

COMMERCE

FILED JAN 30 2002

SENATE FILE
BY VEENSTRA

2087

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to insurance fraud, and providing civil remedies.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 507F.1 SHORT TITLE.

2 This chapter shall be known and may be cited as the
3 "Insurance Fraud Civil Remedies Act".

4 Sec. 2. NEW SECTION. 507F.2 DEFINITIONS.

5 For purposes of this chapter:

6 1. "Conceal" means to take affirmative action to prevent
7 others from discovering information.

8 2. "Insurance policy" means an insurance policy as defined
9 in section 507B.2.

10 3. "Insurance professional" means a person or any other
11 legal entity engaged in the business of insurance, including
12 producers, brokers, adjusters, and third-party administrators.

13 4. "Insurance transaction" means a transaction by,
14 between, or among an insurer, or a person who acts on behalf
15 of an insurer, and an insured, claimant, applicant for
16 insurance, public adjuster, insurance professional,
17 practitioner, or any person who acts on behalf of any of those
18 persons, for the purpose of obtaining insurance or
19 reinsurance, calculating insurance premiums, submitting a
20 claim, negotiating or adjusting a claim, or otherwise
21 obtaining insurance, self-insurance, or reinsurance, or
22 obtaining the benefits of insurance.

23 5. "Insurer" means a person engaged in the business of
24 insurance, as defined in section 507A.3.

25 6. "Premium" includes any premium or consideration paid or
26 payable for coverage under a group or individual insurance
27 policy.

28 7. "Reckless" means without reasonable belief of the truth
29 of representations made, or, for the purposes of section
30 507E.3, subsection 1, paragraph "c", with a high degree of
31 awareness of probable insolvency.

32 8. "Withhold" means to fail to disclose facts or
33 information which any law, other than this chapter, requires
34 to be disclosed. Mere failure to disclose does not constitute
35 withholding if the person failing to disclose reasonably

1 believes that no duty to disclose applies.

2 Sec. 3. NEW SECTION. 507F.3 UNLAWFUL INSURANCE PRACTICE.

3 Any person who commits, participates in, or aids, abets, or
4 conspires to commit, or solicits another person to commit, or
5 permits the person's employees or agents to commit any of the
6 following acts with an intent to induce reliance, commits an
7 unlawful insurance practice:

8 1. Presents, causes to be presented, or prepares with
9 knowledge or belief that it will be presented, by or on behalf
10 of an insured, claimant, or applicant to an insurer or
11 insurance professional in connection with an insurance
12 transaction, any information that the person knows to contain
13 false representations, or representations the falsity of which
14 the person has recklessly disregarded, as to any material
15 fact, or that withholds or conceals a material fact,
16 concerning any of the following:

17 a. The application for, rating of, or renewal of any
18 insurance policy.

19 b. A claim for payment or benefit pursuant to any
20 insurance policy.

21 c. Payments made in accordance with the terms of any
22 insurance policy.

23 2. Presents, causes to be presented, or prepares with
24 knowledge or belief that it will be presented, to or by an
25 insurer or insurance professional, in connection with an
26 insurance transaction, any information that contains false
27 representations as to any material fact, or that withholds or
28 conceals a material fact, concerning any of the following:

29 a. The solicitation for sale of any insurance policy or
30 purported insurance policy.

31 b. An application for certificate of authority.

32 c. The financial condition of any insurer.

33 d. The acquisition, formation, merger, affiliation, or
34 dissolution of any insurer.

35 3. Solicits or accepts new or renewal insurance risks by

1 or for an insurer that the person knows was insolvent or the
2 insolvency of which the person recklessly disregards.

3 Sec. 4. NEW SECTION. 507F.4 CIVIL REMEDIES.

4 1. A person who suffers an injury to the person's business
5 or property by reason of a violation of section 507F.3,
6 subsection 1, may recover all of the following from the person
7 violating section 507F.3:

8 a. Any profit, benefit, compensation, or payment received
9 by the person violating section 507F.3 that directly resulted
10 from the violation.

11 b. Reasonable attorney fees and related legal expenses,
12 including internal legal expenses and court costs.

13 An action maintained under this subsection shall not be
14 certified as a class action and shall not be made part of a
15 class action.

16 2. A person who suffers an injury to the person's business
17 or property by reason of a violation of section 507F.3,
18 subsection 2, may recover all of the following from the person
19 violating section 507F.3:

20 a. Any profit, benefit, compensation, or payment received
21 by the person violating section 507F.3 that directly resulted
22 from the violation.

23 b. Reasonable attorney fees and related legal expenses,
24 including internal legal expenses and court costs.

25 c. All other pecuniary damages directly resulting from the
26 violation of section 507F.3.

27 d. Reasonable investigative fees based on a reasonable
28 estimate of the time and expense incurred in the investigation
29 of the violation of section 507F.3.

30 e. A civil penalty not to exceed forty thousand dollars
31 per violation.

32 An action maintained under this subsection shall not be
33 certified as a class action and shall not be made part of a
34 class action.

35 3. a. A violation of section 507E.3, subsection 2, is a

1 violation of section 714.16, subsection 2, paragraph "a". All
2 the powers conferred upon the attorney general to accomplish
3 the objectives and carry out the duties prescribed pursuant to
4 section 714.16 are also conferred upon the attorney general to
5 enforce section 507E.3, including, but not limited to, the
6 power to issue subpoenas, adopt rules which shall have the
7 force of law, and seek injunctive relief and civil penalties.

8 b. In seeking reimbursement pursuant to section 714.16,
9 subsection 7, from a person who has committed a violation of
10 section 507E.3, the attorney general may seek an order from
11 the court that the person pay to the attorney general on
12 behalf of consumers the amounts for which the person would be
13 liable under section 507E.3, for each consumer who has a cause
14 of action pursuant to section 507E.3. Section 714.16, as it
15 relates to consumer reimbursement, shall apply to consumer
16 reimbursement pursuant to this section.

17 4. Any court in which a civil action has been commenced
18 pursuant to this section may stay or limit proceedings
19 regarding the same or related conduct or may transfer or
20 consolidate the actions or allow the plaintiffs in the actions
21 to participate in the action brought pursuant to this section.

22 5. An insurer shall not pay damages awarded under this
23 section, or provide a defense or moneys for a defense, on
24 behalf of an insured under a contract of insurance or
25 indemnification. A third party who has asserted a claim
26 against an insured shall have no cause of action under this
27 section against the insurer of the insured arising out of the
28 insurer's processing or settlement of the third party's claim.
29 An obligee under a surety bond shall not have a cause of
30 action under this section against the surety arising out of
31 the surety's processing or settlement of the obligee's claim
32 against the bond.

33 Sec. 5. NEW SECTION. 507F.5 EXCLUSIVITY OF REMEDIES.

34 1. The remedies expressly provided in section 507F.4 shall
35 be the only remedies for violations of this chapter and no

1 additional remedies shall be implied.

2 2. The remedies available under section 507F.4 shall not
3 be used in conjunction with or in addition to any other
4 remedies available at law or in equity to duplicate recovery
5 for the same element of economic damage.

6 3. This chapter shall not limit or abrogate any right of
7 action that would have existed in the absence of this chapter,
8 but an action based on such a right shall not rely on this
9 chapter to establish a standard of conduct or for any other
10 purpose.

11 EXPLANATION

12 This bill creates new Code chapter 507F, providing civil
13 remedies for insurance fraud.

14 The new Code section 507F.2 provides definitions, including
15 "conceal", "insurance policy", "insurance professional",
16 "insurance transaction", and "withhold".

17 The bill sets out in new Code section 507F.3 circumstances
18 in which the false representation of a material fact or
19 withholding or concealment of a material fact in the
20 application for, claim for payment or benefit pursuant to, or
21 payments made in accordance with any insurance policy are
22 unlawful insurance practices. A person who acts with reckless
23 disregard for the falsity of representations may also be
24 liable under this section. Also included as unlawful
25 insurance practices are the solicitation for sale of any
26 insurance policy or purported policy; false representation of
27 a material fact or the withholding or concealing of a material
28 fact in an application for certificate of authority; false
29 representation relating to the financial condition of any
30 insurer, or the acquisition, formation, merger, affiliation,
31 or dissolution of any insurer; and the solicitation or
32 acceptance of new or renewal insurance risks by or for an
33 insolvent insurer. The Code section makes unlawful any
34 attempt to commit such acts, and any aiding and assisting, or
35 commission or attempted commission of unlawful insurance

1 practices.

2 The bill provides, in new Code section 507F.4, civil
3 remedies for persons injured as a result of violations of the
4 prohibitions against unlawful insurance practices. The civil
5 remedies for violation of Code section 507F.3, unlawful
6 insurance practices, may include recovery of profit, benefit,
7 compensation, or payment received by the person violating the
8 Code section, as well as attorney fees and legal expenses.

9 The action for civil remedies cannot be certified as, nor made
10 part of, a class action. Civil remedies for violation of Code
11 section 507F.3, fraudulent insurance practices, include
12 pecuniary damages directly resulting from the violation,
13 reasonable investigative fees, and a civil penalty not to
14 exceed \$40,000 per violation.

15 New Code section 507E.4 also deems a violation of Code
16 section 507E.3, subsection 2, as a violation of Code section
17 714.16, subsection 2, paragraph "a", relating to consumer
18 frauds. The attorney general may seek relief on behalf of
19 consumers in accordance with that Code section.

20 The bill grants the court certain rights to stay and to
21 consolidate actions regarding the same or similar conduct.

22 The bill also prohibits insurers from providing a defense
23 or money for a defense, and limits the rights of third-party
24 claimants and surety bond obligees.

25 The bill provides that the remedies provided in the new
26 Code chapter are the exclusive remedies for the violations set
27 out in the Code chapter.

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