than 10 percent of the moneys appropriated in this lettered paragraph may be used for costs of administration and implementation of soil and water conservation practices.

f. To encourage and assist farmers in enrolling in and the implementation of federal conservation programs and work with them to enhance their revegetation efforts to improve water quality and habitat:

. . . . . $ 2,000,000

Not more than 5 percent of the moneys appropriated in this lettered paragraph may be used for costs of administration and implementation of soil and water conservation practices.

g. For deposit in the loess hills development and conservation fund created in section 161D.2:

. . . . . $ 600,000

Of the amount appropriated in this lettered paragraph, $400,000 shall be allocated to the hungry canyons account and $200,000 shall be allocated to the loess hills alliance account, to be used for the purposes for which the moneys in those accounts are authorized to be used under chapter 161D. No more than 5 percent of the moneys allocated to each account in this lettered paragraph may be used for administrative costs.

h. For deposit in the southern Iowa development and conservation fund created in section 161D.12:

. . . . . $ 300,000

Not more than 5 percent of the moneys appropriated in this lettered paragraph may be used for administrative costs.

2. DEPARTMENT OF ECONOMIC DEVELOPMENT

For deposit in the brownfield redevelopment fund created in section 15.293 to provide assistance under the brownfield redevelopment program:

. . . . . $ 500,000

3. DEPARTMENT OF NATURAL RESOURCES

a. To provide local watershed managers with geographic information system data for their use in developing, monitoring, and displaying results of their watershed work:

. . . . . $ 195,000

b. For statewide coordination of volunteer efforts under the water quality and keepers of the land programs:

. . . . . $ 100,000

c. For continuing the establishment and operation of water quality monitoring stations:

. . . . . $ 2,955,000

d. For deposit in the administration account of the water quality protection fund, to carry out the purposes of that account:

. . . . . $ 500,000

e. For air quality monitoring equipment:

. . . . . $ 500,000

f. For the dredging of lakes, including necessary preparation for dredging, in accordance with the department's classification of Iowa lakes restoration report:

. . . . . $ 1,000,000

The department shall consider the following criteria for funding lake dredging projects as provided in this lettered paragraph, and shall prioritize projects based on the following:

(1) Documented efforts to address watershed protection, considering testing, conservation efforts, and amount of time devoted to watershed protection.

(2) Protection of a natural resource and natural habitat.

(3) Percentage of public access and undeveloped lakefront property.

(4) Continuation of current projects partially funded by state resources to achieve department recommendations.

g. For purposes of funding capital projects for the purposes specified in section 452A.79, and for expenditures for the local cost share grants to be used for capital expenditures to local governmental units for boating accessibility:

. . . . . $ 2,300,000

h. For regular maintenance of state parks and staff time associated with these activities:

. . . . . $ 2,000,000

RESOURCES ENHANCEMENT AND PROTECTION FUND

Sec. 302. 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 environment first fund 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, 2004, and ending June 30, 2005, the following amount, to be allocated as provided in section 455A.19:

. . . . . $ 11,000,000

Sec. 303. REVERSION.

1. Except as provided in subsection 2, and notwithstanding section 8.33, moneys appropriated in this division of this Act that remain unencumbered or unobligated shall not revert at the close of the fiscal year for which they were appropriated but shall remain available for the purposes designated until the close of the fiscal year beginning July 1, 2005, or until the project for which the appropriation was made is completed, whichever is earlier.

2. Notwithstanding section 8.33, moneys appropriated in this division of this Act to the department of agriculture and land stewardship to provide financial assistance for the establishment of permanent soil and water conservation practices that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the fiscal year that begins July 1, 2007.

DIVISION XIII
TOBACCO SETTLEMENT TRUST FUND

Sec. 304. There is appropriated from the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund to the following departments and agencies for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. DEPARTMENT OF ADMINISTRATIVE SERVICES

a. For the payment of claims relating to the purchase and implementation of an integrated information for Iowa system, notwithstanding section 12E.12, subsection 1, paragraph "b", subparagraph (1):

. . . . . $ 6,049,284

b. For capitol interior restoration:

. . . . . $ 3,500,000

The department shall consult with the leaders of the senate and house of representatives prior to planning or implementing any capitol interior restoration project or other activity.

2. TAX-EXEMPT STATUS — USE OF APPROPRIATIONS. Payment of moneys from the appropriations in this section shall be made in a manner that does not adversely affect the tax-exempt status of any outstanding bonds issued by the tobacco settlement authority.

3. REVERSION. Notwithstanding section 8.33, moneys appropriated in this section shall not revert at the close of the fiscal year for which they were appropriated but shall remain available for the purposes designated until the close of the fiscal year that begins July 1, 2006, or until the project for which the appropriation was made is completed, whichever is earlier.

* Item veto; see message at end of the Act

Sec. 305. PAYMENTS IN LIEU OF TUITION. There is appropriated from the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund of the state to the state board of regents for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

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, notwithstanding section 12E.12, subsection 1, paragraph "b", subparagraph (1):

. . . . . $ 10,437,174

Sec. 306. IOWA COMMUNICATIONS NETWORK DEBT SERVICE. There is appropriated from the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund to the office of the treasurer of state for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For debt service for the Iowa communications network, notwithstanding section 12E.12, subsection 1, paragraph "b", subparagraph (1):

. . . . . $ 13,039,778

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. 307. PRISON DEBT SERVICE. There is appropriated from the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund to the office of the treasurer of state for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For repayment of prison infrastructure bonds under section 16.177, notwithstanding section 12E.12, subsection 1, paragraph "b", subparagraph (1):

. . . . . $ 5,413,324

Sec. 308. ENDOWMENT FOR IOWA'S HEALTH ACCOUNT — TRANSFER TO REBUILD IOWA INFRASTRUCTURE FUND. Notwithstanding 2001 Iowa Acts, chapter 174, section 1, subsection 1, as amended by 2002 Iowa Acts, chapter 1167, section 4, 2002 Iowa Acts, chapter 1174, section 8, and 2002 Iowa Acts, chapter 1175, section 95, there is transferred from the endowment for Iowa's health account of the tobacco settlement trust fund created in section 12E.12 to the rebuild Iowa infrastructure fund for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount:

. . . . . $ 10,966,960

Notwithstanding section 8.33, moneys transferred in this section shall not revert.

Sec. 309. 2003 Iowa Acts, chapter 177, section 23, subsection 3, is amended to read as follows:

3. Notwithstanding section 8.33, moneys appropriated in this section shall not revert at the close of the fiscal year for which they were appropriated, but shall remain available for the purpose designated until the close of the fiscal year that begins July 1, ~~2008~~ 2006, or until the project for which the appropriation was made is completed, whichever is earlier.

Sec. 310. 2002 Iowa Acts, chapter 1173, section 1, subsection 7, paragraph a, is amended to read as follows:

a. For parking improvements and provision of street access for the judicial building:

FY 2002-2003 ..... $ 700,000
FY 2003-2004 ..... $ 0
FY 2004-2005 ..... $ 0
FY 2005-2006 ..... $ 0

Of the amount appropriated in this lettered paragraph for FY 2002-2003, up to $330,000 may be used for costs associated with operation of the judicial building, notwithstanding section 12E.12, subsection 1, paragraph "b", subparagraph (1).

DIVISION XIV
MISCELLANEOUS FUNDS

Sec. 311. HELP AMERICA VOTE ACT. 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, 2003, and ending June 30, 2004, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For the purchase and installation of voting machines to implement the federal Help America Vote Act (HAVA):

..... $ 765,000

Of the federal funds drawn down pursuant to HAVA, not less than 80 percent shall be distributed to counties for the implementation of that Act.

The state commissioner of elections shall report to the general assembly regarding the expenditure of the moneys appropriated in this section by January 2, 2005, and July 1, 2005.

Notwithstanding section 8.33, moneys appropriated in this section that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year.

Sec. 312. GENERAL FUND APPROPRIATIONS.

1. There is appropriated from the general fund of the state to the state department of transportation for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

a. For operation and maintenance of the network of automated weather observation and data transfer systems associated with the Iowa aviation weather system, the runway marking program for public airports, the windsock program for public airports, and the aviation improvement program:

..... $ 64,792

b. For the rail assistance program and to provide economic development project funding:

..... $ 35,959

2. There is appropriated from the general fund of the state to the racing and gaming commission within the department of inspections and appeals for the fiscal year beginning July 1, 2004, and ending June 30, 2005, in addition to any other appropriation made by the general assembly, 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 regulation of parimutual[34] racetracks:

..... $ 217,161

The funds appropriated in this subsection shall be used for one additional gaming representative at each of the three licensed racetracks.

Sec. 313. PRIMARY ROAD FUND APPROPRIATION. There is appropriated from the primary road fund to the department of administrative services for the fiscal year beginning July

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* Item veto; see message at end of the Act

[34] According to enrolled Act

1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for distribution to the state department of transportation:

. . . . . $ 465,491

Moneys appropriated in this section shall be separately accounted for in a distribution account and shall be distributed to the state department of transportation to pay for services provided the state department of transportation by the department of administrative services as described in chapter 8A.

Sec. 314. ROAD USE TAX FUND APPROPRIATION. There is appropriated from the road use tax fund to the department of administrative services for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for distribution to the state department of transportation:

. . . . . $ 76,059

Moneys appropriated in this section shall be separately accounted for in a distribution account and shall be distributed to the state department of transportation to pay for services provided the state department of transportation by the department of administrative services as described in chapter 8A.

Sec. 315. TRANSFER AND DEPOSIT OF SURPLUS MONEYS IN LOCAL HOUSING ASSISTANCE PROGRAM FUND. The sum of $800,000 is transferred from moneys declared by the Iowa finance authority under section 16.10 to be surplus moneys to the housing trust fund created in section 16.181 for the fiscal year beginning July 1, 2004, and ending June 30, 2005.*

Sec. 316. 2003 Iowa Acts, chapter 171, section 2, is amended by inserting the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Notwithstanding section 8.33, moneys appropriated in subsection 1 that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure until the close of the fiscal year that begins July 1, 2004, for the purpose of restocking the department's salt storage.

Sec. 317. EFFECTIVE DATE.

1. The section of this division of this Act providing an appropriation for implementation of the federal Help America Vote Act, being deemed of immediate importance, takes effect upon enactment.

2. The section of this division of this Act, amending 2003 Iowa Acts, chapter 171, section 2, being deemed of immediate importance, takes effect upon enactment.

DIVISION XV
CODE CHANGES

Sec. 318. Section 15.109, subsection 2, Code 2003, is amended to read as follows:

2. Apply for, receive, administer, and use federal or other funds available for achieving the purposes of this chapter. For purposes of this subsection, the term "federal funds" includes federal tax credits, grants, or other economic benefits allocated or provided by the United States government to encourage investment in low-income or other specified areas or to otherwise promote economic development. The department may enter into an agreement pursuant to chapter 28E, or any other agreement, with a person, including for-profit and nonprofit legal entities, in order to directly or indirectly apply for, receive, administer, and use federal funds. As part of such agreements and in furtherance of this public purpose and in addition to powers and duties conferred under other provisions of law, the department may, including for or on behalf of for-profit or nonprofit legal entities, appoint, remove, and replace board members and advisors; provide oversight; make its personnel and resources available to perform administrative, management, and compliance functions; coordinate investments; and engage in other acts as reasonable and necessary to encourage investment in low-income or other areas or

* Item veto; see message at end of the Act

to promote economic development. The department, including department officials and employees in their official and personal capacities, are immune from liability for all acts or omissions under this subsection.

*Sec. 319. Section 80.9, subsection 2, paragraph f, Code 2003, is amended to read as follows:

f. Provide protection and security for persons and property on the grounds of the state capitol complex. Notwithstanding chapter 8A or any other provision of law, the department shall be solely responsible for the purchase, installation, and maintenance of, including making any improvements or additions to, executive branch capitol complex security systems or equipment, including the changing of locks and issuance of keys, access cards, and identification badges. The department of administrative services shall cooperate with the department of public safety in executing the department's duties under this paragraph.*

Sec. 320. Section 423.3, subsections 2 and 37, as enacted by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 96, are amended to read as follows:

2. The sales price of sales for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with the furnishing of taxable services except for sales, other than leases or rentals, which are sales, of machinery, equipment, attachments, and replacement parts specifically enumerated in subsection 37 and used in the manner described in subsection 37.

37. The sales price of services on or connected with new construction, reconstruction, alteration, expansion, remodeling, or the services of a general building contractor, architect, or engineer. The exemption in this subsection also applies to the sales price on the lease or rental of self-propelled building equipment, self-constructed cranes, pile drivers, structural concrete forms, regular and motorized scaffolding, generators, or attachments customarily drawn or attached to self-propelled building equipment, self-constructed cranes, pile drivers, structural concrete forms, regular and motorized scaffolding, and generators, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

DIVISION XVI
MISCELLANEOUS PROVISIONS

Sec. 321. Section 8.57, subsection 5, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. Notwithstanding any other provision to the contrary, and prior to the appropriation of moneys from the rebuild Iowa infrastructure fund pursuant to paragraph "c", and section 8.57A, subsection 4, moneys shall first be appropriated from the rebuild Iowa infrastructure fund to the vertical infrastructure fund as provided in section 8.57B, subsection 4.

Sec. 322. NEW SECTION. 8.57B VERTICAL INFRASTRUCTURE FUND.

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

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

3. Moneys in the fund in a fiscal year shall be used as appropriated by the general assembly

* Item veto; see message at end of the Act

for public vertical infrastructure projects. For the purposes of this section, "vertical infrastructure" includes only land acquisition and construction, major renovation, and major repair of buildings, all appurtenant structures, utilities, and site development. "Vertical infrastructure" does not include routine, recurring maintenance, debt service, or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

4. There is appropriated from the rebuild Iowa infrastructure fund to the vertical infrastructure fund, the following:

a. For the fiscal year beginning July 1, 2005, and ending June 30, 2006, the sum of fifteen million dollars.

*b. *For the fiscal year beginning July 1, 2006, and ending June 30, 2007, the sum of fifty million dollars.*

c. For the fiscal year beginning July 1, 2007, and ending June 30, 2008, the sum of seventy-five million dollars.

*d. For the fiscal year beginning July 1, 2008, and each fiscal year thereafter, the sum of one hundred million dollars.**

Sec. 323. Section 8D.13, subsection 12, Code Supplement 2003, is amended to read as follows:

12. The commission, on its own or as recommended by an advisory committee of the commission and approved by the commission, shall permit a fee to be charged by a receiving site to the originator of the communication provided on the network. The fee charged shall be for the purpose of recovering the operating costs of a receiving site. The fee charged shall be reduced by an amount received by the receiving site pursuant to a state appropriation for such costs, or federal assistance received for such costs. Fees established under this subsection shall be paid by the originator of the communication directly to the receiving site. In the event that an entity requests a receiving site location in a video classroom facility which is authorized by, but not funded by, the originator of the communication, the requesting entity shall be directly billed by the video classroom facility for operating costs relating to the communication. For purposes of this section, "operating costs" include the costs associated with the management or coordination, operations, utilities, classroom, equipment, maintenance, and other costs directly related to providing the receiving site.

Sec. 324. Section 15E.208, subsection 3, paragraph b, subparagraph (2), Code Supplement 2003, is amended by adding the following new subparagraph subdivisions:

NEW SUBPARAGRAPH SUBDIVISION. (c) Notwithstanding any provision of this division to the contrary, payments on the principal balance of the loan granted by the corporation to an eligible person and assigned to the department pursuant to this subparagraph during calendar year 2003 shall be deferred until October 1, 2007. The eligible person shall make principal payments to the department in the amount of one million dollars for each year on October 1, 2007, October 1, 2008, and October 1, 2009. The eligible person shall pay the department four hundred eighty-two thousand seven hundred sixty-one dollars in interest, which shall be deemed to be the total amount of interest accruing on the principal amount of the loan. The eligible person shall pay the interest amount on October 1, 2010. Upon the payment of the principal balance of the loan and the accrued interest, the debt shall be retired.

NEW SUBPARAGRAPH SUBDIVISION. (d) Notwithstanding any provision of this division to the contrary, the corporation shall repay the department the principal balance of the Iowa agricultural industry finance loan beginning on October 1, 2007. The principal balance of the loan equals twenty-one million five hundred seventeen thousand two hundred thirty-nine dollars. The corporation shall repay the department five hundred seventeen thousand two hundred thirty-nine dollars by October 1, 2007, and for each subsequent year the corporation shall repay the department at least one million dollars by October 1 until the total principal balance of the loan is repaid. This subparagraph subdivision shall not be construed to limit the department's authority to negotiate the payment of interest accruing on the principal

* Item veto; see message at end of the Act

balance which shall be paid to the department as provided by an agreement executed by the department and the corporation.

Sec. 325. Section 28M.1, if enacted by 2004 Iowa Acts, Senate File 2284,[35] section 1, is amended by adding the following new subsection:

NEW SUBSECTION. 3. "Transportation" means the movement of individuals in a four or more wheeled motorized vehicle designed to carry passengers, including a car, van, or bus, or the carrying of individuals upon cars operated upon stationary rails, between one geographic point and another geographic point. "Transportation" does not include emergency or incidental transportation or transportation conducted by the department of human services at its institutions.

Sec. 326. Section 28M.2, subsections 1 and 3, if enacted by 2004 Iowa Acts, Senate File 2284,[36] section 2, are amended to read as follows:

1. A county with a population in excess of ~~three~~ one hundred seventy-five thousand and participating cities may create, by chapter 28E agreement, a regional transit district in the county pursuant to this chapter. Two or more contiguous counties and participating cities may create, by chapter 28E agreement, a regional transit district pursuant to this chapter if one of the counties has a population in excess of ~~three~~ one hundred seventy-five thousand. A district shall consist of the unincorporated area of any participating county and the incorporated area of any city in the county that does not have an urban transit system. However, a city without an urban transit system may decline, by resolution forwarded to the board of supervisors, to participate in a regional transit district.

3. A city that is located in a nonparticipating county that is contiguous to a county with a population in excess of ~~three~~ one hundred seventy-five thousand that is creating a regional transit district may notify that county, by resolution forwarded to the board of supervisors of that county, that the city wishes to participate.

Sec. 327. Section 28M.5, subsection 1, unnumbered paragraph 2, if enacted by 2004 Iowa Acts, Senate File 2284,[37] section 5, is amended to read as follows:

The amount of the regional transit district levy that is the responsibility of a participating county shall be deducted from the maximum rates of taxes authorized to be levied by the county pursuant to section 331.423, subsections 1 and 2, as applicable. However, for a regional transit district that includes a county with a population of less than three hundred thousand, the amount of the regional transit district levy that is the responsibility of a participating county shall be deducted from the maximum rate of taxes authorized to be levied by the county pursuant to section 331.423, subsection 1.

Sec. 328. Section 99F.7, subsection 13, Code 2003, as amended by 2004 Iowa Acts, House File 2302,[38] if enacted, is amended to read as follows:

13. ~~An~~ When applicable, an excursion gambling boat operated on inland waters of this state or an excursion boat that has been removed from navigation and is designated as a permanently moored vessel by the United States coast guard shall be subject to the exclusive jurisdiction of the department of natural resources and meet all of the requirements of chapter 462A and is further subject to an inspection of its sanitary facilities to protect the environment and water quality before a certificate of registration is issued by the department of natural resources or a license is issued or renewed under this chapter.

Sec. 329. Section 165B.5, subsection 3, if enacted by 2004 Iowa Acts, House File 2476,[39] section 6, is amended to read as follows:

3. a. A person who owns or operates a restricted concentration point is subject to a civil penalty of ~~not less than~~ five thousand dollars for the first violation and ~~not less than~~ twenty-five

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35 Chapter 1072 herein
36 Chapter 1072 herein
37 Chapter 1072 herein
38 Chapter 1136, §47 herein
39 Chapter 1089 herein

thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

b. A person who has a legal interest in infected poultry or has custody of infected poultry which are located at a restricted concentration point is subject to a civil penalty of ~~not less than~~ five thousand dollars for the first violation and ~~not less than~~ twenty-five thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

c. A person who transports poultry to or from a restricted concentration point is subject to a civil penalty of ~~not less than~~ one thousand dollars for the first violation and ~~not less than~~ five thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

d. A person who purchases, offers to purchase, barters, or offers to barter for poultry at a restricted concentration point is subject to a civil penalty of ~~not less than~~ one hundred dollars for the first violation and ~~not less than~~ one thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

e. A person who charges admission for entry into a restricted concentration point where a contest occurs or otherwise holds, advertises, or conducts the contest is subject to a civil penalty of ~~not less than~~ one thousand dollars for the first violation and ~~not less than~~ five thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

f. A person who attends or participates in a contest at a restricted concentration point where a contest occurs is subject to a civil penalty of ~~not less than~~ one hundred dollars for the first violation and ~~not less than~~ one thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

Sec. 330. Section 260C.18A, subsection 3, Code Supplement 2003, is amended to read as follows:[40]

3. Of the moneys appropriated in this section, for the fiscal period beginning July 1, 2003, and ending June 30, ~~2006~~ 2007, the following amounts shall be designated for the purposes of funding job retention projects under section 260F.9:

a. One million dollars for the fiscal year beginning July 1, 2003.

b. One million dollars for the fiscal year beginning July 1, 2004.

c. One million dollars for the fiscal year beginning July 1, 2005.

d. One million dollars for the fiscal year beginning July 1, 2006. However, this paragraph only applies if moneys allocated under paragraph "a" were distributed to community colleges as provided under subsection 8.

Sec. 331. Section 260C.18A, Code Supplement 2003, is amended by adding the following new subsection:[41]

NEW SUBSECTION. 8. If moneys allocated under subsection 3, paragraph "a", are unobligated and unencumbered on June 30, 2004, those moneys shall be distributed to community colleges in accordance with subsection 5 for the fiscal year beginning July 1, 2004, and ending June 30, 2005.

Sec. 332. Section 306.46, as enacted by 2004 Iowa Acts, Senate File 2118,[42] section 1, is amended by adding the following new subsection:

NEW SUBSECTION. 3. This section shall not impair or interfere with a city's authority to grant, amend, extend, or renew a franchise as provided in section 364.2, and shall not impair or interfere with a city's existing general police powers to control the use of its right-of-way.

Sec. 333. Section 321.34, subsection 11, paragraphs c and d, Code Supplement 2003, are amended to read as follows:

c. The special natural resources fee for letter number designated natural resources plates is ~~thirty-five~~ forty-five dollars. The fee for personalized natural resources plates is forty-five

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40 See 2004 Iowa Acts, First Extraordinary Session, chapter 1002, §9, 13 herein

41 See 2004 Iowa Acts, First Extraordinary Session, chapter 1002, §11, 13 herein

42 Chapter 1014 herein

dollars which shall be paid in addition to the special natural resources fee of ~~thirty-five~~ forty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24, and prior to the crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph "b", the treasurer of state shall credit monthly from those revenues to the Iowa resources enhancement and protection fund created pursuant to section 455A.18, the amount of the special natural resources fees collected in the previous month for the natural resources plates.

From the moneys credited to the Iowa resources enhancement and protection fund under this paragraph "c", ten dollars of the fee collected for each natural resources plate issued, and fifteen dollars from each renewal fee, shall be allocated to the department of natural resources wildlife bureau to be used for nongame wildlife programs.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration receipt and plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special natural resources fee for letter number designated plates is ~~ten~~ twenty-five dollars which shall be paid in addition to the regular annual registration fee. The annual fee for personalized natural resources plates is five dollars which shall be paid in addition to the annual special natural resources fee and the regular annual registration fee. The annual special natural resources fee shall be credited as provided under paragraph "c".

Sec. 334. NEW SECTION. 327F.38 FIRST AID AND MEDICAL TREATMENT FOR EMPLOYEES.

The department shall adopt rules requiring railroad corporations within the state to provide reasonable and adequate access to first aid and medical treatment for employees injured in the course of employment. A railroad corporation found guilty of a rule adopted pursuant to this section shall, upon conviction, be subject to a schedule "one" penalty.

**Sec. 335. Section 331.362, subsection 5, Code Supplement 2003, is amended to read as follows:*

*5. ~~The~~ Notwithstanding any provision of law to the contrary, the board may enter into agreements with the department of transportation as provided in section 313.2, including but not limited to agreements for the disposition of county property in accordance with section 331.361, subsection 2.**

**Sec. 336. Section 422.11J, subsection 5, paragraph a, if enacted by 2004 Iowa Acts, Senate File 2295, is amended to read as follows:*

*a. "Disabled student" means a child requiring special education, as defined in section 256B.2, subsection 1, or a student with disabilities who qualifies for educational services under section 504 of the federal Rehabilitation Act of 1973, as amended and codified in 29 U.S.C. § 794.**

Sec. 337. Section 432.1, subsection 6, paragraph b, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

In addition to the prepayment amount in paragraph "a", each life insurance company or association which is subject to tax under subsection 1 of this section and each mutual health service corporation which is subject to tax under section 432.2 shall remit on or before ~~June 30~~ August 15, on a prepayment basis, an additional amount equal to the following percent of the premium tax liability for the preceding calendar year as follows:

Sec. 338. Section 432.1, subsection 6, paragraph c, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

In addition to the prepayment amount in paragraph "a", each insurance company or association, other than a life insurance company or association, which is subject to tax under subsec-

* Item veto; see message at end of the Act

tion 3 shall remit on or before ~~June 30~~ August 15, on a prepayment basis, an additional amount equal to the following percent of the premium tax liability for the preceding calendar year as follows:

Sec. 339. Section 518.18, subsection 3, paragraph b, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

In addition to the prepayment amount in paragraph "a", each association shall remit on or before ~~June 30~~ August 15, on a prepayment basis, an additional amount equal to the following percent of the premium tax liability for the preceding calendar year as follows:

Sec. 340. Section 518A.35, subsection 3, paragraph b, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

In addition to the prepayment amount in paragraph "a", each association shall remit on or before ~~June 30~~ August 15, on a prepayment basis, an additional amount equal to the following percent of the premium tax liability for the preceding calendar year as follows:

Sec. 341. 2004 Iowa Acts, Senate File 2257,[43] section 1, subsection 10, if enacted, is amended to read as follows:

10. APPLICABILITY DATE. This section applies to personal insurance contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after ~~April 1, 2005~~ October 1, 2004.

Sec. 342. 2003 Iowa Acts, chapter 145, section 290, subsection 2, paragraph c, is amended to read as follows:

c. By ~~September~~ December 1, 2004, the department of administrative services, with the assistance of the department of management, shall conduct a comprehensive study of the impact of transferring all state agency employees delivering information technology services to the department of administrative services and of the impact of physically merging the data centers of the department, the state department of transportation, and the department of workforce development, into one data center. The study shall include an assessment of advantages and disadvantages, economies of scale, cost, and space availability, and shall solicit input from outside vendors, both public and private. The department shall report to the legislative ~~fiscal bureau~~ services agency and the committees on government oversight of the senate and house of representatives on the department's findings and recommendations by ~~November 1,~~ December 15, 2004.

Sec. 343. 2004 Iowa Acts, House File 2562,[44] section 11, subsection 1, if enacted, is amended to read as follows:

1. This Act, except for the provision of this Act enacting section 99B.10, subsection 5B, being deemed of immediate importance, takes effect upon enactment.

Sec. 344. MENTAL HEALTH INSTITUTE AT CHEROKEE. If building space located at the state mental health institute at Cherokee being used by an organization other than the state will be vacated by the organization, the department of human services shall reserve the space to be available for the purposes described in this section. The department shall develop a plan for using vacant building space at the institute for a program to address the treatment needs of persons with a developmental disability who exhibit sexually violent behavior and are residents at state resource centers or other residential settings.

Sec. 345. EFFECTIVE DATE. The sections of this division of this Act amending section 260C.18A, Code Supplement 2003, being deemed of immediate importance, take effect upon enactment.

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[43] Chapter 1039 herein

[44] Chapter 1118 herein

* Item veto; see message at end of the Act

Sec. 346. EFFECTIVE DATE. The section of this division of this Act amending section 306.46, being deemed of immediate importance, takes effect upon enactment.

Sec. 347. REAP PLATES — EFFECTIVE DATE. The section of this division of this Act amending section 321.34, subsection 11, paragraphs "c" and "d", takes effect January 1, 2005.

Sec. 348. EFFECTIVE DATE. The sections of this division of this Act amending sections 432.1, 518.18, and 518A.35, being deemed of immediate importance, take effect upon enactment.

DIVISION XVII
CORRECTIVE PROVISIONS

Sec. 349. Section 9E.6A, unnumbered paragraph 1, Code 2003, as amended by 2004 Iowa Acts, House File 2516,[45] section 1, if enacted, is amended to read as follows:

Each person performing a notarial act pursuant to section 9E.10 must acquire and use a stamp or seal as provided in this chapter. However, this section shall not apply to a notarial act performed by a judicial officer as defined in section 602.1101, if the notarial act is performed in accordance with state or federal statutory authority, ~~or is~~ and shall not apply to a certification by a chief officer or a chief officer's designee of a peace officer's verification of a uniform citation and complaint pursuant to section 805.6, subsection 5.

Sec. 350. Section 9H.1, subsection 17, Code Supplement 2003, is amended to read as follows:

17. "Limited partnership" means a limited partnership as defined in section 487.101~~, subsection 7, and~~ or 488.102, or a limited liability limited partnership under section 487.1301 or chapter 488, which owns or leases agricultural land or is engaged in farming.

Sec. 351. Section 9H.1, subsection 17, Code Supplement 2003, as amended by this division of this Act to take effect January 1, 2005, is amended to read as follows:

17. "Limited partnership" means a limited partnership as defined in section ~~487.101 or~~ 488.102, or a limited liability limited partnership under ~~section 487.1301 or~~ chapter 488, which owns or leases agricultural land or is engaged in farming.

Sec. 352. Section 10B.1, subsection 8, Code Supplement 2003, is amended to read as follows:

8. "Limited partnership" means a foreign or domestic limited partnership, including a limited partnership as defined in section 487.101~~, subsection 7~~ or 488.102, and a domestic or foreign limited liability limited partnership under section 487.1301 or 487.1303, or chapter 488.

Sec. 353. Section 10B.1, subsection 8, Code Supplement 2003, as amended by this division of this Act to take effect January 1, 2005, is amended to read as follows:

8. "Limited partnership" means a foreign or domestic limited partnership, including a limited partnership as defined in section ~~487.101 or~~ 488.102, and a domestic or foreign limited liability limited partnership under ~~section 487.1301 or 487.1303, or~~ chapter 488.

**Sec. 354. Section 34A.7A, subsection 2, paragraph f, if enacted by 2004 Iowa Acts, House File 2434, is amended by striking the paragraph and inserting in lieu thereof the following:*

f. (1) The program manager shall allocate an amount up to one hundred twenty-seven thousand dollars per calendar quarter equally to the joint E911 service boards and the department of public safety that have submitted an annual written request to the program manager in a form approved by the program manager by May 15 of each year.

(2) Upon retirement of outstanding obligations referred to in paragraph "e", the amount allocated under this paragraph "f" shall be an amount up to four hundred thousand dollars per calendar quarter allocated as follows:

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[45] Chapter 1054 herein

* Item veto; see message at end of the Act

(a) Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the service area to the total square miles in this state.

(b) Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless E911 calls taken at the public safety answering point in the service area to the total number of wireless E911 calls originating in this state.

(c) Notwithstanding subparagraph subdivisions (a) and (b), the minimum amount allocated to each joint E911 service board and to the department of public safety shall be no less than one thousand dollars for each public safety answering point within the service area of the department of public safety or joint E911 service board.

*(3) The funds allocated in this paragraph "f" shall be used for communication equipment located inside the public safety answering points for the implementation and maintenance of wireless E911 phase 2. The joint E911 service boards and the department of public safety shall provide an estimate of phase 2 implementation costs to the program manager by January 1, 2005.**

Sec. 355. Section 48A.11, subsection 1, paragraph e, Code 2003, as amended by 2004 Iowa Acts, Senate File 2269,[46] section 8, if enacted, is amended to read as follows:

e. Iowa driver's license number if the registrant has a current and valid Iowa driver's license, Iowa nonoperator's identification card if the registrant has a current and valid Iowa nonoperator's identification card, or the last four numerals of the registrant's social security number. If the registrant does not have an Iowa driver's license number, an Iowa nonoperator's identification card number, or a social security number, the form shall provide space for a number to be assigned as provided in subsection 7.

Sec. 356. Section 48A.25A, unnumbered paragraph 1, if enacted by 2004 Iowa Acts, Senate File 2269,[47] section 13, is amended to read as follows:

Upon receipt of an application for voter registration by mail, the state registrar of voters shall compare the driver's license number, the Iowa nonoperator's identification card number, or the last four numerals of the social security number provided by the registrant with the records of the state department of transportation. To be verified, the voter registration record shall contain the same name, date of birth, and driver's license number or Iowa nonoperator's identification card number or whole or partial social security number as the records of the department of transportation. If the information cannot be verified, the application shall be rejected and the registrant shall be notified of the reason for the rejection. If the information can be verified, a record shall be made of the verification and the application shall be accepted.

Sec. 357. Section 48A.37, subsection 2, Code 2003, as amended by 2004 Iowa Acts, Senate File 2269,[48] section 18, if enacted, is amended to read as follows:

2. Electronic records shall include a status code designating whether the records are active, inactive, local, or pending. Inactive records are records of registered voters to whom notices have been sent pursuant to section 48A.28, subsection 3, and who have not returned the card or otherwise responded to the notice, and those records have been designated inactive pursuant to section 48A.29. Local records are records of applicants who did not answer either "yes" or "no" to the question in section 48A.11, subsection 2A, paragraph "a". Pending records are records of applicants whose applications have not been verified pursuant to section 48A.25A. All other records are active records. An inactive record shall be made active when the registered voter votes at an election, registers again, or reports a change of name, address, telephone number, or political party affiliation. A pending record shall be made active upon verification. A local record shall be valid for any election for which no candidates for federal office appear on the ballot~~, but the~~. A registrant ~~may~~ with only a local record shall not vote in a federal election unless the registrant submits a new voter registration application before election day indicating that the applicant is a citizen of the United States.

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* Item veto; see message at end of the Act

46 Chapter 1083 herein

47 Chapter 1083 herein

48 Chapter 1083 herein

Sec. 358. Section 49.81, subsection 2, unnumbered paragraph 3, if enacted by 2004 Iowa Acts, Senate File 2269,[49] section 20, is amended to read as follows:

You must show identification before your ballot can be counted. Please bring or mail a copy of a current and valid photo identification card to the county ~~commissioners~~ commissioner's office or bring or mail a copy of one of the following current documents that show your name and address:

Sec. 359. Section 52.7, unnumbered paragraph 4, Code 2003, as amended by 2004 Iowa Acts, Senate File 2269,[50] section 27, if enacted, is amended to read as follows:

Such machine shall be so constructed as to accurately account for every vote cast upon it. The machine shall be so constructed as to remove information from the ballot identifying the voter before the ballot is recorded and counted. If the machine is a direct ~~electronic~~ recording electronic device, the machine shall be so constructed as to store each ballot cast separate from the ballot tabulation function, which ballot may be reproduced on paper in the case of a recount, manual audit, or machine malfunction.

Sec. 360. Section 53.3, subsection 7, if enacted by 2004 Iowa Acts, Senate File 2269,[51] section 30, is amended to read as follows:

7. A statement that an absentee ballot will ~~by~~ be mailed to the applicant within twenty-four hours after the ballot for the election is available.

Sec. 361. Section 53.17, subsection 1, paragraph a, if enacted by 2004 Iowa Acts, Senate File 2269,[52] section 33, is amended to read as follows:

a. The sealed carrier envelope may be delivered by the registered voter, by the special precinct election officials designated pursuant to section 53.22, subsection 1, or by the voter's designee if the absentee ballot is voted by a voter described in section 53.22, subsection 5, to the commissioner's office no later than the time the polls are closed on election day~~, except as otherwise provided in subsection 4~~.

Sec. 362. Section 53.17, subsection 4, paragraph d, subparagraph (2), if enacted by 2004 Iowa Acts, Senate File 2269,[53] section 33, is amended to read as follows:

(2) The date and time the ~~voted~~ completed absentee ballot was received from the voter.

Sec. 363. Section 68A.402, subsection 7, paragraph b, as amended by 2004 Iowa Acts, House File 2319,[54] section 1, if enacted, is amended to read as follows:

b. COUNTY ELECTIONS. A political committee expressly advocating the nomination, election, or defeat of candidates for county office shall file reports on the same dates as a candidate's committee is required to file reports under subsection 2, paragraph "a" and subsection 5, paragraph "b".

Sec. 364. Section 68A.503, subsection 4, unnumbered paragraph 1, as amended by 2004 Iowa Acts, House File 2318,[55] section 7, if enacted, is amended to read as follows:

The prohibitions in ~~sections~~ subsections 1 and 2 shall not apply to an insurance company, savings and loan association, bank, credit union, or corporation engaged in any of the following activities:

Sec. 365. Section 99B.11, subsection 2, paragraph c, Code 2003, as amended by 2004 Iowa Acts, Senate File 2249,[56] section 1, is amended to read as follows:

c. Contests or exhibitions of cooking, horticulture, livestock, poultry, fish or other animals, artwork, hobbywork or craftwork, except those prohibited by chapter 717A ~~or section 725.11~~.

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[49] Chapter 1083 herein
[50] Chapter 1083 herein
[51] Chapter 1083 herein
[52] Chapter 1083 herein
[53] Chapter 1083 herein
[54] Chapter 1114 herein
[55] Chapter 1042 herein
[56] Chapter 1056 herein

Sec. 366. Section 174.1, subsection 0B, paragraph a, as enacted by House File 2403,[57] section 8, is amended to read as follows:

a. The organization owns or leases at least ten acres of fairgrounds. ~~A society~~ An organization may meet the requirement of owning or leasing land, buildings, and improvements through ownership by a joint entity under chapter 28E.

Sec. 367. Section 174.12, subsection 2, unnumbered paragraph 1, Code 2003, as amended by 2004 Iowa Acts, House File 2403,[58] section 16, is amended to read as follows:

A district director of the association representing the district in which the county is located, and the director of the Iowa state fair board representing the state fair board district in which the county is located, certify to the association that the fair had an accredited delegate in attendance at at least one of the district meetings, and at the association's annual meeting.

Sec. 368. Section 229.27, subsection 1, Code 2003, is amended to read as follows:

1. Hospitalization of a person under this chapter, either voluntarily or involuntarily, does not constitute a finding of nor equate with nor raise a presumption of incompetency, nor cause the person so hospitalized to be deemed a person of unsound mind nor a person under legal disability for any purpose, including but not limited to any circumstances to which sections 6B.15, 447.7, 487.402, subsection 5, paragraph "b", section 488.603, subsection 6, paragraph "c", sections 487.705, 488.704, 597.6, 600B.21, 614.8, 614.19, 614.22, 614.24, 614.27, and 633.244 are applicable.

Sec. 369. Section 229.27, subsection 1, Code 2003, as amended by this division of this Act to take effect January 1, 2005, is amended to read as follows:

1. Hospitalization of a person under this chapter, either voluntarily or involuntarily, does not constitute a finding of nor equate with nor raise a presumption of incompetency, nor cause the person so hospitalized to be deemed a person of unsound mind nor a person under legal disability for any purpose, including but not limited to any circumstances to which sections 6B.15, 447.7, ~~487.402, subsection 5, paragraph "b",~~ section 488.603, subsection 6, paragraph "c", sections 487.705, 488.704, 597.6, 600B.21, 614.8, 614.19, 614.22, 614.24, 614.27, and 633.244 are applicable.

Sec. 370. Section 260C.18A, subsection 2, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

On July 1 of each year for the fiscal year beginning July 1, 2003, and for every fiscal year thereafter, moneys from the grow Iowa values fund created in section 15G.108 are appropriated to the department of economic development for deposit in the workforce training and economic development funds in amounts determined pursuant to subsection ~~3~~ 4.[59] Moneys deposited in the funds and disbursed to community colleges for a fiscal year shall be expended for the following purposes, provided seventy percent of the moneys shall be used on projects in the areas of advanced manufacturing, information technology and insurance, and life sciences which include the areas of biotechnology, health care technology, and nursing care technology:

Sec. 371. Section 321I.10, if enacted by 2004 Iowa Acts, Senate File 297,[60] section 53, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. Cities may designate streets under the jurisdiction of cities within their respective corporate limits which may be used for the sport of driving all-terrain vehicles.

Sec. 372. Section 331.606B, subsection 4, paragraph a, if enacted by 2004 Iowa Acts, Senate File 371,[61] section 3, is amended to read as follows:

a. A document or instrument that was signed before July 1, ~~2004~~ 2005.

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57 "2004 Iowa Acts, House File 2403" probably intended; chapter 1019 herein

58 Chapter 1019 herein

59 See 2004 Iowa Acts, First Extraordinary Session, chapter 1002, §8, 13 herein

60 Chapter 1132 herein

61 Chapter 1069 herein

Sec. 373. Section 488.102, subsection 10, paragraph a, subparagraph (2), as enacted by 2004 Iowa Acts, House File 2347,[62] section 2, is amended to read as follows:

(2) A person that was a general partner in a limited partnership when the limited partnership became subject to this chapter under section ~~488.1206~~ 488.1204, subsection 1 or 2.

Sec. 374. Section 488.102, subsection 12, paragraph a, subparagraph (2), as enacted by 2004 Iowa Acts, House File 2347,[63] section 2, is amended to read as follows:

(2) A person that was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section ~~488.1206~~ 488.1204, subsection 1 or 2.

Sec. 375. Section 488.102, subsection 13, as enacted by 2004 Iowa Acts, House File 2347,[64] section 2, is amended to read as follows:

13. "Limited partnership", except in the phrases "foreign limited partnership" and "foreign limited liability limited partnership", means an entity, having one or more general partners and one or more limited partners, which is formed under this chapter by two or more persons or becomes subject to this chapter under article 11 or section ~~488.1206~~ 488.1204, subsection 1 or 2. The term includes a limited liability limited partnership.

Sec. 376. Section 488.202, subsection 3, unnumbered paragraph 1, as enacted by 2004 Iowa Acts, House File 2347,[65] section 20, is amended to read as follows:

A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly do at least one of the following:

Sec. 377. Section 488.209, subsection 1, paragraph c, as enacted by 2004 Iowa Acts, House File 2347,[66] section 27, is amended to read as follows:

c. Whether all fees, taxes, and penalties under this chapter or other law due ~~to~~ the secretary of state have been paid.

Sec. 378. Section 488.209, subsection 2, paragraph c, as enacted by 2004 Iowa Acts, House File 2347,[67] section 27, is amended to read as follows:

c. Whether all fees, taxes, and penalties under this chapter or other law due ~~to~~ the secretary of state have been paid.

Sec. 379. Section 488.508, subsection 6, as enacted by 2004 Iowa Acts, House File 2347,[68] section 50, is amended to read as follows:

6. A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection 2 if the terms of the indebtedness provide that payment of principal and interest ~~are~~ is made only to the extent that a distribution could then be made to partners under this section.

Sec. 380. Section 488.703, subsection 1, as enacted by 2004 Iowa Acts, House File 2347,[69] section 61, is amended to read as follows:

1. On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. 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

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[62] Chapter 1021 herein
[63] Chapter 1021 herein
[64] Chapter 1021 herein
[65] Chapter 1021 herein
[66] Chapter 1021 herein
[67] Chapter 1021 herein
[68] Chapter 1021 herein
[69] Chapter 1021 herein

might have made or which the circumstances of the case may require to give effect to the charging order.

Sec. 381. Section 488.809, subsection 1, paragraph a, as enacted by 2004 Iowa Acts, House File 2347,[70] section 72, is amended to read as follows:

a. Pay any fee, tax, or penalty under this chapter or other law due ~~to~~ the secretary of state.

Sec. 382. Section 488.906, subsection 1, paragraph a, as enacted by 2004 Iowa Acts, House File 2347,[71] section 81, is amended to read as follows:

a. Pay, within sixty days after the due date, any fee, tax or penalty under this chapter or other law due ~~to~~ the secretary of state.

Sec. 383. Section 488.1106, subsection 1, paragraph a, as enacted by 2004 Iowa Acts, House File 2347,[72] section 94, is amended to read as follows:

a. The governing statute of each of the other organizations authorizes the merger.

Sec. 384. Section 504.304, subsection 1, if enacted by 2004 Iowa Acts, Senate File 2274,[73] section 27, is amended to read as follows:

1. Except as provided in subsection 2, the validity of corporate action ~~may~~ shall not be challenged on the ground that the corporation lacks or lacked power to act.

Sec. 385. Section 504.854, subsection 3, paragraph b, if enacted by 2004 Iowa Acts, Senate File 2274,[74] section 104, is amended to read as follows:

b. By the members, but the director who, at the time does not qualify as a disinterested director, ~~may~~ shall not vote as a member or on behalf of a member.

Sec. 386. Section 504.1422, subsection 3, if enacted by 2004 Iowa Acts, Senate File 2274,[75] section 145, is amended to read as follows:

3. A corporation that is administratively dissolved continues its corporate existence but ~~may~~ shall not carry on any activities except those necessary to wind up and liquidate its affairs pursuant to section 504.1406 and notify its claimants pursuant to sections 504.1407 and 504.1408.

Sec. 387. Section 614.37, Code 2003, as amended by 2004 Iowa Acts, House File 2450,[76] section 8, if enacted, is amended to read as follows:

614.37 LIMITATION STATUTES NOT EXTENDED.

Nothing contained in this chapter shall be construed to extend the period for the bringing of an action or for the doing of any other required act under any statutes of limitations, nor, except as herein specifically provided, to effect the operation of any statutes governing the effect of the recording or the failure to record any instrument affecting land. It is intended that nothing contained in this ~~division~~ chapter be interpreted to revive or extend the period of filing a claim or bringing an action that may be limited or barred by any other statute.

Sec. 388. Section 669.14, subsection 11, unnumbered paragraph 1, Code Supplement 2003, as amended by 2004 Iowa Acts, House File 2347,[77] section 116, is amended to read as follows:

Any claim for financial loss based upon an act or omission in financial regulation, including but not limited to examinations, inspections, audits, or other financial oversight responsibilities, pursuant to chapters 87, 203, 203C, 203D, 421B, 486, ~~or the figure "487"~~ 487, 488, and 490 through 553, excluding chapters 540A, 542, 542B, 543B, 543C, 543D, 544A, and 544B.

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[70] Chapter 1021 herein
[71] Chapter 1021 herein
[72] Chapter 1021 herein
[73] Chapter 1049 herein
[74] Chapter 1049 herein
[75] Chapter 1049 herein
[76] Chapter 1052 herein
[77] Chapter 1021 herein

Sec. 389. Section 709A.1, subsection 2, paragraph c, Code 2003, as amended by 2004 Iowa Acts, Senate File 2249,[78] section 2, is amended to read as follows:

c. Any premises the use of which constitutes a violation of chapter 717A, or section 725.5~~,~~ or 725.10~~, or 725.11~~.

Sec. 390. Section 714.26, subsection 1, paragraph c, if enacted by 2004 Iowa Acts, House File 2395,[79] is amended to read as follows:

c. "Retail value" means the highest value of an item determined by any reasonable standard at the time the item bearing or identified by a counterfeit mark is seized. If a seized item bearing or identified by a counterfeit mark is a component of a finished product, "retail value" also means the highest value, determined by any reasonable standard, of the finished product on which the component would have been utilized. The retail value shall be the retail value of the aggregate quantity of all items seized which bear or are identified by a counterfeit mark. For purposes of this paragraph, reasonable standard includes but is not limited ~~the~~ to the market value within the community, actual value, replacement value, or the counterfeiter's regular selling price for the item bearing or identified by a counterfeit mark, or the intellectual property owner's regular selling price for an item similar to the item bearing or identified by a counterfeit mark.

Sec. 391. Section 717E.1, subsection 3, paragraph a, if enacted by 2004 Iowa Acts, House File 2480,[80] section 1, is amended to read as follows:

a. The annual fair and exposition held by the Iowa state fair board pursuant to chapter 173 or any fair ~~held~~ event conducted by a ~~county or district~~ fair ~~or agricultural society~~ under the provisions of chapter 174.

Sec. 392. Section 812.6, subsection 2, unnumbered paragraph 1, if enacted by 2004 Iowa Acts, Senate File 2272,[81] section 8, is amended to read as follows:

If the court finds by clear and convincing evidence that the defendant poses a danger to the public peace or safety, or that the defendant is otherwise not qualified for pretrial release, or the defendant refuses to cooperate with treatment, the court shall commit the defendant to an appropriate inpatient treatment facility as provided in ~~paragraphs~~ paragraph "a" ~~and~~ or "b". The defendant shall receive mental health treatment designed to restore the defendant to competency.

Sec. 393. Sections 7D.15, 10D.1, 15.114, 15.221, 15E.64, 18A.11, 84A.1C, 225C.13, 303.3, 331.441, 357A.2, 357A.11, 357A.20, 357A.21, 357A.22A, 357A.23, 357A.24, 425.11, 476.1, 476.27, 480.3, 499.5, 499.5A, 500.3, 504C.1, 514.19, 514.23, and 515.1, Code 2003, are amended by inserting before the figure "504A" the following: "504 or", if 2004 Iowa Acts, Senate File 2274[82] is enacted.

Sec. 394. Sections 9H.1, 9H.4, 10B.1, 190C.6, 304A.21, 331.427, 357A.15, 422.45, 490.1701, 504B.1, 504B.6, 513C.10, 514.1, 514.2, 514.5, 616.10, 633.63, and 716.6B, Code Supplement 2003, are amended by inserting before the figure "504A" the following: "504 or", if 2004 Iowa Acts, Senate File 2274[83] is enacted.

Sec. 395. 2004 Iowa Acts, House File 401,[84] section 1, is amended by striking the section and inserting in lieu thereof the following:

SECTION 1. Section 404A.4, subsection 4, Code Supplement 2003, is amended to read as follows:

4. The total amount of tax credits that may be approved for a fiscal year under this chapter shall not exceed two million four hundred thousand dollars. For the fiscal years beginning July

[78] Chapter 1056 herein
[79] Chapter 1112 herein
[80] Chapter 1109 herein
[81] Chapter 1084 herein
[82] Chapter 1049 herein
[83] Chapter 1049 herein
[84] Chapter 1001 herein

1, 2005, and July 1, 2006, an additional five hundred thousand dollars of tax credits may be approved each fiscal year for purposes of projects located in cultural and entertainment districts certified pursuant to section 303.3B. Any of the additional tax credits allocated for projects located in certified cultural and entertainment districts that are not approved during a fiscal year may be carried over to the succeeding fiscal year. ~~Tax credit certificates shall be issued on the basis of the earliest awarding~~ The department of cultural affairs shall establish by rule the procedures for the application, review, selection, and awarding of certifications of completion ~~as provided in subsection 1~~. The departments of economic development, cultural affairs, and revenue shall each adopt rules to jointly administer this subsection and shall provide by rule for the method to be used to determine for which fiscal year the tax credits are ~~approved~~ available.

Sec. 396. 2004 Iowa Acts, House File 2562,[85] section 10, subsection 2, if enacted, is amended to read as follows:

2. On and after July 1, 2005, an owner of an electrical and mechanical amusement device as described in subsection 1 shall not offer the device for use by the public. However, the owner of a device shall be permitted to sell the device to a distributor, as defined in section 99B.1, as amended by this Act, or to a person authorized to offer the device to the public pursuant to section 99B.10, subsection 4, as amended by this Act for which a class "A", class "B", class "C", or class "D" liquor control license ~~or class "B" or class "C" beer permit~~ has been issued pursuant to chapter 123.

Sec. 397. 2004 Iowa Acts, Senate File 2070,[86] section 35, subsection 1, is amended to read as follows:

1. Except as provided in subsections 2 through ~~4~~ 6, this Act takes effect January 1, 2005.

Sec. 398. The section of 2004 Iowa Acts, House File 2489,[87] amending section 523A.502, subsection 7, is repealed if 2004 Iowa Acts, House File 2269,[88] is enacted.

Sec. 399. 2004 Iowa Acts, Senate File 2282,[89] section 1, if enacted, is amended to read as follows:

SECTION 1. LOESS HILLS STUDY AND REPORT. The loess hills development and conservation authority, in consultation with the state advisory board for preserves, shall conduct a comprehensive study to determine the archaeological and paleontological significance and the significance of the flora and fauna of the loess hills and to determine the feasibility of designating land in the loess hills for dedication as a state native prairie preserve and of other various uses of the loess hills. The ~~natural resource commission~~ loess hills development and conservation authority may accept gifts, grants, bequests, and other private contributions, as well as federal, state, or local funds for the purposes of conducting the study. The loess hills development and conservation authority and the state advisory board for preserves shall file a joint report containing their findings and recommendations with the legislative services agency by December 15, 2006, for distribution to the general assembly.

Sec. 400. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.

1. The sections of this division of this Act amending sections 9H.1 and 10B.1, Code Supplement 2003, and 229.27, Code 2003, take effect January 1, 2005. The sections of this division of this Act further amending sections 9H.1 and 10B.1, Code Supplement 2003, and 229.27, Code 2003, as amended by this division of this Act to take effect January 1, 2005, take effect January 1, 2006.

2. The section of this division of this Act amending section 260C.18A, being deemed of immediate importance, takes effect upon enactment and applies retroactively to July 1, 2003.

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[85] Chapter 1118 herein
[86] Chapter 1013 herein
[87] Chapter 1110, §67 herein
[88] Chapter 1104 herein
[89] Chapter 1122 herein

3. The section of this division of this Act amending 2004 Iowa Acts, Senate File 2070,[90] being deemed of immediate importance, takes effect upon enactment and applies retroactively to the date of enactment of Senate File 2070.[91]

DIVISION XVIII
COMMUNITY ATTRACTION AND TOURISM FUND

Sec. 401. Section 15F.204, subsection 3, Code 2003, is amended to read as follows:

3. The fund shall be used to provide assistance only from funds, rights, and assets legally available to the board in the form of grants, loans, forgivable loans, and credit enhancements and financing instruments under the community attraction and tourism program established in section 15F.202. A project with a total cost exceeding twenty million dollars may receive financial assistance under the program. An applicant under the community attraction and tourism program shall not receive financial assistance from the fund in an amount exceeding fifty percent of the total cost of the project.

Sec. 402. Section 15F.204, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 8. a. There is appropriated from the rebuild Iowa infrastructure fund to the community attraction and tourism fund, the following amounts:

(1) For the fiscal year beginning July 1, 2004, and ending June 30, 2005, the sum of twelve million dollars.

(2) For the fiscal year beginning July 1, 2005, and ending June 30, 2006, the sum of five million dollars.

(3) For the fiscal year beginning July 1, 2006, and ending June 30, 2007, the sum of five million dollars.

(4) For the fiscal year beginning July 1, 2007, and ending June 30, 2008, the sum of five million dollars.

(5) For the fiscal year beginning July 1, 2008, and ending June 30, 2009, the sum of five million dollars.

(6) For the fiscal year beginning July 1, 2009, and ending June 30, 2010, the sum of five million dollars.

b. There is appropriated from the franchise tax revenues deposited in the general fund of the state to the community attraction and tourism fund, the following amounts:

(1) For the fiscal year beginning July 1, 2005, and ending June 30, 2006, the sum of seven million dollars.

(2) For the fiscal year beginning July 1, 2006, and ending June 30, 2007, the sum of seven million dollars.

(3) For the fiscal year beginning July 1, 2007, and ending June 30, 2008, the sum of seven million dollars.

(4) For the fiscal year beginning July 1, 2008, and ending June 30, 2009, the sum of seven million dollars.

(5) For the fiscal year beginning July 1, 2009, and ending June 30, 2010, the sum of seven million dollars.

Notwithstanding the allocation requirements in subsection 5, the board may make a multiyear commitment to an applicant of up to four million dollars in any one fiscal year.

DIVISION XIX
REGULATORY EFFICIENCY COMMISSION

**Sec. 403. REGULATORY EFFICIENCY COMMISSION.*

1. A regulatory efficiency commission is established for purposes of identifying unneeded regulations, fines, and fees that hinder business development. The commission shall also identify methods for streamlining access to regulatory information.

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[90] Chapter 1013 herein

[91] Chapter 1013 herein

* Item veto; see message at end of the Act

2. The commission shall consist of eight voting members appointed by the governor and four ex officio members.

a. The eight voting members appointed by the governor are subject to the requirements of sections 69.16, 69.16A, and 69.19. The eight members shall consist of the following:

(1) Two members shall be economic development representatives from two different chambers of commerce. One shall be from a metropolitan area with more than fifty thousand people and one shall be from a metropolitan area with fifty thousand people or less.

(2) Two members representing agricultural interests.

(3) One member representing the Iowa association of business and industry.

(4) Two members representing commercial-based and manufacturing-based businesses.

(5) One member representing the Iowa environmental council.

b. The four ex officio members shall be members of the general assembly. Two members shall be from the senate and two members shall be from the house of representatives, with not more than one member from each chamber being from the same political party. The two senators shall be designated by the president of the senate after consultation with the majority and minority leaders of the senate. The two representatives shall be designated by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives. Legislative members shall serve in an ex officio, nonvoting capacity.

3. Meetings of the commission are subject to the provisions of chapter 21.

*4. By January 10, 2005, the commission shall submit a written report to the governor and the general assembly. The report shall include the findings and legislative recommendations of the commission. The report shall be distributed by the secretary of the senate and the chief clerk of the house of representatives to the chairpersons and members of the administrative rules review committee and the economic growth committees in the senate and the house of representatives.**

DIVISION XX
WIND ENERGY TAX CREDITS

Sec. 404. NEW SECTION. 422.11J WIND ENERGY PRODUCTION TAX CREDIT.

The taxes imposed under this division, less the credits allowed under sections 422.12 and 422.12B, shall be reduced by a wind energy production tax credit allowed under chapter 476B.

Sec. 405. Section 422.33, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 16. The taxes imposed under this division shall be reduced by a wind energy production tax credit allowed under chapter 476B.

Sec. 406. Section 422.60, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 9. The taxes imposed under this division shall be reduced by a wind energy production tax credit allowed under chapter 476B.

Sec. 407. NEW SECTION. 432.12E WIND ENERGY PRODUCTION TAX CREDIT.

The taxes imposed under this chapter shall be reduced by a wind energy production tax credit allowed under chapter 476B.

Sec. 408. Section 437A.6, subsection 1, paragraph c, Code 2003, is amended to read as follows:

c. Wind energy conversion property subject to section 427B.26 or eligible for a tax credit under chapter 476B.

Sec. 409. NEW SECTION. 476B.1 DEFINITIONS.

For purposes of this chapter, unless the context otherwise requires:

* Item veto; see message at end of the Act

1. "Board" means the utilities board within the utilities division of the department of commerce.
2. "Department" means the department of revenue.
3. "Qualified electricity" means electricity produced from wind at a qualified facility.
4. "Qualified facility" means an electrical production facility that meets all of the following:
a. Produces electricity from wind.
b. Is located in Iowa.
c. Was originally placed in service on or after July 1, 2004, but before July 1, 2007.

Sec. 410. NEW SECTION. 476B.2 GENERAL RULE.
The owner of a qualified facility shall, for each kilowatt-hour of qualified electricity that the owner sells during the ten-year period beginning on the date the qualified facility was originally placed in service, be allowed a wind energy production tax credit to the extent provided in this chapter against the tax imposed in chapter 422, divisions II, III, and V, and chapter 432.

Sec. 411. NEW SECTION. 476B.3 CREDIT AMOUNT.
1. Except as limited by subsection 2, the wind energy production tax credit allowed under this chapter equals the product of one cent multiplied by the number of kilowatt-hours of qualified electricity sold by the owner during the taxable year.
2. a. The maximum amount of tax credit which a group of qualified facilities operating as one unit may receive for a taxable year equals the rate of credit times thirty-two percent of the total number of kilowatts of nameplate generating capacity.
b. However, if for the previous taxable year the amount of the tax credit for the group of qualified facilities operating as one unit is less than the maximum amount available as provided in paragraph "a", the maximum amount for the next taxable year shall be increased by the amount of the previous year's unused maximum credit.

Sec. 412. NEW SECTION. 476B.4 LIMITATIONS.
1. a. The wind energy production tax credit shall not be allowed for any kilowatt-hour of electricity produced on wind energy conversion property for which the owner has claimed or otherwise received for that property the benefit of special valuation under section 427B.26 or section 441.21, subsection 8, or the exemption from retail sales tax under section 422.45, subsection 48, or section 423.3, subsection 53, as applicable.
b. The disallowance of the tax credit pursuant to paragraph "a" does not apply to an owner of a qualified facility that owns, directly or indirectly, in the aggregate, a total annual turbine nameplate capacity of all such property of less than one megawatt. A qualified facility under this paragraph shall not be owned by more than one person.
2. The wind energy production tax credit shall not be allowed for any kilowatt-hour of electricity that is sold to a related person. For purpose[92] of this subsection, persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b) of the Internal Revenue Code. In the case of a corporation that is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to such a person by another member of such group.

Sec. 413. NEW SECTION. 476B.5 APPLICATION FOR TAX CREDIT CERTIFICATES.
1. a. To be eligible to receive the wind energy production tax credit, the owner must first receive approval of the board of supervisors of the county in which the qualified facility is located. The application for approval may be submitted prior to commencement of the construction of the qualified facility but shall be submitted no later than the close of the owner's first taxable year for which the credit is to be applied for. The application must contain the owner's name and address, the address of the qualified facility, and the dates of the owner's first and last taxable years for which the credit will be applied for. Within forty-five days of the receipt of the application for approval, the board of supervisors shall either approve or disapprove the application. After the forty-five-day limit, the application is deemed to be approved.

[92] According to enrolled Act

b. Upon approval of the application, the owner may apply for the tax credit as provided in subsection 2. In addition, approval of the application is acceptance by the applicant for the assessment of the qualified facility for property tax purposes for a period of twelve years and approval by the board of supervisors for the payment of the property taxes levied on the qualified property to the state. For purposes of property taxation, the qualified facility shall be centrally assessed and shall be exempt from any replacement tax under section 437A.6 for the period during which the facility is subject to property taxation. The property taxes to be paid to the state are those property taxes which make up the consolidated tax levied on the qualified facility and which are due and payable in the twelve-year period beginning with the first fiscal year beginning on or after the end of the owner's first taxable year for which the credit is applied for. Upon approval of the application, the board of supervisors shall notify the county treasurer to state on the tax statement which lists the taxes on the qualified facility that the amount of the property taxes shall be paid to the department. Payment of the designated property taxes to the department shall be in the same manner as required for the payment of regular property taxes and failure to pay designated property taxes to the department shall be treated the same as failure to pay property taxes to the county treasurer.

c. Once the owner of the qualified facility receives approval under paragraph "a", subsequent approval under paragraph "a" is not required for the same qualified facility for subsequent taxable years.

2. To receive the wind energy production tax credit, an owner of the qualified facility must submit an application for a tax credit certificate to the board not later than thirty days after the close of the taxable year for which the credit is applied for. The owner's application must contain, but need not be limited to, all of the following information: the owner's name, tax identification number, and address, the number of kilowatt-hours of qualified electricity sold by the owner during the preceding taxable year, the address of the qualified facility at which the qualified electricity was produced, and the denomination that each tax credit certificate is to carry. For the first taxable year for which the credit is applied for, there shall be attached to the application a notarized copy of the board of supervisors' approval as required in subsection 1.

3. The board shall, in conjunction with the department, prescribe appropriate forms, including board of supervisors' approval forms, and instructions to enable owners to claim the tax credit allowed under this chapter. If the board prescribes these forms and instructions, an owner's application for a tax credit certificate shall not be valid unless made on and in accordance with these forms and instructions.

Sec. 414. NEW SECTION. 476B.6 ISSUANCE OF TAX CREDIT CERTIFICATES.

1. If the owner meets the criteria for eligibility for the wind energy production tax credit, the board shall determine the validity of the application and if valid, shall approve the application for credit. Once approval of the credit for a qualified facility is granted, subsequent approval is not required for the same qualified facility. However, application is required to be filed as provided in section 476B.5, subsection 2, for purposes of the issuance of credit certificates. The board shall issue one or more tax credit certificates to the owner not later than thirty days after the application is submitted to the board. Each tax credit certificate must contain the owner's name, address, and tax identification number, amount of tax credits, the first taxable year the certificates may be used, which shall not be for a taxable year beginning prior to July 1, 2005, and the expiration date of the tax credit certificate, which shall be seven years from its date of issuance and any other information required by the department. Once issued by the board, the tax credit certificate shall be binding on the board and the department and shall not be modified, terminated, or rescinded. The board shall notify the department and identify the qualified facility for which the owner received tax credit certificates that property taxes levied on the qualified facility are to be paid to the department.

2. If the tax credit application is filed by a partnership, limited liability company, S corporation, estate, trust, or other reporting entity all of the income of which is taxed directly to its equity holders or beneficiaries, the tax credit certificate may, at the election of the owner, be issued directly to equity holders or beneficiaries of the owner in proportion to their pro rata share of the income of such entity. If the owner elects to have the tax credit certificate issued

directly to its equity holders or beneficiaries, the owner must, in the application made under section 476B.5, identify its equity holders or beneficiaries, and the amount of such entity's income that is allocable to each equity holder or beneficiary.

Sec. 415. NEW SECTION. 476B.7 TRANSFER OF TAX CREDIT CERTIFICATES.

Wind energy production tax credit certificates issued under this chapter may be transferred to any person or entity. Within thirty days of transfer, the transferee must submit the transferred tax credit certificate to the board along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department. Within thirty days of receiving the transferred tax credit certificate and the transferee's statement, the board shall issue one or more replacement tax credit certificates to the transferee. Each replacement certificate must contain the information required under section 476B.6 and must have the same effective taxable year and the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than the minimum amount established by rule of the board shall not be transferable. A tax credit shall not be claimed by a transferee under this chapter until a replacement tax credit certificate identifying the transferee as the proper holder has been issued.

The tax credit shall only be transferred once. The transferee may use the amount of the tax credit transferred against the taxes imposed under chapter 422, divisions II, III, and V, and chapter 432 for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V.

Sec. 416. NEW SECTION. 476B.8 USE OF TAX CREDIT CERTIFICATES.

To claim a wind energy production tax credit under this chapter, a taxpayer must attach one or more tax credit certificates to the taxpayer's tax return. A tax credit certificate shall not be used or attached to a return filed for a taxable year beginning prior to July 1, 2005. The tax credit certificate or certificates attached to the taxpayer's tax return shall be issued in the taxpayer's name, expire on or after the last day of the taxable year for which the taxpayer is claiming the tax credit, and show a tax credit amount equal to or greater than the tax credit claimed on the taxpayer's tax return. Any tax credit in excess of the taxpayer's tax liability for the taxable year may be credited to the taxpayer's tax liability for the following seven taxable years or until depleted, whichever is the earlier.

Sec. 417. NEW SECTION. 476B.9 REGISTRATION OF TAX CREDIT CERTIFICATES.

The board shall, in conjunction with the department, develop a system for the registration of the wind energy production tax credit certificates issued or transferred under this chapter and a system that permits verification that any tax credit claimed on a tax return is valid and that transfers of the tax credit certificates are made in accordance with the requirements of this chapter. The tax credit certificates issued under this chapter shall not be classified as a security pursuant to chapter 502.

Sec. 418. EFFECTIVE AND APPLICABILITY DATES. This division of this Act, being deemed of immediate importance, takes effect upon enactment and applies retroactively to taxable years beginning on or after January 1, 2004.

DIVISION XXI
LICENSED INTERPRETER FOR THE HEARING IMPAIRED

Sec. 419. Section 147.1, subsection 2, paragraph c, Code 2003, is amended to read as follows:

c. "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, social worker, massage therapist, athletic trainer, ~~or~~ acupuncturist, or interpreter for the hearing impaired, means a person licensed under this subtitle.

Sec. 420. Section 147.1, subsection 2, paragraph f, Code 2003, is amended to read as follows:

f. "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, dietetics, massage therapy, athletic training, ~~or~~ acupuncture, or interpreting for the hearing impaired.

Sec. 421. Section 147.2, unnumbered paragraph 1, Code 2003, 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, massage therapy, mortuary science, ~~or~~ acupuncture, or interpreting for the hearing impaired, 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. 422. Section 147.13, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 21. For interpreters, interpreter for the hearing impaired examiners.

Sec. 423. Section 147.14, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 21. For interpreting for the hearing impaired, four members licensed to practice interpreting, three of whom shall be practicing interpreters at the time of appointment to the board and at least one of whom is employed in an educational setting; and three members who are consumers of interpreting services as defined in section 154E.1, each of whom shall be deaf. A majority of members of the board constitutes a quorum.

Sec. 424. Section 147.74, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 21A. An interpreter licensed under chapter 154E and this chapter may use the title "licensed interpreter" or the letters "L.I." after the person's name.

Sec. 425. Section 147.80, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 28A. License to practice interpreting, license to practice interpreting under a reciprocal license, or renewal of a license to practice interpreting.

Sec. 426. NEW SECTION. 154E.1 DEFINITIONS.

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

1. "Board" means the board of interpreter for the hearing impaired examiners established in chapter 147.

2. "Consumer" means an individual utilizing interpreting services who uses spoken English, American sign language, or a manual form of English.

3. "Department" means the Iowa department of public health.

4. "Interpreter training program" means a post-secondary education program training individuals to interpret or transliterate.

5. "Interpreting" means facilitating communication between individuals who communicate via American sign language and individuals who communicate via spoken English.

6. "Licensee" means any person licensed to practice interpreting or transliterating for deaf, hard-of-hearing, and hearing individuals in the state of Iowa.

7. "Transliterating" means facilitating communication between individuals who communicate via a manual form of English and individuals who communicate via spoken English.

Sec. 427. NEW SECTION. 154E.2 DUTIES OF THE BOARD.

The board shall administer this chapter. The board's duties shall include, but are not limited to, the following:

1. Adopt rules consistent with this chapter and with chapter 147 which are necessary for the performance of its duties.

2. Act on matters concerning licensure and the process of applying for, granting, suspending, imposing supervisory or probationary conditions upon, reinstating, and revoking a license.

3. Establish and collect licensure fees. The board shall establish the amounts of license and renewal fees based upon the actual costs of sustaining the board and the actual costs of issuing the licenses, and all fees collected shall be deposited with the treasurer of state who shall deposit them in the general fund of the state.

4. Administer the provisions of this chapter regarding documentation required to demonstrate competence as an interpreter, and the processing of applications for licenses and license renewals.

5. Establish and maintain as a matter of public record a registry of interpreters licensed pursuant to this chapter.

6. Develop continuing education requirements as a condition of license renewal.

7. Evaluate requirements for licensure in other states to determine if reciprocity may be granted.

Sec. 428. NEW SECTION. 154E.3 REQUIREMENTS FOR LICENSURE.

On or after July 1, 2005, every person providing interpreting or transliterating services in this state shall be licensed pursuant to this chapter. The board shall adopt rules pursuant to chapters 17A, 147, and 272C establishing procedures for the licensing of new and existing interpreters. Prior to obtaining licensure, an applicant shall successfully pass an examination prescribed and approved by the board, demonstrating the following:

1. VOICE-TO-SIGN INTERPRETATION. An applicant shall demonstrate proficiency at:

a. Message equivalence, producing a true and accurate signed form of the spoken message, maintaining the integrity of content and meaning, and exhibiting few omissions, substitutions, or other errors.

b. Affect, producing nonmanual grammar consistent with the intent and emotion of the speaker, and exhibiting no distracting mannerisms.

c. Vocabulary choice, making correct sign choices appropriate to the setting and consumers, applying facial grammar consistent with sign choice, selecting signs that remain true to speaker's intent, and demonstrating lexical variety.

d. Fluency, displaying confidence in production, exhibiting a strong command of American sign language or manual codes for English, applying nonmanual behaviors consistent with the speaker's intent, and demonstrating understanding of and sensitivity to cultural differences.

2. SIGN-TO-VOICE INTERPRETATION. An applicant shall demonstrate proficiency at:

a. Message equivalence, producing a true and accurate spoken form of the signed message, maintaining the integrity of content and meaning, and exhibiting few omissions, substitutions, or other errors.

b. Affect, producing inflection consistent with the intent and emotion of the speaker, and exhibiting no distracting mannerisms.

c. Vocabulary choice, making correct word choices appropriate to the setting and consumers, using vocal inflection consistent with word choice, selecting words that remain true to the speaker's intent, and demonstrating lexical variety.

d. Fluency, displaying confidence in production, exhibiting a strong command of English in both spoken and written forms, applying vocal inflections consistent with the speaker's intent, and demonstrating understanding of and sensitivity to cultural differences.

3. PROFESSIONAL CONDUCT. An applicant shall demonstrate:

a. Proficiency in functioning as a communicator of messages between the sender and receiver, and educating consumers of services about the functions and logistics of the interpreting process.

b. An impartial demeanor, refraining from interjecting opinions or advice and from aligning with one party over another. An applicant shall treat all people fairly and respectfully regardless of their relationship to the interpreting assignment, and present a professional appearance that is not visually distracting and is appropriate to the setting. An applicant shall exhibit knowledge and application of federal and state laws pertaining to the interpreting profession.

c. Integrity, and shall be proficient in understanding and applying ethical behavior appropriate for a licensee. An applicant shall demonstrate discretion in accepting and meeting interpreter services requests, and shall engage actively in lifelong learning.

Sec. 429. NEW SECTION. 154E.4 EXCEPTIONS.

1. A person shall not practice interpreting or transliterating, or represent oneself to be an interpreter, unless the person is licensed under this chapter.

2. This chapter does not prohibit any of the following:

a. Any person residing outside of the state of Iowa holding a current license from another state that meets the state of Iowa's requirements from providing interpreting or transliterating services in this state for up to fourteen days per calendar year without a license issued pursuant to this chapter.

b. Any person who interprets or transliterates solely in a religious setting with the exception of those working in schools that receive government funding.

c. Volunteers working without compensation, including emergency situations, until a licensed interpreter is obtained.

d. Any person working as a substitute for a licensed interpreter in an early childhood, elementary, or secondary education setting for no more than thirty school days in a calendar year.

Sec. 430. Section 272C.1, subsection 6, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. ad. The board of interpreter for the hearing impaired examiners, created pursuant to chapter 154E.

Sec. 431. INTERPRETER STANDARDS AND REGULATIONS. There is appropriated from the general fund of the state to the Iowa department of public health, for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, for the purpose designated:

For protecting the health and safety of the public through establishing standards and enforcing regulations of interpreters for the deaf, hard-of-hearing, and hearing impaired, and for not more than the following full-time equivalent positions:

.....	$	60,390
.....	FTEs	1.00

Sec. 432. TRANSITION PROVISIONS.

1. The board of interpreter for the hearing impaired examiners shall be provisionally established as provided in section 147.14, as amended in this division of this Act, effective July 1, 2004, for the sole purpose of appointment of members and organizing, planning, and adopting rules, as described in section 154E.2, as enacted in this division of this Act, which rules shall

be effective July 1, 2005. The board shall become fully operational July 1, 2007, as provided in this division of this Act.

2. Applicants for licensure under chapter 154E who have not passed a licensure examination approved by the board by July 1, 2005, shall be issued a temporary license to practice interpreting for a period of two years, commencing on July 1, 2005.

3. Applicants issued a temporary license pursuant to this section shall pass a licensure examination approved by the board on or before July 1, 2007, in order to remain licensed as an interpreter.

Sec. 433. EFFECTIVE DATE. This division of this Act providing for the licensing of interpreters by amending chapters 147 and 272C and enacting chapter 154E takes effect July 1, 2005.

DIVISION XXII
INCOME TAX CHECKOFFS

Sec. 434. NEW SECTION. 100B.13 VOLUNTEER FIRE FIGHTER PREPAREDNESS FUND.

1. A volunteer fire fighter preparedness fund is created as a separate and distinct fund in the state treasury under the control of the division of fire protection of the department of public safety.

2. Revenue for the volunteer fire fighter preparedness fund shall include, but is not limited to, the following:

a. Moneys credited to the fund pursuant to section 422.12F.

b. Moneys in the form of a devise, gift, bequest, donation, or federal or other grant intended to be used for the purposes of the fund.

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

4. Moneys in the volunteer fire fighter preparedness fund are appropriated to the division of fire protection of the department of public safety to be used annually to pay the costs of providing volunteer fire fighter training around the state and to pay the costs of providing volunteer fire fighting equipment.

Sec. 435. Section 314.28, Code 2003, is reenacted to read as follows:

314.28 KEEP IOWA BEAUTIFUL FUND.

A keep Iowa beautiful fund is created in the office of the treasurer of state. The fund is composed of moneys appropriated or available to and obtained or accepted by the treasurer of state for deposit in the fund. The fund shall include moneys credited to the fund as provided in section 422.12A. All interest earned on moneys in the fund shall be credited to and remain in the fund. Section 8.33 does not apply to moneys in the fund.

Moneys in the fund are subject to appropriation by the general assembly annually for the purposes of educating and encouraging Iowans to take greater responsibility for improving their community environment and enhancing the beauty of the state through litter prevention, improving waste management and recycling efforts, and beautification projects.

The department may authorize payment of moneys appropriated from the fund to the department upon approval of an application from a private or public organization. The applicant shall submit a plan for litter prevention, improving waste management and recycling efforts, or a beautification project along with its application. The department shall establish standards relating to the type of projects available for assistance.

Sec. 436. Section 422.12A, Code Supplement 2003, is reenacted to read as follows:

422.12A INCOME TAX REFUND CHECKOFF FOR KEEP IOWA BEAUTIFUL FUND.

1. A person who files an individual or a joint income tax return with the department of revenue under section 422.13 may designate one dollar or more to be paid to the keep Iowa beauti-

ful fund as created in section 314.28. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the keep Iowa beautiful fund, the amount designated shall be reduced to the remaining amount of refund or the remaining amount remitted with the return. The designation of a contribution to the keep Iowa beautiful fund under this section is irrevocable.

2. The director of revenue shall draft the income tax form to allow the designation of contributions to the keep Iowa beautiful fund on the tax return. The department of revenue, on or before January 31, shall certify the total amount designated on the tax return forms due in the preceding calendar year and shall report the amount to the treasurer of state. The treasurer of state shall credit the amount to the keep Iowa beautiful fund. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of revenue and accounts identified as owing under section 421.17 and the political contribution allowed under section 68A.601 shall be satisfied.

3. Moneys in the fund are subject to appropriation as provided in section 314.28.

4. The department of revenue shall adopt rules to administer this section.

5. This section is subject to repeal under section 422.12E.

Sec. 437. Section 422.12E, Code Supplement 2003, is amended to read as follows:

422.12E INCOME TAX RETURN CHECKOFFS LIMITED.

For tax years beginning on or after January 1, ~~1995~~ 2004, there shall be allowed no more than ~~three~~ four income tax return checkoffs on each income tax return. When the same ~~three~~ four income tax return checkoffs have been provided on the income tax return for ~~three~~ two consecutive years, the ~~checkoff~~ two checkoffs for which the least amount has been contributed, in the aggregate for the first ~~two~~ tax ~~years~~ year and through March 15 of the ~~third~~ second tax year, ~~shall be~~ are repealed. This section does not apply to the income tax return checkoff provided in section 68A.601.

If more checkoffs are enacted in the same session of the general assembly than there is space for inclusion on the individual tax return form, the earliest enacted checkoffs for which there is space for inclusion on the return form shall be included on the return form, and all other checkoffs enacted during that session of the general assembly are repealed.

Sec. 438. NEW SECTION. 422.12F INCOME TAX CHECKOFF FOR VOLUNTEER FIRE FIGHTER PREPAREDNESS.

1. A person who files an individual or a joint income tax return with the department of revenue under section 422.13 may designate one dollar or more to be paid to the volunteer fire fighter preparedness fund as created in section 100B.13. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the volunteer fire fighter preparedness fund, the amount designated shall be reduced to the remaining amount of refund or the remaining amount remitted with the return. The designation of a contribution to the volunteer fire fighter preparedness fund under this section is irrevocable.

2. The director of revenue shall draft the income tax form to allow the designation of contributions to the volunteer fire fighter preparedness fund on the tax return. The department of revenue, on or before January 31, shall certify the total amount designated on the tax return forms due in the preceding calendar year and shall report the amount to the treasurer of state. The treasurer of state shall credit the amount to the volunteer fire fighter preparedness fund. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of revenue and accounts identified as owing under section 421.17 and the political contribution allowed under section 68A.601 shall be satisfied.

3. The department of revenue shall adopt rules to administer this section.

4. This section is subject to repeal under section 422.12E.

Sec. 439. EFFECTIVE AND APPLICABILITY DATES.

1. The section of this division of this Act amending section 422.12E, being deemed of immediate importance, takes effect upon enactment.

2. The sections of this division of this Act reenacting section 422.12A and enacting section 422.12F apply retroactively to tax years beginning on or after January 1, 2004.

DIVISION XXIII
STATE TAX IMPLEMENTATION COMMITTEE

**Sec. 440. STATE TAX IMPLEMENTATION COMMITTEE.*

1. On or before July 1, 2004, the department of revenue, in consultation with the department of management, shall initiate and coordinate the establishment of a state tax implementation committee. The department of revenue and the department of management shall provide staffing assistance to the committee.

The state tax implementation committee shall include four members of the general assembly, one each appointed by the majority leader of the senate, the speaker of the house of representatives, the minority leader of the senate, and the minority leader of the house of representatives. The committee shall also include members appointed by the department of revenue. One member shall be appointed to represent each of the following:

a. The department of revenue.
b. The department of management.
c. Counties.
d. Cities.
e. School districts.
f. Local assessors.
g. County auditors.
h. Commercial property taxpayers.
i. Industrial property taxpayers.
j. Residential property taxpayers.
k. Agricultural property taxpayers.
l. Chapter 437A taxpayers.

One additional stakeholder shall be appointed jointly by the majority leader of the senate and the speaker of the house of representatives.

Any vacancy shall be filled in the same manner as regular appointments are made.

The chairpersons of the committee shall be those members of the general assembly appointed by the majority leader of the senate and the speaker of the house of representatives.

The members of the committee representing the department of revenue and the department of management are nonvoting, ex officio members.

The committee shall meet quarterly and at other times as necessary at the call of the chairpersons. Written notice of the time and place of each meeting shall be given to each member of the committee. The only vote taken by the committee shall be the vote approving the final report in subsection 2.

2. The committee shall review and analyze the following:

a. Revenue sources available to local governments and school districts, including taxes, payments in lieu of property taxes, fees, state appropriations, and federal moneys.

b. Revenue sources available to the state, including taxes, fees, and federal moneys, and the portion of state revenues annually appropriated, or otherwise disbursed, to local governments.

c. Exemptions, credits, deductions, exclusions, and other reductions in state or local taxes made available, by state statute or local ordinance, to state and local taxpayers; and state reimbursement of any property tax credits and exemptions.

d. Services provided by local governments, including those provided at the discretion of a local government and those mandated by federal or state statutes and regulations.

e. The role of property taxes in funding local government services, the types of services currently funded by property taxes, and the property tax financing portion of the school funding formula.

f. Alternative systems of property taxation, alternative procedures for protesting property assessments, and various methods of controlling property tax revenues and expenditures.

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* Item veto; see message at end of the Act

In conducting its review and analysis, the committee shall study state and local taxes from the standpoint of neutrality; competitiveness; simplicity; stability; and equity, including maintenance of equity among classes of taxpayers and among taxpayers within the same class.

The committee may hold public hearings to allow persons and organizations to be heard.

The committee shall submit a final report to the general assembly no later than final adjournment of the 2005 regular legislative session. The report shall summarize the committee's activities to date, analyze issues studied to date, and may include such other information that the committee deems relevant and necessary.

*3. The committee may request from any state agency or official the information and assistance as needed to perform the review and analysis required in subsection 2. A state agency or official shall furnish the information or assistance requested within the authority and resources of the state agency or official. This subsection does not allow the examination or copying of any public record required by law to be kept confidential.**

Sec. 441. FUTURE REPEAL. The section of this division of this Act establishing the state tax implementation committee is repealed effective June 30, 2005.

Sec. 442. 2003 Iowa Acts, First Extraordinary Session, chapter 1, section 41, is repealed.

Sec. 443. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION XXIV
911 EMERGENCY

Sec. 444. Section 34A.1, Code 2003, is amended to read as follows:

34A.1 PURPOSE.

The ~~legislature~~ general assembly finds that enhanced 911 emergency telephone communication systems and other emergency 911 notification devices further the public interest and protect the health, safety, and welfare of the people of Iowa. The purpose of this chapter is to enable the orderly development, installation, and operation of enhanced 911 emergency telephone communication systems and other emergency 911 notification devices statewide. These systems are to be operated under governmental management and control for the public benefit.

Sec. 445. Section 34A.2, Code 2003, is amended to read as follows:

34A.2 DEFINITIONS.

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

1. "Access line" means ~~a local~~ an exchange access line that has the ability to access ~~local~~ dial tone and reach a ~~local~~ public safety ~~agency~~ answering point.

2. "Administrator" means the ~~E911~~ administrator ~~appointed pursuant to section 34A.2A~~ of the homeland security and emergency management division of the department of public defense.

3. "Competitive local exchange service provider" means the same as defined in section 476.96.

4. "Emergency 911 notification device" means a product capable of accessing a public safety answering point through the 911 system.

~~3.~~ 5. "Enhanced 911" or "E911" means a service ~~which~~ that provides the user of a ~~public telephone system~~ communications service with the ability to reach a public safety answering point by dialing the digits 911, and ~~which~~ that has the following additional features:

a. Routes an incoming 911 call to the appropriate public safety answering point ~~selected from the public safety answering points operating in a 911 service area~~.

b. Automatically provides voice, displays the name, address or location, and telephone number of an incoming 911 call and public safety agency servicing the ~~address on a video monitor at the appropriate public safety answering point~~ location.

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* Item veto; see message at end of the Act

~~4.~~ 6. "Enhanced 911 service area" means the geographic area to be serviced, or currently serviced under an enhanced 911 service plan, provided that an enhanced 911 service area must at minimum encompass one entire county. The enhanced 911 service area may encompass more than one county, and need not be restricted to county boundaries.

~~5.~~ 7. "Enhanced 911 service plan" means a plan that includes the following information:

a. A description of the enhanced 911 service area.

b. A list of all public and private safety agencies within the enhanced 911 service area.

c. The number of public safety answering points within the enhanced 911 service area.

d. Identification of the agency responsible for management and supervision of the enhanced 911 emergency ~~telephone~~ communication system.

e. A statement of estimated costs to be incurred by the joint E911 service board or the department of public safety, including separate estimates of the following:

(1) Nonrecurring costs, including, but not limited to, public safety answering points, network equipment, software, database, addressing, initial training, and other capital and start-up expenditures, including the purchase or lease of subscriber names, addresses, and telephone information from the local exchange service provider.

(2) Recurring costs, including, but not limited to, network access fees and other telephone charges, software, equipment, and database management, and maintenance, including the purchase or lease of subscriber names, addresses, and telephone information from the local exchange service provider. Recurring costs shall not include personnel costs for a public safety answering point.

Funds deposited in an E911 service fund ~~shall be~~ are appropriated and shall be used for the payment of costs ~~which~~ that are limited to nonrecurring and recurring costs directly attributable to the provision of 911 emergency telephone communication service and may include costs for portable and vehicle radios, communication towers and associated equipment, and other radios and associated equipment permanently located at the public safety answering point and as directed by either the joint E911 service board or the department of public safety. Costs do not include expenditures for any other purpose, and specifically exclude costs attributable to other emergency services or expenditures for buildings or personnel, except for the costs of personnel for database management and personnel directly associated with addressing.

f. Current equipment operated by affected local exchange service providers, and central office equipment and technology upgrades necessary for the provider to implement enhanced 911 service within the enhanced 911 service area ~~on or before July 1, 1992~~.

g. A schedule for implementation of the plan throughout the E911 service area. The schedule may provide for phased implementation. ~~However, a joint 911 service board may decide not to implement E911 service.~~

h. The number of telephone access lines capable of access to 911 in the enhanced 911 service area.

i. The total property valuation in the enhanced 911 service area.

~~6. "Enhanced 911 service surcharge" is a charge set by the E911 service area operating authority and assessed on each access line which physically terminates within the E911 service area.~~

8. "Local exchange carrier" means the same as defined in section 476.96.

~~7.~~ 9. "Local exchange service provider" means a ~~person~~ vendor engaged in providing telecommunications service between points within an exchange and includes but is not limited to a competitive local exchange service provider and a local exchange carrier.

10. "Program manager" means the E911 program manager appointed pursuant to section 34A.2A.

~~8.~~ 11. "Provider" means a ~~person~~ vendor who provides, or offers to provide, E911 equipment, installation, maintenance, or exchange access services within the enhanced 911 service area.

~~9.~~ 12. "Public or private safety agency" means a unit of state or local government, a special

purpose district, or a private firm which provides or has the authority to provide fire fighting, police, ambulance, ~~or~~ emergency medical services, or hazardous materials response.

~~10.~~ 13. "Public safety answering point" means a ~~twenty-four hour local jurisdiction~~ twenty-four-hour public safety communications facility ~~which~~ that receives enhanced 911 service calls and directly dispatches emergency response services or relays calls to the appropriate public or private safety agency.

14. "Wireless E911 phase 1" means a 911 call made from a wireless device in which the wireless service provider delivers the call-back number and address of the tower that received the call to the appropriate public safety answering point.

15. "Wireless E911 phase 2" means a 911 call made from a wireless device in which the wireless service provider delivers the call-back number and the latitude and longitude coordinates of the wireless device to the appropriate public safety answering point.

16. "Wire-line E911 service surcharge" is a charge set by the E911 service area operating authority and assessed on each wire-line access line which physically terminates within the E911 service area.

Sec. 446. Section 34A.2A, Code 2003, is amended to read as follows:

34A.2A ~~ADMINISTRATOR~~ PROGRAM MANAGER — APPOINTMENT — DUTIES.

1. The administrator of the division of homeland security and emergency management division of the department of public defense shall appoint an E911 ~~administrator~~ program manager to administer this chapter.

2. The E911 ~~administrator~~ program manager shall act under the supervisory control of the administrator of the ~~division of~~ homeland security and emergency management division of the department of public defense, and in consultation with the E911 communications council, and perform the duties specifically set forth in this chapter and as assigned by the administrator.

Sec. 447. Section 34A.3, Code 2003, is amended to read as follows:

34A.3 JOINT ~~911~~ E911 SERVICE BOARD — 911 SERVICE PLAN — IMPLEMENTATION — WAIVERS.

1. JOINT ~~911~~ E911 SERVICE BOARDS ~~TO SUBMIT~~ — PLANS.

a. The board of supervisors of each county shall ~~establish~~ maintain a joint ~~911~~ E911 service board ~~not later than January 1, 1989~~.

(1) 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~~ E911 service board. Each private safety agency operating within the area is entitled to nonvoting membership on the board.

(2) A township ~~which~~ that 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~~ E911 service board, but its contractor is entitled to membership according to the contractor's status as a public or private safety agency.

b. The joint ~~911~~ E911 service board shall ~~develop~~ maintain an enhanced 911 service plan encompassing at minimum the entire county, unless an exemption is granted by the ~~administrator~~ program manager permitting a smaller E911 service area.

(1) The ~~administrator~~ program manager may grant a discretionary exemption from the single county minimum service area requirement based upon ~~an E911~~ a joint E911 service board's or other E911 service plan operating authority's presentation of evidence which supports the requested exemption if the ~~administrator~~ program manager 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.~~

(2) The ~~administrator~~ program manager 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~~ E911 service board representing the territory.

c. The E911 service plan operating authority shall submit proposed changes to the plan ~~on or before January 1, 1994,~~ to all of the following:

~~a.~~ (1) The ~~administrator~~ program manager.

~~b.~~ (2) Public and private safety agencies in the enhanced 911 service area.

~~c.~~ (3) ~~Providers~~ Local exchange service 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 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 administrator shall prepare a summary of the plans submitted and present the summary to the legislature on or before August 1, 1994.~~

2. COMPLIANCE WAIVERS AVAILABLE IN LIMITED CIRCUMSTANCES.

a. The ~~administrator~~ program manager may extend~~, in whole or in part,~~ the time period for plan implementation by issuing ~~for implementation of an enhanced 911 service plan beyond the scheduled plan of implementation, by issuance of~~ a compliance waiver.

b. The compliance waiver shall be based upon a joint ~~911~~ E911 service board's presentation of evidence which supports an extension if the ~~administrator~~ program manager finds that local conditions make implementation financially unreasonable or technically infeasible by the originally scheduled plan of implementation.

c. The compliance waiver shall be for a set period of time, and subject to review and renewal or denial of renewal upon its expiration.

d. The waiver may cover all or a portion of a 911 service plan's enhanced 911 service area to facilitate phased implementation when possible.

e. The granting of a compliance waiver does not create a presumption that the identical or similar waiver will be extended in the future.

f. Consideration of compliance waivers shall be on a case-by-case basis.

3. CHAPTER 28E AGREEMENT — ALTERNATIVE TO JOINT ~~911~~ E911 SERVICE BOARD. A legal entity created pursuant to chapter 28E by a county or counties, other political divisions, and public or private agencies to jointly plan, implement, and operate a countywide, or larger, enhanced 911 service system may be substituted for the joint ~~911~~ E911 service board required under subsection 1.

An alternative legal entity created pursuant to chapter 28E as a substitute for a joint ~~911~~ E911 service board, as permitted by this subsection, may be created by either:

a. Agreement of the parties entitled to voting membership on a joint ~~911~~ E911 service board.

b. Agreement of the members of a joint ~~911~~ E911 service board.

An alternative chapter 28E entity has all of the powers of a joint ~~911~~ E911 service board and any additional powers granted by the agreement. As used in this chapter, "joint ~~911~~ E911 service board" includes an alternative chapter 28E entity created for that purpose, except as specifically limited by the chapter 28E agreement or unless clearly provided otherwise in this chapter. A chapter 28E agreement related to E911 service shall permit the participation of a private safety agency or other persons allowed to participate in a joint ~~911~~ E911 service board, but the terms, scope, and conditions of participation are subject to the chapter 28E agreement.

4. PARTICIPATION IN JOINT E911 SERVICE BOARD REQUIRED. A political subdivision or state agency having a public safety agency within its territory or jurisdiction shall participate in a joint E911 service board and cooperate in ~~preparing~~ maintaining the E911 service plan.

Sec. 448. Section 34A.4, Code 2003, is amended to read as follows:

34A.4 ~~REQUIRED CONVERSION~~ REQUIREMENTS OF PAY TELEPHONES AND OTHER TELECOMMUNICATIONS DEVICES TO ALLOW 911 CALLS WITHOUT DEPOSITING COINS OR OTHER CHARGE.

~~1. CONVERSION AND NOTICE REQUIRED. When an enhanced 911 service system~~

~~becomes operational or as soon as feasible thereafter, each provider or other owner or lessee of a pay station telephone to be operated within the enhanced 911 service area shall do the following:~~

~~a. Convert each telephone to permit a caller to dial 911 without first inserting a coin or paying any other charge.~~

~~b. Prominently display on each pay telephone a notice advising callers to dial 911 in an emergency and that deposit of a coin is not required.~~

~~2. CERTAIN PAY PHONES PROHIBITED WITHIN SERVICE AREA. After commencement of enhanced 911 service in~~ In an enhanced 911 service area, a person shall not install or offer for use within the enhanced 911 service area a pay station telephone or other fixed device unless the telephone or device is capable of ~~accepting~~ making a 911 call without prior insertion of a coin or payment of any other charge, and unless the telephone or device displays notice of free 911 service.

Sec. 449. Section 34A.6, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Before a joint E911 service board may request imposition of the surcharge by the ~~administrator~~ program manager, the board shall submit the following question to voters, as provided in subsection 2, in the proposed E911 service area, and the question shall receive a favorable vote from a simple majority of persons submitting valid ballots on the following question within the proposed E911 service area:

Sec. 450. Section 34A.7, unnumbered paragraph 1, Code 2003, is amended to read as follows:

When an E911 service plan is implemented, the costs of providing E911 service within an E911 service area are the responsibility of the joint E911 service board and the member political subdivisions. Costs in excess of the amount raised by imposition of the E911 service surcharge provided for under subsection 1, shall be paid by the joint E911 service board from such revenue sources allocated among the member political subdivisions as determined by the joint E911 service board. Funding is not limited to the surcharge, and surcharge revenues may be supplemented by other permissible local and state revenue sources. A joint ~~911~~ E911 service board shall not commit a political subdivision to appropriate property tax revenues to fund an E911 service plan without the consent of the political subdivision. A joint ~~911~~ E911 service board may approve ~~a 911~~ an E911 service plan, including a funding formula requiring appropriations by participating political subdivisions, subject to the approval of the funding formula by each political subdivision. However, a political subdivision may agree in advance to appropriate property tax revenues or other moneys according to a formula or plan developed by an alternative chapter 28E entity.

Sec. 451. Section 34A.7, subsections 1, 2, 3, and 4, Code 2003, are amended to read as follows:

1. LOCAL WIRE-LINE E911 SERVICE SURCHARGE IMPOSITION.

a. To encourage local implementation of E911 service, one source of funding for E911 emergency telephone communication systems shall come from a surcharge per month, per access line on each access line subscriber, except as provided in subsection 5, equal to the lowest amount of the following:

(1) One dollar.

(2) An amount less than one dollar, which would fully pay both recurring and nonrecurring costs of the E911 service system within five years from the date the maximum surcharge is imposed.

(3) The maximum monetary limitation approved by referendum.

b. The surcharge shall be imposed by order of the ~~administrator~~ program manager as follows:

(1) The ~~administrator~~ program manager shall notify a local exchange service provider

scheduled to provide exchange access line service to an E911 service area, that implementation of an E911 service plan has been approved by the joint ~~911~~ E911 service board and by the service area referendum, and that collection of the surcharge is to begin within one hundred days.

(2) The ~~notice shall be provided at least one hundred days before the surcharge must be billed for the first time~~ program manager shall also provide notice to all affected public safety answering points.

~~c. The surcharge shall terminate at the end of twenty-four months, unless either, or both, of the following conditions is met:~~

~~(1) E911 service is initiated for all or a part of the E911 service area.~~

~~(2) An extension is granted by the administrator for good cause.~~

~~d. The surcharge shall terminate at the end of twenty-four months if the joint E911 service plan has not been approved by the administrator within eighteen months of the original notice to the provider to impose the surcharge, and shall not be reimposed until a service plan is approved by the administrator and the administrator gives providers notice as required by paragraph "a", subparagraphs (1) and (2).~~

2. SURCHARGE COLLECTED BY LOCAL EXCHANGE SERVICE PROVIDERS.

a. The surcharge shall be collected as part of the access line service provider's periodic billing to a subscriber. In compensation for the costs of billing and collection, the local exchange service provider may retain one percent of the gross surcharges collected. If the compensation is insufficient to fully recover a local exchange service provider's costs for billing and collection of the surcharge, the deficiency shall be included in the local exchange service provider's costs for ratemaking purposes to the extent it is reasonable and just under section 476.6. The surcharge shall be remitted to the E911 service operating authority for deposit into the E911 service fund quarterly by the local exchange service provider. The total amount for multiple exchanges may be combined.

b. A local exchange service provider is not liable for an uncollected surcharge for which the local exchange service provider has billed a subscriber but not been paid. The surcharge shall appear as a single line item on a subscriber's periodic billing entitled, "E911 emergency telephone service surcharge". The E911 service surcharge is not subject to sales or use tax.

c. The joint E911 service board may request, not more than once each quarter, the following information from the local exchange service provider:

(1) The identity of the exchange from which the surcharge is collected.

(2) The number of lines to which the surcharge was applied for the quarter.

(3) The number of refusals to pay per exchange if applicable.

(4) Write-offs applied per exchange if applicable.

(5) The number of lines exempt per exchange.

(6) The amount retained by the local exchange service provider generated from the one percent administration fee.

d. Access line counts and surcharge remittances are confidential public records as provided in section 34A.8.

3. MAXIMUM LIMIT PER SUBSCRIBER BILLING FOR SURCHARGE. An individual subscriber shall not be required to pay on a single periodic billing the surcharge on more than one hundred access lines, or their equivalent, in an E911 service area. A subscriber shall pay the surcharge in each E911 service area in which the subscriber receives access line service.

4. E911 SERVICE FUND. Each joint E911 service board shall establish and maintain as a separate account an E911 service fund. Any funds remaining in the account at the end of each fiscal year shall not revert to the general funds of the member political subdivisions, except as provided in subsection 5, but shall remain in the E911 service fund. Moneys in an E911 service fund may only be used for nonrecurring and recurring costs of the E911 service plan as approved by the ~~administrator~~ program manager, as those terms are defined by section 34A.2.

Sec. 452. Section 34A.7, subsection 5, paragraph b, subparagraphs (2) and (3), Code 2003, are amended to read as follows:

(2) If money remains in the fund after fully paying for recurring costs incurred in the preced-

ing year, the remainder may be spent to pay for nonrecurring costs, not to exceed actual nonrecurring costs as approved by the ~~administrator~~ program manager.

(3) If money remains in the fund after fully paying obligations under subparagraphs (1) and (2), the remainder may be accumulated in the fund as a carryover operating surplus. If the surplus is greater than twenty-five percent of the approved annual operating budget for the next year, the ~~administrator~~ program manager shall reduce the surcharge by an amount calculated to result in a surplus of no more than twenty-five percent of the planned annual operating budget. After nonrecurring costs have been paid, if the surcharge is less than the maximum allowed and the fund surplus is less than twenty-five percent of the approved annual operating budget, the ~~administrator~~ program manager shall, upon application of the joint E911 service board, increase the surcharge in an amount calculated to result in a surplus of twenty-five percent of the approved annual operating budget. The surcharge may only be adjusted once in a single year, upon one hundred days' prior notice to the provider.

Sec. 453. Section 34A.7A, subsection 1, Code 2003, is amended to read as follows:

1. a. Notwithstanding section 34A.6, the administrator shall adopt by rule a monthly surcharge of up to ~~fifty~~ sixty-five 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~~ program manager shall provide no less than one hundred days' notice of the surcharge to be imposed to each wireless communications service provider. The ~~administrator~~ program manager, subject to the ~~fifty~~ sixty-five cent limit in paragraph "a", may adjust the amount of the surcharge as necessary, but no more than once in any calendar year.

c. (1) The surcharge shall be collected as part of the wireless communications service provider's periodic billing to a subscriber. 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. In the case of prepaid wireless telephone service, this surcharge shall be remitted based upon the address associated with the point of purchase, the customer billing address, or the location associated with the mobile telephone number for each active prepaid wireless telephone that has a sufficient positive balance as of the last days of the information, if that information is available. The wireless E911 service surcharge is not subject to sales or use tax.

(2) In compensation for the costs of billing and collection, the wireless communications service provider may retain one percent of the gross surcharges collected.

(3) The surcharges shall be remitted quarterly by the wireless communications service provider to the ~~administrator~~ program manager for deposit into the fund established in subsection 2.

(4) A wireless communications service provider is not liable for an uncollected surcharge for which the wireless communications service 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.~~

Sec. 454. Section 34A.7A, subsection 2, Code 2003, is amended to read as follows:

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~~ program manager. 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~~ in the following priority order:

a. An amount as appropriated by the general assembly to the administrator shall be allocated to the administrator and program manager for implementation, support, and maintenance of the functions of the administrator and program manager and to employ the auditor of state to perform an annual audit of the wireless E911 emergency communications fund.

b. The program manager shall allocate twenty-one percent of the total amount of surcharge generated to wireless carriers to recover their costs to deliver E911 phase 1 services. If the allocation in this paragraph is insufficient to reimburse all wireless carriers for such carrier's eligible expenses, the program manager shall allocate a prorated 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. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under this paragraph.

c. The program manager shall reimburse wire-line carriers on a calendar quarter basis for carriers' eligible expenses for transport costs between the selective router and the public safety answering points related to the delivery of wireless E911 phase 1 services.

~~b.~~ d. ~~(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~~ program manager shall reimburse wire-line carriers and third-party E911 automatic location information database providers on a calendar quarterly basis for the costs of maintaining and upgrading the E911 components and functionalities beyond the input to the E911 selective router, including the E911 selective router and the automatic location information database.

~~(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.~~

e. The program manager shall apply an amount up to five hundred thousand dollars per calendar quarter to any outstanding wireless E911 phase 1 obligations incurred pursuant to this chapter prior to July 1, 2004.

f. (1) The program manager shall allocate an amount up to one hundred fifty-nine thousand dollars per calendar quarter equally to the joint E911 service boards and the department of public safety that have submitted an annual written request to the program manager in a form approved by the program manager by May 15 of each year. The program manager shall allocate to each joint E911 service board and to the department of public safety a minimum of one thousand dollars per calendar quarter for each public safety answering point within the service area of the department of public safety or joint E911 service board.

(2) Upon retirement of outstanding obligations referred to in paragraph "e", the amount allocated under this paragraph "f" shall be twenty-four percent of the total amount of surcharge generated per calendar quarter allocated as follows:

(a) Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the service area to the total square miles in this state.

(b) Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless E911 calls taken at the public safety answering point in the service area to the total number of wireless E911 calls originating in this state.

(c) Notwithstanding subparagraph subdivisions (a) and (b), the minimum amount allocated to each joint E911 service board and to the department of public safety shall be no less than one thousand dollars for each public safety answering point within the service area of the department of public safety or joint E911 service board.

(3) The funds allocated in this paragraph "f" shall be used for communication equipment located inside the public safety answering points for the implementation and maintenance of wireless E911 phase 2. The joint E911 service boards and the department of public safety shall

provide an estimate of phase 2 implementation costs to the program manager by January 1, 2005.

~~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.~~

g. If moneys remain in the fund after fully paying all obligations under paragraphs "a" through "f", the remainder may be accumulated in the fund as a carryover operating surplus. This surplus shall be used to fund future phase 2 network and public safety answering point improvements and wireless carriers' transport costs related to wireless E911 services, if those costs are not otherwise recovered by wireless carriers through customer billing or other sources and approved by the program manager. Notwithstanding section 8.33, any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain available for the purposes of the fund.

~~(2)~~ h. The administrator, in consultation with the program manager and 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~~ subsection. 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 wireless 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)~~ 2A. a. The ~~administrator~~ program manager shall submit an annual report by January 15 of each year to the legislative government oversight committee advising the general assembly of the status of E911 implementation and operations, including both ~~land-line~~ wire-line and wireless services, ~~and~~ the distribution of surcharge receipts, and an accounting of the revenues and expenses of the E911 program.

b. The program manager shall submit a calendar quarter report of the revenues and expenses of the E911 program to the fiscal services division of the legislative services agency.

c. The legislative government oversight committee shall review the priorities of distribution of funds under this chapter at least every two years.

Sec. 455. Section 34A.7A, subsection 3, Code 2003, is amended to read as follows:

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~~ program manager 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~~ program manager, 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.

Sec. 456. Section 34A.8, subsection 2, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The program manager, joint E911 service board, the designated E911 service provider, and the public safety answering point, their agents, employees, and assigns shall use local exchange service information provided by the local exchange service provider solely for the purposes of providing E911 emergency telephone service, and it shall otherwise be kept confidential. A person who violates this section is guilty of a simple misdemeanor.

Sec. 457. Section 34A.9, Code 2003, is amended to read as follows:

34A.9 TELECOMMUNICATIONS DEVICES FOR THE ~~DEAF~~ SPEECH AND HEARING-IMPAIRED.

~~By January 1, 1990, each county~~ Each public safety answering point shall provide for the installation and use of ~~at least one~~ telecommunications ~~device~~ devices for the ~~deaf at a public safety answering point~~ speech and hearing-impaired.

Sec. 458. NEW SECTION. 34A.10 E911 SELECTIVE ROUTER.

On and after July 1, 2004, only the program manager shall approve access to the E911 selective router.

Sec. 459. Section 34A.15, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. The auditor of state or the auditor of state's designee shall serve as an ex officio nonvoting member.

Sec. 460. Section 34A.15, subsection 2, Code 2003, is amended to read as follows:

2. The council shall advise and make recommendations to the administrator and program manager regarding the implementation of this chapter. Such advice and recommendations shall be provided on issues at the request of the administrator or program manager or as deemed necessary by the council.

Sec. 461. Section 16.161, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The authority shall assist the ~~administrator~~ program manager, appointed pursuant to section 34A.2A, 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.

DIVISION XXV
SEX OFFENDER REGISTRY

Sec. 462. Section 22.7, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 48. Sex offender registry records under chapter 692A, except as provided in section 692A.13.

Sec. 463. Section 229A.8A, subsection 4, Code Supplement 2003, is amended to read as follows:

4. ~~For purposes of registering as a sex offender under chapter 692A, a person placed in the transitional release program shall be classified a "high-risk" sex offender and public notification shall be as provided in section 692A.13A, subsection 2.~~ A committed person who refuses to register as a sex offender is not eligible for placement in a transitional release program.

Sec. 464. Section 692A.13, Code Supplement 2003, is amended by striking the section and inserting in lieu thereof the following:

692A.13 AVAILABILITY OF RECORDS.

1. The department may provide relevant information from the sex offender registry to the following:

a. A criminal or juvenile justice agency, an agency of the state, any sex offender registry of another state, or the federal government.

b. The general public through the sex offender registry's web page, except that relevant information about an offender who was under twenty years of age at the time the offender committed a violation of section 709.4, subsection 2, paragraph "c", subparagraph (4), shall not be disclosed on the web page.

c. The single contact repository established pursuant to section 135C.33, in accordance with the rules adopted by the department.

2. A criminal or juvenile justice agency may provide relevant information from the sex offender registry to the following:

a. A criminal or juvenile justice agency, an agency of the state, or any sex offender registry of another state, or the federal government.

b. The general public, including public and private agencies, organizations, public places, public and private schools, child care facilities, religious and youth organizations, neighbors, neighborhood associations, community meetings, and employers. Registry information may be distributed to the public through printed materials, visual or audio press releases, or through a criminal or juvenile justice agency's web page.

3. Any member of the public may contact a county sheriff's office or police department to request relevant information from the registry regarding a specific person required to register under this chapter. The request for information shall be in writing, and shall include the name of the person and at least one of the following identifiers pertaining to the person about whom the information is sought:

a. The date of birth of the person.

b. The social security number of the person.

c. The address of the person.

4. A county sheriff shall also provide to any person upon request access to a list of all registrants in that county. However, records of a person protected under 18 U.S.C. § 3521 shall not be disclosed.

5. Relevant information provided to the general public may include the offender's name, address, a photograph, locations frequented by the offender, relevant criminal history information from the registry, and any other relevant information. Relevant information provided to the public shall not include the identity of any victim.

6. Notwithstanding sections 232.147 through 232.151, records concerning convictions which are committed by a minor may be released in the same manner as records of convictions of adults.

7. Sex offender registry records are confidential records pursuant to section 22.7 and shall only be released as provided in this section.

Sec. 465. Section 901.4, Code Supplement 2003, 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. Pursuant to section 904.602, the presentence investigation report may also be released by the department of corrections or a judicial district department of correctional services to another jurisdiction for the purpose of providing interstate probation and parole compact services or evaluations, or to a substance abuse or mental health services provider when referring a defendant for services. 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.13A for performing the assessment of risk~~.

Sec. 466. Section 692A.13A, Code 2003, is repealed.

Sec. 467. APPLICABILITY OF AVAILABLE RECORDS IN THE SEX OFFENDER REGISTRY. Section 692A.13, as amended by this division of this Act, shall apply retroactively to all offenders on the registry.

Sec. 468. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 17, 2004, with exceptions noted.

THOMAS J. VILSACK, *Governor*

Dear Mr. Secretary:

I hereby transmit Senate File 2298, an Act making, reducing, and transferring appropriations, providing for government and economic development-related taxation, surcharge, and fee matters, providing for other properly related matters, and including penalty and effective and retroactive and other applicability date provisions.

During my Condition of the State address in January, I asked the Legislature to join me in honoring the spirit of service and sacrifice of Iowans serving in harm's way. As important decisions affecting our state's future presented a significant challenge, I felt it was crucial to put these challenges in perspective to guide our work in shaping the future of Iowa. At that time, I remarked, "Today, and for the foreseeable future, Iowans will be placed in harm's way in the service of liberty and freedom. Their task of improving the world in which we all live is our task as well. In our work at home we should draw inspiration from them to do our duty. They sacrifice to transform a nation and open up opportunity for someone else's child. We sacrifice to transform a state and open up opportunity for their children and all of our children."

We strived to fund initiatives and operations of state government that allowed these values to strengthen our homes, neighborhoods and communities. As a state, we have the **responsibility** to create classrooms of extraordinary learning. Technology should replace worn out textbooks of yesterday to engage youngster's interests ultimately leading to a workforce of unmatched talent. As a state, the Iowa Values Fund has created tremendous economic **opportunity** by investing in good paying jobs. Of course, **security** for all Iowans remains the centerpiece of state government. Seniors deserve the dignity of remaining in their homes longer through assistance of the Senior Living Trust. Vulnerable Iowans deserve health care and social service when they have nowhere else to turn.

Despite continued anemic revenue growth, I renewed my pledge to work with majority party legislative leaders to put together a budget that reflected these important Iowa values. The Legislature, at the direction of Republican leaders, chose a different route. During the closing days of the session, they sent my office a massive 337-page omnibus-spending bill. In reviewing this legislation, it became clear to me that Legislative leaders chose a path that had the potential to make Iowa less than it must be. I voiced these concerns. Sadly, majority party leaders made it clear that returning to the Capitol to reach compromise was not an option. I must take them at their word.

The Executive Branch of this government will rise up and manage — as best we can — the challenge of providing state services in the absence of adequate resources. So now, the difficult work begins. We will go about this work with a clear sense of duty. We will do this because Iowans expect us to do our jobs. And we will do this because we have a promise to keep. I have not forgotten the promise I made to these very brave Iowans.

Senate File 2298 is approved on this date, with the following exceptions, which I hereby disapprove:

Division I

I am unable to approve the item designated as Section 2, subsection 1, second unnumbered paragraph in its entirety. This paragraph requires the Department of Administrative Services to refund $1,889,610 to the State's general fund at the end of fiscal year 2005. The Department needs these start-up funds for more than a single year to ensure economic viability as it moves to an entrepreneurial business model.

I am unable to approve the item designated as Section 9 in its entirety. This section prohibits the Alcoholic Beverages Division from adding new positions for the purpose of the State assuming the state liquor warehouse functions currently being done by a private contractor. The language also requires the Division to hire a new private contractor to operate the warehouse using a competitive bidding process. This language prevents the State from considering the opportunity to manage its own resources, including the possibility of achieving cost savings and improving customer service. I support using a competitive bidding process but want to have flexibility for the State to participate in that process.

I am unable to approve the item designated as Section 10 in its entirety. This section is contingent upon the enactment of House File 2521, which was not approved by the Legislature. Therefore, this section is unnecessary.

I am unable to approve the item designated as Section 24, subsection 3 in its entirety. This would appropriate $50,000 to the Department of Revenue for a study of the entire state and local government tax structure and services they support. As noted later in this message, the resources and the timeframe are inadequate to accomplish a study of this magnitude.

I am unable to approve the item designated as Section 32 in its entirety. This section provides the enactment clause for Section 9, relating to the state liquor warehouse, which is vetoed. Therefore, this section is unnecessary.

Division III

I am unable to approve the item designated as Section 49, subsection 3 in its entirety. As I indicated the last two years, the Accountable Government Act establishes a comprehensive, enterprise-wide process for setting program goals and establishing results measures. These measures have been developed with data currently being compiled. This section would create redundancies in the development and reporting of goals and results measurements for the Department of Economic Development.

I am unable to approve the item designated as a portion of Section 58, subsection 2. This would require that small business development centers be located equally throughout the different regions of the state. This bill contains no instruction as to the legislative meaning or intent of "located equally throughout the different regions of the state." As such, the bill is terminally vague making compliance impossible.

I am unable to approve the items designated as Section 58, subsection 3, paragraph b; Section 59, subsection 2, paragraph b; and Section 60, subsection 2, paragraph b in their entirety. These sections would require any business or individual receiving benefits from specified Regent programs to have a commercially viable service or product. This legislative mandate would have an unacceptable stifling effect on innovation. Iowa should be encouraging entrepreneurship. These sections would have the opposite impact.

I am unable to approve the item designated as Section 67 in its entirety. This section implies that Iowa's community colleges would give funding priority to the training and retraining needs of the information technology sector of Iowa's economy. While the information technology sector represents a very important component of the Iowa economy, it is just one of three sectors targeted by the Iowa Values Fund. Singling out one sector for possible preference could create conflicting expectations both between the information technology businesses and the community colleges and between other targeted industry sectors. Under the Iowa Values Fund legislation the community colleges and the Iowa Department of Economic Development are charged with administering training funds and the Iowa Values Fund Board is responsible for business incentive funding. The addition of a perceived funding preference for one industry sector diminishes the authority vested in these entities by the Iowa Values Fund legislation.

I am unable to approve the item designated as Section 71 in its entirety. Expenditure information for executive branch agencies of state government is currently available to the economic development appropriations subcommittees and the Legislative Services Agency on a daily basis through the Iowa Financial and Accounting System. The Legislative Services Agency also has the authority to request expenditure information from Regent universities. The reporting requirement in this section would duplicate existing data and place an unnecessary and unprecedented requirement on limited staff resources.

Division IV

I am unable to approve the item designated as Section 82, subsection 1 in its entirety. This section requires the Department of Education, the Board of Regents, and other accredited postsecondary institutions to study the feasibility of offering a teacher intern program that would be available statewide. This study is unnecessary, as the State Board of Education has already provided authority through administrative rules for the development and implementation of this type of program.

I am unable to approve the item designated as Section 86, subsection 1, paragraph a, first unnumbered paragraph in its entirety. This sentence specifies that the Board of Regents, the Department of Management, and the Legislative Services Agency shall cooperate to determine the amount to be appropriated for tuition replacement. This language is outdated and unnecessary as the Board of Regents now relies on a financial advisor to calculate figures for tuition replacement.

I am unable to approve the item designated as Section 86, subsection 2, paragraph a, second unnumbered paragraph in its entirety. This paragraph restricts spending on the School of Public Health and the Public Health Initiative at the University of Iowa. As we face a growing need for workers trained in these health professions and for the services provided by this program, it is appropriate to allow reallocations of funds to the School of Public Health from other

areas, rather than single this out as the one area at the University of Iowa to have its budget capped at its previous level.

I am unable to approve the item designated as Section 86, subsection 2, paragraph b, subparagraph (4) in its entirety. This language changes a long-standing agreement on the definition of "medically necessary" as applied to conditions for the termination of pregnancy under the Indigent Patient Care Program at the University of Iowa Hospitals. While the prior language may not have satisfied anyone completely, the terminology was based on a process of mutual discussion and agreement that struck a careful balance among people with deeply held convictions. Because this subsection alters that language and disrupts the balance that was previously agreed to without going through a similar process of mutual discussion and agreement, this paragraph is unacceptable.

I am unable to approve the item designated as a portion of Section 86, subsection 3, paragraph a, second unnumbered paragraph in its entirety. This paragraph restricts spending on the Center for Excellence in Fundamental Plant Sciences at Iowa State University and does not permit this program to receive either its share of dollars for salary increases or internal reallocations of funds from other university programs. If we are committed to making Iowa a leader in plant sciences technologies, then it is unreasonable to single this out as the one center at Iowa State University to have its budget capped at its previous level.

I am unable to approve the item designated as a portion of Section 86, subsection 4, paragraph a, second unnumbered paragraph in its entirety. This paragraph restricts spending on the Masters in Social Work Program, the roadside vegetation project, and the Iowa Office for Staff Development at the University of Northern Iowa. There is no reason to single these three areas out to be treated differently from all the other programs and activities at the University of Northern Iowa.

I am unable to approve the item designated as Section 96 in its entirety. This section delays by one year, until July 1, 2006, implementation of an evaluator training certification renewal program. We must continue to support the teacher quality initiative started a few years ago. In addition to increasing minimum teacher salaries and providing mentors, this initiative includes training programs for administrators who must evaluate teacher performance. Private foundation funds may be available to develop this training. The evaluator training certification renewal program also aids the Department's efforts to meet federal No Child Left Behind highly qualified teacher expectations.

Division V

I am unable to approve the item designated as a portion of Section 102, subsection 1, paragraph c. This sentence would require the Department of Public Health to produce a report of all organizations that applied for substance abuse treatment funds, the amounts awarded, and the basis for refusal to award funds to any of the organizations that applied. In accordance with the Accountable Government Act, all substance abuse treatment and prevention grants are awarded on a competitive basis. The Healthy Iowans Tobacco Trust bill already requires the Department to report on the success rates of substance abuse treatment programs. This item is duplicative and an unfunded mandate that takes time away from customers and communities for unnecessary reporting.

I am unable to approve the item designated as a portion of Section 106. This sentence directs the Department of Public Health to submit a report regarding a collaborative effort with the Department of Human Services to identify funding to leverage federal funds. The service to Iowans would be enhanced if Department staff spent time identifying additional ways for the

State to obtain all available federal matching funds and applying for other federal and private grants rather than drafting an unnecessary report.

I am unable to approve the item designated as Section 107 in its entirety. This section, relating to employment of a division administrator in the Department of Public Health for tobacco prevention efforts, is a duplication of language, although not identical, in House File 2577. Therefore, this section is unnecessary.

I am unable to approve the item designated as Section 111 in its entirety. This section provides additional language for an Iowa Marriage Initiative Grant Fund, and the language directs the Department of Human Services to initiate grants by specifying deadlines for issuing grants and reporting requirements where no funds are available for this purpose. The prior year funding referred to in the bill has been spent, and the Legislature did not appropriate additional funding for this purpose. Therefore, this section is unnecessary.

I am unable to approve the item designated as a portion of Section 114. This sentence directs the Departments of Public Health and Human Services to submit a report regarding utilization of the food stamp program. Requiring a report will utilize additional resources that could be used for administering the program. This is an unnecessary reporting requirement at a time when funding for staff has been reduced.

I am unable to approve the item designated as Section 116, subsection 1 in its entirety. This language changes a long-standing agreement on the definition of "medically necessary" as applied to conditions for the termination of pregnancy under the Medical Assistance Program. While the prior language may not have satisfied anyone completely, the terminology was based on a process of mutual discussion and agreement that struck a careful balance among people with deeply held convictions. Because this subsection alters that language and disrupts the balance that was previously agreed to without going through a similar process of mutual discussion and agreement, this subsection is unacceptable. Federal regulations outline the conditions for the termination of pregnancy that qualify under the Medical Assistance Program and shall provide guidance to the Department in administering this program.

I am unable to approve the item designated as Section 124, subsection 1, first unnumbered paragraph in its entirety. This language directs the Department of Human Services to convene a group to review the Iowa Juvenile Home. Many previous studies have made recommendations and generally require additional funds to implement. I have, in fact, recommended funding to implement recommendations of previous studies that the Legislature has chosen not to fund. It seems pointless to conduct another study when the issue is funding.

I am unable to approve the item designated as Section 125, subsection 17 in its entirety. This paragraph directs the Department of Human Services to develop a plan to privatize the administration of foster care and adoption programs. Given the fact that no additional funds were provided for this purpose and the child welfare redesign effort is already underway, implementation of this subsection is counter-productive.

I am unable to approve the item designated as a portion of Section 135, subsection 2. This sentence requires the Department of Human Services to submit proposed legislation to correct Code references related to service areas. This effort has already been completed with the enactment of House File 2390 — technical changes to programs under the purview of the Department of Human Services. Therefore, this sentence is unnecessary.

I am unable to approve the item designated as Section 142 in its entirety. This section would require unspent funds remaining in the Medical Assistance Program account to carry forward into the next fiscal year. This language does not provide the Executive Branch the flexibility

necessary to deal with the fiscal year 2004 budget that is needed. Additionally, it provides the use of one-time funding for on-going purposes.

I am unable to approve the item designated as Section 147 in its entirety. This section creates a new network of faith-based and community-based organizations by taking nine staff away from their current work of providing child abuse assessments or managing services to families where abuse, neglect, or behavioral problems are present. If the Legislature is serious about this effort, then additional funds should be appropriated and the program should provide for the coordination of all groups in Iowa providing community services that aid families.

I am unable to approve the item designated as Section 150 in its entirety. This section establishes a new Medical Assistance Mental Health Quality of Care Improvement Committee. The committee is directed to advise the Department of Human Services on the required implementation of clinical treatment algorithms for schizophrenia, major depressive disorder and bipolar disorder, and a mental health polypharmacy review process. The Legislature is sending mixed and contrary messages on drug utilization. Legislation already enacted contains costs through preferred drug lists, prior authorization, and state maximum allowable costs for generic drugs. This proposal seems to countermand those efforts with an alternate methodology. Additionally, the State is recognized nationally for its mental health/substance abuse treatment contract. This proposal would put the current waiver and contract at risk, and that is unacceptable.

I approve Section 151, which establishes a Medical Assistance Crisis Intervention Team and directs the team to analyze the Medical Assistance Program and provide recommendations to reduce costs or provide revenue enhancements for the program. With the current federal government stance on eliminating intergovernmental transfers in the Medical Assistance Program, I am directing this team to examine options with and without the continuance of intergovernmental transfers as they conduct their work.

I am unable to approve the item designated as Section 162, subsection 3 in its entirety. This section provides the enactment clause for Section 142, relating to non-reversion and prohibited transfer of appropriations to the Medical Assistance Program, which is vetoed. Therefore, this subsection is unnecessary.

Division VI

I am unable to approve the item designated as Section 166 in its entirety. This section appropriates funds to the Insurance Division of the Department of Commerce to administer a long-term care insurance partnership program. This appropriation is linked to Senate File 2183 that makes changes to long-term care insurance provisions and providing asset and income disregards for Medicaid. While I am supportive of people incorporating long-term care insurance into their financial plans and future health needs, Senate File 2183, as drafted, expands the proposed benefit beyond those individuals accessing long-term care insurance. This language needs further legislative review, and I am directing the Department of Human Services and Insurance Division to work with the Legislature to achieve an appropriate solution.

Division IX

I am unable to approve the item designated as a portion of Section 186, subsection 2. This sentence grants immunity from civil or employer liability for a government entity or nonprofit agency using inmate labor. While I support the use of inmate labor for nonprofit and governmental entities, this language provides blanket immunity even in extreme cases. For example, if an inmate were to harm or even take the life of a person while working, regardless of whether it was accidental or intentional and regardless of negligence on the part of the employer, this

provision would provide no mechanism for the victim's family to claim compensation for damages inflicted on the victim's spouse, children, or other family members. With the use of inmate labor comes the responsibility to exercise great care to protect the safety of the public, those who employ prison labor, and the inmates themselves.

I am unable to approve the item designated as a portion of Section 192, subsection 5, third unnumbered paragraph in its entirety. This language redirects funds credited to the motor pool depreciation fund, a portion of which is federal funds, to the Department of Public Safety vehicle replacement. While a laudable goal, the impact is that other State employees will face consequences including unreliable vehicles for activities such as investigating child abuse complaints, transporting residents of resource centers to their work, transporting juveniles residing at the Iowa Juvenile Home or Training Center to health care appointments, or the myriad of inspections such as food inspections, medical complaints and others that keep Iowans safe. Merely shifting the funds around does not preclude the needed resources for all programs.

I am unable to approve the item designated as Section 198 in its entirety. This section has the potential to provide private drives through many state-owned recreational properties. Parceling off or dividing sections of recreational land from the public trust undermines the role and responsibilities as stewards of public land. Many state recreational lands have restrictions placed on them as a result of utilizing federal funds for management, development or acquisition. Relinquishing control of this land requires federal coordination and precious state resources to replace it. State recreational areas are for public use and the benefit of everyone. They have never been intended and never should be considered for permanent private use by individuals.

I am unable to approve the item designated as Section 201 in its entirety. This section changes the income level guidelines from "at or below 125 percent" to "at or below 100 percent" of the U.S. poverty level for a person who is entitled to an attorney appointed by the court. Everyone is afforded the constitutional right to counsel, and we should not be attempting to restrict this right by lowering income guidelines. Instead, the Legislature should focus its attention on providing adequate funding for indigent defense and the State Public Defenders Office.

Division X

I am unable to approve the item designated as Section 217 in its entirety. This section requires state departments return to the general fund at the end of the fiscal year any part of an appropriation associated with a full-time position that is vacant during the fiscal year. This gives departments very few options other than cutting services to balance their operations budgets. For example, once an employee leaves, departments make a lump-sum payout for the value of the employee's unused vacation. In practice, departments generally hold positions open for the amount of time necessary to make those payouts. Under this language, that practice would trigger a reversion of the amount to the general fund at the end of the year. In essence, the department must pay twice. The language also limits the ability of departments to utilize the Early Out program or other employee attrition to cover budget reductions. Given that department budgets have been reduced on numerous occasions over the past three years, this section is unworkable and unwise micromanagement of Executive Branch operations.

I am unable to approve the item designated as Section 225 in its entirety. The Iowa Supreme Court, in Meyer v. Employment Appeal Board 441 N.W.2d 766 and Area Education Agency 7 v. Bauch, 646 N.W.2d 398, has determined that deferred wages are actually payable when earned. The Court has held that once the school year ends, a school district employee is no longer drawing 'a wage,' but rather collecting 'past earnings due.' Gross earnings should be calculated by using the amount earned rather than the amount actually paid. Section 225

significantly diminishes established property rights that accrue to a school district employee by redrafting a statutory provision clearly interpreted by the Court. Workers' compensation weekly benefits are intended to replace earnings that are lost while the employee is disabled and is based upon the rate at which the employee earns. Earning capacity is best reflected by what an employer is willing to pay an employee in return for services performed. Since the Court has already determined that the proper rate at which the employee earns should be based on the time during which services are provided and because Section 225 would unfairly alter the property rights that accrue to school district employees, I am unable to approve this section.

I am unable to approve the items designated as Sections 229, 239 and 240 in their entirety. These three sections require the Department of Education, local school boards and Area Education Agencies to submit data annually on the salaries and benefits of administrators and increases for employees' salaries and group health insurance plans. The reporting required in these sections duplicates information already collected by the Department and the level of detail specified is not necessary to support policy development and decision-making.

I am unable to approve the item designated as Section 230 in its entirety. This section requires the Department of Education to report in detail on Class Size/Early Intervention expenditures. The Department already provides a lengthy report on this topic. The additional data collection and reporting required in this section is unnecessary.

I am unable to approve the item designated as Section 241 in its entirety. This section requires local school boards to examine expenditures and identify potential cost savings. I believe every school board in the state understands its responsibilities to the citizens of Iowa to be sound stewards of tax dollars. With the limited state aid funding provided to school districts in recent years, school boards already study these items and look for opportunities to reduce operating expenditures. The directive in this legislation goes far beyond what is necessary for prudent management of school districts and incorporates reporting requirements that will create an onerous burden on already strapped administrators.

I am unable to approve the items designated as Section 242, subsections 2 through 4, and the items designated as Sections 243 through 246 in their entirety. These sections create an Iowa Learning Technology Initiative. While I am supportive of providing technology training and learning opportunities for Iowa's children, there is no state funding available for this initiative. If private funds are raised, I am committed to directing the Department of Education to work with the donors to advance the plan. In the meantime, the Department will coordinate a committee effort to study teacher and student technology needs across the educational system so that Iowa-specific information is available on this subject.

I am unable to approve the item designated as Section 261 in its entirety. The proposed exemption under this section sets a precedent contrary to Iowa's waste management hierarchy, by reducing the cost of disposal for one specific waste stream. Shredder fluff has no inherent characteristics that would lead to its exemption from tonnage fees.

I am unable to approve the item designated as Section 263 in its entirety. This section is contingent upon the enactment of House File 2440, which was vetoed. Therefore, this section is unnecessary.

I am unable to approve the item designated as Section 276 in its entirety. This section requires the Board of Regents to develop and implement a policy for "addressing the budget ramifications associated with unfilled vacant positions." Regent institutions are not provided appropriations based on specific positions and full-time equivalent caps, so this policy would serve no useful purpose. Regent institutions require the flexibility to, among other things, use positions

to meet student demand and to address patient volumes at the University of Iowa Hospital and Clinics. This is further micromanaging that will serve no useful purpose and drain resources from more productive responsibilities.

I am unable to approve the item designated as Section 278 in its entirety. This section provides for a refund to an individual that exhausted the administrative appeals process and is not entitled to a refund from the State. Judgments on issues such as this should be made based on the facts of the circumstances and the process established by law; not on political connections with individual legislators.

I am unable to approve the item designated as Section 285 in its entirety. This section eliminates the 30-day deadline for enacting the School Foundation Aid allowable growth percentage and the requirement that the allowable growth rate be the only subject matter of the bill for the 2004 legislative session. The Legislature included this language because they failed to comply with Iowa law by failing to set the growth rate for Iowa's school districts until months after the deadline. This delay is unacceptable and hinders the ability of Iowa's school districts to plan for future years. It is difficult to expect our school children to respect and follow the law when lawmakers are unwilling or unable to do the same.

I am unable to approve the item designated as Section 287, subsection 4 in its entirety. This section provides the enactment clause for Section 278, relating to refund for commercial vehicle registration fees, which is vetoed. Therefore, this section is unnecessary.

Division XI

I am unable to approve the item designated as Section 288, subsection 1, paragraph g in its entirety. This subsection appropriates $1,770,000 from the Rebuild Iowa Infrastructure Fund for capitol interior restoration. The Legislature's approval of funding for this project at the expense of fully funding the Secure an Advanced Vision for Education Fund in Section 299 validates that they are more interested in spending money to remodel their chambers and offices than they are in meeting their obligation to provide funds for critical repairs and improvements to local schools. In taking this action, I am putting schools first.

I am unable to approve the item designated as Section 288, subsection 8 in its entirety. This subsection provides $250,000 to construct a new residential treatment facility for youth. I am unable to support providing funds for this type of special interest pork barrel project. This is not a prudent expenditure of taxpayer dollars for the construction of a new facility when existing facilities are closing because the Legislature failed to provide sufficient child welfare funds for the beds that currently exist.

I am unable to approve the item designated as Section 299 in its entirety. This section caps the amount of Rebuild Iowa Infrastructure Fund moneys appropriated to the Secure an Advanced Vision for Education Fund in fiscal year 2005 at $8,160,000 instead of the $10 million in current law. The actions being taken in this bill to eliminate less important projects will allow Iowa schools to receive the full $10 million for local school infrastructure projects. Iowa voters in 88 counties have approved the local option sales tax for school infrastructure improvements, and they are counting on the State to provide the necessary matching money to fully fund these critical projects. In taking this action, I am keeping my commitment to fund school infrastructure even if the Legislature failed to do so.

Division XII

I approve the item designated as Section 301, subsection 1, paragraph c, second unnumbered paragraph. However, I am concerned that this section specifies a single organization to con-

duct these efforts, given the complaints expressed to the Executive Branch by the Legislature's Oversight Committee regarding sole source contracting. I caution the Legislature that this form of sole source contracting does not follow good business practices. Competitive bidding for state contracts ensures accountability and efficient use of public resources. I encourage the Department of Agriculture and Land Stewardship to conduct a detailed review of the expenditure of these funds to ensure proper accountability.

Division XIII

I am unable to approve the item designated as Section 304, subsection 1, paragraph b, first unnumbered paragraph in its entirety. This language requires the Department of Administrative Services to consult with legislative leadership prior to planning or implementing any capitol interior restoration project or other activity. This language represents the Legislature's attempt to micromanage a function of the Executive Branch. This paragraph contains language that is unnecessary and prescribes burdensome requirements on the Department which can, at times, be very difficult to fulfill.

Division XIV

I am unable to approve the item designated as Section 311, second unnumbered paragraph in its entirety. The federal Help America Vote Act (HAVA) legislation requires the chief state election official to distribute HAVA funds to Iowa's 99 counties. It is unnecessary and burdensome to place specific restrictions on the Secretary of State's office in implementing HAVA requirements. Additional State legislative mandates only create another level of bureaucratic red tape and are detrimental to the effective, statewide implementation of HAVA.

I am unable to approve the item designated as Section 315 in its entirety. This section requires the Iowa Finance Authority Board to declare a surplus from bond proceed reserves and transfer this surplus to the State Housing Trust Fund. Such a legislative mandate has a very negative impact on the Authority's bond ratings. National credit rating agencies such as Moody's and Standard and Poor's have suggested such mandates could result in downgrades or negative watches on future Authority bond offerings. Lower bond ratings would drive up interest rates and increase the cost of loans made to first time homebuyers and other bonding programs operated by the Authority. The Iowa Finance Authority is committed to finding additional resources for the State Housing Trust Fund that will not negatively impact their bond rating.

Division XV

I am unable to approve the item designated as Section 319 in its entirety. This section amends Code Section 80.9, subsection 2, paragraph f, by placing sole responsibility for Executive Branch Capitol Complex security in the Department of Public Safety. The State would be better served by a cooperative, joint security effort between the Departments of Public Safety and Administrative Services and the Homeland Security/Emergency Management Division. Proper competitive procedures can be followed as well as the proper placement of functions and staff.

Division XVI

I am unable to approve the items designated as Section 322, subsection 4, paragraphs b, c, and d in their entirety. These paragraphs appropriate money from the Rebuild Iowa Infrastructure Fund account to the new Vertical Infrastructure Fund. I have maintained the allocation of $15 million in fiscal year 2006 to this Fund. Beyond that, the designated paragraphs appropriate $50 million in fiscal year 2007, $75 million in fiscal year 2008, and $100 million in fiscal year

2009 and thereafter. This session, the Legislature approved and I signed into law House File 2302, a bill making comprehensive changes to Iowa's gaming laws. The gaming law changes approved will provide the State with additional resources from gambling activities; however, the additional amount that will be generated by these changes is difficult to project absent more information about expanded facilities and products. It is not prudent to put into law, at this time, significant future allocations from the Rebuild Iowa Infrastructure Fund given the absence of revenue to meet those expenditures. I am willing to revisit this issue when more accurate information on projected gaming receipts is available.

I am unable to approve the item designated as Section 335 in its entirety. This section pertains to county agreements with the Iowa Department of Transportation related to disposition of county property. There is a question of precision in defining the application of this section.

I am unable to approve the item designated as Section 336 in its entirety. This section is contingent upon the enactment of Senate File 2295, which was vetoed. Therefore, this section is unnecessary.

I am unable to approve the item designated as Section 344 in its entirety. This section requires Cherokee Mental Health Institute to leave space vacant if vacated by current tenants. This directive hampers the institution's ability to gain revenues from leasing available space or utilizing space in the most efficient way. This section further requires the department to develop a plan to address treatment needs of persons with a developmental disability who exhibit sexually violent behavior; however, no funding is provided for developing such a plan.

Division XVII

I am unable to approve the item designated as Section 354 in its entirety. This section is contingent upon the enactment of House File 2434, which was not approved by the Legislature. Therefore, this section is unnecessary.

Division XIX

I am unable to approve the item designated as Section 403 in its entirety. This section establishes a Regulatory Efficiency Commission. Creating such a commission is duplicative of efforts already underway to comprehensively review regulatory rules as well as regulatory processes of state government and implement business process improvement techniques to enhance efficiency and improve service. This is a collaborative effort including a number of state departments, private industry representatives, and the Iowa Business Council. Iowa companies have already reaped the benefits of this process through a reduction in the time it takes to process an air quality permit. Similar efforts are underway with wastewater permits and a variety of other regulatory processes throughout state government. Appointing a new commission will slow this progress down and divert efforts away from actually improving Iowa's regulatory assistance and creating a more streamlined government.

Division XX

I approve the items designated as Sections 404 through 418 in their entirety, even though the Legislature made a mistake in the drafting of this language resulting in no incentive for wind energy production. I am willing to work with the Legislature next year to ensure that wind energy grows, but not at the risk of other priorities of Iowans. We must ensure that local governments and schools are not hurt by unintended consequences. Therefore, I ask legislative leaders to work with me over the interim to strike the appropriate balance of providing economic incentives for wind energy without devastating other priorities at the state and local level.

Division XXIII

I am unable to approve the items designated as Sections 440 and 441 in their entirety. These sections establish and repeal a new state tax implementation committee. Two years ago, I recommended that the Department of Revenue conduct a two-year tax fairness study and provided $400,000 for staff and support. In contrast, the Legislature continually fails to devote sufficient time or resources to make this study workable. Under the framework devised, in less than a year's time, the Committee and the Departments of Revenue and Management are charged with reviewing and analyzing all revenue sources available to the State; all current exemptions, credits and exclusions; all revenue sources available to local governments; all services provided by local government; the role of property taxes in funding local government, including examining the state school aid formula; alternative systems of property taxation, protesting property assessments; and methods of controlling property tax revenues and expenditures. To accomplish all this, the Legislature appropriated a meager $50,000.

In the past, the Legislature has devoted as much as two years to tax studies that were not nearly as broad as this one. Last year, the Legislature assembled a similar group charged with making recommendations for changes to the property tax system alone; and after a year of study and meeting, the group has yet to make substantive recommendations for reform. Iowa's tax structure must be reviewed and reformed. Our property tax system is outdated and unfair. Until the Legislature gets serious about tax reform, these insufficient attempts to study the issue are a waste of limited time and resources.

For the above reasons, I respectfully disapprove of the designated items in accordance with Article III, Section 16 of the Constitution of the State of Iowa. All other items in Senate File 2298 are hereby approved as of this date.

Sincerely,
THOMAS J. VILSACK, *Governor*

CHAPTER 1176

HEALTHY IOWANS TOBACCO TRUST AND
TOBACCO SETTLEMENT TRUST FUND —
APPROPRIATIONS — MISCELLANEOUS PROVISIONS

H.F. 2577

AN ACT relating to and making appropriations from the healthy Iowans tobacco trust and the tobacco settlement trust fund and providing an effective date.

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

Section 1. HEALTHY IOWANS TOBACCO TRUST — APPROPRIATIONS TO DEPARTMENTS. There is appropriated from the healthy Iowans tobacco trust created in section 12.65 to the following departments for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. To the department of human services:

a. Unless otherwise provided, to maintain the reimbursement rate for all noninstitutional medical assistance providers, with the exception of anesthesia and dental services, at the rate provided under the federal Medicare program for such providers during the fiscal year beginning July 1, 2000, and ending June 30, 2001, as specified in 2000 Iowa Acts, chapter 1221, section 1, subsection 1, paragraph "a", for the fiscal year July 1, 2004, through June 30, 2005, and to continue the resource-based relative value system of reimbursement under the medical assistance program:

. . . . . $ 8,095,718

b. To maintain the reimbursement rate at the usual and customary rate as established in 2000 Iowa Acts, chapter 1221, section 1, subsection 1, paragraph "b", for the fiscal year July 1, 2004, through June 30, 2005, for dental services under the medical assistance program:

. . . . . $ 3,814,973

c. To maintain the reimbursement rate as established in 2000 Iowa Acts, chapter 1221, section 1, subsection 1, paragraph "e", for the fiscal year July 1, 2004, through June 30, 2005, for hospitals under the medical assistance program:

. . . . . $ 3,035,278

d. To maintain the reimbursement rate as established in 2000 Iowa Acts, chapter 1221, section 1, subsection 1, paragraph "f", for the fiscal year July 1, 2004, through June 30, 2005, for home health care services under the medical assistance program:

. . . . . $ 2,108,279

e. To maintain the reimbursement rate as established in 2000 Iowa Acts, chapter 1221, section 1, subsection 1, paragraph "g", for the fiscal year July 1, 2004, through June 30, 2005, for critical access hospitals under the medical assistance program:

. . . . . $ 250,000

f. To maintain the expansion of home health care services and habilitative day care as established in 2000 Iowa Acts, chapter 1221, section 1, subsection 1, paragraph "h", under the medical assistance program for children with special needs:

. . . . . $ 1,975,496

g. To maintain the expansion of respite care services provided through home and community-based waivers as established in 2000 Iowa Acts, chapter 1221, section 1, subsection 1, paragraph "i", under the medical assistance program:

. . . . . $ 1,137,309

h. To maintain the cost-of-living adjustment as established in 2000 Iowa Acts, chapter 1221, section 1, subsection 1, paragraph "c", for the fiscal year July 1, 2004, through June 30, 2005, for rehabilitative treatment and support services providers under child and family services:

. . . . . $ 3,243,026

i. To maintain the cost-of-living adjustment as established in 2000 Iowa Acts, chapter 1221, section 1, subsection 1, paragraph "d", for the fiscal year July 1, 2004, through June 30, 2005, for adoption, independent living, shelter care, and home studies services providers:

. . . . . $ 468,967

j. To maintain the reimbursement rate as established in 2000 Iowa Acts, chapter 1221, section 1, subsection 1, paragraph "j", for the fiscal year July 1, 2004, through June 30, 2005, to service providers under the purview of the department of human services:

. . . . . $ 545,630

2. To the department of human services to continue the supplementation of the children's health insurance program appropriation:

. . . . . $ 200,000

3. To the department of human services to provide coverage under the medical assistance program to women who require treatment for breast or cervical cancer as provided in section 249A.3, subsection 2, paragraph "b":

. . . . . $ 250,000

4. To the department of human services to continue the supplementation of the medical assistance appropriation:

. . . . . $ 14,346,750

Of the amount appropriated in this subsection, $50,000 shall be used to continue the efforts

of the Iowa chronic care consortium pursuant to 2003 Iowa Acts, chapter 112, section 12, as amended by 2003 Iowa Acts, chapter 179, sections 166 and 167.

5. To the department of human services for general administration of health-related programs:

. . . . . $ 274,000

6. To the Iowa department of public health:

a. For the tobacco use prevention and control initiative, including efforts at the state and local levels, as provided in chapter 142A and for not more than the following full-time equivalent positions:

. . . . . $ 5,011,565
. . . . . FTEs 7.00

(1) The director of public health shall dedicate sufficient resources to promote and ensure retailer compliance with tobacco laws and ordinances relating to persons under 18 years of age, and shall prioritize the state's compliance in the allocation of available funds to comply with 42 U.S.C. § 300x-26 and section 453A.2.

(2) Of the full-time equivalent positions funded under this section, two full-time equivalent positions shall be utilized to provide for enforcement of tobacco laws, regulations, and ordinances under a chapter 28D agreement entered into between the Iowa department of public health and the alcoholic beverages division of the department of commerce.

(3) Of the funds appropriated in this paragraph "a", not more than $525,759 shall be expended on administration and management of the program.

(4) Of the funds appropriated in this paragraph "a", not less than 80 percent of the amount expended in the fiscal year beginning July 1, 2001, for community partnerships shall be expended in the fiscal year beginning July 1, 2004, for that purpose.

b. For provision of smoking cessation and smoking-related diseases products as provided in this paragraph:

. . . . . $ 75,000

The department shall award grants to free health clinics that are tax-exempt organizations pursuant to 26 U.S.C. § 501(c)(3) to fund the provision of smoking cessation and smoking-related diseases products to patients. The department shall adopt a methodology for the awarding of the grants to the health clinics based upon the order of receipt of applications.

c. For additional substance abuse treatment under the substance abuse treatment program:

. . . . . $ 11,800,000

(1) The department shall use funds appropriated in this paragraph "c" to enhance the quality of and to expand the capacity to provide 24-hour substance abuse treatment programs.

(2) The department shall use funds appropriated in this paragraph "c" to expand the length of individual client substance abuse treatment plans, as necessary to reduce program recidivism.

(3) The department shall use funds appropriated in this paragraph "c" to share research-based best practices for treatment with substance abuse treatment facilities.

(4) The department shall use funds appropriated in this paragraph "c" to develop a results-based funding approach for substance abuse treatment services.

(5) The department shall use funds appropriated in this paragraph "c" to develop a program to encourage individuals who are successfully managing their substance abuse problems to serve as role models.

(6) The department shall submit a report annually by March 1, to the governor and the general assembly delineating the success rates of the substance abuse treatment programs that receive funding under this paragraph "c".

d. For the healthy Iowans 2010 plan within the Iowa department of public health and for not more than the following full-time equivalent positions:

. . . . . $ 2,346,960
. . . . . FTEs 4.00

(1) Of the funds appropriated in this paragraph "d", not more than $1,157,482 shall be used for core public health functions, including home health care and public health nursing

services, contracted through a formula by local boards of health, to enhance disease and injury prevention services.

(2) Of the funds appropriated in this paragraph "d", not more than $387,320 shall be used for the continuation and support of a coordinated system of delivery of trauma and emergency medical services.

(3) Of the funds appropriated in this paragraph "d", not more than $437,000 shall be used for the state poison control center.

(4) Of the funds appropriated in this paragraph "d", not more than $288,770 shall be used for the development of scientific and medical expertise in environmental epidemiology.

(5) Of the funds appropriated in this paragraph "d", not more than $76,388 shall be used for the childhood lead poisoning prevention program.

e. For the automated external defibrillator grant program established by 2004 Iowa Acts, House File 2464,[1] if enacted:

..... $ 250,000

f. For the center for congenital and inherited disorders:

..... $ 26,000

7. To the department of corrections:

..... $ 980,000

a. Of the funds appropriated in this subsection, $127,217 is allocated to the second judicial district department of correctional services to replace expired federal funding for day programming.

b. Of the funds appropriated in this subsection, $35,359 is allocated to the third judicial district department of correctional services to replace expired federal funding for the drug court program.

c. Of the funds appropriated in this subsection, $191,731 is allocated to the fourth judicial district department of correctional services for a drug court program.

d. Of the funds appropriated in this subsection, $255,693 is allocated to the fifth judicial district department of correctional services to replace expired funding for the drug court program.

e. Of the funds appropriated in this subsection, $370,000 is allocated to the Newton correctional facility for a value-based treatment program. **Of the funds allocated in this paragraph, $60,000 shall be used to operate a similar value-based treatment program at the Iowa correctional institution for women at Mitchellville. Moneys allocated for the program at Mitchellville that remain unencumbered or unobligated for that purpose at the close of the fiscal year shall revert.**

8. To the department for the blind:

..... $ 130,000

To plan, establish, administer, and promote a statewide program to provide audio news and information services to blind or visually impaired persons residing in this state.

Sec. 2. PURCHASE OF SERVICE CONTRACT PROVIDERS — REIMBURSEMENT INCREASE. There is appropriated from the healthy Iowans tobacco trust created in section 12.65 to the property tax relief fund created in section 426B.1 for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For assistance to the counties with limited county mental health, mental retardation, and developmental disabilities services fund balances which were selected in accordance with 2000 Iowa Acts, chapter 1221, section 3, to receive such assistance in the same amount provided during the fiscal year beginning July 1, 2000, and ending June 30, 2001, to pay reimbursement increases in accordance with 2000 Iowa Acts, chapter 1221, section 3:

..... $ 146,750

Sec. 3. IOWA EMPOWERMENT FUND. There is appropriated from the healthy Iowans tobacco trust created in section 12.65, to the Iowa empowerment fund created in section 28.9

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[1] Chapter 1034 herein

* Item veto; see message at end of the Act

for the fiscal year beginning July 1, 2004, and ending June 30, 2005, for deposit in the school ready children grants account and for distribution as provided in this section:
. . . . . $ 2,153,250

Sec. 4. DEPARTMENT OF CORRECTIONS — SPECIAL NEEDS UNIT. There is appropriated from the healthy Iowans tobacco trust created in section 12.65, to the department of corrections for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For operating the special needs unit at the Fort Madison correctional facility:
. . . . . $ 1,187,285

Sec. 5. ENDOWMENT FOR IOWA'S HEALTH ACCOUNT — TRANSFER. In addition to the amount transferred pursuant to section 12E.12, subsection 1, paragraph "b", subparagraph (2), subparagraph subdivision (b), $6,316,077 is transferred from the endowment for Iowa's health account of the tobacco settlement trust fund created in section 12E.12 to the healthy Iowans tobacco trust created in section 12.65 for the fiscal year beginning July 1, 2004, and ending June 30, 2005.

Sec. 6. Section 142A.3, subsection 2, Code 2003, is amended to read as follows:

2. A commission on tobacco use prevention and control is established to develop policy, provide direction for the initiative, and perform all other duties related to the initiative and other tobacco use prevention and control activities as directed by this chapter or referred to the commission by the director of public health.

Sec. 7. Section 142A.4, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 12A. Represented by the chairperson of the commission, annually appear before the joint appropriations subcommittee that makes recommendations concerning the commission's budget to report on budget expenditures and division operations relative to the prior fiscal year and the current fiscal year.

Sec. 8. Section 142A.5, subsection 1, paragraph b, Code Supplement 2003, is amended to read as follows:

b. Employ a separate division administrator ~~who~~, in accordance with the requirements of section 142A.4, subsection 14, in a full-time equivalent position whose sole responsibility and duty shall be ~~responsible for~~ the administration and oversight of the division. The division administrator shall report to and shall serve at the pleasure of the director. The administrator shall be exempt from the merit system provisions of chapter 8A, subchapter IV.

Sec. 9. Section 142A.5, subsection 2, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. Provide necessary information to the commission to assist the commission in making its annual report to the joint appropriations subcommittee pursuant to section 142A.4, subsection 12A, and in fulfilling other commission duties pursuant to section 142A.4.

Sec. 10. Section 216B.3, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 18. Plan, establish, administer, and promote a statewide program to provide audio news and information services to blind or visually impaired persons residing in this state.

a. The commission may enter into necessary contracts and arrangements with the national federation for the blind to provide for the delivery of newspapers over the telephone, furnished by the national federation for the blind.

b. The commission may enter into necessary contracts and arrangements with the Iowa radio reading information service for the blind and print handicapped to provide for the delivery

of newspapers, magazines, and other printed materials over the radio, furnished by the Iowa radio reading information service for the blind and print handicapped.

Sec. 11. Section 216B.4, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The director may accept financial aid from the government of the United States for carrying out rehabilitation and physical restoration of the blind and for providing library, news, and information services to persons who are blind and persons with physical disabilities.

Sec. 12. Section 234.39, subsection 6, if enacted by 2004 Iowa Acts, Senate File 2298,[2] is amended by striking the subsection.

Sec. 13. Section 272C.3, subsection 1, paragraph k, Code Supplement 2003, is amended to read as follows:

k. Establish a licensee review committee for the purpose of evaluating and monitoring licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability, and who self-report the impairment to the committee, or who are referred by the board to the committee. Members of the committee shall receive actual expenses for the performance of their duties and shall be eligible to receive per diem compensation pursuant to section 7E.6. The board shall adopt rules for the establishment and administration of the committee, including but not limited to establishment of the criteria for eligibility for referral to the committee and the grounds for disciplinary action for noncompliance with committee decisions. Information in the possession of the board or the licensee review committee, under this paragraph, shall be subject to the confidentiality requirements of section 272C.6. Referral of a licensee by the board to a licensee review committee shall not relieve the board of any duties of the board and shall not divest the board of any authority or jurisdiction otherwise provided. A licensee who violates section 272C.10 or the rules of the board while under review by the licensee review committee shall be referred to the board for appropriate action.

Sec. 14. 2003 Iowa Acts, chapter 183, section 1, subsection 5, paragraph b, is amended to read as follows:

b. For a grant to a program that utilizes high school mentors to teach life skills, violence prevention, and character education in an effort to reduce the illegal use of alcohol, tobacco, and other substances:

. . . . . $ 400,000

(1) The program described in this paragraph "b" shall meet all of the following requirements:

(a) The program shall be a statewide mentoring program that is an alternative to mentoring programs that utilize the standards of effective practice.

(b) The program shall contract with a university to assist in curriculum development and performance evaluation.

(c) The program shall provide for some level of public-private partnership.

(d) The program shall obtain the assistance of the Iowa department of public health in the development of the performance evaluation design.

(e) The program shall demonstrate improvement in meeting the current standards.

(2) The Iowa department of public health shall negotiate a sole source contract with a nonprofit corporation that mentors through live music and receives funds through private partnership to implement this paragraph "b".

(3) The Iowa department of public health may use up to $50,000 of the moneys appropriated under this paragraph "b" to provide technical assistance to and monitoring of the program.

(4) Notwithstanding section 8.33, moneys appropriated under this paragraph "b" that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for the purpose designated in the succeeding fiscal year.

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[2] See chapter 1175, §149 herein

Sec. 15. EFFECTIVE DATE. The section of this Act amending 2003 Iowa Acts, chapter 183, being deemed of immediate importance, takes effect upon enactment.

Approved May 17, 2004, with exception noted.

THOMAS J. VILSACK, *Governor*

Dear Mr. Secretary:

I hereby transmit House File 2577, an Act relating to and making appropriations from the healthy Iowans tobacco trust and the tobacco settlement trust fund and providing an effective date.

House File 2577 is approved on this date with the following exceptions, which I hereby disapprove.

I approve Section 8, which requires the Department of Public Health to provide a separate division administrator for the Division of Tobacco Use Prevention and Control. I fully recognize the importance of focusing on the importance of preventing and reducing tobacco use and appreciate the interest of stakeholders in maintaining a separate division administrator. However, I retain this language with some reservation. I am concerned that this new position may not be the most efficient use of tobacco prevention dollars. The tobacco division consists of nine employees and two vacant positions, which does not meet the span-of-control goal of 1:12. The next smallest division in the Department has four times as many employees, and all of the other divisions have multiple programs. Over the last two years, the Legislature has decreased the budget of the tobacco division by 40 percent. I am hopeful that this language marks a shift in legislative priorities and that the Legislature will restore these funds and provide a strong fiscal commitment to reducing tobacco use. Without an accompanying financial commitment, this language and the new division administrator are primarily a symbolic act.

I am unable to approve the item designated as a portion of Section 1, subsection 7, paragraph e. This language requires allocation of funds for the implementation of a treatment program at the Iowa Correctional Institution for Women in Mitchellville. A similar value-based treatment program at the Newton Correctional Facility is the subject of a constitutional challenge currently before the U.S. District Court. In order to avoid expansion of potential liability, state appropriations for value-based treatment programming should not be expanded to other correctional institutions until the courts resolve this issue.

I approve the items designated as Section 14 and Section 15, which direct the Department of Public Health to issue a $400,000 contract to a specific program targeted towards prevention efforts with Iowa youth. I support mentoring programs that focus on violence prevention and efforts to reduce the illegal use of alcohol, tobacco, and other substances among our youth. By preventing such acts, we save kids from a lot of pain and we save lives. However, I retain this language with some reservation. First, it is difficult to justify a sole source contract when there are other qualified organizations that would be denied any opportunity to bid on such a large contract. Furthermore, I expect this program to demonstrate its effectiveness through an independent evaluation. Certified mentoring programs in Iowa are required to meet standards of effective practice, and I expect the same of this program.

For the above reasons, I respectfully disapprove of the designated items in accordance with Article III, Section 16 of the Constitution of the State of Iowa. All other items in House File 2577 are hereby approved as of this date.

Sincerely,
THOMAS J. VILSACK, *Governor*

CHAPTER 1177

APPROPRIATIONS — TRANSPORTATION

S.F. 2112

AN ACT relating to and making transportation and other infrastructure-related appropriations to the state department of transportation, including allocation and use of moneys from the road use tax fund, the primary road fund, and the keep Iowa beautiful fund, and providing for the nonreversion of certain moneys.

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

Section 1. There is appropriated from the road use tax fund to the state department of transportation for the fiscal year beginning July 1, 2004, and ending June 30, 2005, 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 driver's licenses, as defined in section 321.1, subsection 20A:

. . . . . $ 2,820,000

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2005, from the appropriation made in this subsection shall not revert, but shall remain available for subsequent fiscal years for the purposes specified in this subsection.

2. For salaries, support, maintenance, and miscellaneous purposes:

a. Operations and finance:

. . . . . $ 5,357,153

b. Administrative services:

. . . . . $ 553,964

c. Planning:

. . . . . $ 460,225

d. Motor vehicles:

. . . . . $ 30,378,726

3. For payments to the department of administrative services for expenses incurred in administering the merit system on behalf of the state department of transportation, as required by chapter 19A:

. . . . . $ 37,500

4. Unemployment compensation:

. . . . . $ 17,000

5. For payments to the department of administrative services for paying workers' compensation claims under chapter 85 on behalf of employees of the state department of transportation:

. . . . . $ 95,000

6. For payment to the general fund of the state for indirect cost recoveries:

. . . . . $ 102,000

7. For reimbursement to the auditor of state for audit expenses as provided in section 11.5B:

. . . . . $ 54,314

8. For automation, telecommunications, and related costs associated with the county issuance of driver's licenses and vehicle registrations and titles:

. . . . . $ 1,096,000

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 costs associated with the participation in the Mississippi river parkway commission:

. . . . . $ 40,000

11. For membership in the North America's superhighway corridor coalition:

. . . . . $ 50,000

Sec. 2. There is appropriated from the primary road fund to the state department of transportation for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

1. For salaries, support, maintenance, and miscellaneous purposes and for not more than the following full-time equivalent positions:

a. Operations and finance:

..... $ 32,758,225
..... FTEs 271

b. Administrative services:

..... $ 3,402,920
..... FTEs 37

c. Planning:

..... $ 8,744,293
..... FTEs 142

d. Highways:

..... $ 180,300,015
..... FTEs 2,464

e. Motor vehicles:

..... $ 1,226,838
..... FTEs 507

2. For payments to the department of administrative services for expenses incurred in administering the merit system on behalf of the state department of transportation, as required by chapter 19A:

..... $ 712,500

3. Unemployment compensation:

..... $ 328,000

4. For payments to the department of administrative services for paying workers' compensation claims under chapter 85 on behalf of the employees of the state department of transportation:

..... $ 2,268,000

5. For disposal of hazardous wastes from field locations and the central complex:

..... $ 800,000

6. For payment to the general fund for indirect cost recoveries:

..... $ 748,000

7. For reimbursement to the auditor of state for audit expenses as provided in section 11.5B:

..... $ 336,036

8. For costs associated with producing transportation maps:

..... $ 275,000

9. For Ames complex facilities improvements:

..... $ 650,000

10. For deferred maintenance projects at field facilities throughout the state:

..... $ 351,500

Notwithstanding section 8.33, moneys appropriated in subsections 9 and 10 that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the fiscal year that begins July 1, 2007.

Sec. 3. Section 314.28, Code 2003, is amended to read as follows:

314.28 KEEP IOWA BEAUTIFUL FUND.

A keep Iowa beautiful fund is created in the office of the treasurer of state. The fund is composed of moneys appropriated or available to and obtained or accepted by the treasurer of state for deposit in the fund. The fund shall include moneys ~~credited~~ transferred to the fund as provided in section 422.12A. All interest earned on moneys in the fund shall be credited to and remain in the fund. Section 8.33 does not apply to moneys in the fund.

Moneys in the fund ~~are subject to appropriation by the general assembly annually for the purposes of educating and encouraging~~ that are authorized by the department for expenditure are appropriated, and shall be used, to educate and encourage Iowans to take greater responsibility for improving their community environment and enhancing the beauty of the state through litter prevention, improving waste management and recycling efforts, and beautification projects.

The department may authorize payment of moneys ~~appropriated~~ from the fund ~~to the department~~ upon approval of an application from a private or public organization. The applicant shall submit a plan for litter prevention, improving waste management and recycling efforts, or a beautification project along with its application. The department shall establish standards relating to the type of projects available for assistance.

Sec. 4. Section 422.12A, subsections 2 and 3, Code Supplement 2003, are amended to read as follows:

2. The director of revenue shall draft the income tax form to allow the designation of contributions to the keep Iowa beautiful fund on the tax return. The department of revenue, on or before January 31, shall ~~certify~~ transfer the total amount designated on the tax return forms due in the preceding calendar year ~~and shall report the amount to the treasurer of state~~ to the keep Iowa beautiful fund. ~~The treasurer of state shall credit the amount to the keep Iowa beautiful fund.~~ However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of revenue and accounts identified as owing under section 421.17 and the political contribution allowed under section 68A.601 shall be satisfied.

3. ~~Moneys in the fund are subject to appropriation as provided in section 314.28.~~ The state department of transportation may authorize payment of moneys from the keep Iowa beautiful fund, in accordance with section 314.28.

Approved May 19, 2004

CHAPTER 1178

WORLD FOOD PRIZE AWARDS CEREMONY

S.J.R. 2007

A JOINT RESOLUTION authorizing the temporary use and consumption of wine in the State Capitol in conjunction with the awards ceremony of the World Food Prize Foundation.

WHEREAS, the State of Iowa has the honor of being the home of the World Food Prize Foundation which annually presents an international award recognizing outstanding individual achievement in improving the quality, quantity, or availability of food in the world; and

WHEREAS, Iowa's unique State Capitol is an optimal location for this awards ceremony of the World Food Prize Foundation and previously served as the ceremony location; and

WHEREAS, wine is customarily served as an accompaniment to the food and entertainment provided at this type of awards ceremony and wine was served when the ceremony was previously held at the State Capitol; and

WHEREAS, under 11 IAC 100.4(8), which prohibits the consumption of alcoholic beverages on the capitol complex, it is not possible to serve wine at this type of awards ceremony in the State Capitol; NOW THEREFORE,

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

Section 1. Notwithstanding 11 IAC 100.4(8) and any contrary provisions of chapter 123,

prohibiting the use and consumption of alcoholic beverages in public places, wine may be used and consumed within the state capitol at an awards ceremony, to be held on or around October 14, 2004, hosted and organized in whole or in part by the world food prize foundation if the person providing the food and wine at the awards ceremony possesses an appropriate valid liquor control license. For the purpose of this section and section 123.95, the state capitol is a private place.

Approved March 29, 2004

CHAPTER 1179

ANNUAL MEETING OF MIDWESTERN LEGISLATIVE CONFERENCE
OF COUNCIL OF STATE GOVERNMENTS

H.J.R. 2005

A JOINT RESOLUTION authorizing the temporary use and consumption of wine and beer in the State Capitol in conjunction with the 2004 annual meeting of the Midwestern Legislative Conference of the Council of State Governments.

WHEREAS, the State of Iowa is honored to host the Midwestern Legislative Conference of the Council of State Governments in Des Moines, Iowa, on July 11 through 14, 2004; and

WHEREAS, this prestigious regional meeting offers an opportunity to develop and maintain contact among legislators, public officials, and the private sector from the states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin; and

WHEREAS, social events are held in conjunction with the business sessions of this annual meeting, and Iowa's unique State Capitol is an optimal location for one of the social events for this national meeting; and

WHEREAS, wine and beer are customarily served as an accompaniment to the food and entertainment provided at such social events; and

WHEREAS, under 11 IAC 100.4(8), which prohibits the consumption of alcoholic beverages on the capitol complex, it is not possible to serve wine and beer at social events in the State Capitol; NOW THEREFORE,

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

Section 1. Notwithstanding 11 IAC 100.4(8) and any contrary provisions of chapter 123, prohibiting the use and consumption of alcoholic beverages in public places, wine and beer may be used and consumed within the State Capitol at a social event, to be held on or around July 13, 2004, hosted by the State of Iowa in conjunction with the 2004 Midwestern Legislative Conference of the Council of State Governments, if the person providing the food and beverages at the social event possesses the appropriate valid liquor control license. For the purposes of this section and section 123.95, the State Capitol is a private place.

Approved March 29, 2004

CHAPTER 1180

ANNUAL MEETING OF MIDAMERICAN CHAPTER
OF AMERICAN ASSOCIATION OF LAW LIBRARIANS

S.J.R. 2009

A JOINT RESOLUTION authorizing the temporary use and consumption of wine in the State Capitol in conjunction with the 2004 annual meeting of the MidAmerican Chapter of the American Association of Law Librarians.

WHEREAS, the MidAmerican Chapter of the American Association of Law Librarians is a prestigious group representing information resource specialists in all areas of research in both the public and private sectors; and

WHEREAS, the annual meeting of the MidAmerican Chapter of the American Association of Law Librarians addresses the major issues facing libraries, staff, and library users at all levels; and

WHEREAS, wine is customarily served at social events for member participants attending the annual meeting; and

WHEREAS, under 11 IAC 100.4(8), which prohibits the consumption of alcoholic beverages on the capitol complex, it is not possible to serve wine at social events in the State Capitol; NOW THEREFORE,

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

Section 1. Notwithstanding 11 IAC 100.4(8) and any contrary provisions of chapter 123, prohibiting the use and consumption of alcoholic beverages in public places, wine may be used and consumed within the State Capitol at a social event, to be held on or around October 15, 2004, hosted by local membership committees in conjunction with the 2004 Annual Meeting of the MidAmerican Chapter of the American Association of Law Librarians, if the person providing the food and wine at the social event possesses the appropriate valid liquor control license. For the purposes of this section and section 123.95, the State Capitol is a private place.

Approved April 2, 2004

CHAPTER 1181

PROPOSED CONSTITUTIONAL AMENDMENT
— TAX OR FEE INCREASES

S.J.R. 2010

First Time Passed

A JOINT RESOLUTION proposing an amendment to the Constitution of the State of Iowa to require approval by vote of the people before certain tax or fee increases take effect.

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:

The Constitution of the State of Iowa is amended by adding the following new sections to new Article XIII:

ARTICLE XIII
PEOPLE'S RIGHT TO VOTE ON TAX OR FEE INCREASES

PEOPLE'S RIGHT TO VOTE ON TAX OR FEE INCREASES. SECTION 1. If all tax and fee increases adopted in a fiscal year would produce new annual revenue exceeding one percent of total state general fund revenue received in the preceding fiscal year, excluding transfers from other state funds, the increases shall be submitted to the electors, starting with the largest increase and including increases in descending order, except the remaining increases that total one percent or less. All increases of any one tax or fee shall together be regarded as one increase. An adopted tax or fee increase required by this article to be submitted to the electors shall take effect only if submitted to the electors at the next state general election and approved by a majority of the electors voting thereon.

APPLICATION. SEC. 2. In this article:

1. "Local governments" includes all political subdivisions.
2. "Increase" includes, but is not limited to, imposing a new tax or fee; raising a rate or amount; repealing, reducing, or delaying an exemption, deduction, credit, exclusion, reduction, or indexing requirement; or broadening the base or scope of a tax or fee in any way.
3. "Increase" includes legislation that allows or requires one or more local governments, with or without approval by local electors, to impose or increase any tax on income, sales, or property, but excludes legislation in which the only subject matter is establishment of the state percentage of growth for school foundation aid.
4. "Increase" of property tax includes legislation that has the effect of reducing total state funds transferred to all local governments in a fiscal year in comparison with the preceding fiscal year, taking into account all legislation increasing or reducing such transfers.
5. "Increase" of property tax includes legislation that has the effect of requiring local governments to incur aggregate net cost increases in a fiscal year, after deducting increased transfers of state funds for the express purpose of offsetting those cost increases. Such increased transfers shall be deducted under this subsection and not under subsection 4.
6. "New annual revenue" means the estimated net increase over the fiscal year preceding adoption in total state general fund revenue produced by the total of all tax and fee increases adopted in a fiscal year, less estimated refunds payable as a result of the increases, all as estimated for the fiscal year in which all such increases are adopted, as if all such increases and refunds were fully effective and entirely implemented for that full fiscal year. Actual amounts, if known, shall be used instead of estimates.
7. "Adopted" or "adoption" means that after 2006, a bill has been passed and all requirements of article III have been met, so that the bill would become law except for the requirements of this article.

8. This article does not apply to taxes and fees subject to article VII, sections 5 and 8.

EMERGENCY. SEC. 3. A temporary exception to the preceding requirements of this article shall be allowed only to this extent and only if all these conditions are met: (1) the Governor requests the General Assembly to adopt an emergency tax increase for only one specified fiscal year; (2) the request specifically states the nature of the emergency, the expenditures needed to respond to the emergency, and the proposed tax increase to pay for the emergency expenditures for that year; and (3) a law declaring an emergency and providing an emergency tax increase in accordance with the Governor's specific request is passed by a vote of two-thirds of all the members elected to each branch of the General Assembly and is approved by the Governor. Such law shall not be passed more than four months prior to the fiscal year to which it applies. Such law must be enacted prior to obligating any requested emergency expenditures.

ENFORCEMENT. SEC. 4. Any citizen or taxpayer may, within two years after a tax or fee increase is adopted, bring suit to enforce compliance with this article. If no such suit is filed within the two-year period, the elector approval requirement for that tax or fee increase is negated. The Supreme Court shall have original jurisdiction of any such suit. The Supreme Court shall invalidate any increase which should have been, but was not, submitted to the electors as required by this article and shall order that the revenue collected in violation of this article be refunded or applied to reduce future taxes. A citizen or taxpayer who brings suit and prevails shall receive from the state the costs of the suit, including reasonable attorney fees.

IMPLEMENTATION. SEC. 5. This article shall be interpreted and implemented to achieve its purpose to increase the electors' control of taxes and fees. The General Assembly shall enact laws to implement this article.

Sec. 2. REFERRAL AND PUBLICATION. The foregoing proposed 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 it to be published for three consecutive months previous to the date of that election as provided by law.

ANALYSIS OF TABLES

2004 REGULAR SESSION

CONVERSION TABLES OF SENATE AND HOUSE FILES AND JOINT RESOLUTIONS TO CHAPTERS OF THE ACTS OF THE GENERAL ASSEMBLY

2004 REGULAR SESSION

SENATE FILES

File No.	Acts Chapter	File No.	Acts Chapter	File No.	Acts Chapter
297	1132	2177	1059	2253	1007
371	1069	2179	1091	2257	1039
443	1148	2187	1022	2261	1008
2026	1133	2188	1020	2266	1071
2044	1063	2189	1005	2269	1083
2059	1171	2193	1060	2270	1149
2066	1113	2199	1016	2272	1084
2070	1013	2202	1023	2274	1049
2101	1057	2208	1082	2275	1150
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2119	1080	2213	1070	2288	1174
2149	1058	2215	1134	2289	1092
2153	1097	2217	1037	2290	1003
2154	1164	2224	1038	2291	1165
2166	1004	2234	1061	2296	1073
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2174	1047	2249	1056	2308	1123

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2039	1170	2350	1043	2490	1067
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2138	1040	2358	1044	2505	1155
2145	1074	2362	1031	2506	1036
2146	1064	2366	1115	2516	1054
2149	1041	2367	1106	2517	1078
2150	1151	2373	1018	2518	1143
2167	1026	2378	1166	2520	1046
2170	1050	2381	1032	2522	1055
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2241	1027	2419	1088	2553	1079
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7J.1(1) **S**	1086, §4
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8.57 **S**	1170, §3
8.57(5) **S**	1175, §321
8.59 **S**	1086, §5
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8A.322(1) **S**	1101, §8
8A.402(2c) **S**	1086, §7
8A.412(5) **S**	1101, §9
8A.412(19) **S**	1141, §1
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[2] The governor's message printed at the end of Senate File 2298 indicates these sections are item vetoed; however, these sections were not initialed and bracketed as item vetoed on the original enrolled Act

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2003 Acts, First Extraordinary Session, ch 1	1086, §59
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[3] Not enacted
[4] Not enacted

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1990 Acts, ch 1239, §21	1175, §124
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2001	15.281 – 15.288	1175, §52
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ACTS OF CONGRESS AND UNITED STATES CODE REFERRED TO — Continued

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[5] The governor's message printed at the end of Senate File 2298 indicates these sections are item vetoed; however, these sections were not initialed and bracketed as item vetoed on the original enrolled Act

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2004 First Extraordinary Session

of the

Eightieth General Assembly

of the

State of Iowa

HELD AT DES MOINES, THE CAPITAL OF THE STATE

FIRST EXTRAORDINARY SESSION HELD THE SEVENTH DAY OF SEPTEMBER, A.D. 2004
IN THE ONE HUNDRED FIFTY-EIGHTH YEAR OF THE STATE

CHAPTER 1001

MISCELLANEOUS ECONOMIC DEVELOPMENT, TAXATION,
REGULATORY, AND EMPLOYMENT-RELATED CHANGES

H.F. 2581

AN ACT concerning regulatory, taxation, and statutory requirements affecting individuals and business relating to economic development, workers' compensation, financial services, unemployment compensation employer surcharges, income taxation bonus depreciation and expensing allowances, and civil action appeal bonds, and including effective date, applicability, and retroactive applicability provisions.

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

DIVISION I
LEGISLATIVE FINDINGS

Section 1. LEGISLATIVE FINDINGS. It is the finding of the general assembly that the recent Iowa supreme court decision of Rants and Iverson v. Vilsack, No. 60/03-1948, June 16, 2004, has invalidated the proper enactment of provisions contained in 2003 Iowa Acts, First Extraordinary Session, chapter 1 (House File 692). It is the intent of the general assembly to reenact and reaffirm certain provisions of House File 692 that were published in the 2003 Iowa Code Supplement, including provisions that were subsequently amended in the 2004 regular session of the Eightieth General Assembly and validate contracts entered into in reliance on the enactment of provisions published in the 2003 Code Supplement.

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

DIVISION II
ENDOW IOWA GRANTS

Sec. 3. The following provisions, as published in Iowa Code Supplement 2003, pertaining to endow Iowa grants, are reaffirmed and reenacted:

1. Section 15E.301.
2. Section 15E.302.
3. Section 15E.303.
4. Section 15E.304.
5. Section 15E.306.

Sec. 4. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY PROVISIONS. This division of this Act, being deemed of immediate importance, takes effect upon enactment, and is retroactively applicable to January 1, 2003, for tax years beginning on or after that date.

DIVISION III
CIVIL ACTION APPEAL BONDS

Sec. 5. Section 625A.9, as published in Iowa Code Supplement 2003, pertaining to supersedeas bonds, is reaffirmed and reenacted.

Sec. 6. Section 625A.9, subsection 2, Code Supplement 2003, as reaffirmed and reenacted by this division of this Act, is amended to read as follows:

2. a. ~~If~~ Except as provided in paragraph "b", if the judgment or order appealed from is for money, such bond shall not exceed one hundred ten percent of the amount of the money judgment.

The court may set a bond in an amount in excess of one hundred ten percent of the amount of the money judgment upon making specific findings justifying such an amount, and in doing so, shall consider, but shall not be limited to consideration of, the following criteria:

(1) The availability and cost of the bond or other form of adequate security.

(2) The assets of the judgment debtor and of the judgment debtor's insurer or indemnitor, if any.

(3) The potential adverse effects of the bond on the judgment debtor, including, but not limited to, the potential adverse effects on the judgment debtor's employees, financial stability, and business operations.

(4) The potential adverse effects of the bond on the judgment creditor and third parties, including public entities.

(5) In a class action suit, the adequacy of the bond to compensate all members of the class.

b. Notwithstanding paragraph "a", in no case shall a bond exceed one hundred million dollars, regardless of the value of the money judgment. This limitation shall not apply in cases where the court finds that the defendant intentionally dissipated the defendant's assets outside the ordinary course of business for the purpose of evading payment of the judgment.

Sec. 7. 2004 Iowa Acts, Senate File 2306,[1] is repealed.

Sec. 8. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY PROVISIONS.

1. The section of this division of this Act reaffirming and reenacting section 625A.9, being deemed of immediate importance, takes effect upon enactment, and applies retroactively to July 1, 2003.

2. The section of this division of this Act amending section 625A.9, as reaffirmed and reenacted by this division of this Act, being deemed of immediate importance, takes effect upon enactment of this Act, and applies retroactively to cases pending and filed on or after April 20, 2004, and through June 15, 2004, and to cases pending or filed on or after June 16, 2004.

3. The section of this division of this Act repealing 2004 Iowa Acts, Senate File 2306,[2] being deemed of immediate importance, takes effect upon enactment.

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[1] 2004 Iowa Acts, Regular Session, chapter 1093 herein
[2] 2004 Iowa Acts, Regular Session, chapter 1093 herein

4. This section of this division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION IV
WORKERS' COMPENSATION

Sec. 9. Section 85.27, subsection 4, Code 2003, is amended to read as follows:

4. For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. If the employer chooses the care, the employer shall hold the employee harmless for the cost of care until the employer notifies the employee that the employer is no longer authorizing all or any part of the care and the reason for the change in authorization. An employer is not liable for the cost of care that the employer arranges in response to a sudden emergency if the employee's condition, for which care was arranged, is not related to the employment. The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care. In an emergency, the employee may choose the employee's care at the employer's expense, provided the employer or the employer's agent cannot be reached immediately. An application made under this subsection shall be considered an original proceeding for purposes of commencement and contested case proceedings under section 85.26. The hearing shall be conducted pursuant to chapter 17A. Before a hearing is scheduled, the parties may choose a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. The workers' compensation commissioner shall issue a decision within ten working days of receipt of an application for alternate care made pursuant to a telephone hearing or within fourteen working days of receipt of an application for alternate care made pursuant to an in-person hearing. The employer shall notify an injured employee of the employee's ability to contest the employer's choice of care pursuant to this subsection.

Sec. 10. Section 85.34, subsection 2, paragraph u, Code 2003, is amended to read as follows:

u. In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs "a" through "t" hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the ~~body of the injured~~ earning capacity that the employee ~~as a whole~~ possessed when the injury occurred.

Sec. 11. Section 85.34, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 7. SUCCESSIVE DISABILITIES.

a. An employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.

b. If an injured employee has a preexisting disability that was caused by a prior injury arising out of and in the course of employment with the same employer, and the preexisting disability was compensable under the same paragraph of section 85.34, subsection 2, as the employee's present injury, the employer is liable for the combined disability that is caused by the injuries, measured in relation to the employee's condition immediately prior to the first injury. In this instance, the employer's liability for the combined disability shall be considered to be

already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer.

If, however, an employer is liable to an employee for a combined disability that is payable under section 85.34, subsection 2, paragraph "u", and the employee has a preexisting disability that causes the employee's earnings to be less at the time of the present injury than if the prior injury had not occurred, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer minus the percentage that the employee's earnings are less at the time of the present injury than if the prior injury had not occurred.

c. A successor employer shall be considered to be the same employer if the employee became part of the successor employer's workforce through a merger, purchase, or other transaction that assumes the employee into the successor employer's workforce without substantially changing the nature of the employee's employment.

Sec. 12. Section 85.36, subsection 9, paragraph c, Code 2003, is amended by striking the paragraph.

Sec. 13. Section 85.70, Code 2003, is amended to read as follows:

85.70 ADDITIONAL PAYMENT FOR ATTENDANCE.

An employee who has sustained an injury resulting in permanent partial or permanent total disability, for which compensation is payable under this chapter, and who cannot return to gainful employment because of such disability, shall upon application to and approval by the workers' compensation commissioner be entitled to a ~~twenty-dollar~~ one hundred dollar weekly payment from the employer in addition to any other benefit payments, during each full week in which the employee is actively participating in a vocational rehabilitation program recognized by the vocational rehabilitation services division of the department of education. The workers' compensation commissioner's approval of such application for payment may be given only after a careful evaluation of available facts, and after consultation with the employer or the employer's representative. Judicial review of the decision of the workers' compensation commissioner may be obtained in accordance with the terms of the Iowa administrative procedure Act and in section 86.26. Such additional benefit payment shall be paid for a period not to exceed thirteen consecutive weeks except that the workers' compensation commissioner may extend the period of payment not to exceed an additional thirteen weeks if the circumstances indicate that a continuation of training will in fact accomplish rehabilitation.

Sec. 14. Section 86.12, as published in Iowa Code Supplement 2003, is reaffirmed and reenacted.

Sec. 15. Section 86.13A, as published in Iowa Code Supplement 2003, is reaffirmed and reenacted.

Sec. 16. Section 86.13A, unnumbered paragraph 2, Code Supplement 2003, as reaffirmed and reenacted by this Act, is amended to read as follows:

If during any fiscal year commencing after June 30, ~~2005~~ 2006, the general business practices of an employer or insurer result in the delay of the commencement of voluntary weekly compensation payments after the date specified in section 85.30 more frequently and for a longer number of days than the average number of days for the entire group of employers or insurers, the commissioner may impose an assessment on the employer or insurer payable to the second injury fund created in section 85.66. The amount of the assessment shall be ten dollars, multiplied by the average number of days that weekly compensation payments were delayed after the date specified in section 85.30, and multiplied by the number of injuries the employer or insurer reported during the fiscal year. Notwithstanding the foregoing, an assessment shall not be imposed if the employer or insurer commenced voluntary weekly compensa-

tion benefits within the time specified in section 85.30 for more than seventy-five percent of the injuries reported by the employer or insurer.

Sec. 17. Section 85.55, Code 2003, is repealed.

Sec. 18. EFFECTIVE DATE AND APPLICABILITY PROVISIONS. The sections of this division of this Act amending sections 85.27, 85.34, 85.36, and 85.70, and repealing section 85.55, being deemed of immediate importance, take effect upon enactment and apply to injuries occurring on or after that date.

Sec. 19. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY PROVISIONS. The sections of this division of this Act reaffirming and reenacting sections 86.12 and 86.13A and the section of this division of this Act amending section 86.13A as reaffirmed and reenacted, being deemed of immediate importance, take effect upon enactment and are retroactively applicable to injuries occurring on or after July 1, 2003.

Sec. 20. LEGISLATIVE INTENT. It is the intent of the general assembly that this division of this Act will prevent all double recoveries and all double reductions in workers' compensation benefits for permanent partial disability. This division modifies the fresh start and full responsibility rules of law announced by the Iowa supreme court in a series of judicial precedents.

The general assembly recognizes that the amount of compensation a person receives for disability is directly related to the person's earnings at the time of injury. The competitive labor market determines the value of a person's earning capacity through a strong correlation with the level of earnings a person can achieve in the competitive labor market. The market reevaluates a person as a working unit each time the person competes in the competitive labor market, causing a fresh start with each change of employment. The market's determination effectively apportions any disability through a reduced level of earnings. The market does not reevaluate an employee's earning capacity while the employee remains employed by the same employer.

The general assembly intends that an employer shall fully compensate all of an injured employee's disability that is caused by work-related injuries with the employer without compensating the same disability more than once. This division of this Act creates a formula that applies disability payments made toward satisfaction of the combined disability that the employer is liable for compensating, while taking into account the impact of the employee's earnings on the amount of compensation to be ultimately paid for the disability.

The general assembly does not intend this division of this Act to change the character of any disability from scheduled to unscheduled or vice versa or to combine disabilities that are not otherwise combined under law existing on the effective date of this section of this division of this Act. Combination of successive scheduled disabilities in section 85.34, subsection 7, as enacted in this division of this Act, is limited to disabilities affecting the same member, such as successive disabilities to the right arm. A disability to the left arm that is followed by a disability to the right arm is governed by section 85.64 and is not a successive disability under this division. This division does not alter benefits under the second injury fund, benefits for permanent total disability under section 85.34, subsection 3, the method of determining the degree of unscheduled permanent partial disability, the compensable character of aggravation injuries, or an employer's right to choose the care an injured employee receives, expand the fresh start rule to scheduled disabilities, or change existing law in any way that is not expressly provided in this division.

The general assembly intends that changes in the identity of the employer that do not require the employee to reenter the competitive labor market will be treated as if the employee remained employed by the same employer.

Sec. 21. EFFECTIVE DATE. Unless otherwise provided, this division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION V
FINANCIAL SERVICES

Sec. 22. The following provisions, as published in Iowa Code Supplement 2003, pertaining to financial services, are reaffirmed and reenacted:

1. Section 537.2502, subsections 3 and 6.
2. Section 537.2601, subsection 1.

Sec. 23. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY PROVISIONS. This division of this Act, being deemed of immediate importance, takes effect upon enactment, and is retroactively applicable to July 1, 2003.

DIVISION VI
LOAN AND CREDIT GUARANTEE PROGRAM

Sec. 24. The following provisions, as published in Iowa Code Supplement 2003, pertaining to the economic development loan and credit guarantee program, are reaffirmed and reenacted:

1. Section 15E.221.
2. Section 15E.222.
3. Section 15E.223.
4. Section 15E.224.
5. Section 15E.225.

Sec. 25. Section 15E.223, subsection 4, Code Supplement 2003, as reaffirmed and reenacted by this division of this Act, is amended to read as follows:

4. "Targeted industry business" means an existing or proposed business entity, including an emerging small business or qualified business which is operated for profit and which has a primary business purpose of doing business in at least one of the targeted industries designated by the department which include life sciences, software and information technology, advanced manufacturing, value-added agriculture, and any other industry designated as a targeted industry by the ~~loan and credit guarantee advisory board~~ department.

Sec. 26. Section 15E.224, subsections 1, 3, 5, and 7, Code Supplement 2003, as reaffirmed and reenacted by this division of this Act, are amended to read as follows:

1. The department shall~~, with the advice of the loan and credit guarantee advisory board,~~ establish and administer a loan and credit guarantee program. The department, pursuant to agreements with financial institutions, shall provide loan and credit guarantees, or other forms of credit guarantees for qualified businesses and targeted industry businesses for eligible project costs. A loan or credit guarantee provided under the program may stand alone or may be used in conjunction with or to enhance other loans or credit guarantees offered by private, state, or federal entities. The department may purchase insurance to cover defaulted loans meeting the requirements of the program. However, the department shall not in any manner directly or indirectly pledge the credit of the state. Eligible project costs include expenditures for productive equipment and machinery, working capital for operations and export transactions, research and development, marketing, and such other costs as the department may so designate.

3. In administering the program, the department shall consult and cooperate with financial institutions in this state ~~and with the loan and credit guarantee advisory board~~. Administrative procedures and application procedures, as practicable, shall be responsive to the needs of qualified businesses, targeted industry businesses, and financial institutions, and shall be consistent with prudent investment and lending practices and criteria.

5. The department~~, with the advice of the loan and credit guarantee advisory board,~~ shall adopt a loan or credit guarantee application procedure for a financial institution on behalf of a qualified business or targeted industry business.

7. The department~~, with the advice of the loan and credit guarantee advisory board,~~ may adopt loan and credit guarantee application procedures that allow a qualified business or targeted industry business to apply directly to the department for a preliminary guarantee commitment. A preliminary guarantee commitment may be issued by the department subject to the qualified business or targeted industry business securing a commitment for financing from a financial institution. The application procedures shall specify the process by which a financial institution may obtain a final loan and credit guarantee.

Sec. 27. Section 15E.225, subsections 1 and 2, Code Supplement 2003, as reaffirmed and reenacted by this division of this Act, are amended to read as follows:

1. When entering into a loan or credit guarantee agreement, the department~~, with the advice of the loan and credit guarantee advisory board,~~ shall establish fees and other terms for participation in the program by qualified businesses and targeted industry businesses.

2. The department, with due regard for the possibility of losses and administrative costs ~~and with the advice of the loan and credit guarantee advisory board~~, shall set fees and other terms at levels sufficient to assure that the program is self-financing.

Sec. 28. Section 15E.227, subsection 2, paragraph c, Code Supplement 2003, is amended by striking the paragraph.

Sec. 29. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY PROVISIONS. This division of this Act, being deemed of immediate importance, takes effect upon enactment, and is retroactively applicable to July 1, 2003.

DIVISION VII
ADMINISTRATIVE CONTRIBUTION SURCHARGE

Sec. 30. Section 96.9, subsection 8, paragraph e, Code Supplement 2003, is amended to read as follows:

e. Moneys from interest earned on the unemployment compensation reserve fund shall be used by the department only upon appropriation by the general assembly ~~and only for purposes contained in section 96.7, subsection 12, for department of workforce development rural satellite offices,~~ and for administrative costs to collect the reserve contributions.

Sec. 31. CODE EDITOR'S REMOVAL OF SECTION 96.7, SUBSECTION 12, FROM CODE. Consistent with the Iowa supreme court decision of Rants and Iverson v. Vilsack, No. 60/03-1948, June 16, 2004, the general assembly acknowledges the Code editor's removal of section 96.7, subsection 12, relating to the administrative contribution surcharge and fund, from the Code, due to the subsection's repeal effective July 1, 2003.

Sec. 32. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment and applies retroactively to July 1, 2003.

DIVISION VIII
MARKETING

Sec. 33. Section 15G.109, as published in Iowa Code Supplement 2003, pertaining to the economic development marketing board, is reaffirmed and reenacted.

Sec. 34. Section 15G.109, subsections 1, 2, and 5, Code Supplement 2003, as reaffirmed and reenacted by this division of this Act, are amended by striking the subsections.

Sec. 35. Section 15G.109, subsections 3 and 4, Code Supplement 2003, as reaffirmed and reenacted by this division of this Act, are amended to read as follows:

~~3.~~ The department of economic development ~~marketing board~~ shall accept proposals for

marketing strategies for purposes of selecting a strategy for the department to administer. The marketing strategies shall be designed to market Iowa as a lifestyle, increase the population of the state, increase the wealth of Iowans, and expand and stimulate the state economy. ~~The economic development marketing board shall submit a recommendation regarding the proposal to the grow Iowa values board. In selecting a marketing strategy for recommendation, the economic development marketing board shall base the selection on the goals and performance measures provided in section 15G.107. The grow Iowa values board shall either approve or deny the recommendation.~~ The department shall select and approve a proposal that meets the requirements of this subsection.

~~4.~~ The department shall implement and administer the approved marketing strategy ~~approved by the grow Iowa values board as provided in subsection 3. The department shall provide the economic development marketing board with assistance in implementing administrative functions of the board and provide technical assistance to the board.~~

Sec. 36. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY. This division of this Act, being deemed of immediate importance, takes effect upon enactment. The section of this division of this Act reaffirming and reenacting Code section 15G.109 is retroactively applicable to July 1, 2003.

DIVISION IX
INCOME TAXATION
BONUS DEPRECIATION AND EXPENSING ALLOWANCE

Sec. 37. Section 422.3, subsection 5, Code Supplement 2003, is amended to read as follows:

5. "Internal Revenue Code" means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 1, 2003, and as amended by Pub. L. No. 108-27, section 202, whichever is applicable.

Sec. 38. Section 422.7, subsection 39, Code Supplement 2003, is amended to read as follows:

39. a. The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 107-147, section 101, does not apply in computing net income for state tax purposes. If the taxpayer has taken such deduction in computing federal adjusted gross income, the following adjustments shall be made:

~~a.~~ (1) Add the total amount of depreciation taken on all property for which the election under section 168(k) of the Internal Revenue Code was made for the tax year.

~~b.~~ (2) Subtract an amount equal to depreciation ~~taken~~ allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k).

~~c.~~ (3) Any other adjustments to gains or losses to reflect the adjustments made in ~~paragraphs "a" and "b"~~ subparagraphs (1) and (2) pursuant to rules adopted by the director.

b. The additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code, as enacted by Pub. L. No. 108-27, shall apply in computing net income for state tax purposes, for qualified property acquired after May 5, 2003, and before January 1, 2005.

Sec. 39. Section 422.32, subsection 7, Code Supplement 2003, is amended to read as follows:

7. "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, 2003, and as amended by Pub. L. No. 108-27, section 202, whichever is applicable.

Sec. 40. Section 422.35, subsection 19, Code Supplement 2003, is amended to read as follows:

19. a. The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 107-147, section 101, does not apply in computing net income for state tax purposes. If the taxpayer has taken such deduction in computing taxable income, the following adjustments shall be made:

~~a.~~ (1) Add the total amount of depreciation taken on all property for which the election under section 168(k) of the Internal Revenue Code was made for the tax year.

~~b.~~ (2) Subtract an amount equal to depreciation ~~taken~~ allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k).

~~c.~~ (3) Any other adjustments to gains or losses to reflect the adjustments made in ~~paragraphs "a" and "b"~~ subparagraphs (1) and (2) pursuant to rules adopted by the director.

b. The additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code, as enacted by Pub. L. No. 108-27, shall apply in computing net income for state tax purposes, for qualified property acquired after May 5, 2003, and before January 1, 2005.

Sec. 41. RETROACTIVE APPLICABILITY.

1. The sections of this division of this Act amending section 422.7, subsection 39, and section 422.35, subsection 19, apply retroactively to tax years ending after May 5, 2003.

2. The sections of this division of this Act amending sections 422.3, subsection 5, and 422.32, subsection 7, apply retroactively to January 1, 2003, for tax years beginning on or after that date.

Sec. 42. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION X
ADVISORY CAPACITY OF BOARDS

Sec. 43. ADVISORY CAPACITY OF BOARDS. For only the fiscal year beginning July 1, 2004, and ending June 30, 2005, the establishment and existence of the grow Iowa values board, the economic development marketing board, and the loan and credit guarantee advisory board, as provided for in 2003 Iowa Acts, First Extraordinary Session, chapter 1 (House File 692), are validated. However, the boards shall serve only in an advisory capacity to the department of economic development. The composition of the boards shall consist of the membership in existence on June 15, 2004.

Sec. 44. EFFECTIVE DATE PROVISION. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

Approved September 7, 2004

CHAPTER 1002

WORKFORCE AND ECONOMIC DEVELOPMENT APPROPRIATIONS AND RELATED CHANGES

S.F. 2311

AN ACT relating to appropriations for economic development purposes, workforce development field offices, workforce training and economic development funds of community colleges, and including effective date and retroactive applicability provisions.

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

DIVISION I
APPROPRIATION RELATED

Section 1. CONTRACT OR APPROVED PROJECT OR ACTIVITY VALIDATION. Any contract or approved project or activity originally funded or intended to be funded in whole or in part with moneys from the grow Iowa values fund, and entered into or approved by the department of economic development or the grow Iowa values board after June 30, 2003, and before June 16, 2004, in reliance on the publication of law implementing the grow Iowa values fund in the 2003 Code Supplement and 2003 Iowa Acts, is valid and enforceable to the full extent of the law. The Iowa supreme court decision in Rants and Iverson v. Vilsack, No. 60/03-1948, June 16, 2004, and the provisions of this Act shall not in themselves constitute grounds for recision or modification of such contracts or approved projects or activities. This Act provides appropriations to fund these contracts or approved projects or activities.

Sec. 2. ECONOMIC DEVELOPMENT APPROPRIATIONS.

1. There is appropriated from the fund created in subsection 2, to the following designated entities and funds for the fiscal year beginning July 1, 2004, and ending June 30, 2005, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

a. (1) To the department of economic development for marketing strategies for the state:
. . . . . $ 6,782,949

(2) Of the amount appropriated in subparagraph (1), $6,771,417 shall be expended pursuant to contracts or approved projects or activities validated in this division of this Act.

b. (1) To the department of economic development for financial assistance and incentives to businesses under programs currently existing which are administered by the department:
. . . . . $ 61,045,652

(2) Of the amount appropriated in subparagraph (1), $36,915,343 shall be expended pursuant to contracts or approved projects or activities validated in this division of this Act.

(3) In addition to the amount appropriated in subparagraph (1), $700,000 of any interest or earnings on moneys in the fund created in subsection 2 which are credited to the fund shall be appropriated to the department for the purposes specified in subparagraph (1).

c. To the department of economic development for providing financial assistance for projects in targeted state parks and destination parks pursuant to contracts or approved projects or activities validated in this division of this Act:
. . . . . $ 475,806

d. (1) For deposit in the loan and credit guarantee fund created in section 15E.227:
. . . . . $ 5,728,402

(2) Of the amount appropriated in subparagraph (1), $1,785 shall be expended pursuant to contracts or approved projects or activities validated in this division of this Act.

e. To the department of economic development for financial assistance for institutions of higher learning under the control of the board of regents and for accredited private institutions pursuant to contracts or approved projects or activities validated in this division of this Act:
. . . . . $ 10,058,162

f. (1) To the department of economic development for deposit into the workforce training and economic development funds of the community colleges pursuant to section 260C.18A:
. . . . . $ 3,848,668

(2) Of the amount appropriated in subparagraph (1), $742,608 shall be expended pursuant to contracts or approved projects or activities validated in this division of this Act.

g. To the department of economic development for deposit into the workforce training and economic development funds of the community colleges created in section 260C.18A for purposes of the job retention program pursuant to section 260F.9:
. . . . . $ 1,000,000

h. To the department of economic development for endow Iowa grants to lead philanthropic entities pursuant to section 15E.304:
. . . . . $ 155,303

i. To the department of economic development for deposit into the general fund of the state for lost revenue due to endow Iowa tax credits granted pursuant to section 15E.305:
. . . . . $ 155,303

j. For deposit into the cash reserve fund to replace claims paid from the general fund of the state by the state appeal board as affirmed in section 3 of this division of this Act:
. . . . . $ 10,749,754

2. A federal economic stimulus and jobs holding fund is created in the state treasury under the control of the department of management consisting of moneys received from the federal government for state and local government fiscal relief under the federal Jobs and Growth Tax Relief Reconciliation Act of 2003. Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund. Moneys appropriated from the fund in this section shall be expended as provided in the federal law making the moneys available and in conformance with chapter 17A.

3. Notwithstanding section 8.33, moneys that remain unexpended at the end of a fiscal year shall not revert to any fund but shall remain available for expenditure for the designated purposes during the succeeding fiscal year.

Sec. 3. PAYMENT OF CLAIMS. The general assembly affirms the action by the state appeal board on August 27, 2004, approving payment of claims against the state for moneys appropriated from the grow Iowa values fund and obligated prior to the Iowa supreme court decision of Rants and Iverson v. Vilsack, No. 60/03-1948, June 16, 2004, that invalidated the proper enactment of the appropriations.

Sec. 4. REPEAL. 2003 Iowa Acts, First Extraordinary Session, chapter 2, sections 65 through 75, are repealed.

Sec. 5. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES. This division of this Act, being deemed of immediate importance, takes effect upon enactment and applies retroactively to July 1, 2003.

DIVISION II
WORKFORCE DEVELOPMENT FIELD OFFICES
APPROPRIATIONS

Sec. 6. NEW SECTION. 96.7A APPROPRIATIONS FOR WORKFORCE DEVELOPMENT FIELD OFFICES.

There is appropriated from the general fund of the state to the department of workforce development for the fiscal period beginning July 1, 2004, and ending June 30, 2007, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

For workforce development field offices, including salaries, support, maintenance, conducting labor market surveys, and miscellaneous purposes:

1. FY 2004-2005 . . . . . $ 6,525,000

2. FY 2005-2006 ..... $ 6,525,000
3. FY 2006-2007 ..... $ 3,262,500

Notwithstanding section 8.33, moneys that remain unexpended at the end of the fiscal year shall not revert but shall remain available for expenditure for the designated purposes during the succeeding fiscal year.

Sec. 7. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION III
WORKFORCE TRAINING AND ECONOMIC DEVELOPMENT FUNDS

Sec. 8. Section 260C.18A, subsection 2, unnumbered paragraph 1, Code Supplement 2003, as amended by 2004 Iowa Acts, Senate File 2298,[1] section 370, is amended to read as follows:

~~On July 1 of each year for the fiscal year beginning July 1, 2003, and for every fiscal year thereafter, moneys from the grow Iowa values fund created in section 15G.108 are appropriated to the department of economic development for deposit in the workforce training and economic development funds in amounts determined pursuant to subsection 4.~~ Moneys deposited in the funds and disbursed to community colleges for a fiscal year shall be expended for the following purposes, provided seventy percent of the moneys shall be used on projects in the areas of advanced manufacturing, information technology and insurance, and life sciences which include the areas of biotechnology, health care technology, and nursing care technology:

Sec. 9. Section 260C.18A, subsections 3, 4, and 7, Code Supplement 2003, as amended by 2004 Iowa Acts, Senate File 2298,[2] section 330, are amended by striking the subsections.

Sec. 10. Section 260C.18A, subsection 6, paragraph d, Code Supplement 2003, is amended to read as follows:

d. Annually submit the two-year plan and progress report to the department of economic development in a manner prescribed by rules adopted by the department pursuant to chapter 17A ~~and annually file a copy of the plan and progress report with the grow Iowa values board~~. ~~For the fiscal year beginning July 1, 2004, and each fiscal year thereafter, a community college shall not have moneys deposited in the workforce training and economic development fund of that community college unless the grow Iowa values board approves the annual progress report of the community college.~~

Sec. 11. Section 260C.18A, subsection 8, as enacted by 2004 Iowa Acts, Senate File 2298,[3] section 331, is amended by striking the subsection.

Sec. 12. Section 260C.18A, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 9. This section is repealed effective June 30, 2010.

Sec. 13. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES. This division of this Act, being deemed of immediate importance, takes effect upon enactment and applies retroactively to June 30, 2004.

Approved September 7, 2004

[1] 2004 Iowa Acts, Regular Session, chapter 1175 herein
[2] 2004 Iowa Acts, Regular Session, chapter 1175 herein
[3] 2004 Iowa Acts, Regular Session, chapter 1175 herein

ANALYSIS OF TABLES

2004 FIRST EXTRAORDINARY SESSION

CONVERSION TABLES OF SENATE AND HOUSE FILES TO CHAPTERS OF THE ACTS OF THE GENERAL ASSEMBLY

2004 FIRST EXTRAORDINARY SESSION

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HOUSE FILE

File No.	Acts Chapter
2581	1001

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2004 FIRST EXTRAORDINARY SESSION

S immediately following Code chapter or section indicates Code Supplement

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260C.18A(8)[9]	1002, §11, 13
422.3(5) **S**	1001, §37, 41, 42
422.7(39) **S**	1001, §38, 41, 42

[1] Reaffirmed and reenacted
[2] Reaffirmed and reenacted
[3] Reaffirmed and reenacted
[4] Reaffirmed and reenacted
[5] Reaffirmed and reenacted
[6] Reaffirmed and reenacted
[7] Reaffirmed and reenacted
[8] Reaffirmed and reenacted
[9] Enacted in 2004 Regular Session

2003 CODE AND CODE SUPPLEMENT CHAPTERS AND SECTIONS AMENDED OR REPEALED — Continued

2004 FIRST EXTRAORDINARY SESSION — Continued

Code Chapter or Section	Acts Chapter
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625A.9(2) **S**	1001, §6, 8

NEW CODE SECTION ASSIGNED BY THE EIGHTIETH GENERAL ASSEMBLY, 2004 FIRST EXTRAORDINARY SESSION

New section number is subject to change when codified

Code Section	Acts Chapter
96.7A	1002, §6, 7

SESSION LAWS AMENDED OR REPEALED IN ACTS OF THE EIGHTIETH GENERAL ASSEMBLY, 2004 FIRST EXTRAORDINARY SESSION

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Senate File 2298, §331 (ch 1175)	1002, §11, 13
Senate File 2298, §370 (ch 1175)	1002, §8, 13
Senate File 2306 (ch 1093)	1001, §7, 8

[10] Reaffirmed and reenacted
[11] Reaffirmed and reenacted
[12] Reaffirmed and reenacted

SESSION LAWS AMENDED OR REPEALED IN ACTS OF THE EIGHTIETH GENERAL ASSEMBLY, 2004 FIRST EXTRAORDINARY SESSION — Continued

ACTS OF PREVIOUS GENERAL ASSEMBLIES AMENDED OR REPEALED

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ACTS OF PREVIOUS GENERAL ASSEMBLIES REFERRED TO

Prior Year and Chapter	2004 First Extraordinary Session Acts Chapter
2003 Acts, First Extraordinary Session, ch 1	1001, §1

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