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SENATE FILE 360
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1142)

Passed Senate, Date 4-4-05 Passed House, Date _____
Vote: Ayes 50 Nays 0 Vote: Ayes _____ Nays _____
Approved 4-28-05

A BILL FOR

1 An Act relating to various provisions administered by the
2 insurance division of the department of commerce concerning
3 premium tax refunds, the interstate insurance compact, insurer
4 insolvency proceedings, individual health insurance, the small
5 employer carrier reinsurance program, the Iowa comprehensive
6 health association, fire insurance policies, the Iowa
7 insurance guaranty association, the FAIR plan, motor vehicle
8 service contracts, investments by county and state mutual
9 associations, reciprocal or interinsurance contract premium
10 rates, unauthorized activity of insurance producers, and
11 annuity contracts for cemetery and funeral merchandise and
12 funeral services, and making fees and penalties applicable and
13 providing effective and retroactive applicability dates.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 322.19, subsection 2, paragraph a, Code
2 2005, is amended to read as follows:

3 a. A ~~motor-vehicle~~ service contract as defined in section
4 516E.1.

5 Sec. 2. Section 432.1, subsection 6, paragraph d, Code
6 2005, is amended to read as follows:

7 d. The sums prepaid by a company or association under this
8 subsection shall be allowed as credits against its premium tax
9 liability for the calendar year during which the payments are
10 made. If a prepayment made under this subsection exceeds the
11 annual premium tax liability, the excess shall be allowed as a
12 credit against subsequent prepayment or tax liabilities. The
13 commissioner of insurance shall authorize the department of
14 revenue to make a cash refund to an insurer, in lieu of a
15 credit against subsequent prepayment or tax liabilities, if
16 the insurer demonstrates the inability to recoup the funds
17 paid via a credit. The commissioner shall adopt rules
18 establishing eligibility criteria for such a refund and a
19 refund process. The commissioner may suspend or revoke the
20 license of a company or association that fails to make a
21 prepayment on or before the due date.

22 Sec. 3. Section 505A.1, Article II, section 8, Code 2005,
23 is amended to read as follows:

24 8. "Member" means the person chosen by a compacting state
25 as its representative to the commission, or the person's
26 designee. The commissioner of insurance shall be the
27 representative member of the compact for the state of Iowa.

28 Sec. 4. Section 507C.2, Code 2005, is amended by adding
29 the following new subsections:

30 NEW SUBSECTION. 01. "Affiliate" of or "affiliated" with a
31 specific person, means a person that directly or indirectly,
32 through one or more intermediaries, controls or is controlled
33 by, or is under common control with, the person specified.

34 NEW SUBSECTION. 2A. "Commodity contract" means any of the
35 following:

1 a. A contract for the purchase or sale of a commodity for
2 future delivery on, or subject to the rules of, a board of
3 trade designated as a contract market by the commodity futures
4 trading commission under the federal Commodity Exchange Act, 7
5 U.S.C. § 1 et seq., or a board of trade outside the United
6 States.

7 b. An agreement that is subject to regulation under
8 section 19 of the federal Commodity Exchange Act, 7 U.S.C. § 1
9 et seq., and that is commonly known to the commodities trade
10 as a margin account, margin contract, leverage account, or
11 leverage contract.

12 c. An agreement or transaction that is subject to
13 regulation under section 4c(b) of the federal Commodity
14 Exchange Act, 7 U.S.C. § 1 et seq., and that is commonly known
15 to the commodities trade as a commodity option.

16 NEW SUBSECTION. 2B. "Control" means the same as defined
17 in section 521A.1, subsection 3.

18 NEW SUBSECTION. 8A. "Forward contract" means a contract
19 for the purchase, sale, or transfer of a commodity, as defined
20 in section 1 of the federal Commodity Exchange Act, 7 U.S.C. §
21 1 et seq., or any similar good, article, service, right, or
22 interest that is presently or in the future becomes the
23 subject of dealing in the forward contract trade, or product
24 or byproduct thereof, with a maturity date more than two days
25 after the date the contract is entered into, including, but
26 not limited to, a repurchase transaction, reverse repurchase
27 transaction, consignment, lease, swap, hedge transaction,
28 deposit, loan, option, allocated transaction, unallocated
29 transaction, or a combination of them or option on any of
30 them. "Forward contract" does not include a commodity
31 contract.

32 NEW SUBSECTION. 12A. "Netting agreement" means an
33 agreement, including terms and conditions incorporated by
34 reference therein, including a master agreement, which master
35 agreement, together with all schedules, confirmations,

1 definitions, and addenda thereto and transactions under any
2 thereof, shall be treated as one netting agreement, that
3 documents one or more transactions between parties to the
4 agreement for or involving one or more qualified financial
5 contracts and that provides for the netting or liquidation of
6 qualified financial contracts or present or future payment
7 obligations or payment entitlements thereunder, including
8 liquidation or closeout values relating to such obligations or
9 entitlements among the parties to the netting agreement.

10 NEW SUBSECTION. 13A. "Qualified financial contract" means
11 a commodity contract, forward contract, repurchase agreement,
12 securities contract, swap agreement, and any similar agreement
13 that the commissioner determines by regulation, resolution, or
14 order to be a qualified financial contract for the purposes of
15 this chapter.

16 NEW SUBSECTION. 15A. "Repurchase agreement" means an
17 agreement, including related terms, that provides for the
18 transfer of certificates of deposit, eligible bankers'
19 acceptances, or securities that are direct obligations of, or
20 that are fully guaranteed as to principal and interest by, the
21 United States or an agency of the United States against the
22 transfer of funds by the transferee of the certificates of
23 deposit, eligible bankers' acceptances or securities, with a
24 simultaneous agreement by the transferee to transfer to the
25 transferor certificates of deposit, eligible bankers'
26 acceptances, or securities as described above, at a date
27 certain not later than one year after the transfers or on
28 demand against the transfer of funds. For the purposes of
29 this definition, the items that may be subject to a repurchase
30 agreement include, but are not limited to, mortgage-related
31 securities, a mortgage loan, and an interest in a mortgage
32 loan, but shall not include any participation in a commercial
33 mortgage loan, unless the commissioner determines by rule,
34 resolution, or order to include the participation within the
35 meaning of the term. Repurchase agreement also applies to a

1 reverse repurchase agreement.

2 NEW SUBSECTION. 16A. "Securities contract" means a
3 contract for the purchase, sale, or loan of a security,
4 including an option for the repurchase or sale of a security,
5 certificate of deposit, or group or index of securities,
6 including an interest therein or based on the value thereof,
7 or an option entered into on a national securities exchange
8 relating to foreign currencies, or the guarantee of a
9 settlement of cash or securities by or to a securities
10 clearing agency. For the purposes of this definition, the
11 term "security" includes a mortgage loan, mortgage-related
12 securities, and an interest in any mortgage loan or mortgage-
13 related security.

14 NEW SUBSECTION. 18A. "Swap agreement" means an agreement,
15 including the terms and conditions incorporated by reference
16 in an agreement, that is a rate swap agreement, basis swap,
17 commodity swap, forward rate agreement, interest rate future,
18 interest rate option, forward foreign exchange agreement, spot
19 foreign exchange agreement, rate cap agreement, rate floor
20 agreement, rate collar agreement, currency swap agreement,
21 cross-currency rate swap agreement, currency future, or
22 currency option or any other similar agreement, and includes
23 any combination of agreements and an option to enter into an
24 agreement.

25 Sec. 5. NEW SECTION. 507C.28A QUALIFIED FINANCIAL
26 CONTRACTS.

27 1. Notwithstanding any other provision of this chapter to
28 the contrary, including any other provision of this chapter
29 permitting the modification of contracts, or other law of a
30 state, a person shall not be stayed or prohibited from
31 exercising any of the following:

32 a. A contractual right to terminate, liquidate, or close
33 out any netting agreement or qualified financial contract with
34 an insurer because of any of the following:

35 (1) The insolvency, financial condition, or default of the

1 insurer at any time, provided that the right is enforceable
2 under applicable law other than this chapter.

3 (2) The commencement of a formal delinquency proceeding
4 under this chapter.

5 b. Any right under a pledge, security, collateral, or
6 guarantee agreement or any other similar security arrangement
7 or credit support document relating to a netting agreement or
8 qualified financial contract.

9 c. Subject to any provision of section 507C.30, subsection
10 2, any right to set off or net out any termination value,
11 payment amount, or other transfer obligation arising under or
12 in connection with a netting agreement or qualified financial
13 contract where the counterparty or its guarantor is organized
14 under the laws of the United States or a state or foreign
15 jurisdiction approved by the securities valuation office or
16 the national association of insurance commissioners as
17 eligible for netting.

18 2. Upon termination of a netting agreement, the net or
19 settlement amount, if any, owed by a nondefaulting party to an
20 insurer against which an application or petition has been
21 filed under this chapter shall be transferred to or on the
22 order of the receiver for the insurer, even if the insurer is
23 the defaulting party, notwithstanding any provision in the
24 netting agreement that may provide that the nondefaulting
25 party is not required to pay any net or settlement amount due
26 to the defaulting party upon termination. Any limited two-
27 way payment provision in a netting agreement with an insurer
28 that has defaulted shall be deemed to be a full two-way
29 payment provision as against the defaulting insurer. Any such
30 amount shall, except to the extent it is subject to one or
31 more secondary liens or encumbrances, be a general asset of
32 the insurer.

33 3. In making any transfer of a netting agreement or
34 qualified financial contract of an insurer subject to a
35 proceeding under this chapter, the receiver shall do either of

1 the following:

2 a. Transfer to one party, other than an insurer subject to
3 a proceeding under this chapter, all netting agreements and
4 qualified financial contracts between a counterparty or any
5 affiliate of the counterparty and the insurer that is the
6 subject of the proceeding, including all of the following:

7 (1) All rights and obligations of each party under each
8 such netting agreement and qualified financial contract.

9 (2) All property, including any guarantees or credit
10 support documents, securing any claims of each party under
11 each such netting agreement and qualified financial contract.

12 b. Transfer none of the netting agreements, qualified
13 financial contracts, rights, obligations, or property referred
14 to in paragraph "a" with respect to the counterparty and any
15 affiliate of the counterparty.

16 4. If a receiver for an insurer makes a transfer of one or
17 more netting agreements or qualified financial contracts, the
18 receiver shall use the receiver's best efforts to notify any
19 person who is a party to the netting agreements or qualified
20 financial contracts of the transfer by noon of the receiver's
21 local time on the business day following the transfer. For
22 purposes of this subsection, "business day" means a day other
23 than a Saturday, Sunday, or any day on which either the New
24 York stock exchange or the federal reserve bank of New York is
25 closed.

26 5. Notwithstanding any other provision of this chapter to
27 the contrary, a receiver shall not avoid a transfer of money
28 or other property arising under or in connection with a
29 netting agreement or qualified financial contract, or any
30 pledge security, collateral, or guarantee agreement or any
31 other similar security arrangement or credit support document
32 relating to a netting agreement or qualified financial
33 contract, that is made before the commencement of a formal
34 delinquency proceeding under this chapter. However, a
35 transfer may be avoided under section 507C.28 if the transfer

1 was made with actual intent to hinder, delay, or defraud the
2 insurer, a receiver appointed for the insurer, or existing or
3 future creditors.

4 6. In exercising any of its powers under this chapter to
5 disaffirm or repudiate a netting agreement or qualified
6 financial contract, the receiver must take action with respect
7 to each netting agreement or qualified financial contract and
8 all transactions entered into in connection therewith, in its
9 entirety. Notwithstanding any other provision of this chapter
10 to the contrary, any claim of a counterparty against the
11 estate arising from the receiver's disaffirmance or
12 repudiation of a netting agreement or qualified financial
13 contract that has not been previously affirmed in the
14 liquidation or in the immediately preceding rehabilitation
15 case shall be determined and shall be allowed or disallowed as
16 if the claim had arisen before the date of the filing of the
17 petition for liquidation or, if a rehabilitation proceeding is
18 converted to a liquidation proceeding, as if the claim had
19 arisen before the date of filing the petition for
20 rehabilitation. The amount of the claim shall be the actual
21 direct compensatory damages determined as of the date of the
22 disaffirmance or repudiation of the netting agreement or
23 qualified financial contract. The term "actual direct
24 compensatory damages" does not include punitive or exemplary
25 damages, damages for lost profit or lost opportunity, or
26 damages for pain and suffering, but does include normal and
27 reasonable costs of cover or other reasonable measures of
28 damages utilized in the derivatives market for the contract
29 and agreement claims.

30 7. The term "contractual right" as used in this section
31 includes any right, whether or not evidenced in writing,
32 arising under statutory or common law, a rule or bylaw of a
33 national securities exchange, national securities clearing
34 organization or securities clearing agency, a rule or bylaw,
35 or a resolution of the governing body of a contract market or

1 its clearing organization, or under law merchant.

2 8. This section shall not apply to persons who are
3 affiliates of the insurer that is the subject of the
4 proceeding.

5 9. All rights of a counterparty under this chapter shall
6 apply to netting agreements and qualified financial contracts
7 entered into on behalf of the general account or separate
8 accounts, provided that the assets of each separate account
9 are available only to counterparties to netting agreements and
10 qualified financial contracts entered into on behalf of that
11 separate account.

12 Sec. 6. Section 507C.30, subsection 2, paragraph a,
13 subparagraphs (4) and (5), Code 2005, are amended to read as
14 follows:

15 (4) The obligation of the person is owed to the affiliate
16 of the insurer, or any other entity or association other than
17 the insurer.

18 ~~(4)~~ (5) The obligation of the person is to pay an
19 assessment levied against the members or subscribers of the
20 insurer, or is to pay a balance upon a subscription to the
21 capital stock of the insurer, or is in any other way in the
22 nature of a capital contribution.

23 ~~(5)~~ (6) The obligation of the person is to pay earned
24 premiums to the insurer.

25 Sec. 7. Section 513B.12, Code 2005, is amended by adding
26 the following new subsection:

27 NEW SUBSECTION. 6. During the period of time that the
28 operation of the small employer carrier reinsurance program is
29 suspended pursuant to section 513B.13, subsection 14, a small
30 employer carrier is not required to make an application to
31 become a risk-assuming carrier pursuant to this section.

32 Sec. 8. Section 513B.13, subsection 3, Code 2005, is
33 amended by adding the following new paragraph:

34 NEW PARAGRAPH. e. During the period of time that the
35 program is suspended pursuant to subsection 14, the size of

1 the board may be reduced with the approval of the
2 commissioner.

3 Sec. 9. Section 513B.17, subsection 4, Code 2005, is
4 amended by striking the subsection.

5 Sec. 10. Section 513C.6, Code 2005, is amended by adding
6 the following new subsection:

7 NEW SUBSECTION. 7. An individual who has coverage as a
8 dependent under a basic or standard health benefit plan may,
9 when that individual is no longer a dependent under such
10 coverage, elect to continue coverage under the basic or
11 standard health benefit plan if the individual so elects
12 immediately upon termination of the coverage under which the
13 individual was covered as a dependent.

14 Sec. 11. Section 514B.13, unnumbered paragraph 2, Code
15 2005, is amended to read as follows:

16 Health maintenance organizations providing services
17 exclusively on a group contract basis may limit the open
18 enrollment provided for in this section to all members of the
19 group covered by the contract, including those members of the
20 group who previously waived coverage.

21 Sec. 12. Section 514E.2, subsection 1, paragraph a, Code
22 2005, is amended to read as follows:

23 a. All carriers and all organized delivery systems
24 licensed by the director of public health providing health
25 insurance or health care services in Iowa, whether on an
26 individual or group basis, and all other insurers designated
27 by the association's board of directors and approved by the
28 commissioner shall be members of the association.

29 Sec. 13. Section 514E.2, subsection 5, paragraph 1, Code
30 2005, is amended to read as follows:

31 1. Develop a method of advising applicants of the
32 availability of other coverages outside the association, ~~and~~
33 ~~shall promulgate a list of health conditions the existence of~~
34 ~~which would make an applicant eligible without demonstrating a~~
35 ~~rejection of coverage by one carrier.~~

1 Sec. 14. Section 514E.2, subsection 7, Code 2005, is
2 amended by adding the following new unnumbered paragraph:

3 NEW UNNUMBERED PARAGRAPH. For purposes of this subsection,
4 "total health insurance premiums" and "payments for subscriber
5 contracts" include, without limitation, premiums or other
6 amounts paid to or received by a member for individual and
7 group health plan care coverage provided under any chapter of
8 the Code or Acts, and "paid losses" includes, without
9 limitation, claims paid by a member operating on a self-funded
10 basis for individual and group health plan care coverage
11 provided under any chapter of the Code or Acts. For purposes
12 of calculating and conducting the assessment, the association
13 shall have the express authority to require members to report
14 on an annual basis each member's total health insurance
15 premiums and payments for subscriber contracts and paid
16 losses. A member is liable for its share of the assessment
17 calculated in accordance with this section regardless of
18 whether it participates in the individual insurance market.

19 Sec. 15. Section 514E.7, subsection 1, Code 2005, is
20 amended by adding the following new paragraphs:

21 NEW PARAGRAPH. d. That the individual has a health
22 condition that is established by the association's board of
23 directors, with the approval of the commissioner, to be
24 eligible for plan coverage.

25 NEW PARAGRAPH. e. That the individual has coverage under
26 a basic or standard health benefit plan under chapter 513C.

27 Sec. 16. Section 514E.8, subsection 1, Code 2005, is
28 amended to read as follows:

29 1. An association policy shall contain provisions under
30 which the association is obligated to renew the coverage for
31 an individual until the day the individual becomes eligible
32 for Medicare coverage based on age, provided that any
33 individual who is covered by an association policy and is
34 eligible for Medicare coverage based on age prior to January
35 1, 2005, may continue to renew the coverage under the

1 association policy.

2 Sec. 17. Section 515.138, sixth subsection, paragraph
3 entitled concealment -- fraud, Code 2005, is amended to read
4 as follows:

5 CONCEALMENT -- FRAUD. This entire policy shall be void if,
6 whether before or after a loss, the an insured has willfully
7 concealed or misrepresented any material fact or circumstance
8 concerning this insurance or the subject thereof, or the
9 interest of the an insured therein, or in case of any fraud or
10 false swearing by the an insured relating thereto.

11 Sec. 18. Section 515.138, sixth subsection, paragraph
12 entitled perils not included, Code 2005, is amended to read as
13 follows:

14 PERILS NOT INCLUDED. This company shall not be liable for
15 loss by fire or other perils insured against in this policy
16 caused, directly or indirectly, by: (a) Enemy attack by armed
17 forces, including action taken by military, naval or air
18 forces in resisting an actual or an immediately impending
19 enemy attack; (b) invasion; (c) insurrection; (d) rebellion;
20 (e) revolution; (f) civil war; (g) usurped power; (h) order of
21 any civil authority except acts of destruction at the time of
22 and for the purpose of preventing the spread of fire, provided
23 that such fire did not originate from any of the perils
24 excluded by this policy; (i) neglect of the an insured to use
25 all reasonable means to save and preserve the property at and
26 after a loss, or when the property is endangered by fire in
27 neighboring premises; (j) nor shall this company be liable for
28 loss by theft.

29 Sec. 19. Section 515.138, sixth subsection, paragraph
30 entitled conditions suspending or restricting insurance, Code
31 2005, is amended to read as follows:

32 CONDITIONS SUSPENDING OR RESTRICTING INSURANCE. Unless
33 otherwise provided in writing added hereto this company shall
34 not be liable for loss occurring under any of the following
35 circumstances:

1 a. While the hazard is created or increased by any means
2 within the control or knowledge of the an insured~~or.~~

3 b. While a described building, whether intended for
4 occupancy by owner or tenant, is vacant or unoccupied beyond a
5 period of sixty consecutive days~~or.~~

6 c. As a result of explosion or riot, unless fire ensue,
7 and in that event for loss by fire only.

8 Sec. 20. Section 515B.2, subsection 4, paragraph b,
9 subparagraph (7), Code 2005, is amended to read as follows:

10 (7) That would otherwise be a covered claim, but is an
11 obligation to or on behalf of a person who has a net worth~~on~~
12 ~~the date of the occurrence giving rise to the claim~~ greater
13 than that allowed by the guarantee fund law of the state of
14 residence of the claimant, and which state has denied coverage
15 to that claimant on that basis.

16 Sec. 21. Section 515B.17, Code 2005, is amended to read as
17 follows:

18 515B.17 TIMELY FILING OF CLAIMS.

19 Notwithstanding any other provision of this chapter, a
20 covered claim shall not include any claim filed with the
21 association after twenty-four months from the date of the
22 order of liquidation or after the final date set by the court
23 for the filing of claims against the insolvent insurer or its
24 receiver, whichever occurs first.

25 Sec. 22. Section 515F.36, subsection 2, Code 2005, is
26 amended to read as follows:

27 2. The committee shall consist of seven members~~one of~~
28 whom.

29 a. Five of the members shall be elected by to the
30 committee, with one member from each of the following:

31 a- (1) American insurance association.

32 b- (2) ~~Alliance of American insurers~~ Property casualty
33 insurers association of America.

34 c- ~~National association of independent insurers.~~

35 d- (3) Iowa insurance institute.

1 e- (4) Mutual insurance association of Iowa.

2 f- (5) Independent insurance agents of Iowa.

3 g- b. All-other-insurers Two of the members shall be
4 elected to the committee by other insurer members of the plan.

5 Sec. 23. Section 516E.1, Code 2005, is amended to read as
6 follows:

7 516E.1 DEFINITIONS.

8 For the purposes of this chapter:

9 1. "Administrator" means the deputy administrator
10 appointed pursuant to section 502.601.

11 ~~1. 2. "Commissioner" means the commissioner of insurance~~
12 ~~as provided in section 505.1 or the deputy administrator~~
13 ~~appointed under section 502.601.~~

14 3. "Maintenance agreement" means a contract of limited
15 duration that provides for scheduled maintenance only.

16 2- 4. "Mechanical breakdown insurance" means a policy,
17 contract, or agreement that undertakes to perform or provide
18 repair or replacement service, or indemnification for that
19 service, for the operational or structural failure of a motor
20 vehicle due to a defect in materials or skill of work or
21 normal wear and tear, and that is issued by an insurance
22 company authorized to do business in this state.

23 3- 5. "Motor vehicle" means any self-propelled vehicle
24 subject to registration under chapter 321.

25 4- --"Motor-vehicle-service-contract" or "service-contract"
26 means a contract or agreement given for consideration over and
27 above the lease or purchase price of a new or used motor
28 vehicle having a gross vehicle weight rating of less than
29 sixteen thousand pounds that undertakes to perform or provide
30 repair or replacement service, or indemnification for that
31 service, for the operational or structural failure of a motor
32 vehicle due to a defect in materials or skill of work or
33 normal wear and tear, but does not include mechanical
34 breakdown insurance or maintenance agreements providing
35 scheduled repair and maintenance services for leased vehicles.

1 5. ~~6. "Motor-vehicle-service-contract-provider"-or~~
2 ~~"provider"~~ "Provider" means a person who issues, makes,
3 provides, sells, or offers to sell a motor-vehicle service
4 contract.

5 6. ~~--"Motor-vehicle-service-contract-reimbursement-insurance~~
6 ~~policy"-or-"reimbursement-insurance-policy"-means-a-policy-of~~
7 ~~insurance-providing-coverage-for-all-obligations-and~~
8 ~~liabilities-incurred-by-a-motor-vehicle-service-contract~~
9 ~~provider-under-the-terms-of-motor-vehicle-service-contracts~~
10 ~~issued-by-the-provider.~~

11 7. "Record" means information stored or preserved in any
12 medium, including in an electronic or paper format. A record
13 includes but is not limited to documents, books, publications,
14 accounts, correspondence, memoranda, agreements, computer
15 files, film, microfilm, photographs, and audio or visual
16 tapes.

17 8. "Reimbursement insurance policy" means a policy of
18 insurance issued to a service company and pursuant to which
19 the insurer agrees, for the benefit of the service contract
20 holders, to discharge all of the obligations and liabilities
21 of the service company under the terms of service contracts
22 issued by the service company in the event of nonperformance
23 by the service company. For the purposes of this definition,
24 "all obligations and liabilities" include, but are not limited
25 to, failure of the service company to perform under the
26 service contract and the return of the unearned service
27 company fee in the event of the service company's
28 unwillingness or inability to reimburse the unearned service
29 company fee in the event of termination of a service contract.

30 9. "Service company" means a person who issues and is
31 obligated to perform, or arrange for the performance of,
32 services pursuant to a service contract.

33 10. "Service contract" means a contract or agreement given
34 for consideration over and above the lease or purchase price
35 of a new or used motor vehicle having a gross vehicle weight

1 rating of less than sixteen thousand pounds, that undertakes
2 to perform or provide repair or replacement service, or
3 indemnification for that service, for the operation or
4 structural failure of a motor vehicle due to a defect in
5 materials or skill of work or normal wear and tear, but does
6 not include mechanical breakdown insurance or maintenance
7 agreements.

8 8- 11. "Service contract holder" means a person who
9 purchases a ~~motor-vehicle~~ service contract.

10 12. "Third-party administrator" means a person who
11 contracts with a service company to be responsible for the
12 administration of the service company's service contracts,
13 including processing and adjudicating claims pursuant to a
14 service contract.

15 Sec. 24. Section 516E.2, Code 2005, is amended to read as
16 follows:

17 516E.2 INSURANCE-REQUIRED REQUIREMENTS FOR DOING BUSINESS.

18 1. A ~~motor-vehicle~~ service contract shall not be issued,
19 sold, or offered for sale in this state unless the ~~provider of~~
20 ~~the service contract is insured under a motor vehicle service~~
21 ~~contract reimbursement insurance policy issued by an insurer~~
22 ~~authorized to do business in this state.~~ service company does
23 all of the following:

24 a. Provides a receipt for the purchase of the service
25 contract to the service contract holder.

26 b. Provides a copy of the service contract to the service
27 contract holder within a reasonable period of time after the
28 date of purchase of the service contract.

29 2. ~~The issuer of a reimbursement insurance policy shall~~
30 ~~not cancel a reimbursement insurance policy unless a written~~
31 ~~notice has been received by the commissioner and by each~~
32 ~~applicable provider, including automobile dealers and third-~~
33 ~~party administrators.--The notice shall fix the date of~~
34 ~~cancellation at a date no earlier than ten days after receipt~~
35 ~~of the notice by the commissioner and by the applicable~~

1 ~~provider.--The notice may be made in person or by mail and a~~
2 ~~post office department receipt of certified or registered~~
3 ~~mailing shall be deemed proof of receipt of the notice. A~~
4 service company shall not issue a service contract or arrange
5 to perform services pursuant to a service contract unless the
6 service company is registered with the commissioner. A
7 service company shall file a registration with the
8 commissioner annually, on a form prescribed by the
9 commissioner, accompanied by a registration fee in the amount
10 of five hundred dollars.

11 3. In order to assure the faithful performance of a
12 service company's obligations to its service contract holders,
13 each service company shall do all of the following:

14 a. Insure all service contracts under a reimbursement
15 insurance policy issued by an insurer authorized to transact
16 insurance in this state.

17 b. Maintain a funded reserve account for the service
18 company's obligations under its service contracts issued and
19 outstanding in this state. The reserves shall not be less
20 than forty percent of gross consideration received, less
21 claims paid, on the sale of the service contracts for all in-
22 force service contracts. The reserve account shall be subject
23 to examination and review by the commissioner.

24 c. File a certificate of deposit issued by a financial
25 institution in the name of the commissioner, as trustee, with
26 terms and conditions approved by the commissioner as to
27 issuer, form, and contents, as a financial security deposit,
28 having a value of not less than five percent of the gross
29 consideration received by the service company in Iowa on the
30 sale of service contracts for all service contracts issued and
31 in force, but not less than the amount of twenty-five thousand
32 dollars.

33 4. The commissioner may issue an order denying,
34 suspending, or revoking any registration if the commissioner
35 finds that the order is in the public interest and finds any

1 of the following:

2 a. The registration is incomplete in any material respect
3 or contains any statement which, in light of the circumstances
4 under which the registration was made, is determined by the
5 commissioner to be false or misleading with respect to any
6 material fact.

7 b. A provision of this chapter or a rule, order, or
8 condition lawfully imposed under this chapter, has been
9 willfully violated in connection with the sale of service
10 contracts by any of the following persons:

11 (1) The person filing the registration, but only if the
12 person filing the registration is directly or indirectly
13 controlled by or acting for the service company.

14 (2) The service company, any partner, officer, or director
15 of the service company or any person occupying a similar
16 status or performing similar functions for the service
17 company, or any person directly or indirectly controlling or
18 controlled by the service company.

19 c. The service company has not filed a document or
20 information required under this chapter.

21 d. The service company's literature or advertising is
22 misleading, incorrect, incomplete, or deceptive.

23 e. The service company has failed to pay the proper filing
24 fee. However, the commissioner shall vacate an order issued
25 pursuant to this paragraph when the proper fee has been paid.

26 f. The service company does not have the minimum net
27 worth, as determined in accordance with generally accepted
28 accounting principles, required under this chapter.

29 The commissioner may vacate or modify an order issued under
30 this subsection if the commissioner finds that the conditions
31 which prompted the entry of the order have changed or that it
32 is otherwise in the public interest to do so.

33 Sec. 25. Section 516E.3, Code 2005, is amended to read as
34 follows:

35 516E.3 FILING AND FEE REQUIREMENTS.

1 1. SERVICE COMPANIES.

2 a. A ~~motor-vehicle~~ service contract shall not be issued,
3 sold, or offered for sale in this state unless a true and
4 correct copy of the service contract, and the ~~provider's~~
5 service company's reimbursement insurance policy have been
6 filed with the commissioner by the service company.

7 2. ~~b. In-addition-to-any-other-required-filings,-an~~
8 ~~accurate-copy-of-the-service-contract-and-the-provider's~~
9 ~~reimbursement-insurance-policy,-the~~ A service company shall
10 file a consent to service of process on the commissioner, and
11 such other information as the commissioner requires ~~shall-be~~
12 ~~filed~~ annually with the commissioner no later than the first
13 day of August. If the first day of August falls on a weekend
14 or a holiday, the date for filing shall be the next business
15 day. In addition to the annual filing, the provider service
16 company shall promptly file copies of any amended documents if
17 material amendments have been made in the materials on file
18 with the commissioner. If an annual filing is made after the
19 first of August and sales have occurred during the period when
20 the provider service company was in noncompliance with this
21 section, the commissioner shall assess an additional filing
22 fee that is two times the amount normally required for an
23 annual filing. A fee shall not be charged for interim filings
24 made to keep the materials filed with the division current and
25 accurate. The annual filing shall be accompanied by a filing
26 fee determined by the commissioner which shall be sufficient
27 to defray the costs of administering this chapter.

28 3. --a. ~~c.~~ A ~~motor-vehicle-service-contract-provider~~
29 service company shall promptly file the following information
30 with the insurance commissioner:

31 (1) A change in the name or ownership of the provider
32 service company.

33 (2) The termination of the provider's service company's
34 business.

35 b. (3) The provider service company is not required to

1 submit a fee as part of this filing.

2 2. PROVIDERS.

3 a. A service contract shall not be sold or offered for
4 sale in this state unless a true and correct copy of the
5 service contract has been filed with the commissioner by the
6 provider.

7 b. A provider shall file a consent to service of process
8 on the commissioner and such other information as the
9 commissioner requires annually with the commissioner no later
10 than August 1. If August 1 falls on a weekend or a holiday,
11 the date for filing shall be the next business day. In
12 addition to the annual filing, the provider shall promptly
13 file copies of any amended documents if material amendments
14 have been made in the materials on file with the commissioner.
15 If an annual filing is made after August 1 and sales have
16 occurred during the period when the provider was in
17 noncompliance with this section, the commissioner shall assess
18 an additional filing fee that is two times the amount normally
19 required for an annual filing. A fee shall not be charged for
20 interim filings made to keep the materials filed with the
21 division current and accurate. The annual filing shall be
22 accompanied by a filing fee in the amount of one hundred
23 dollars.

24 c. A provider shall promptly file the following
25 information with the commissioner:

26 (1) A change in the name or ownership of the provider.

27 (2) The termination of the provider's business.

28 (3) A provider is not required to submit a fee as part of
29 this filing.

30 Sec. 26. Section 516E.4, Code 2005, is amended by striking
31 the section and inserting in lieu thereof the following:

32 516E.4 REIMBURSEMENT INSURANCE POLICY REQUIREMENTS.

33 1. REQUIRED DISCLOSURES. A reimbursement insurance policy
34 insuring a service contract issued, sold, or offered for sale
35 in this state shall conspicuously state that, upon failure of

1 the service company to perform under the contract, including
2 but not limited to a failure to return the unearned
3 consideration paid for a service contract in excess of the
4 premium, the insurer that issued the policy shall pay on
5 behalf of the service company any amount that is owed to the
6 service contract holder by the service company to satisfy the
7 service company's obligations under a service contract issued
8 or sold by the service company.

9 2. TERMINATION. As applicable, an insurer that issued a
10 reimbursement insurance policy shall not terminate the policy
11 unless a written notice has been received by the commissioner
12 and by each applicable provider, service company, or third-
13 party administrator. The notice shall fix the date of
14 termination at a date no earlier than ten days after receipt
15 of the notice by the commissioner and by the applicable
16 provider, service company, or third-party administrator. The
17 notice may be delivered in person or sent by mail, and a
18 restricted certified mail return receipt shall be deemed proof
19 of receipt of notice. The termination of a reimbursement
20 insurance policy shall not reduce the issuer's responsibility
21 for a service contract issued by a service company prior to
22 the date of termination.

23 3. INDEMNIFICATION OR SUBROGATION. This section does not
24 prevent or limit the right of an insurer that issued a
25 reimbursement insurance policy to seek indemnification from or
26 subrogation against a service company if the insurer pays or
27 is obligated to pay a service contract holder sums that the
28 service company was obligated to pay pursuant to the
29 provisions of a service contract or pursuant to a contractual
30 agreement.

31 Sec. 27. Section 516E.5, Code 2005, is amended to read as
32 follows:

33 516E.5 DISCLOSURE TO SERVICE CONTRACT HOLDERS -- CONTRACT
34 PROVISIONS.

35 1. A ~~motor-vehicle~~ service contract shall not be issued,

1 sold, or offered for sale in this state unless the contract
2 conspicuously states that the obligations of the provider
3 service company to the service contract holder are guaranteed
4 under ~~the-service-contract~~ a reimbursement insurance policy,
5 ~~and-unless-the~~ including a statement in substantially the
6 following form: "Obligations of the service company under
7 this service contract are guaranteed under a reimbursement
8 insurance policy. If the service company fails to pay or
9 provide service on a claim within sixty days after proof of
10 loss has been filed with the service company, the service
11 contract holder is entitled to make a claim directly against
12 the reimbursement insurance policy." A claim against a
13 reimbursement insurance policy shall also include a claim for
14 return of the unearned consideration paid for the service
15 contract in excess of the premium paid. A service contract
16 shall conspicuously states state the name and address of the
17 issuer of the reimbursement insurance policy for that service
18 contract.

19 2. A ~~motor-vehicle~~ service contract shall be written in
20 clear, understandable language and the entire contract shall
21 be printed or typed in easy-to-read type, size, and style, and
22 shall not be issued, sold, or offered for sale in this state
23 unless the contract does all of the following:

24 a. Clearly and conspicuously states the name and address
25 of the service company, describes the service company's
26 obligations to perform services or to arrange for the
27 performance of services under the service contract, and states
28 that the obligations of the provider service company to the
29 service contract holder are guaranteed under a service
30 contract reimbursement insurance policy.

31 b. Clearly and conspicuously states the name and address
32 of the issuer of the reimbursement insurance policy.

33 c. Identifies the ~~motor-vehicle~~ service contract-provider,
34 ~~the-seller-of-the-motor-vehicle~~ company obligated to perform
35 the service under the service contract, any third-party

1 administrator, and the service contract holder to the extent
2 that the name and address of the service contract holder has
3 been furnished by the service contract holder.

4 d. Sets forth the total purchase price of the service
5 contract and the terms under which the purchase price of the
6 service contract is to be paid.

7 e. Sets forth the procedure for making a claim, including
8 a telephone number.

9 f. Clearly and conspicuously states the dates that
10 coverage starts and ends and the existence, terms, and
11 conditions of a deductible amount, if any.

12 g. Specifies the merchandise or services, or both, to be
13 provided and clearly states any and all limitations,
14 exceptions, or exclusions.

15 h. Sets forth the conditions on which substitution of
16 services will be allowed.

17 i. Sets forth all of the obligations and duties of the
18 service contract holder, including but not limited to the duty
19 to protect against any further damage to the motor vehicle,
20 and the obligation to notify the provider service company in
21 advance of any repair, if any.

22 j. Sets forth any and all terms, restrictions, or
23 conditions governing transferability of the service contract,
24 if any.

25 k. Describes or references any and all applicable
26 provisions of the Iowa consumer credit code, chapter 537.

27 l. States the name and address of the commissioner.

28 m. Sets forth any and all conditions on which the service
29 contract may be canceled, the terms and conditions for the
30 refund of any portion of the purchase price, the identity of
31 the person primarily liable to provide any refund, and the
32 identity of any other person liable to provide any portion of
33 the refund. If the service contract holder cancels the
34 service contract, the service company shall mail a written
35 notice of termination to the service contract holder within

1 fifteen days of the date of the termination.

2 n. Permits the service contract holder to cancel and
3 return the service contract within at least twenty days of the
4 date of mailing the service contract to the service contract
5 holder or within at least ten days after delivery of the
6 service contract if the service contract is delivered at the
7 time of sale of the service contract, or within a longer
8 period of time as permitted under the service contract. If no
9 claim has been made under the service contract prior to its
10 return, the service contract is void and the full purchase
11 price of the service contract shall be refunded to the service
12 contract holder. A ten percent penalty shall be added each
13 month to a refund that is not paid to a service contract
14 holder within thirty days of the return of the service
15 contract to the service company. The applicable time period
16 for cancellation of a service contract shall apply only to the
17 original service contract holder that purchased the service
18 contract.

19 3. A complete copy of the terms of the ~~motor-vehicle~~
20 service contract shall be delivered to the prospective service
21 contract holder at or before the time that the prospective
22 service contract holder makes application for the service
23 contract. If there is no separate application procedure, then
24 a complete copy of the ~~motor-vehicle~~ service contract shall be
25 delivered to the service contract holder at or before the time
26 the service contract holder becomes bound under the contract.

27 Sec. 28. Section 516E.6, Code 2005, is amended to read as
28 follows:

29 516E.6 COMMISSIONER MAY PROHIBIT CERTAIN SALES --
30 INJUNCTION.

31 The commissioner shall issue an order instructing the a
32 provider, service company, or third-party administrator to
33 cease and desist from selling or offering for sale ~~motor~~
34 ~~vehicle~~ service contracts if the commissioner determines that
35 the provider, service company, or third-party administrator

1 has failed to comply with a provision of this chapter. Upon
2 the failure of a motor-vehicle provider, service contract
3 provider company, or third-party administrator to obey a cease
4 and desist order issued by the commissioner, the commissioner
5 may give notice in writing of the failure to the attorney
6 general, who shall immediately commence an action against the
7 provider, service company, or third-party administrator to
8 enjoin the provider, service company, or third-party
9 administrator from selling or offering for sale motor-vehicle
10 service contracts until the provider, service company, or
11 third-party administrator complies with the provisions of this
12 chapter and the district court may issue the injunction.

13 Sec. 29. Section 516E.7, Code 2005, is amended to read as
14 follows:

15 516E.7 RULES.

16 The commissioner may adopt rules as provided in chapter 17A
17 to administer and enforce the provisions of this chapter and
18 to establish minimum standards for disclosure of motor-vehicle
19 service contract coverage limitations and exclusions.

20 Sec. 30. Section 516E.8, Code 2005, is amended to read as
21 follows:

22 516E.8 EXEMPTION.

23 This chapter does not apply to a motor-vehicle service
24 contract issued by the manufacturer or importer of the motor
25 vehicle covered by the service contract or to any third party
26 acting in an administrative capacity on the manufacturer's
27 behalf in connection with that service contract.

28 Sec. 31. Section 516E.9, Code 2005, is amended to read as
29 follows:

30 516E.9 MISREPRESENTATIONS OF STATE APPROVAL.

31 A motor-vehicle service contract-provider company shall not
32 represent or imply in any manner that the provider service
33 company has been sponsored, recommended, or approved or that
34 the provider's service company's abilities or qualifications
35 have in any respect been passed upon by the state of Iowa,

1 including the commissioner, the insurance division, or the
2 division's securities bureau.

3 Sec. 32. Section 516E.10, Code 2005, is amended to read as
4 follows:

5 516E.10 PROHIBITED ACTS -- UNFAIR OR DECEPTIVE TRADE
6 PRACTICES.

7 1. MISREPRESENTATIONS, FALSE ADVERTISING, AND UNFAIR
8 PRACTICES.

9 a. Unless licensed as an insurance company, a ~~motor~~
10 ~~vehicle~~ service contract-provider company shall not use in its
11 name, contracts, or literature, the words "insurance",
12 "casualty", "surety", "mutual", or any other words descriptive
13 of the insurance, casualty, or surety business or deceptively
14 similar to the name or description of any insurance or surety
15 corporation, or any other ~~motor-vehicle~~ service contract
16 provider company.

17 b. A ~~motor-vehicle~~ service contract-provider company shall
18 not, without the written consent of the purchaser, knowingly
19 charge a purchaser for duplication of coverage or duties
20 required by state or federal law, a warranty expressly issued
21 by a manufacturer or seller of a product, or an implied
22 warranty enforceable against the lessor, seller, or
23 manufacturer of a product.

24 c. A ~~motor-vehicle~~ provider, service contract-provider
25 company, or third-party administrator shall not make, permit,
26 or cause a false or misleading statement, either oral or
27 written, in connection with the sale, offer to sell, or
28 advertisement of a ~~motor-vehicle~~ service contract.

29 d. A ~~motor-vehicle~~ provider, service contract-provider
30 company, or third-party administrator shall not permit or
31 cause the omission of a material statement in connection with
32 the sale, offer to sell, or advertisement of a ~~motor-vehicle~~
33 service contract, which under the circumstances should have
34 been made in order to make the statement not misleading.

35 e. A ~~motor-vehicle~~ provider, service contract-provider

1 company, or third-party administrator shall not make, permit,
2 or cause to be made a false or misleading statement, either
3 oral or written, about the benefits or services available
4 under the ~~motor-vehicle~~ service contract.

5 f. A ~~motor-vehicle~~ provider, service contract-provider
6 company, or third-party administrator shall not make, permit,
7 or cause to be made a statement of practice which has the
8 effect of creating or maintaining a fraud.

9 g. A ~~motor-vehicle~~ provider, service contract-provider
10 company, or third-party administrator shall not make, publish,
11 disseminate, circulate, or place before the public, or cause,
12 directly or indirectly, to be made, published, disseminated,
13 circulated, or placed before the public in a newspaper,
14 magazine, or other publication, or in the form of a notice,
15 circular, pamphlet, letter, or poster, or over a radio or
16 television station, or in any other way, an advertisement,
17 announcement, or statement containing an assertion,
18 representation, or statement with respect to the ~~motor-vehicle~~
19 service contract industry or with respect to a ~~motor-vehicle~~
20 provider, service contract-provider company, or third-party
21 administrator which is untrue, deceptive, or misleading. It
22 is deceptive or misleading to use any combination of words,
23 symbols, or physical materials which by their content,
24 phraseology, shape, color, or other characteristics are so
25 similar to a combination of words, symbols, or physical
26 materials used by a manufacturer or of such a nature that the
27 use would tend to mislead a person into believing that the
28 solicitation is in some manner connected with the
29 manufacturer, unless actually authorized or issued by the
30 manufacturer.

31 h. A bank, savings and loan association, credit union,
32 insurance company, or other lending institution shall not
33 require the purchase of a ~~motor-vehicle~~ service contract as a
34 condition of a loan.

35 2. DEFAMATION. A ~~motor-vehicle~~ provider, service contract

1 provider company, or third-party administrator shall not make,
2 publish, disseminate, or circulate, directly or indirectly, or
3 aid, abet, or encourage the making, publishing, disseminating,
4 or circulating of an oral or written statement or a pamphlet,
5 circular, article, or literature which is false or maliciously
6 critical of or derogatory to the financial condition of a
7 person, and which is calculated to injure the person.

8 3. BOYCOTT, COERCION, AND INTIMIDATION. A ~~motor-vehicle~~
9 provider, service contract-provider-shall-not-enter-into-an
10 company, or third-party administrator agreement to commit, or
11 by a concerted action commit, an act of boycott, coercion, or
12 intimidation resulting in or tending to result in unreasonable
13 restraint of, or monopoly in, the service contract industry.

14 4. FALSE STATEMENTS. A ~~motor-vehicle~~ provider, service
15 contract-provider company, or third-party administrator shall
16 not knowingly file with a supervisory or other public
17 official, or knowingly make, publish, disseminate, circulate,
18 or deliver to a person, or place before the public, or
19 knowingly cause directly or indirectly to be made, published,
20 disseminated, circulated, delivered to a person, or placed
21 before the public, a false material statement of fact as to
22 the financial condition of a person.

23 5. FALSE ENTRIES. A ~~motor-vehicle~~ provider, service
24 contract-provider company, or third-party administrator shall
25 not knowingly make a false entry of a material fact in a book,
26 report, or statement of a person or knowingly fail to make a
27 true entry of a material fact pertaining to the business of
28 the person in a book, report, or statement of the person.

29 6. USED OR REBUILT PARTS. A ~~motor-vehicle~~ service
30 contract-provider company shall not repair a motor vehicle
31 covered by a ~~motor-vehicle~~ service contract with any of the
32 following:

33 a. Used parts, unless the provider service company
34 receives prior written authorization by the vehicle owner.

35 b. Rebuilt parts, unless the parts are rebuilt according

1 to national standards recognized by the insurance division.

2 7. MARKETING. A provider, service company, or third-party
3 administrator shall not market, advertise, offer to sell, or
4 sell a service contract by using personal information obtained
5 in violation of the federal Driver's Privacy Protection Act,
6 18 U.S.C. § 2721 et seq.

7 ~~7.~~ 8. VIOLATIONS OF SECTION 714.16.

8 a. A violation of this chapter or rules adopted by the
9 commissioner pursuant to this chapter is an unfair practice as
10 defined in section 714.16.

11 b. An enforcement agreement between the commissioner and a
12 motor-vehicle provider, service contract-provider company, or
13 third-party administrator does not bar the attorney general
14 from bringing an action against the provider, service company,
15 or third-party administrator under section 714.16 as to
16 allegations that a violation of this chapter constitutes a
17 violation of section 714.16.

18 Sec. 33. Section 516E.11, Code 2005, is amended to read as
19 follows:

20 516E.11 RECORDS -- EXPLANATION OF REASONS FOR DENIAL OF
21 CLAIMS.

22 1. A motor-vehicle provider, service contract-provider
23 company, or third-party administrator shall keep accurate
24 records concerning transactions regulated under this chapter.

25 a. ~~A-motor-vehicle-service-contract-provider's-records~~
26 Records of a provider, service company, or third-party
27 administrator shall include all of the following:

28 (1) Copies of ~~all-service-contracts~~ each type of service
29 contract issued or sold.

30 (2) The name and address of each service contract holder.

31 (3) ~~The~~ Claim files which shall contain, at a minimum, the
32 dates, amounts, and descriptions of all receipts, claims, and
33 expenditures related to service contracts.

34 (4) Copies of all materials relating to claims which have
35 been denied.

1 b. A motor-vehicle provider, service contract-provider
2 company, or third-party administrator shall retain all
3 required records pertaining to a service contract holder for
4 at least two years after the specified period of coverage has
5 expired. A provider, service company, or third-party
6 administrator discontinuing business in this state shall
7 maintain its records until the provider, service company, or
8 third-party administrator furnishes the commissioner
9 satisfactory proof that the provider, service company, or
10 third-party administrator has discharged all obligations to
11 contract holders in this state.

12 c. ~~Motor-vehicle-service-contract-providers~~ Providers,
13 service companies, or third-party administrators shall make
14 all records concerning transactions regulated under the
15 chapter available to the commissioner for the purpose of
16 examination.

17 d. A provider, service company, or third-party
18 administrator may keep all records required under this chapter
19 in an electronic form. If an administrator maintains records
20 in a form other than a printed copy, the records shall be
21 accessible from a computer terminal available to the
22 commissioner and shall be capable of duplication to a legible
23 printed copy.

24 2. A ~~motor-vehicle-service-contract~~ provider, service
25 company, or third-party administrator shall promptly deliver a
26 written explanation to the service contract holder, describing
27 the reasons for denying a claim or for the offer of a
28 compromise settlement, based on all relevant facts or legal
29 requirements and referring to applicable provisions of the
30 service contract.

31 3. A provider, service company, or third-party
32 administrator shall keep accurate records concerning
33 transactions regulated under this chapter, including a list of
34 the locations where service contracts are marketed, sold,
35 offered for sale, or performed.

1 Sec. 34. Section 516E.12, Code 2005, is amended to read as
2 follows:

3 516E.12 SERVICE OF PROCESS.

4 The commissioner shall be the agent for service of process
5 upon a ~~motor-vehicle~~ provider, ~~service contract-provider~~
6 company, or third-party administrator and an issuer of a
7 reimbursement insurance policy.

8 Sec. 35. Section 516E.13, subsection 4, unnumbered
9 paragraph 1, Code 2005, is amended to read as follows:

10 Upon the commissioner's determination that a provider,
11 service company, or third-party administrator has engaged, is
12 engaging, or is about to engage in any act or practice
13 constituting a violation of this chapter or a rule adopted
14 pursuant to this chapter, the commissioner may issue a summary
15 order directing the person to cease and desist from engaging
16 in the act or practice resulting in the violation or to take
17 other affirmative action as in the judgment of the
18 commissioner is necessary to comply with the requirements of
19 this chapter.

20 Sec. 36. Section 516E.14, Code 2005, is amended to read as
21 follows:

22 516E.14 AUDITS.

23 The commissioner may examine or cause to be examined the
24 records of a ~~motor-vehicle~~ provider, ~~service contract-provider~~
25 company, or third-party administrator for the purpose of
26 verifying compliance with this chapter. The commissioner may
27 require, by a subpoena, the attendance of the provider,
28 service company, or third-party administrator, or the
29 ~~provider's~~ a representative thereof, and any other witness
30 whom the commissioner deems necessary or expedient, and the
31 production of records relating in any manner to compliance
32 with this chapter if a provider, service company, third-party
33 administrator, or witness fails or refuses to produce the
34 documents for examination when requested by the commissioner.

35 Sec. 37. Section 516E.15, subsection 1, paragraph b, Code

1 2005, is amended to read as follows:

2 b. A motor-vehicle provider, service contract-provider-who
3 company, or third-party administrator that fails to file
4 documents and information with the commissioner as required
5 pursuant to section 516E.3 may be subject to a civil penalty.
6 The amount of the civil penalty shall not be more than four
7 hundred dollars plus two dollars for each motor-vehicle
8 service contract that the person executed prior to satisfying
9 the filing requirement. However, a person who fails to file
10 information regarding a change in the provider's name or the
11 termination of the provider's business of a provider, service
12 company, or third-party administrator as required pursuant to
13 section 516E.3 is subject to a civil penalty of not more than
14 five hundred dollars.

15 Sec. 38. Section 516E.15, subsection 2, Code 2005, is
16 amended to read as follows:

17 2. If the commissioner believes that grounds exist for the
18 criminal prosecution of a motor-vehicle provider, service
19 contract-provider company, or third-party administrator for
20 violating this chapter or any other law of this state, the
21 commissioner may forward to the attorney general or the county
22 attorney the grounds for the belief, including all evidence in
23 the commissioner's possession for action deemed appropriate by
24 the attorney general or county attorney. At the request of
25 the attorney general, the county attorney shall appear and
26 prosecute the action when brought in the county served by the
27 county attorney.

28 Sec. 39. NEW SECTION. 516E.16 COURT ACTION FOR FAILURE
29 TO COOPERATE.

30 1. If a person fails or refuses to file a statement or
31 report or to produce any books, accounts, papers,
32 correspondence, memoranda, purchase agreements, files, or
33 other documents or records, or to obey a subpoena issued by
34 the commissioner, the commissioner may refer the matter to the
35 attorney general, who may apply to a district court to enforce

1 compliance. The court may order any of the following:

2 a. Injunctive relief restricting or prohibiting the offer
3 or sale of service contracts.

4 b. Production of documents or records including but not
5 limited to books, accounts, papers, correspondence, memoranda,
6 purchase agreements, files, or other documents or records.

7 c. Such other relief as may be appropriate.

8 2. A court order issued pursuant to subsection 1 is
9 effective until the person who is subject to the order files
10 the statement or report, produces the documents requested, or
11 obeys the subpoena.

12 Sec. 40. NEW SECTION. 516E.17 NET WORTH REQUIREMENT.

13 A service company that has issued or renewed in the
14 aggregate one thousand or fewer service contracts during the
15 preceding calendar year shall maintain a minimum net worth of
16 forty thousand dollars. The minimum net worth to be
17 maintained shall be increased by an additional twenty thousand
18 dollars for each additional five hundred contracts or fraction
19 thereof issued or renewed, up to a maximum required net worth
20 of four hundred thousand dollars. At least twenty thousand
21 dollars of net worth shall consist of paid-in capital.

22 Sec. 41. NEW SECTION. 516E.18 PUBLIC ACCESS TO RECORDS.

23 1. The administrator shall keep a register of all filings
24 and orders which have been entered. The register shall be
25 open for public inspection.

26 2. Upon request and for a reasonable fee, the
27 administrator shall furnish to any person copies of any
28 register entry or any document which is a matter of public
29 record and not confidential. Copies shall be available during
30 normal business hours and may be certified upon request. In
31 any administrative, civil, or criminal proceeding, a certified
32 copy is prima facie evidence of the contents of the document
33 certified.

34 3. Pursuant to chapter 22, the administrator may maintain
35 the confidentiality of information obtained during an

1 investigation or audit.

2 Sec. 42. NEW SECTION. 516E.19 ADMINISTRATION.

3 1. This chapter shall be administered by the commissioner.
4 The deputy administrator appointed pursuant to section 502.601
5 shall be the principal operations officer responsible to the
6 commissioner for the routine administration of this chapter
7 and management of the administrative staff. In the absence of
8 the commissioner, whether because of vacancy in the office, by
9 reason of absence, physical disability, or other cause, the
10 deputy administrator shall be the acting administrator and
11 shall, for the time being, have and exercise the authority
12 conferred upon the commissioner. The commissioner may from
13 time to time delegate to the deputy administrator any or all
14 of the functions assigned to the commissioner in this chapter.
15 The deputy administrator shall employ officers, attorneys,
16 accountants, auditors, investigators, and other employees as
17 shall be needed for the administration of this chapter.

18 2. Upon request, the commissioner may honor requests from
19 interested persons for interpretive opinions.

20 Sec. 43. Section 518.14, subsection 4, paragraph a, Code
21 2005, is amended to read as follows:

22 a. UNITED STATES GOVERNMENT OBLIGATIONS. Obligations
23 Bonds or other evidences of indebtedness issued, assumed, or
24 guaranteed by the United States of America, or by an any
25 agency or instrumentality of the United States of America,
26 include investments in an open-end management investment
27 company registered with the federal securities and exchange
28 commission under the federal Investment Company Act of 1940,
29 15 U.S.C. § 80(a) and operated in accordance with 17 C.F.R. §
30 270.2a-7, the portfolio of which is limited to the United
31 States obligations described in this paragraph, and which are
32 included in the national association of insurance
33 commissioners' securities valuation office's United States
34 direct obligation - full faith and credit list.

35 Sec. 44. Section 518A.12, subsection 4, paragraph a, Code

1 2005, is amended to read as follows:

2 a. UNITED STATES GOVERNMENT OBLIGATIONS. Obligations
3 Bonds or other evidences of indebtedness issued, assumed, or
4 guaranteed by the United States of America, or an by any
5 agency or instrumentality of the United States of America,
6 include investments in an open-end management investment
7 company registered with the federal securities and exchange
8 commission under the federal Investment Company Act of 1940,
9 15 U.S.C. § 80(a) and operated in accordance with 17 C.F.R. §
10 270.2a-7, the portfolio of which is limited to the United
11 States obligations described in this paragraph, and which are
12 included in the national association of insurance
13 commissioners' securities valuation office's United States
14 direct obligation - full faith and credit list.

15 Sec. 45. Section 520.19, Code 2005, is amended to read as
16 follows:

17 520.19 ANNUAL TAX -- FEES.

18 In lieu of all other taxes, licenses, charges, and fees
19 whatsoever, such attorney shall annually pay to the
20 commissioner the same fees as are paid by mutual companies
21 transacting the same kind of business, and an annual tax of
22 ~~two-percent, if a domestic reciprocal organization, and two~~
23 ~~percent, if a foreign reciprocal organization,~~ based upon the
24 applicable percentage stated in section 432.1, subsection 4,
25 calculated upon the gross premiums or deposits collected from
26 subscribers in this state during the preceding calendar year,
27 after deducting therefrom returns, or cancellations, and all
28 amounts returned to subscribers or credited to their accounts
29 as savings, and the amount returned upon canceled policies and
30 rejected applications covering property situated or on
31 business done within this state.

32 Sec. 46. Section 522B.17, Code 2005, is amended to read as
33 follows:

34 522B.17 PENALTY.

35 An insurer or insurance producer who, after hearing, is

1 found to have violated this chapter may be ordered to cease
2 and desist from engaging in the conduct resulting in the
3 violation and may be assessed a civil penalty pursuant to
4 chapter 507B.

5 A person ~~found who~~, after hearing, is found to have acted
6 violated this chapter by acting as an agent of an insurer or
7 otherwise selling, soliciting, or negotiating insurance in
8 this state, or offering to the public advice, counsel, or
9 services with regard to insurance, who is not properly
10 licensed ~~is-subject-to~~ may be ordered to cease and desist from
11 engaging in the conduct resulting in the violation and may be
12 assessed a civil penalty according to the provisions of
13 chapter 507A.

14 If a person does not comply with an order issued pursuant
15 to this section, the commissioner may petition a court of
16 competent jurisdiction to enforce the order. The court shall
17 not require the commissioner to post a bond in an action or
18 proceeding under this section. If the court finds, after
19 notice and opportunity for hearing, that the person is not in
20 compliance with an order, the court may adjudge the person to
21 be in civil contempt of the order. The court may impose a
22 civil penalty against the person for contempt in an amount not
23 less than three thousand dollars but not greater than ten
24 thousand dollars for each violation and may grant any other
25 relief that the court determines is just and proper in the
26 circumstances.

27 Sec. 47. NEW SECTION. 522B.17A INJUNCTIVE RELIEF.

28 An association with at least twenty-five insurance producer
29 members may bring an action in district court to enjoin a
30 person from selling, soliciting, or negotiating insurance in
31 violation of section 522B.2. If the court finds that the
32 person is in violation of section 522B.2 and enjoins the
33 person from selling, soliciting, or negotiating insurance in
34 violation of that section, the court's findings of fact and
35 law, and the judgment and decree, when final, shall be

1 admissible in any proceeding initiated pursuant to section
2 522B.17 by the commissioner against the person enjoined and
3 the person enjoined shall be precluded from contesting in that
4 proceeding the court's determination that the person sold,
5 solicited, or negotiated insurance in violation of section
6 522B.2.

7 Sec. 48. Section 523A.402, subsection 6, paragraph c, Code
8 2005, is amended to read as follows:

9 c. The annuity shall not be contestable, or limit death
10 benefits in the case of suicide, with respect to that portion
11 of the face amount of the annuity which is required by
12 paragraph "b". The annuity shall not refer to physical
13 examination, or otherwise operate as an exclusion, limitation,
14 or condition other than requiring submission of proof of death
15 or surrender of the annuity at the time the prepaid purchase
16 agreement is funded, matures, or is canceled, as the case may
17 be.

18 Sec. 49. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.
19 This section and the sections of this Act amending sections
20 513C.6 and 514E.2, and amending section 514E.7, subsection 1,
21 by enacting paragraph "e", being deemed of immediate
22 importance, take effect upon enactment. The section of the
23 Act amending section 513C.6 is retroactively applicable to
24 January 1, 2005, and is applicable on and after that date.
25 The sections of the Act amending section 514E.2 are
26 retroactively applicable to July 1, 1986, and are applicable
27 on and after that date. The portion of the section of the Act
28 amending section 514E.7, subsection 1, by enacting paragraph
29 "e" is retroactively applicable to January 1, 2005, and is
30 applicable on and after that date.

31 EXPLANATION

32 This bill relates to various provisions administered by the
33 insurance division of the department of commerce.

34 Code section 432.1 provides for cash refunds of excess
35 prepayments of premium tax to an insurance carrier when a

1 premium tax credit will not allow recoupment of the funds
2 paid.

3 Code section 505A.1 is amended to provide that the
4 commissioner of insurance shall be the state's representative
5 for the interstate insurance product regulation compact.

6 Code section 507C.2 is amended to include additional
7 definitions, including definitions of certain derivative
8 contracts that may be involved in insurer insolvency
9 proceedings.

10 New Code section 507C.28A is amended concerning rights that
11 may be exercised under netting agreements or qualified
12 financial contracts under certain circumstances.

13 Code section 507C.30 is amended by adding a new
14 subparagraph concerning the disallowance of certain setoffs
15 during insolvency proceedings.

16 Code section 513B.12 is amended to exempt small employer
17 carriers from electing risk-assuming status while the small
18 employer carrier reinsurance program is suspended.

19 Code section 513B.13 is amended to permit reduction of the
20 size of the small employer carrier reinsurance program board
21 while the program is suspended, with the approval of the
22 commissioner of insurance.

23 Code section 513B.17 strikes language allowing expansion of
24 the small employer carrier reinsurance program to employer
25 groups employing 25 to 50 employees if the market is
26 constricted and not competitive, since state law already
27 includes employee groups of that size in the program.

28 Code section 513C.6 is amended to allow an individual who
29 has coverage as a dependent under a basic or standard health
30 benefit plan to elect to continue coverage under the plan when
31 the individual is no longer covered as a dependent under the
32 plan. The bill provides that this provision is effective upon
33 enactment and is retroactively applicable to January 1, 2005,
34 and applies on and after that date.

35 Code section 514B.13 is amended to allow a health

1 maintenance organization that provides services exclusively on
2 a group contract basis to limit the applicability of the open
3 enrollment period provided for in the section to members of
4 the group covered by the contract, including those members of
5 the group who previously waived coverage.

6 Code section 514E.2, subsection 1, is amended to provide
7 that all carriers and all organized delivery systems licensed
8 by the director of public health providing health insurance or
9 health care services on an individual or group basis are
10 members of the Iowa comprehensive health insurance
11 association.

12 Code section 514E.2, subsection 5, is amended to strike a
13 requirement that the Iowa comprehensive health insurance
14 association include a list of health conditions which would
15 make an applicant eligible without demonstrating a rejection
16 of coverage by one carrier.

17 Code section 514E.2, subsection 7, is amended to include
18 definitions of "total health insurance premiums" and "payments
19 for subscriber contracts" for the purpose of computing
20 assessments of members by the Iowa comprehensive health
21 insurance association.

22 The bill provides that all the amendments to Code section
23 514E.2 take effect upon enactment and are retroactively
24 applicable to July 1, 1986, and apply on and after that date.

25 Code section 514E.7 is amended to provide that an
26 individual is eligible for coverage under the Iowa
27 comprehensive health insurance association if the person has
28 certain health conditions established by the association's
29 board of directors with the approval of the commission. Code
30 section 514E.7 is also amended to provide eligibility for such
31 coverage if the individual has coverage under a basic or
32 standard health benefit plan under Code chapter 513C and this
33 provision is effective upon enactment and is retroactively
34 applicable to January 1, 2005, and applies on and after that
35 date.

1 Code section 514E.8, subsection 1, is amended to provide
2 that an individual who is covered by an association health
3 insurance policy and who is eligible for Medicare coverage
4 based on age prior to January 1, 2005, may continue to renew
5 the coverage under the association policy.

6 Code section 515.138 revises language about intentional
7 acts in standard fire policy language which are
8 noncompensable.

9 Code section 515B.2 is amended to change the date used when
10 calculating the net worth of a person for the purpose of
11 determining whether the person has a covered claim under the
12 Iowa insurance guaranty association.

13 Code section 515B.17 is amended to provide a date certain
14 when claims must be filed in order to be covered by the Iowa
15 insurance guaranty association.

16 Code section 515F.36 is amended to change the membership of
17 the governing board of the FAIR plan, the plan to assure fair
18 access to insurance requirements.

19 Code chapter 516E concerning service contracts for the
20 repair or placement of certain motor vehicles is extensively
21 revised. Code section 516E.1 concerning definitions is
22 amended to include the addition of definitions for an
23 "administrator", for a "third-party administrator", and for a
24 "service company", to redefine "provider" and to redefine
25 "reimbursement insurance policy" to specify that such a policy
26 is for the benefit of the service contract holders.

27 Code section 516E.2 is amended to specify the requirements
28 for a service company to issue, sell, or offer service
29 contracts in this state, including financial security
30 requirements to protect service contract holders in the form
31 of a funded reserve in the amount of 40 percent of gross
32 consideration received by the service company, and the filing
33 of a certificate of deposit with the commissioner in the
34 amount of not less than 5 percent of consideration received,
35 but not less than \$25,000. Service companies are also

1 required to register with the commissioner of insurance and
2 pay a \$500 registration fee. Grounds for denial, suspension,
3 or revocation of such registrations are also specified.

4 Code section 516E.3 is amended to provide that service
5 companies and providers, such as auto dealers and other
6 sellers, are required to file copies of service contracts with
7 the insurance commissioner, including copies of service
8 contracts offered for sale or sold, and a copy of the service
9 company's reimbursement insurance policy. A provider is
10 required to pay a \$100 filing fee. Providers and service
11 companies are required to make additional filings concerning
12 name or ownership changes or cessation of business.

13 Code section 516E.4 is amended to require that
14 reimbursement insurance policies must include a statement that
15 the reimbursement insurer is obligated to pay the service
16 contract holder upon a failure of the service company to
17 perform, must include specified terms for termination of the
18 policy, and may include the right of an insurer to seek
19 indemnification or subrogation against a service company if
20 the insurer is required to pay a service contract holder
21 pursuant to the policy.

22 Code section 516E.5 is amended to require service contracts
23 to include information about the service company and the
24 service company's obligations under the service contract, a
25 statement that the obligations of the service company are
26 guaranteed under a reimbursement insurance policy and that the
27 service contract holder may file claims directly with the
28 insurer if the service company fails to perform under the
29 service contract. The Code section is also amended to require
30 identification of the third-party administrator and the
31 service company for the service contract, to require a written
32 termination notice of a service contract, and to allow a
33 cancellation period by a service contract holder after a
34 service contract has been purchased.

35 Code sections 516E.6, 516E.7, 516E.8, 516E.9, 516E.10,

1 516E.12, 516E.13, 516E.14, and 516E.15 are amended to apply to
2 service companies, providers, and third-party administrators.

3 Code section 516E.11 is amended to conform with changes in
4 definitions made in Code section 516E.1, to require providers,
5 service companies, and third-party administrators to comply
6 with recordkeeping requirements, to reduce recordkeeping
7 requirements as to individual service contracts, and to update
8 recordkeeping requirements to reflect modern technology.

9 Providers, service companies, and third-party administrators
10 are also required to keep a list of locations where service
11 contracts are marketed, sold, offered for sale, or performed.

12 New Code section 516E.16 allows the insurance commissioner
13 to pursue court action when a person does not respond to
14 insurance division orders and requests for information.

15 New Code section 516E.17 imposes a net worth requirement on
16 service companies, based on the number of service contracts
17 issued or renewed in a year, that utilizes the same formula
18 and amounts that are used for residential service contracts
19 under Code chapter 523C.

20 New Code section 516E.18 codifies an existing rule
21 concerning public access to the records of an administrator.

22 New Code section 516E.19 relates to the administration of
23 Code chapter 516E by the commissioner of insurance with the
24 assistance of the deputy administrator of insurance.

25 Code sections 518.14 and 518A.12 are amended to allow
26 county and state mutual associations to invest in United
27 States obligations that include open-end management investment
28 accounts.

29 Code section 520.19 is amended to provide that reciprocal
30 or interinsurance contracts are subject to the new premium tax
31 rate structure contained in Code section 432.1, subsection 4.

32 Code section 522B.17 is amended to provide that if an
33 insurer or insurance producer is found to have violated Code
34 chapter 522B, that person may be ordered to cease and desist
35 from engaging in the illegal conduct and may be assessed a

1 civil penalty pursuant to Code chapter 507B. The section is
2 also amended to provide that a person who violates Code
3 chapter 522B by acting as an agent of an insurer or otherwise
4 sells, solicits, or negotiates insurance in this state or
5 offers advice or services regarding insurance and who is not
6 properly licensed may be ordered to cease and desist from
7 engaging in the illegal conduct and may be assessed a civil
8 penalty pursuant to Code chapter 507B.

9 Code section 522B.17 is also amended to allow the
10 commissioner to enforce a cease and desist order by
11 petitioning a court of competent jurisdiction. The
12 commissioner is not required to file a bond in such an action
13 and if the court finds that the person is not in compliance
14 with the cease and desist order, the court may find the person
15 in civil contempt and may impose a civil penalty against the
16 person in an amount not less than \$3,000 and not more than
17 \$10,000 and grant any other relief that the court determines
18 is appropriate under the circumstances.

19 New Code section 522B.17A allows an association with at
20 least 25 members to bring an action in district court for
21 injunctive relief against a person who sells, solicits, or
22 negotiates insurance in violation of Code section 522B.2. The
23 section provides that if the court finds that such a violation
24 has occurred and enjoins the person from continuing to violate
25 the chapter, the court's findings of law and fact, and the
26 final judgment and decree of the court shall be admissible in
27 any proceeding initiated against the person by the
28 commissioner and the person enjoined is precluded from
29 contesting the court's determination that a violation of Code
30 section 522B.2 has occurred.

31 Code section 523A.402 is amended to correct an error in
32 language concerning annuity contracts for the purpose of
33 funding cemetery and funeral merchandise and funeral services.
34 The change will conform the language to changes made in
35 legislation contained in House File 2269, which was enacted in

1 2004.
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SENATE FILE 360

S-3081

- 1 Amend Senate File 360 as follows:
2 1. Page 16, by striking lines 13 through 32 and
3 inserting the following: "the administrator may by
4 rule require financial responsibility standards."
5 2. By renumbering as necessary.

By MICHAEL E. GRONSTAL

S-3081 FILED APRIL 4, 2005
ADOPTED

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23

SENATE FILE 360

S-3062

- 1 Amend the amendment, S-3050, to Senate File 360, as
2 follows:
3 1. Page 1, line 8, by striking the words
4 "~~attached to the policy when~~" and inserting the
5 following: "attached to the policy when issued or
6 shall be".

By RON WIECK

S-3062 FILED MARCH 29, 2005

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S-3050

1 Amend Senate File 360 as follows:

2 1. Page 8, by inserting after line 24, the
3 following:

4 "Sec. _____. Section 509.3, subsection 1, Code 2005,
5 is amended to read as follows:

6 1. The policy shall have a provision that a copy
7 of the application, if any, of the policyholder shall
8 be ~~attached to the policy when~~ furnished to the
9 policyholder within thirty days after the policy is
10 issued, that all statements made by the policyholder
11 or by the persons insured shall be deemed
12 representations and not warranties, and that no
13 statement made by any person insured shall be used in
14 any contest unless a copy of the instrument containing
15 the statement is or has been furnished to such
16 person."

17 2. Page 9, by inserting after line 13, the
18 following:

19 "Sec. _____. Section 514A.5, subsection 1, Code
20 2005, is amended to read as follows:

21 1. The insured shall not be bound by any statement
22 made in an application for a policy unless a copy of
23 such application is ~~attached to or~~ endorsed on the
24 policy when issued as a part thereof or is furnished
25 to the policyholder within thirty days after the
26 policy is issued. If any such policy delivered or
27 issued for delivery to any person in this state shall
28 be reinstated or renewed, and the insured or the
29 beneficiary or assignee of such policy shall make
30 written request to the insurer for a copy of the
31 application, if any, for such reinstatement or
32 renewal, the insurer shall within fifteen days after
33 the receipt of such request at its home office or any
34 branch office of the insurer, deliver or mail to the
35 person making such request, a copy of such
36 application. If such copy shall not be so delivered
37 or mailed, the insurer shall be precluded from
38 introducing such application as evidence in any action
39 or proceeding based upon or involving such policy or
40 its reinstatement or renewal."

41 3. Title page, line 5, by inserting after the
42 word "program," the following: "insurance
43 applications,".

44 4. By renumbering as necessary.

By MATT McCOY

S-3050 FILED MARCH 23, 2005

S-3054

1 Amend Senate File 360 as follows:

2 1. By striking page 35, line 27 through page 36,
3 line 6, and inserting the following:

4 "Sec. ____ . NEW SECTION. 522B.17A INJUNCTIVE
5 RELIEF.

6 1. An association with at least twenty-five
7 insurance producer members may bring an action in
8 district court to enjoin a person from selling,
9 soliciting, or negotiating insurance in violation of
10 section 522B.2. However, before bringing an action in
11 district court to enjoin a person pursuant to this
12 section, an association shall file a complaint with
13 the insurance division alleging that the person is
14 selling, soliciting, or negotiating insurance in
15 violation of section 522B.2.

16 2. If the division makes a determination to
17 proceed administratively against the person for a
18 violation of section 522B.2, the complainant shall not
19 bring an action in district court against the person
20 pursuant to this section based upon the allegations
21 contained in the complaint filed with the division.

22 3. If the division does not make a determination
23 to proceed administratively against the person for a
24 violation of section 522B.2, the division shall issue,
25 on or before ninety days from the date of filing of
26 the complaint, a release to the complainant that
27 permits the complainant to bring an action in district
28 court pursuant to this section.

29 4. The filing of a complaint with the division
30 pursuant to this section tolls the statute of
31 limitations pursuant to section 614.1 as to the
32 alleged violation for a period of one hundred twenty
33 days from the date of filing the complaint.

34 5. Any action brought in district court by a
35 complainant against a person pursuant to this section,
36 based upon the allegations contained in the complaint
37 filed with the division, shall be brought within one
38 year after the ninety-day period following the filing
39 of the complaint with the division, or the date of the
40 issuance of a release by the division, whichever is
41 earlier.

42 6. If the court finds that the person is in
43 violation of section 522B.2 and enjoins the person
44 from selling, soliciting, or negotiating insurance in
45 violation of that section, the court's findings of
46 fact and law, and the judgment and decree, when final,
47 shall be admissible in any proceeding initiated
48 pursuant to section 522B.17 by the commissioner
49 against the person enjoined and the person enjoined
50 shall be precluded from contesting in that proceeding

S-3054

S-3054

Page 2

1 the court's determination that the person sold,
2 solicited, or negotiated insurance in violation of
3 section 522B.2."

4 2. By renumbering as necessary.

By MICHAEL E. GRONSTAL

S-3054 FILED MARCH 23, 2005

SENATE FILE 366

S-3060

1 Amend Senate File 366 as follows:

2 1. Page 1, line 4, by striking the words "filing
3 of the order for an evaluation" and inserting the
4 following: "~~filing of the order for an evaluation~~
5 arrival of the person at a psychiatric facility for
6 the performance of the evaluation".

7 2. Page 1, by striking lines 8 through 11 and
8 inserting the following: "decides to rely. Pending
9 the hearing, no".

By MAGGIE TINSMAN

S-3060 FILED MARCH 23, 2005

SENATE FILE 360

S-3058

1 Amend Senate File 360 as follows:

2 1. Page 1, by inserting before line 1, the
3 following:

4 "Section 1. NEW SECTION. 249J.1 DEFINITIONS.

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

7 1. "Certified long-term care insurance policy"
8 means a long-term care insurance contract that is
9 issued by an insurer or other person who complies with
10 section 249J.4.

11 2. "Long-term care facility" means a facility
12 licensed under chapter 135C or an assisted living
13 program certified under chapter 231C.

14 3. "Long-term care insurance" means long-term care
15 insurance as defined in section 514G.4 and regulated
16 in section 514G.7.

17 4. "Qualified long-term care services" means
18 qualified long-term care services as defined in
19 section 7702B(c) of the Internal Revenue Code.

20 Sec. 2. NEW SECTION. 249J.2 IOWA LONG-TERM CARE
21 ASSET DISREGARD INCENTIVE PROGRAM -- ESTABLISHMENT AND
22 ADMINISTRATION.

23 1. The Iowa long-term care asset disregard
24 incentive program is established to do all of the
25 following:

26 a. Provide incentives for individuals to insure
27 against the costs of providing for their long-term
28 care needs.

29 b. Provide a mechanism for individuals to qualify
30 for coverage of the costs of their long-term care
31 needs under the medical assistance program without
32 first being required to substantially exhaust all
33 their resources.

34 c. Assist in developing methods for increasing
35 access to and the affordability of long-term care
36 insurance.

37 d. Alleviate the financial burden on the state's
38 medical assistance program by encouraging the pursuit
39 of private initiatives.

40 2. The insurance division of the department of
41 commerce shall administer the program in cooperation
42 with the division responsible for medical services
43 within the department of human services. Each agency
44 shall take appropriate action to maintain the waiver
45 granted by the centers for Medicare and Medicaid
46 services of the United States department of health and
47 human services under 42 U.S.C. § 1396 relating to
48 providing medical assistance under chapter 249A, in
49 effect prior to the effective date of this Act.

50 Sec. 3. NEW SECTION. 249J.3 ELIGIBILITY.

S-3058

1 An individual who is the beneficiary of a certified
2 long-term care insurance policy approved by the
3 insurance division may be eligible for assistance
4 under the medical assistance program using the asset
5 disregard provisions pursuant to section 249J.5.

6 Sec. 4. NEW SECTION. 249J.4 INSURER

7 REQUIREMENTS.

8 1. An insurer or other person who wishes to issue
9 a certified long-term care insurance policy meeting
10 the requirements of this chapter shall, at a minimum,
11 offer to each policyholder or prospective policyholder
12 a policy that provides both of the following:

13 a. Facility coverage, including but not limited to
14 long-term care facility coverage.

15 b. Nonfacility coverage, including but not limited
16 to home and community-based care coverage.

17 2. An insurer or other person who complies with
18 subsection 1 may also elect to offer a certified long-
19 term care insurance policy that provides only facility
20 coverage.

21 Sec. 5. NEW SECTION. 249J.5 ASSET DISREGARD

22 ADJUSTMENT.

23 1. As used in this section, "asset disregard"
24 means a one dollar increase in the amount of assets an
25 individual who is the beneficiary of a certified long-
26 term care insurance policy and meets the requirements
27 of section 249J.3 may retain under section 249A.35 for
28 each one dollar of benefit paid out under the
29 individual's certified long-term care insurance policy
30 for qualified long-term care services if the policy
31 meets all of the following criteria:

32 a. If purchased prior to January 1, 2005, provides
33 benefits in an amount equal to at least seventy
34 thousand dollars as computed on January 1, 2005.

35 b. If purchased on or after January 1, 2005,
36 provides benefits in an amount equal to at least
37 seventy thousand dollars as computed on January 1,
38 2005, compounded annually by at least five percent, or
39 an amount equal to at least the minimum face amount
40 specified by the commissioner of insurance pursuant to
41 subsection 3, whichever amount is greater.

42 c. Includes a provision under which the total
43 amount of the benefit increases by at least five
44 percent, compounded annually.

45 2. When the division responsible for medical
46 services within the department of human services
47 determines whether an individual is eligible for
48 medical assistance under chapter 249A, the division
49 shall make an asset disregard adjustment for any
50 individual who meets the requirements of section

1 249J.3. The asset disregard shall be available after
2 benefits of the certified long-term care insurance
3 policy have been applied to the cost of qualified
4 long-term care services as required under this
5 chapter.

6 3. Beginning September 1, 2006, or one year after
7 the effective date of this Act, whichever is later,
8 the commissioner of insurance shall issue a bulletin
9 annually on that date, declaring the minimum face
10 amount for policies to qualify for the Iowa long-term
11 care asset disregard incentive program for the
12 following calendar year. In making this
13 determination, the commissioner shall consult with the
14 division responsible for collecting data on average
15 nursing home costs in Iowa. Additionally, in making
16 this determination, the commissioner shall consider
17 the current average daily cost for three years of
18 nursing home care and other relevant information.

19 Sec. 6. NEW SECTION. 249J.6 APPLICATION OF ASSET
20 DISREGARD TO DETERMINATION OF INDIVIDUAL'S ASSETS.

21 A public program administered by the state that
22 provides long-term care services and bases eligibility
23 upon the amount of the individual's assets shall apply
24 the asset disregard under section 249J.5 in
25 determining the amount of the individual's assets.

26 Sec. 7. NEW SECTION. 249J.7 PRIOR PROGRAM --
27 DISCONTINUATION OF PROGRAM.

28 1. If the Iowa long-term care asset disregard
29 incentive program is discontinued, an individual who
30 is covered by a certified long-term care insurance
31 policy prior to the date the program is discontinued
32 is eligible to continue to receive an asset disregard
33 as defined under section 249J.5.

34 2. An individual who is covered by a long-term
35 care insurance policy under the long-term care asset
36 preservation program established pursuant to chapter
37 249G, Code 2005, on or before the effective date of
38 this Act, is eligible to continue to receive the asset
39 adjustment as defined under that chapter.

40 3. The insurance division, in cooperation with the
41 department of human services, shall adopt rules to
42 provide an asset disregard to individuals who are
43 covered by a long-term care insurance policy prior to
44 the effective date of this Act, consistent with the
45 Iowa long-term care asset disregard incentive program.

46 Sec. 8. NEW SECTION. 249J.8 RECIPROCAL
47 AGREEMENTS TO EXTEND ASSET DISREGARD.

48 The division responsible for medical services
49 within the department of human services may enter into
50 reciprocal agreements with other states to extend the

1 asset disregard under section 249J.5 to Iowa residents
2 who had purchased or were covered by certified long-
3 term care insurance policies in other states.

4 Sec. 9. NEW SECTION. 249J.9 RULES.

5 The department of human services and the insurance
6 division of the department of commerce shall adopt
7 rules pursuant to chapter 17A as necessary to
8 administer this chapter. The insurance division shall
9 consult with representatives of the insurance industry
10 in adopting such rules. This delegation of rulemaking
11 authority shall be construed narrowly.

12 Sec. 10. NEW SECTION. 249A.35 PURCHASE OF
13 CERTIFIED LONG-TERM CARE INSURANCE POLICY --
14 COMPUTATION UNDER MEDICAL ASSISTANCE PROGRAM.

15 A computation for the purposes of determining
16 eligibility under this chapter concerning an
17 individual who is the beneficiary of a certified long-
18 term care insurance policy under chapter 249J shall
19 include consideration of the asset disregard provided
20 in section 249J.5."

21 2. Page 36, by inserting after line 17, the
22 following:

23 "Sec. _____. Chapter 249G, Code 2005, is repealed.

24 Sec. _____. MEDICAID STATE PLAN WAIVERS -- IOWA
25 LONG-TERM CARE ASSET DISREGARD INCENTIVE PROGRAM.

26 1. The department of human services shall amend
27 the medical assistance state plan to provide that all
28 amounts paid for qualified long-term care services
29 under a certified long-term care insurance policy
30 pursuant to chapter 249J, as enacted in this Act,
31 shall be considered in determining the amount of the
32 asset disregard.

33 2. The department of human services shall seek
34 approval of a state plan amendment or make application
35 to the United States department of health and human
36 services for any waivers necessary to implement
37 chapter 249J, as enacted in this Act."

38 3. Page 36, by inserting after line 30, the
39 following:

40 "Sec. _____. CONTINGENT EFFECTIVE DATE -- IOWA LONG-
41 TERM CARE ASSET DISREGARD INCENTIVE PROGRAM.

42 1. The sections of this Act enacting chapter 249J
43 and section 249A.35, repealing chapter 249G, and
44 directing the department of human services to seek
45 Medicaid state plan amendments and waivers from the
46 federal government shall not take effect until both of
47 the following conditions are met:

48 a. Funding is specifically appropriated to the
49 insurance division of the department of commerce for
50 the purpose of the Iowa long-term care asset disregard

S-3058

Page 5

1 incentive program pursuant to chapter 249J as enacted
2 in this Act. The insurance division shall notify the
3 Code editor if such appropriation is made.

4 b. All Medicaid state plan amendments and waivers
5 necessary to implement chapter 249J, as enacted in
6 this Act, are approved by the United States department
7 of health and human services. The department of human
8 services shall notify the Code editor if such approval
9 is received.

10 2. If the requirements of subsection 1 are met,
11 the program shall begin no sooner than six months
12 following the date that both requirements are met."

13 4. Title page, line 2, by inserting after the
14 word "concerning" the following: "a long-term care
15 asset disregard incentive program,".

16 5. Title page, line 12, by striking the words
17 "applicable and" and inserting the following:
18 "applicable,".

19 6. Title page, line 13, by inserting after the
20 word "dates" the following: ", and providing a
21 contingent effective date".

22 7. By renumbering as necessary.

By RON WIECK

S-3058 FILED MARCH 23, 2005

Fiscal Services Division
Legislative Services Agency
Fiscal Note

SF 360 - Insurance Omnibus (LSB 1155 SV)

Analyst: Jeff Robinson (Phone: (515) 281-4614) (jeff.robinson@legis.state.ia.us)

Fiscal Note Version - New

Description

Senate File 360, Section 2, allows the Insurance Commissioner to approve refunds of insurance premium taxes in certain instances. Section 2 is effective July 1, 2005.

Background

Current Iowa law taxes insurance policy premiums on a calendar year basis, with pre-payments due in June and August of the calendar year, and the final reconciliation payment due in March of the next calendar year. If the pre-payments exceed the amount the company owes in that calendar year, the excess is allowed as a credit against payments due in the next year. In most instances, the credit is redeemed when the first pre-payment for the next calendar year is due (three months later).

If a company no longer issues policies in Iowa, the company may not have future tax liability to offset the credits. In the past, the State Appeals Board has refunded some overpayments. However, no overpayments have been refunded since April 2004, as the Appeals Board determined the Code of Iowa does not specifically authorize the issuance of refunds.

The latest report available shows that through April 2004 the Appeals Board held or denied over \$327,000 in over-payment claims from companies no longer doing business or approved to do business in Iowa. Of that amount, companies no longer licensed in Iowa have claimed \$181,000, and companies still licensed but no longer writing policies have claimed \$146,000. Those numbers would not include similarly situated companies that never filed claims with the State Appeals Board.

Iowa's current insurance premium tax is in the process of a phase-down from 2.0% to 1.0%, and the pre-payments are increasing so that the combination of the June and August pre-payments will equal 100.0% of the previous calendar year tax liability. This will lead to very little, if any tax due during the March final payment period, and an increase in the number of companies with credits to use the next year. Prior to the tax rate and pre-payment changes, only a 50.0% pre-payment was required prior to the final payment, so instances of over-payment were rare.

Assumptions

1. The Appeals Board will not reverse its decision and start issuing insurance tax refunds.
2. The current Revenue Estimating Conference estimate and the standing appropriation to the Appeals Board do not assume payment of any insurance premium tax refunds during FY 2006.
3. All companies that have filed claims with the Appeals Board will request refunds through the Insurance Commissioner.
4. Additional companies without current claims but with similar circumstances will file claims with the Insurance Commissioner.
5. During FY 2006, the Insurance Commissioner will approve refunds for all companies no longer licensed to do business in Iowa, and the Commissioner will not approve claims for companies with credits, but still doing business in Iowa.
6. Companies still licensed to do business, but no longer writing policies, will receive refunds in FY 2007.

Fiscal Impact

Section 2 of SF 360 will decrease net General Fund receipts by at least \$181,000 in FY 2006. There is an additional \$146,000 in potential refunds currently available to companies not currently writing policies in Iowa, but still licensed to do so.

Further, providing authority to the Insurance Commissioner to approve cash refunds will reduce net General Fund receipts in future fiscal years, as current law does not provide for any refund option.

Source

Insurance Division and Appeals Board Records

March 29, 2005

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

1 Section 1. Section 322.19, subsection 2, paragraph a, Code
2 2005, is amended to read as follows:

3 a. A ~~motor-vehicle~~ service contract as defined in section
4 516E.1.

5 Sec. 2. Section 432.1, subsection 6, paragraph d, Code
6 2005, is amended to read as follows:

7 d. The sums prepaid by a company or association under this
8 subsection shall be allowed as credits against its premium tax
9 liability for the calendar year during which the payments are
10 made. If a prepayment made under this subsection exceeds the
11 annual premium tax liability, the excess shall be allowed as a
12 credit against subsequent prepayment or tax liabilities. The
13 commissioner of insurance shall authorize the department of
14 revenue to make a cash refund to an insurer, in lieu of a
15 credit against subsequent prepayment or tax liabilities, if
16 the insurer demonstrates the inability to recoup the funds
17 paid via a credit. The commissioner shall adopt rules
18 establishing eligibility criteria for such a refund and a
19 refund process. The commissioner may suspend or revoke the
20 license of a company or association that fails to make a
21 prepayment on or before the due date.

22 Sec. 3. Section 505A.1, Article II, section 8, Code 2005,
23 is amended to read as follows:

24 8. "Member" means the person chosen by a compacting state
25 as its representative to the commission, or the person's
26 designee. The commissioner of insurance shall be the
27 representative member of the compact for the state of Iowa.

28 Sec. 4. Section 507C.2, Code 2005, is amended by adding
29 the following new subsections:

30 NEW SUBSECTION. 01. "Affiliate" of or "affiliated" with a
31 specific person, means a person that directly or indirectly,
32 through one or more intermediaries, controls or is controlled
33 by, or is under common control with, the person specified.

34 NEW SUBSECTION. 2A. "Commodity contract" means any of the
35 following:

1 a. A contract for the purchase or sale of a commodity for
2 future delivery on, or subject to the rules of, a board of
3 trade designated as a contract market by the commodity futures
4 trading commission under the federal Commodity Exchange Act, 7
5 U.S.C. § 1 et seq., or a board of trade outside the United
6 States.

7 b. An agreement that is subject to regulation under
8 section 19 of the federal Commodity Exchange Act, 7 U.S.C. § 1
9 et seq., and that is commonly known to the commodities trade
10 as a margin account, margin contract, leverage account, or
11 leverage contract.

12 c. An agreement or transaction that is subject to
13 regulation under section 4c(b) of the federal Commodity
14 Exchange Act, 7 U.S.C. § 1 et seq., and that is commonly known
15 to the commodities trade as a commodity option.

16 NEW SUBSECTION. 2B. "Control" means the same as defined
17 in section 521A.1, subsection 3.

18 NEW SUBSECTION. 8A. "Forward contract" means a contract
19 for the purchase, sale, or transfer of a commodity, as defined
20 in section 1 of the federal Commodity Exchange Act, 7 U.S.C. §
21 1 et seq., or any similar good, article, service, right, or
22 interest that is presently or in the future becomes the
23 subject of dealing in the forward contract trade, or product
24 or byproduct thereof, with a maturity date more than two days
25 after the date the contract is entered into, including, but
26 not limited to, a repurchase transaction, reverse repurchase
27 transaction, consignment, lease, swap, hedge transaction,
28 deposit, loan, option, allocated transaction, unallocated
29 transaction, or a combination of them or option on any of
30 them. "Forward contract" does not include a commodity
31 contract.

32 NEW SUBSECTION. 12A. "Netting agreement" means an
33 agreement, including terms and conditions incorporated by
34 reference therein, including a master agreement, which master
35 agreement, together with all schedules, confirmations,

1 definitions, and addenda thereto and transactions under any
2 thereof, shall be treated as one netting agreement, that
3 documents one or more transactions between parties to the
4 agreement for or involving one or more qualified financial
5 contracts and that provides for the netting or liquidation of
6 qualified financial contracts or present or future payment
7 obligations or payment entitlements thereunder, including
8 liquidation or closeout values relating to such obligations or
9 entitlements among the parties to the netting agreement.

10 NEW SUBSECTION. 13A. "Qualified financial contract" means
11 a commodity contract, forward contract, repurchase agreement,
12 securities contract, swap agreement, and any similar agreement
13 that the commissioner determines by regulation, resolution, or
14 order to be a qualified financial contract for the purposes of
15 this chapter.

16 NEW SUBSECTION. 15A. "Repurchase agreement" means an
17 agreement, including related terms, that provides for the
18 transfer of certificates of deposit, eligible bankers'
19 acceptances, or securities that are direct obligations of, or
20 that are fully guaranteed as to principal and interest by, the
21 United States or an agency of the United States against the
22 transfer of funds by the transferee of the certificates of
23 deposit, eligible bankers' acceptances or securities, with a
24 simultaneous agreement by the transferee to transfer to the
25 transferor certificates of deposit, eligible bankers'
26 acceptances, or securities as described above, at a date
27 certain not later than one year after the transfers or on
28 demand against the transfer of funds. For the purposes of
29 this definition, the items that may be subject to a repurchase
30 agreement include, but are not limited to, mortgage-related
31 securities, a mortgage loan, and an interest in a mortgage
32 loan, but shall not include any participation in a commercial
33 mortgage loan, unless the commissioner determines by rule,
34 resolution, or order to include the participation within the
35 meaning of the term. Repurchase agreement also applies to a

1 reverse repurchase agreement.

2 NEW SUBSECTION. 16A. "Securities contract" means a
3 contract for the purchase, sale, or loan of a security,
4 including an option for the repurchase or sale of a security,
5 certificate of deposit, or group or index of securities,
6 including an interest therein or based on the value thereof,
7 or an option entered into on a national securities exchange
8 relating to foreign currencies, or the guarantee of a
9 settlement of cash or securities by or to a securities
10 clearing agency. For the purposes of this definition, the
11 term "security" includes a mortgage loan, mortgage-related
12 securities, and an interest in any mortgage loan or mortgage-
13 related security.

14 NEW SUBSECTION. 18A. "Swap agreement" means an agreement,
15 including the terms and conditions incorporated by reference
16 in an agreement, that is a rate swap agreement, basis swap,
17 commodity swap, forward rate agreement, interest rate future,
18 interest rate option, forward foreign exchange agreement, spot
19 foreign exchange agreement, rate cap agreement, rate floor
20 agreement, rate collar agreement, currency swap agreement,
21 cross-currency rate swap agreement, currency future, or
22 currency option or any other similar agreement, and includes
23 any combination of agreements and an option to enter into an
24 agreement.

25 Sec. 5. NEW SECTION. 507C.28A QUALIFIED FINANCIAL
26 CONTRACTS.

27 1. Notwithstanding any other provision of this chapter to
28 the contrary, including any other provision of this chapter
29 permitting the modification of contracts, or other law of a
30 state, a person shall not be stayed or prohibited from
31 exercising any of the following:

32 a. A contractual right to terminate, liquidate, or close
33 out any netting agreement or qualified financial contract with
34 an insurer because of any of the following:

35 (1) The insolvency, financial condition, or default of the

1 insurer at any time, provided that the right is enforceable
2 under applicable law other than this chapter.

3 (2) The commencement of a formal delinquency proceeding
4 under this chapter.

5 b. Any right under a pledge, security, collateral, or
6 guarantee agreement or any other similar security arrangement
7 or credit support document relating to a netting agreement or
8 qualified financial contract.

9 c. Subject to any provision of section 507C.30, subsection
10 2, any right to set off or net out any termination value,
11 payment amount, or other transfer obligation arising under or
12 in connection with a netting agreement or qualified financial
13 contract where the counterparty or its guarantor is organized
14 under the laws of the United States or a state or foreign
15 jurisdiction approved by the securities valuation office or
16 the national association of insurance commissioners as
17 eligible for netting.

18 2. Upon termination of a netting agreement, the net or
19 settlement amount, if any, owed by a nondefaulting party to an
20 insurer against which an application or petition has been
21 filed under this chapter shall be transferred to or on the
22 order of the receiver for the insurer, even if the insurer is
23 the defaulting party, notwithstanding any provision in the
24 netting agreement that may provide that the nondefaulting
25 party is not required to pay any net or settlement amount due
26 to the defaulting party upon termination. Any limited two-
27 way payment provision in a netting agreement with an insurer
28 that has defaulted shall be deemed to be a full two-way
29 payment provision as against the defaulting insurer. Any such
30 amount shall, except to the extent it is subject to one or
31 more secondary liens or encumbrances, be a general asset of
32 the insurer.

33 3. In making any transfer of a netting agreement or
34 qualified financial contract of an insurer subject to a
35 proceeding under this chapter, the receiver shall do either of

1 the following:

2 a. Transfer to one party, other than an insurer subject to
3 a proceeding under this chapter, all netting agreements and
4 qualified financial contracts between a counterparty or any
5 affiliate of the counterparty and the insurer that is the
6 subject of the proceeding, including all of the following:

7 (1) All rights and obligations of each party under each
8 such netting agreement and qualified financial contract.

9 (2) All property, including any guarantees or credit
10 support documents, securing any claims of each party under
11 each such netting agreement and qualified financial contract.

12 b. Transfer none of the netting agreements, qualified
13 financial contracts, rights, obligations, or property referred
14 to in paragraph "a" with respect to the counterparty and any
15 affiliate of the counterparty.

16 4. If a receiver for an insurer makes a transfer of one or
17 more netting agreements or qualified financial contracts, the
18 receiver shall use the receiver's best efforts to notify any
19 person who is a party to the netting agreements or qualified
20 financial contracts of the transfer by noon of the receiver's
21 local time on the business day following the transfer. For
22 purposes of this subsection, "business day" means a day other
23 than a Saturday, Sunday, or any day on which either the New
24 York stock exchange or the federal reserve bank of New York is
25 closed.

26 5. Notwithstanding any other provision of this chapter to
27 the contrary, a receiver shall not avoid a transfer of money
28 or other property arising under or in connection with a
29 netting agreement or qualified financial contract, or any
30 pledge security, collateral, or guarantee agreement or any
31 other similar security arrangement or credit support document
32 relating to a netting agreement or qualified financial
33 contract, that is made before the commencement of a formal
34 delinquency proceeding under this chapter. However, a
35 transfer may be avoided under section 507C.28 if the transfer

1 was made with actual intent to hinder, delay, or defraud the
2 insurer, a receiver appointed for the insurer, or existing or
3 future creditors.

4 6. In exercising any of its powers under this chapter to
5 disaffirm or repudiate a netting agreement or qualified
6 financial contract, the receiver must take action with respect
7 to each netting agreement or qualified financial contract and
8 all transactions entered into in connection therewith, in its
9 entirety. Notwithstanding any other provision of this chapter
10 to the contrary, any claim of a counterparty against the
11 estate arising from the receiver's disaffirmance or
12 repudiation of a netting agreement or qualified financial
13 contract that has not been previously affirmed in the
14 liquidation or in the immediately preceding rehabilitation
15 case shall be determined and shall be allowed or disallowed as
16 if the claim had arisen before the date of the filing of the
17 petition for liquidation or, if a rehabilitation proceeding is
18 converted to a liquidation proceeding, as if the claim had
19 arisen before the date of filing the petition for
20 rehabilitation. The amount of the claim shall be the actual
21 direct compensatory damages determined as of the date of the
22 disaffirmance or repudiation of the netting agreement or
23 qualified financial contract. The term "actual direct
24 compensatory damages" does not include punitive or exemplary
25 damages, damages for lost profit or lost opportunity, or
26 damages for pain and suffering, but does include normal and
27 reasonable costs of cover or other reasonable measures of
28 damages utilized in the derivatives market for the contract
29 and agreement claims.

30 7. The term "contractual right" as used in this section
31 includes any right, whether or not evidenced in writing,
32 arising under statutory or common law, a rule or bylaw of a
33 national securities exchange, national securities clearing
34 organization or securities clearing agency, a rule or bylaw,
35 or a resolution of the governing body of a contract market or

1 its clearing organization, or under law merchant.

2 8. This section shall not apply to persons who are
3 affiliates of the insurer that is the subject of the
4 proceeding.

5 9. All rights of a counterparty under this chapter shall
6 apply to netting agreements and qualified financial contracts
7 entered into on behalf of the general account or separate
8 accounts, provided that the assets of each separate account
9 are available only to counterparties to netting agreements and
10 qualified financial contracts entered into on behalf of that
11 separate account.

12 Sec. 6. Section 507C.30, subsection 2, paragraph a,
13 subparagraphs (4) and (5), Code 2005, are amended to read as
14 follows:

15 (4) The obligation of the person is owed to the affiliate
16 of the insurer, or any other entity or association other than
17 the insurer.

18 ~~(4)~~ (5) The obligation of the person is to pay an
19 assessment levied against the members or subscribers of the
20 insurer, or is to pay a balance upon a subscription to the
21 capital stock of the insurer, or is in any other way in the
22 nature of a capital contribution.

23 ~~(5)~~ (6) The obligation of the person is to pay earned
24 premiums to the insurer.

25 Sec. 7. Section 509.3, subsection 1, Code 2005, is amended
26 to read as follows:

27 1. The policy shall have a provision that a copy of the
28 application, if any, of the policyholder shall be attached to
29 the policy when issued or shall be furnished to the
30 policyholder within thirty days after the policy is issued,
31 that all statements made by the policyholder or by the persons
32 insured shall be deemed representations and not warranties,
33 and that no statement made by any person insured shall be used
34 in any contest unless a copy of the instrument containing the
35 statement is or has been furnished to such person.

1 Sec. 8. Section 513B.12, Code 2005, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 6. During the period of time that the
4 operation of the small employer carrier reinsurance program is
5 suspended pursuant to section 513B.13, subsection 14, a small
6 employer carrier is not required to make an application to
7 become a risk-assuming carrier pursuant to this section.

8 Sec. 9. Section 513B.13, subsection 3, Code 2005, is
9 amended by adding the following new paragraph:

10 NEW PARAGRAPH. e. During the period of time that the
11 program is suspended pursuant to subsection 14, the size of
12 the board may be reduced with the approval of the
13 commissioner.

14 Sec. 10. Section 513B.17, subsection 4, Code 2005, is
15 amended by striking the subsection.

16 Sec. 11. Section 513C.6, Code 2005, is amended by adding
17 the following new subsection:

18 NEW SUBSECTION. 7. An individual who has coverage as a
19 dependent under a basic or standard health benefit plan may,
20 when that individual is no longer a dependent under such
21 coverage, elect to continue coverage under the basic or
22 standard health benefit plan if the individual so elects
23 immediately upon termination of the coverage under which the
24 individual was covered as a dependent.

25 Sec. 12. Section 514A.5, subsection 1, Code 2005, is
26 amended to read as follows:

27 1. The insured shall not be bound by any statement made in
28 an application for a policy unless a copy of such application
29 is attached-to-or endorsed on the policy when issued as a part
30 thereof or is furnished to the policyholder within thirty days
31 after the policy is issued. If any such policy delivered or
32 issued for delivery to any person in this state shall be
33 reinstated or renewed, and the insured or the beneficiary or
34 assignee of such policy shall make written request to the
35 insurer for a copy of the application, if any, for such

1 reinstatement or renewal, the insurer shall within fifteen
2 days after the receipt of such request at its home office or
3 any branch office of the insurer, deliver or mail to the
4 person making such request, a copy of such application. If
5 such copy shall not be so delivered or mailed, the insurer
6 shall be precluded from introducing such application as
7 evidence in any action or proceeding based upon or involving
8 such policy or its reinstatement or renewal.

9 Sec. 13. Section 514B.13, unnumbered paragraph 2, Code
10 2005, is amended to read as follows:

11 Health maintenance organizations providing services
12 exclusively on a group contract basis may limit the open
13 enrollment provided for in this section to all members of the
14 group covered by the contract, including those members of the
15 group who previously waived coverage.

16 Sec. 14. Section 514E.2, subsection 1, paragraph a, Code
17 2005, is amended to read as follows:

18 a. All carriers and all organized delivery systems
19 licensed by the director of public health providing health
20 insurance or health care services in Iowa, whether on an
21 individual or group basis, and all other insurers designated
22 by the association's board of directors and approved by the
23 commissioner shall be members of the association.

24 Sec. 15. Section 514E.2, subsection 5, paragraph 1, Code
25 2005, is amended to read as follows:

26 1. Develop a method of advising applicants of the
27 availability of other coverages outside the association, ~~and~~
28 ~~shall promulgate a list of health conditions the existence of~~
29 ~~which would make an applicant eligible without demonstrating a~~
30 ~~rejection of coverage by one carrier.~~

31 Sec. 16. Section 514E.2, subsection 7, Code 2005, is
32 amended by adding the following new unnumbered paragraph:

33 NEW UNNUMBERED PARAGRAPH. For purposes of this subsection,
34 "total health insurance premiums" and "payments for subscriber
35 contracts" include, without limitation, premiums or other

1 amounts paid to or received by a member for individual and
2 group health plan care coverage provided under any chapter of
3 the Code or Acts, and "paid losses" includes, without
4 limitation, claims paid by a member operating on a self-funded
5 basis for individual and group health plan care coverage
6 provided under any chapter of the Code or Acts. For purposes
7 of calculating and conducting the assessment, the association
8 shall have the express authority to require members to report
9 on an annual basis each member's total health insurance
10 premiums and payments for subscriber contracts and paid
11 losses. A member is liable for its share of the assessment
12 calculated in accordance with this section regardless of
13 whether it participates in the individual insurance market.

14 Sec. 17. Section 514E.7, subsection 1, Code 2005, is
15 amended by adding the following new paragraphs:

16 NEW PARAGRAPH. d. That the individual has a health
17 condition that is established by the association's board of
18 directors, with the approval of the commissioner, to be
19 eligible for plan coverage.

20 NEW PARAGRAPH. e. That the individual has coverage under
21 a basic or standard health benefit plan under chapter 513C.

22 Sec. 18. Section 514E.8, subsection 1, Code 2005, is
23 amended to read as follows:

24 1. An association policy shall contain provisions under
25 which the association is obligated to renew the coverage for
26 an individual until the day the individual becomes eligible
27 for Medicare coverage based on age, provided that any
28 individual who is covered by an association policy and is
29 eligible for Medicare coverage based on age prior to January
30 1, 2005, may continue to renew the coverage under the
31 association policy.

32 Sec. 19. Section 515.138, sixth subsection, paragraph
33 entitled concealment -- fraud, Code 2005, is amended to read
34 as follows:

35 CONCEALMENT -- FRAUD. This entire policy shall be void if,

1 whether before or after a loss, ~~the~~ an insured has willfully
2 concealed or misrepresented any material fact or circumstance
3 concerning this insurance or the subject thereof, or the
4 interest of ~~the~~ an insured therein, or in case of any fraud or
5 false swearing by ~~the~~ an insured relating thereto.

6 Sec. 20. Section 515.138, sixth subsection, paragraph
7 entitled perils not included, Code 2005, is amended to read as
8 follows:

9 PERILS NOT INCLUDED. This company shall not be liable for
10 loss by fire or other perils insured against in this policy
11 caused, directly or indirectly, by: (a) Enemy attack by armed
12 forces, including action taken by military, naval or air
13 forces in resisting an actual or an immediately impending
14 enemy attack; (b) invasion; (c) insurrection; (d) rebellion;
15 (e) revolution; (f) civil war; (g) usurped power; (h) order of
16 any civil authority except acts of destruction at the time of
17 and for the purpose of preventing the spread of fire, provided
18 that such fire did not originate from any of the perils
19 excluded by this policy; (i) neglect of ~~the~~ an insured to use
20 all reasonable means to save and preserve the property at and
21 after a loss, or when the property is endangered by fire in
22 neighboring premises; (j) nor shall this company be liable for
23 loss by theft.

24 Sec. 21. Section 515.138, sixth subsection, paragraph
25 entitled conditions suspending or restricting insurance, Code
26 2005, is amended to read as follows:

27 CONDITIONS SUSPENDING OR RESTRICTING INSURANCE. Unless
28 otherwise provided in writing added hereto this company shall
29 not be liable for loss occurring under any of the following
30 circumstances:

31 a. While the hazard is created or increased by any means
32 within the control or knowledge of ~~the~~ an insured~~;-or.~~

33 b. While a described building, whether intended for
34 occupancy by owner or tenant, is vacant or unoccupied beyond a
35 period of sixty consecutive days~~;-or.~~

1 c. As a result of explosion or riot, unless fire ensue,
2 and in that event for loss by fire only.

3 Sec. 22. Section 515B.2, subsection 4, paragraph b,
4 subparagraph (7), Code 2005, is amended to read as follows:

5 (7) That would otherwise be a covered claim, but is an
6 obligation to or on behalf of a person who has a net worth~~-on~~
7 ~~the-date-of-the-occurrence-giving-rise-to-the-claim~~, greater
8 than that allowed by the guarantee fund law of the state of
9 residence of the claimant, and which state has denied coverage
10 to that claimant on that basis.

11 Sec. 23. Section 515B.17, Code 2005, is amended to read as
12 follows:

13 515B.17 TIMELY FILING OF CLAIMS.

14 Notwithstanding any other provision of this chapter, a
15 covered claim shall not include any claim filed with the
16 association after twenty-four months from the date of the
17 order of liquidation or after the final date set by the court
18 for the filing of claims against the insolvent insurer or its
19 receiver, whichever occurs first.

20 Sec. 24. Section 515F.36, subsection 2, Code 2005, is
21 amended to read as follows:

22 2. The committee shall consist of seven members~~-one-of~~
23 whom.

24 a. Five of the members shall be elected by to the
25 committee, with one member from each of the following:

26 a- (1) American insurance association.

27 b- (2) ~~Alliance-of-American-insurers~~ Property casualty
28 insurers association of America.

29 c-~~National-association-of-independent-insurers-~~

30 d- (3) Iowa insurance institute.

31 e- (4) Mutual insurance association of Iowa.

32 f- (5) Independent insurance agents of Iowa.

33 g- b. ~~All-other-insurers~~ Two of the members shall be
34 elected to the committee by other insurer members of the plan.

35 Sec. 25. Section 516E.1, Code 2005, is amended to read as

1 follows:

2 516E.1 DEFINITIONS.

3 For the purposes of this chapter:

4 1. "Administrator" means the deputy administrator
5 appointed pursuant to section 502.601.

6 ~~1.~~ 2. "Commissioner" means the commissioner of insurance
7 as provided in section 505.1 ~~or the deputy administrator~~
8 ~~appointed under section 502.601.~~

9 3. "Maintenance agreement" means a contract of limited
10 duration that provides for scheduled maintenance only.

11 ~~2.~~ 4. "Mechanical breakdown insurance" means a policy,
12 contract, or agreement that undertakes to perform or provide
13 repair or replacement service, or indemnification for that
14 service, for the operational or structural failure of a motor
15 vehicle due to a defect in materials or skill of work or
16 normal wear and tear, and that is issued by an insurance
17 company authorized to do business in this state.

18 ~~3.~~ 5. "Motor vehicle" means any self-propelled vehicle
19 subject to registration under chapter 321.

20 ~~4.---"Motor-vehicle-service-contract" or "service-contract"~~
21 ~~means a contract or agreement given for consideration over and~~
22 ~~above the lease or purchase price of a new or used motor~~
23 ~~vehicle having a gross vehicle weight rating of less than~~
24 ~~sixteen thousand pounds that undertakes to perform or provide~~
25 ~~repair or replacement service, or indemnification for that~~
26 ~~service, for the operational or structural failure of a motor~~
27 ~~vehicle due to a defect in materials or skill of work or~~
28 ~~normal wear and tear, but does not include mechanical~~
29 ~~breakdown insurance or maintenance agreements providing~~
30 ~~scheduled repair and maintenance services for leased vehicles.~~

31 5. 6. "Motor-vehicle-service-contract-provider" or
32 "provider" "Provider" means a person who issues, makes,
33 provides, sells, or offers to sell a motor-vehicle service
34 contract.

35 ~~6.---"Motor-vehicle-service-contract-reimbursement-insurance"~~

1 policy"-or-"reimbursement-insurance-policy"-means-a-policy-of
2 insurance-providing-coverage-for-all-obligations-and
3 liabilities-incurred-by-a-motor-vehicle-service-contract
4 provider-under-the-terms-of-motor-vehicle-service-contracts
5 issued-by-the-provider-

6 7. "Record" means information stored or preserved in any
7 medium, including in an electronic or paper format. A record
8 includes but is not limited to documents, books, publications,
9 accounts, correspondence, memoranda, agreements, computer
10 files, film, microfilm, photographs, and audio or visual
11 tapes.

12 8. "Reimbursement insurance policy" means a policy of
13 insurance issued to a service company and pursuant to which
14 the insurer agrees, for the benefit of the service contract
15 holders, to discharge all of the obligations and liabilities
16 of the service company under the terms of service contracts
17 issued by the service company in the event of nonperformance
18 by the service company. For the purposes of this definition,
19 "all obligations and liabilities" include, but are not limited
20 to, failure of the service company to perform under the
21 service contract and the return of the unearned service
22 company fee in the event of the service company's
23 unwillingness or inability to reimburse the unearned service
24 company fee in the event of termination of a service contract.

25 9. "Service company" means a person who issues and is
26 obligated to perform, or arrange for the performance of,
27 services pursuant to a service contract.

28 10. "Service contract" means a contract or agreement given
29 for consideration over and above the lease or purchase price
30 of a new or used motor vehicle having a gross vehicle weight
31 rating of less than sixteen thousand pounds, that undertakes
32 to perform or provide repair or replacement service, or
33 indemnification for that service, for the operation or
34 structural failure of a motor vehicle due to a defect in
35 materials or skill of work or normal wear and tear, but does

1 not include mechanical breakdown insurance or maintenance
2 agreements.

3 ~~8-~~ 11. "Service contract holder" means a person who
4 purchases a motor-vehicle service contract.

5 12. "Third-party administrator" means a person who
6 contracts with a service company to be responsible for the
7 administration of the service company's service contracts,
8 including processing and adjudicating claims pursuant to a
9 service contract.

10 Sec. 26. Section 516E.2, Code 2005, is amended to read as
11 follows:

12 516E.2 INSURANCE-REQUIRED REQUIREMENTS FOR DOING BUSINESS.

13 1. ~~A motor-vehicle service contract shall not be issued,~~
14 ~~sold, or offered for sale in this state unless the provider-of~~
15 ~~the-service-contract-is-insured-under-a-motor-vehicle-service~~
16 ~~contract-reimbursement-insurance-policy-issued-by-an-insurer~~
17 ~~authorized-to-do-business-in-this-state.~~ service company does
18 all of the following:

19 a. Provides a receipt for the purchase of the service
20 contract to the service contract holder.

21 b. Provides a copy of the service contract to the service
22 contract holder within a reasonable period of time after the
23 date of purchase of the service contract.

24 2. ~~The-issuer-of-a-reimbursement-insurance-policy-shall~~
25 ~~not-cancel-a-reimbursement-insurance-policy-unless-a-written~~
26 ~~notice-has-been-received-by-the-commissioner-and-by-each~~
27 ~~applicable-provider,-including-automobile-dealers-and-third-~~
28 ~~party-administrators.--The-notice-shall-fix-the-date-of~~
29 ~~cancellation-at-a-date-no-earlier-than-ten-days-after-receipt~~
30 ~~of-the-notice-by-the-commissioner-and-by-the-applicable~~
31 ~~provider.--The-notice-may-be-made-in-person-or-by-mail-and-a~~
32 ~~post-office-department-receipt-of-certified-or-registered~~
33 ~~mailing-shall-be-deemed-proof-of-receipt-of-the-notice.~~ A

34 service company shall not issue a service contract or arrange
35 to perform services pursuant to a service contract unless the

1 service company is registered with the commissioner. A
2 service company shall file a registration with the
3 commissioner annually, on a form prescribed by the
4 commissioner, accompanied by a registration fee in the amount
5 of five hundred dollars.

6 3. In order to assure the faithful performance of a
7 service company's obligations to its service contract holders,
8 the administrator may by rule require financial responsibility
9 standards.

10 4. The commissioner may issue an order denying,
11 suspending, or revoking any registration if the commissioner
12 finds that the order is in the public interest and finds any
13 of the following:

14 a. The registration is incomplete in any material respect
15 or contains any statement which, in light of the circumstances
16 under which the registration was made, is determined by the
17 commissioner to be false or misleading with respect to any
18 material fact.

19 b. A provision of this chapter or a rule, order, or
20 condition lawfully imposed under this chapter, has been
21 willfully violated in connection with the sale of service
22 contracts by any of the following persons:

23 (1) The person filing the registration, but only if the
24 person filing the registration is directly or indirectly
25 controlled by or acting for the service company.

26 (2) The service company, any partner, officer, or director
27 of the service company or any person occupying a similar
28 status or performing similar functions for the service
29 company, or any person directly or indirectly controlling or
30 controlled by the service company.

31 c. The service company has not filed a document or
32 information required under this chapter.

33 d. The service company's literature or advertising is
34 misleading, incorrect, incomplete, or deceptive.

35 e. The service company has failed to pay the proper filing

1 fee. However, the commissioner shall vacate an order issued
2 pursuant to this paragraph when the proper fee has been paid.

3 f. The service company does not have the minimum net
4 worth, as determined in accordance with generally accepted
5 accounting principles, required under this chapter.

6 The commissioner may vacate or modify an order issued under
7 this subsection if the commissioner finds that the conditions
8 which prompted the entry of the order have changed or that it
9 is otherwise in the public interest to do so.

10 Sec. 27. Section 516E.3, Code 2005, is amended to read as
11 follows:

12 516E.3 FILING AND FEE REQUIREMENTS.

13 1. SERVICE COMPANIES.

14 a. A motor-vehicle service contract shall not be issued,
15 sold, or offered for sale in this state unless a true and
16 correct copy of the service contract, and the provider's
17 service company's reimbursement insurance policy have been
18 filed with the commissioner by the service company.

19 ~~2. b. In-addition-to-any-other-required-filings,-an~~
20 ~~accurate-copy-of-the-service-contract-and-the-provider's~~
21 ~~reimbursement-insurance-policy,-the~~ A service company shall
22 file a consent to service of process on the commissioner, and
23 such other information as the commissioner requires shall be
24 filed annually with the commissioner no later than the first
25 day of August. If the first day of August falls on a weekend
26 or a holiday, the date for filing shall be the next business
27 day. In addition to the annual filing, the provider service
28 company shall promptly file copies of any amended documents if
29 material amendments have been made in the materials on file
30 with the commissioner. If an annual filing is made after the
31 first of August and sales have occurred during the period when
32 the provider service company was in noncompliance with this
33 section, the commissioner shall assess an additional filing
34 fee that is two times the amount normally required for an
35 annual filing. A fee shall not be charged for interim filings

1 made to keep the materials filed with the division current and
2 accurate. The annual filing shall be accompanied by a filing
3 fee determined by the commissioner which shall be sufficient
4 to defray the costs of administering this chapter.

5 ~~3--a-~~ c. A ~~motor-vehicle-service-contract-provider~~
6 service company shall promptly file the following information
7 with the insurance commissioner:

8 (1) A change in the name or ownership of the provider
9 service company.

10 (2) The termination of the provider's service company's
11 business.

12 ~~b-~~ (3) The provider service company is not required to
13 submit a fee as part of this filing.

14 2. PROVIDERS.

15 a. A service contract shall not be sold or offered for
16 sale in this state unless a true and correct copy of the
17 service contract has been filed with the commissioner by the
18 provider.

19 b. A provider shall file a consent to service of process
20 on the commissioner and such other information as the
21 commissioner requires annually with the commissioner no later
22 than August 1. If August 1 falls on a weekend or a holiday,
23 the date for filing shall be the next business day. In
24 addition to the annual filing, the provider shall promptly
25 file copies of any amended documents if material amendments
26 have been made in the materials on file with the commissioner.
27 If an annual filing is made after August 1 and sales have
28 occurred during the period when the provider was in
29 noncompliance with this section, the commissioner shall assess
30 an additional filing fee that is two times the amount normally
31 required for an annual filing. A fee shall not be charged for
32 interim filings made to keep the materials filed with the
33 division current and accurate. The annual filing shall be
34 accompanied by a filing fee in the amount of one hundred
35 dollars.

1 c. A provider shall promptly file the following
2 information with the commissioner:

3 (1) A change in the name or ownership of the provider.

4 (2) The termination of the provider's business.

5 (3) A provider is not required to submit a fee as part of
6 this filing.

7 Sec. 28. Section 516E.4, Code 2005, is amended by striking
8 the section and inserting in lieu thereof the following:

9 516E.4 REIMBURSEMENT INSURANCE POLICY REQUIREMENTS.

10 1. REQUIRED DISCLOSURES. A reimbursement insurance policy
11 insuring a service contract issued, sold, or offered for sale
12 in this state shall conspicuously state that, upon failure of
13 the service company to perform under the contract, including
14 but not limited to a failure to return the unearned
15 consideration paid for a service contract in excess of the
16 premium, the insurer that issued the policy shall pay on
17 behalf of the service company any amount that is owed to the
18 service contract holder by the service company to satisfy the
19 service company's obligations under a service contract issued
20 or sold by the service company.

21 2. TERMINATION. As applicable, an insurer that issued a
22 reimbursement insurance policy shall not terminate the policy
23 unless a written notice has been received by the commissioner
24 and by each applicable provider, service company, or third-
25 party administrator. The notice shall fix the date of
26 termination at a date no earlier than ten days after receipt
27 of the notice by the commissioner and by the applicable
28 provider, service company, or third-party administrator. The
29 notice may be delivered in person or sent by mail, and a
30 restricted certified mail return receipt shall be deemed proof
31 of receipt of notice. The termination of a reimbursement
32 insurance policy shall not reduce the issuer's responsibility
33 for a service contract issued by a service company prior to
34 the date of termination.

35 3. INDEMNIFICATION OR SUBROGATION. This section does not

1 prevent or limit the right of an insurer that issued a
2 reimbursement insurance policy to seek indemnification from or
3 subrogation against a service company if the insurer pays or
4 is obligated to pay a service contract holder sums that the
5 service company was obligated to pay pursuant to the
6 provisions of a service contract or pursuant to a contractual
7 agreement.

8 Sec. 29. Section 516E.5, Code 2005, is amended to read as
9 follows:

10 516E.5 DISCLOSURE TO SERVICE CONTRACT HOLDERS -- CONTRACT
11 PROVISIONS.

12 1. A ~~motor-vehicle~~ service contract shall not be issued,
13 sold, or offered for sale in this state unless the contract
14 conspicuously states that the obligations of the ~~provider~~
15 service company to the service contract holder are guaranteed
16 under ~~the service contract~~ a reimbursement insurance policy,
17 ~~and-unless-the~~ including a statement in substantially the
18 following form: "Obligations of the service company under
19 this service contract are guaranteed under a reimbursement
20 insurance policy. If the service company fails to pay or
21 provide service on a claim within sixty days after proof of
22 loss has been filed with the service company, the service
23 contract holder is entitled to make a claim directly against
24 the reimbursement insurance policy." A claim against a
25 reimbursement insurance policy shall also include a claim for
26 return of the unearned consideration paid for the service
27 contract in excess of the premium paid. A service contract
28 shall conspicuously states state the name and address of the
29 issuer of the reimbursement insurance policy for that service
30 contract.

31 2. A ~~motor-vehicle~~ service contract shall be written in
32 clear, understandable language and the entire contract shall
33 be printed or typed in easy-to-read type, size, and style, and
34 shall not be issued, sold, or offered for sale in this state
35 unless the contract does all of the following:

1 a. Clearly and conspicuously states the name and address
2 of the service company, describes the service company's
3 obligations to perform services or to arrange for the
4 performance of services under the service contract, and states
5 that the obligations of the provider service company to the
6 service contract holder are guaranteed under a **service**
7 **contract** reimbursement insurance policy.

8 b. Clearly and conspicuously states the name and address
9 of the issuer of the reimbursement insurance policy.

10 c. Identifies the ~~motor-vehicle~~ service contract-provider,
11 ~~the-seller-of-the-motor-vehicle~~ company obligated to perform
12 the service under the service contract, any third-party
13 administrator, and the service contract holder to the extent
14 that the name and address of the service contract holder has
15 been furnished by the service contract holder.

16 d. Sets forth the total purchase price of the service
17 contract and the terms under which the purchase price of the
18 service contract is to be paid.

19 e. Sets forth the procedure for making a claim, including
20 a telephone number.

21 f. Clearly and conspicuously states the dates that
22 coverage starts and ends and the existence, terms, and
23 conditions of a deductible amount, if any.

24 g. Specifies the merchandise or services, or both, to be
25 provided and clearly states any and all limitations,
26 exceptions, or exclusions.

27 h. Sets forth the conditions on which substitution of
28 services will be allowed.

29 i. Sets forth all of the obligations and duties of the
30 service contract holder, including but not limited to the duty
31 to protect against any further damage to the motor vehicle,
32 and the obligation to notify the provider service company in
33 advance of any repair, if any.

34 j. Sets forth any and all terms, restrictions, or
35 conditions governing transferability of the service contract,

1 if any.

2 k. Describes or references any and all applicable
3 provisions of the Iowa consumer credit code, chapter 537.

4 l. States the name and address of the commissioner.

5 m. Sets forth any and all conditions on which the service
6 contract may be canceled, the terms and conditions for the
7 refund of any portion of the purchase price, the identity of
8 the person primarily liable to provide any refund, and the
9 identity of any other person liable to provide any portion of
10 the refund. If the service contract holder cancels the
11 service contract, the service company shall mail a written
12 notice of termination to the service contract holder within
13 fifteen days of the date of the termination.

14 n. Permits the service contract holder to cancel and
15 return the service contract within at least twenty days of the
16 date of mailing the service contract to the service contract
17 holder or within at least ten days after delivery of the
18 service contract if the service contract is delivered at the
19 time of sale of the service contract, or within a longer
20 period of time as permitted under the service contract. If no
21 claim has been made under the service contract prior to its
22 return, the service contract is void and the full purchase
23 price of the service contract shall be refunded to the service
24 contract holder. A ten percent penalty shall be added each
25 month to a refund that is not paid to a service contract
26 holder within thirty days of the return of the service
27 contract to the service company. The applicable time period
28 for cancellation of a service contract shall apply only to the
29 original service contract holder that purchased the service
30 contract.

31 3. A complete copy of the terms of the ~~motor-vehicle~~
32 service contract shall be delivered to the prospective service
33 contract holder at or before the time that the prospective
34 service contract holder makes application for the service
35 contract. If there is no separate application procedure, then

1 a complete copy of the ~~motor-vehicle~~ service contract shall be
2 delivered to the service contract holder at or before the time
3 the service contract holder becomes bound under the contract.

4 Sec. 30. Section 516E.6, Code 2005, is amended to read as
5 follows:

6 516E.6 COMMISSIONER MAY PROHIBIT CERTAIN SALES --
7 INJUNCTION.

8 The commissioner shall issue an order instructing the a
9 provider, service company, or third-party administrator to
10 cease and desist from selling or offering for sale ~~motor~~
11 ~~vehicle~~ service contracts if the commissioner determines that
12 the provider, service company, or third-party administrator
13 has failed to comply with a provision of this chapter. Upon
14 the failure of a ~~motor-vehicle~~ provider, service contract
15 provider company, or third-party administrator to obey a cease
16 and desist order issued by the commissioner, the commissioner
17 may give notice in writing of the failure to the attorney
18 general, who shall immediately commence an action against the
19 provider, service company, or third-party administrator to
20 enjoin the provider, service company, or third-party
21 administrator from selling or offering for sale ~~motor-vehicle~~
22 service contracts until the provider, service company, or
23 third-party administrator complies with the provisions of this
24 chapter and the district court may issue the injunction.

25 Sec. 31. Section 516E.7, Code 2005, is amended to read as
26 follows:

27 516E.7 RULES.

28 The commissioner may adopt rules as provided in chapter 17A
29 to administer and enforce the provisions of this chapter and
30 to establish minimum standards for disclosure of ~~motor-vehicle~~
31 service contract coverage limitations and exclusions.

32 Sec. 32. Section 516E.8, Code 2005, is amended to read as
33 follows:

34 516E.8 EXEMPTION.

35 This chapter does not apply to a ~~motor-vehicle~~ service

1 contract issued by the manufacturer or importer of the motor
2 vehicle covered by the service contract or to any third party
3 acting in an administrative capacity on the manufacturer's
4 behalf in connection with that service contract.

5 Sec. 33. Section 516E.9, Code 2005, is amended to read as
6 follows:

7 516E.9 MISREPRESENTATIONS OF STATE APPROVAL.

8 A ~~motor-vehicle~~ service contract-provider company shall not
9 represent or imply in any manner that the provider service
10 company has been sponsored, recommended, or approved or that
11 the provider's service company's abilities or qualifications
12 have in any respect been passed upon by the state of Iowa,
13 including the commissioner, the insurance division, or the
14 division's securities bureau.

15 Sec. 34. Section 516E.10, Code 2005, is amended to read as
16 follows:

17 516E.10 PROHIBITED ACTS -- UNFAIR OR DECEPTIVE TRADE
18 PRACTICES.

19 1. MISREPRESENTATIONS, FALSE ADVERTISING, AND UNFAIR
20 PRACTICES.

21 a. Unless licensed as an insurance company, a ~~motor~~
22 ~~vehicle~~ service contract-provider company shall not use in its
23 name, contracts, or literature, the words "insurance",
24 "casualty", "surety", "mutual", or any other words descriptive
25 of the insurance, casualty, or surety business or deceptively
26 similar to the name or description of any insurance or surety
27 corporation, or any other ~~motor-vehicle~~ service contract
28 provider company.

29 b. A ~~motor-vehicle~~ service contract-provider company shall
30 not, without the written consent of the purchaser, knowingly
31 charge a purchaser for duplication of coverage or duties
32 required by state or federal law, a warranty expressly issued
33 by a manufacturer or seller of a product, or an implied
34 warranty enforceable against the lessor, seller, or
35 manufacturer of a product.

1 c. A motor-vehicle provider, service contract-provider
2 company, or third-party administrator shall not make, permit,
3 or cause a false or misleading statement, either oral or
4 written, in connection with the sale, offer to sell, or
5 advertisement of a motor-vehicle service contract.

6 d. A motor-vehicle provider, service contract-provider
7 company, or third-party administrator shall not permit or
8 cause the omission of a material statement in connection with
9 the sale, offer to sell, or advertisement of a motor-vehicle
10 service contract, which under the circumstances should have
11 been made in order to make the statement not misleading.

12 e. A motor-vehicle provider, service contract-provider
13 company, or third-party administrator shall not make, permit,
14 or cause to be made a false or misleading statement, either
15 oral or written, about the benefits or services available
16 under the motor-vehicle service contract.

17 f. A motor-vehicle provider, service contract-provider
18 company, or third-party administrator shall not make, permit,
19 or cause to be made a statement of practice which has the
20 effect of creating or maintaining a fraud.

21 g. A motor-vehicle provider, service contract-provider
22 company, or third-party administrator shall not make, publish,
23 disseminate, circulate, or place before the public, or cause,
24 directly or indirectly, to be made, published, disseminated,
25 circulated, or placed before the public in a newspaper,
26 magazine, or other publication, or in the form of a notice,
27 circular, pamphlet, letter, or poster, or over a radio or
28 television station, or in any other way, an advertisement,
29 announcement, or statement containing an assertion,
30 representation, or statement with respect to the motor-vehicle
31 service contract industry or with respect to a motor-vehicle
32 provider, service contract-provider company, or third-party
33 administrator which is untrue, deceptive, or misleading. It
34 is deceptive or misleading to use any combination of words,
35 symbols, or physical materials which by their content,

1 phraseology, shape, color, or other characteristics are so
2 similar to a combination of words, symbols, or physical
3 materials used by a manufacturer or of such a nature that the
4 use would tend to mislead a person into believing that the
5 solicitation is in some manner connected with the
6 manufacturer, unless actually authorized or issued by the
7 manufacturer.

8 h. A bank, savings and loan association, credit union,
9 insurance company, or other lending institution shall not
10 require the purchase of a ~~motor-vehicle~~ service contract as a
11 condition of a loan.

12 2. DEFAMATION. A ~~motor-vehicle~~ provider, service contract
13 provider company, or third-party administrator shall not make,
14 publish, disseminate, or circulate, directly or indirectly, or
15 aid, abet, or encourage the making, publishing, disseminating,
16 or circulating of an oral or written statement or a pamphlet,
17 circular, article, or literature which is false or maliciously
18 critical of or derogatory to the financial condition of a
19 person, and which is calculated to injure the person.

20 3. BOYCOTT, COERCION, AND INTIMIDATION. A ~~motor-vehicle~~
21 provider, service contract-provider-shall-not-enter-into-an
22 company, or third-party administrator agreement to commit, or
23 by a concerted action commit, an act of boycott, coercion, or
24 intimidation resulting in or tending to result in unreasonable
25 restraint of, or monopoly in, the service contract industry.

26 4. FALSE STATEMENTS. A ~~motor-vehicle~~ provider, service
27 contract-provider company, or third-party administrator shall
28 not knowingly file with a supervisory or other public
29 official, or knowingly make, publish, disseminate, circulate,
30 or deliver to a person, or place before the public, or
31 knowingly cause directly or indirectly to be made, published,
32 disseminated, circulated, delivered to a person, or placed
33 before the public, a false material statement of fact as to
34 the financial condition of a person.

35 5. FALSE ENTRIES. A ~~motor-vehicle~~ provider, service

1 contract-provider company, or third-party administrator shall
2 not knowingly make a false entry of a material fact in a book,
3 report, or statement of a person or knowingly fail to make a
4 true entry of a material fact pertaining to the business of
5 the person in a book, report, or statement of the person.

6 6. USED OR REBUILT PARTS. A motor-vehicle service
7 contract-provider company shall not repair a motor vehicle
8 covered by a motor-vehicle service contract with any of the
9 following:

10 a. Used parts, unless the provider service company
11 receives prior written authorization by the vehicle owner.

12 b. Rebuilt parts, unless the parts are rebuilt according
13 to national standards recognized by the insurance division.

14 7. MARKETING. A provider, service company, or third-party
15 administrator shall not market, advertise, offer to sell, or
16 sell a service contract by using personal information obtained
17 in violation of the federal Driver's Privacy Protection Act,
18 18 U.S.C. § 2721 et seq.

19 ~~7.~~ 8. VIOLATIONS OF SECTION 714.16.

20 a. A violation of this chapter or rules adopted by the
21 commissioner pursuant to this chapter is an unfair practice as
22 defined in section 714.16.

23 b. An enforcement agreement between the commissioner and a
24 motor-vehicle provider, service contract-provider company, or
25 third-party administrator does not bar the attorney general
26 from bringing an action against the provider, service company,
27 or third-party administrator under section 714.16 as to
28 allegations that a violation of this chapter constitutes a
29 violation of section 714.16.

30 Sec. 35. Section 516E.11, Code 2005, is amended to read as
31 follows:

32 516E.11 RECORDS -- EXPLANATION OF REASONS FOR DENIAL OF
33 CLAIMS.

34 1. A motor-vehicle provider, service contract-provider
35 company, or third-party administrator shall keep accurate

1 records concerning transactions regulated under this chapter.

2 ~~a. A motor-vehicle-service-contract-provider's-records~~

3 Records of a provider, service company, or third-party

4 administrator shall include all of the following:

5 (1) ~~Copies of all-service-contracts~~ each type of service
6 contract issued or sold.

7 (2) The name and address of each service contract holder.

8 (3) ~~The~~ Claim files which shall contain, at a minimum, the
9 dates, amounts, and descriptions of all receipts, claims, and
10 expenditures related to service contracts.

11 (4) Copies of all materials relating to claims which have
12 been denied.

13 b. ~~A motor-vehicle provider, service contract-provider~~
14 company, or third-party administrator shall retain all
15 required records pertaining to a service contract holder for
16 at least two years after the specified period of coverage has
17 expired. A provider, service company, or third-party
18 administrator discontinuing business in this state shall
19 maintain its records until the provider, service company, or
20 third-party administrator furnishes the commissioner
21 satisfactory proof that the provider, service company, or
22 third-party administrator has discharged all obligations to
23 contract holders in this state.

24 c. ~~Motor-vehicle-service-contract-providers~~ Providers,
25 service companies, or third-party administrators shall make
26 all records concerning transactions regulated under the
27 chapter available to the commissioner for the purpose of
28 examination.

29 d. A provider, service company, or third-party
30 administrator may keep all records required under this chapter
31 in an electronic form. If an administrator maintains records
32 in a form other than a printed copy, the records shall be
33 accessible from a computer terminal available to the
34 commissioner and shall be capable of duplication to a legible
35 printed copy.

1 2. A motor-vehicle-service-contract provider, service
2 company, or third-party administrator shall promptly deliver a
3 written explanation to the service contract holder, describing
4 the reasons for denying a claim or for the offer of a
5 compromise settlement, based on all relevant facts or legal
6 requirements and referring to applicable provisions of the
7 service contract.

8 3. A provider, service company, or third-party
9 administrator shall keep accurate records concerning
10 transactions regulated under this chapter, including a list of
11 the locations where service contracts are marketed, sold,
12 offered for sale, or performed.

13 Sec. 36. Section 516E.12, Code 2005, is amended to read as
14 follows:

15 516E.12 SERVICE OF PROCESS.

16 The commissioner shall be the agent for service of process
17 upon a motor-vehicle provider, service contract-provider
18 company, or third-party administrator and an issuer of a
19 reimbursement insurance policy.

20 Sec. 37. Section 516E.13, subsection 4, unnumbered
21 paragraph 1, Code 2005, is amended to read as follows:

22 Upon the commissioner's determination that a provider,
23 service company, or third-party administrator has engaged, is
24 engaging, or is about to engage in any act or practice
25 constituting a violation of this chapter or a rule adopted
26 pursuant to this chapter, the commissioner may issue a summary
27 order directing the person to cease and desist from engaging
28 in the act or practice resulting in the violation or to take
29 other affirmative action as in the judgment of the
30 commissioner is necessary to comply with the requirements of
31 this chapter.

32 Sec. 38. Section 516E.14, Code 2005, is amended to read as
33 follows:

34 516E.14. AUDITS.

35 The commissioner may examine or cause to be examined the

1 records of a motor-vehicle provider, service contract-provider
2 company, or third-party administrator for the purpose of
3 verifying compliance with this chapter. The commissioner may
4 require, by a subpoena, the attendance of the provider,
5 service company, or third-party administrator, or the
6 provider's a representative thereof, and any other witness
7 whom the commissioner deems necessary or expedient, and the
8 production of records relating in any manner to compliance
9 with this chapter if a provider, service company, third-party
10 administrator, or witness fails or refuses to produce the
11 documents for examination when requested by the commissioner.

12 Sec. 39. Section 516E.15, subsection 1, paragraph b, Code
13 2005, is amended to read as follows:

14 b. A motor-vehicle provider, service contract-provider-who
15 company, or third-party administrator that fails to file
16 documents and information with the commissioner as required
17 pursuant to section 516E.3 may be subject to a civil penalty.
18 The amount of the civil penalty shall not be more than four
19 hundred dollars plus two dollars for each motor-vehicle
20 service contract that the person executed prior to satisfying
21 the filing requirement. However, a person who fails to file
22 information regarding a change in the provider's name or the
23 termination of the provider's business of a provider, service
24 company, or third-party administrator as required pursuant to
25 section 516E.3 is subject to a civil penalty of not more than
26 five hundred dollars.

27 Sec. 40. Section 516E.15, subsection 2, Code 2005, is
28 amended to read as follows:

29 2. If the commissioner believes that grounds exist for the
30 criminal prosecution of a motor-vehicle provider, service
31 contract-provider company, or third-party administrator for
32 violating this chapter or any other law of this state, the
33 commissioner may forward to the attorney general or the county
34 attorney the grounds for the belief, including all evidence in
35 the commissioner's possession for action deemed appropriate by

1 the attorney general or county attorney. At the request of
2 the attorney general, the county attorney shall appear and
3 prosecute the action when brought in the county served by the
4 county attorney.

5 Sec. 41. NEW SECTION. 516E.16 COURT ACTION FOR FAILURE
6 TO COOPERATE.

7 1. If a person fails or refuses to file a statement or
8 report or to produce any books, accounts, papers,
9 correspondence, memoranda, purchase agreements, files, or
10 other documents or records, or to obey a subpoena issued by
11 the commissioner, the commissioner may refer the matter to the
12 attorney general, who may apply to a district court to enforce
13 compliance. The court may order any of the following:

14 a. Injunctive relief restricting or prohibiting the offer
15 or sale of service contracts.

16 b. Production of documents or records including but not
17 limited to books, accounts, papers, correspondence, memoranda,
18 purchase agreements, files, or other documents or records.

19 c. Such other relief as may be appropriate.

20 2. A court order issued pursuant to subsection 1 is
21 effective until the person who is subject to the order files
22 the statement or report, produces the documents requested, or
23 obeys the subpoena.

24 Sec. 42. NEW SECTION. 516E.17 NET WORTH REQUIREMENT.

25 A service company that has issued or renewed in the
26 aggregate one thousand or fewer service contracts during the
27 preceding calendar year shall maintain a minimum net worth of
28 forty thousand dollars. The minimum net worth to be
29 maintained shall be increased by an additional twenty thousand
30 dollars for each additional five hundred contracts or fraction
31 thereof issued or renewed, up to a maximum required net worth
32 of four hundred thousand dollars. At least twenty thousand
33 dollars of net worth shall consist of paid-in capital.

34 Sec. 43. NEW SECTION. 516E.18 PUBLIC ACCESS TO RECORDS.

35 1. The administrator shall keep a register of all filings

1 and orders which have been entered. The register shall be
2 open for public inspection.

3 2. Upon request and for a reasonable fee, the
4 administrator shall furnish to any person copies of any
5 register entry or any document which is a matter of public
6 record and not confidential. Copies shall be available during
7 normal business hours and may be certified upon request. In
8 any administrative, civil, or criminal proceeding, a certified
9 copy is prima facie evidence of the contents of the document
10 certified.

11 3. Pursuant to chapter 22, the administrator may maintain
12 the confidentiality of information obtained during an
13 investigation or audit.

14 Sec. 44. NEW SECTION. 516E.19 ADMINISTRATION.

15 1. This chapter shall be administered by the commissioner.
16 The deputy administrator appointed pursuant to section 502.601
17 shall be the principal operations officer responsible to the
18 commissioner for the routine administration of this chapter
19 and management of the administrative staff. In the absence of
20 the commissioner, whether because of vacancy in the office, by
21 reason of absence, physical disability, or other cause, the
22 deputy administrator shall be the acting administrator and
23 shall, for the time being, have and exercise the authority
24 conferred upon the commissioner. The commissioner may from
25 time to time delegate to the deputy administrator any or all
26 of the functions assigned to the commissioner in this chapter.
27 The deputy administrator shall employ officers, attorneys,
28 accountants, auditors, investigators, and other employees as
29 shall be needed for the administration of this chapter.

30 2. Upon request, the commissioner may honor requests from
31 interested persons for interpretive opinions.

32 Sec. 45. Section 518.14, subsection 4, paragraph a, Code
33 2005, is amended to read as follows:

34 a. UNITED STATES GOVERNMENT OBLIGATIONS. Obligations
35 Bonds or other evidences of indebtedness issued, assumed, or

1 guaranteed by the United States of America, or by an any
2 agency or instrumentality of the United States of America,
3 include investments in an open-end management investment
4 company registered with the federal securities and exchange
5 commission under the federal Investment Company Act of 1940,
6 15 U.S.C. § 80(a) and operated in accordance with 17 C.F.R. §
7 270.2a-7, the portfolio of which is limited to the United
8 States obligations described in this paragraph, and which are
9 included in the national association of insurance
10 commissioners' securities valuation office's United States
11 direct obligation - full faith and credit list.

12 Sec. 46. Section 518A.12, subsection 4, paragraph a, Code
13 2005, is amended to read as follows:

14 a. UNITED STATES GOVERNMENT OBLIGATIONS. Obligations
15 Bonds or other evidences of indebtedness issued, assumed, or
16 guaranteed by the United States of America, or an by any
17 agency or instrumentality of the United States of America,
18 include investments in an open-end management investment
19 company registered with the federal securities and exchange
20 commission under the federal Investment Company Act of 1940,
21 15 U.S.C. § 80(a) and operated in accordance with 17 C.F.R. §
22 270.2a-7, the portfolio of which is limited to the United
23 States obligations described in this paragraph, and which are
24 included in the national association of insurance
25 commissioners' securities valuation office's United States
26 direct obligation - full faith and credit list.

27 Sec. 47. Section 520.19, Code 2005, is amended to read as
28 follows:

29 520.19 ANNUAL TAX -- FEES.

30 In lieu of all other taxes, licenses, charges, and fees
31 whatsoever, such attorney shall annually pay to the
32 commissioner the same fees as are paid by mutual companies
33 transacting the same kind of business, and an annual tax of
34 ~~two-percent, if a domestic reciprocal organization, and two~~
35 ~~percent, if a foreign reciprocal organization,~~ based upon the

1 applicable percentage stated in section 432.1, subsection 4,
2 calculated upon the gross premiums or deposits collected from
3 subscribers in this state during the preceding calendar year,
4 after deducting therefrom returns, or cancellations, and all
5 amounts returned to subscribers or credited to their accounts
6 as savings, and the amount returned upon canceled policies and
7 rejected applications covering property situated or on
8 business done within this state.

9 Sec. 48. Section 522B.17, Code 2005, is amended to read as
10 follows:

11 522B.17 PENALTY.

12 An insurer or insurance producer who, after hearing, is
13 found to have violated this chapter may be ordered to cease
14 and desist from engaging in the conduct resulting in the
15 violation and may be assessed a civil penalty pursuant to
16 chapter 507B.

17 A person found who, after hearing, is found to have acted
18 violated this chapter by acting as an agent of an insurer or
19 otherwise selling, soliciting, or negotiating insurance in
20 this state, or offering to the public advice, counsel, or
21 services with regard to insurance, who is not properly
22 licensed ~~is subject to~~ may be ordered to cease and desist from
23 engaging in the conduct resulting in the violation and may be
24 assessed a civil penalty according to the provisions of
25 chapter 507A.

26 If a person does not comply with an order issued pursuant
27 to this section, the commissioner may petition a court of
28 competent jurisdiction to enforce the order. The court shall
29 not require the commissioner to post a bond in an action or
30 proceeding under this section. If the court finds, after
31 notice and opportunity for hearing, that the person is not in
32 compliance with an order, the court may adjudge the person to
33 be in civil contempt of the order. The court may impose a
34 civil penalty against the person for contempt in an amount not
35 less than three thousand dollars but not greater than ten

1 thousand dollars for each violation and may grant any other
2 relief that the court determines is just and proper in the
3 circumstances.

4 Sec. 49. NEW SECTION. 522B.17A INJUNCTIVE RELIEF.

5 1. An association with at least twenty-five insurance
6 producer members may bring an action in district court to
7 enjoin a person from selling, soliciting, or negotiating
8 insurance in violation of section 522B.2. However, before
9 bringing an action in district court to enjoin a person
10 pursuant to this section, an association shall file a
11 complaint with the insurance division alleging that the person
12 is selling, soliciting, or negotiating insurance in violation
13 of section 522B.2.

14 2. If the division makes a determination to proceed
15 administratively against the person for a violation of section
16 522B.2, the complainant shall not bring an action in district
17 court against the person pursuant to this section based upon
18 the allegations contained in the complaint filed with the
19 division.

20 3. If the division does not make a determination to
21 proceed administratively against the person for a violation of
22 section 522B.2, the division shall issue, on or before ninety
23 days from the date of filing of the complaint, a release to
24 the complainant that permits the complainant to bring an
25 action in district court pursuant to this section.

26 4. The filing of a complaint with the division pursuant to
27 this section tolls the statute of limitations pursuant to
28 section 614.1 as to the alleged violation for a period of one
29 hundred twenty days from the date of filing the complaint.

30 5. Any action brought in district court by a complainant
31 against a person pursuant to this section, based upon the
32 allegations contained in the complaint filed with the
33 division, shall be brought within one year after the ninety-
34 day period following the filing of the complaint with the
35 division, or the date of the issuance of a release by the

1 division, whichever is earlier.

2 6. If the court finds that the person is in violation of
3 section 522B.2 and enjoins the person from selling,
4 soliciting, or negotiating insurance in violation of that
5 section, the court's findings of fact and law, and the
6 judgment and decree, when final, shall be admissible in any
7 proceeding initiated pursuant to section 522B.17 by the
8 commissioner against the person enjoined and the person
9 enjoined shall be precluded from contesting in that proceeding
10 the court's determination that the person sold, solicited, or
11 negotiated insurance in violation of section 522B.2.

12 Sec. 50. Section 523A.402, subsection 6, paragraph c, Code
13 2005, is amended to read as follows:

14 c. The annuity shall not be contestable, or limit death
15 benefits in the case of suicide, with respect to that portion
16 of the face amount of the annuity which is required by
17 paragraph "b". The annuity shall not refer to physical
18 examination, or otherwise operate as an exclusion, limitation,
19 or condition other than requiring submission of proof of death
20 or surrender of the annuity at the time the prepaid purchase
21 agreement is funded, matures, or is canceled, as the case may
22 be.

23 Sec. 51. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.
24 This section and the sections of this Act amending sections
25 513C.6 and 514E.2, and amending section 514E.7, subsection 1,
26 by enacting paragraph "e", being deemed of immediate
27 importance, take effect upon enactment. The section of the
28 Act amending section 513C.6 is retroactively applicable to
29 January 1, 2005, and is applicable on and after that date.
30 The sections of the Act amending section 514E.2 are
31 retroactively applicable to July 1, 1986, and are applicable
32 on and after that date. The portion of the section of the Act
33 amending section 514E.7, subsection 1, by enacting paragraph
34 "e" is retroactively applicable to January 1, 2005, and is
35 applicable on and after that date.

SENATE FILE 360

H-1416

1 Amend Senate File 360, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 10, by inserting after line 15, the
4 following:

5 "Sec. ____ . NEW SECTION. 514C.22 ENTERAL FORMULAS
6 -- COVERAGE.

7 1. Except as provided in subsections 4 and 5, and
8 notwithstanding the uniformity of treatment
9 requirements of section 514C.6, a policy or contract
10 providing for third-party payment or prepayment of
11 health or medical expenses shall not exclude or
12 restrict benefits for enteral formulas for home use
13 for which a practitioner licensed by law to prescribe
14 and administer prescription drugs has issued a written
15 order, if such policy or contract provides benefits
16 for other outpatient prescription drugs or devices.
17 Such written order must state that the enteral formula
18 is medically necessary for the patient.

19 2. For purposes of this section, "enteral formula"
20 means enteral formulas which have been proven
21 effective for the treatment of inborn errors of
22 metabolism with a dietary restriction, which if left
23 untreated will cause malnourishment, chronic physical
24 disability, mental retardation, or death. "Enteral
25 formula" includes low-protein medical food and
26 metabolic formula prescribed for persons diagnosed
27 with inborn errors of metabolism with a dietary
28 restriction. The commissioner, by rule, shall further
29 define enteral formula.

30 3. a. This section applies to the following
31 classes of third-party payment provider contracts or
32 policies delivered, issued for delivery, continued, or
33 renewed in this state on or after July 1, 2005:

34 (1) Individual or group accident and sickness
35 insurance providing coverage on an expense-incurred
36 basis.

37 (2) Any individual or group hospital or medical
38 service contract issued pursuant to chapter 509, 514,
39 or 514A.

40 (3) Any individual or group health maintenance
41 organization contract regulated under chapter 514B.

42 (4) A plan established pursuant to chapter 509A
43 for public employees.

44 (5) An organized delivery system licensed by the
45 director of public health.

46 b. This section shall not apply to accident only,
47 specified disease, short-term hospital or medical,
48 hospital confinement indemnity, credit, dental,
49 vision, Medicare supplement, long-term care, basic
50 hospital and medical-surgical expense coverage as

H-1416

1 defined by the commissioner, disability income
2 insurance coverage, coverage issued as a supplement to
3 liability insurance, workers' compensation or similar
4 insurance, or automobile medical payment insurance.

5 4. An individual or group policy, contract, or
6 plan subject to the requirements of this section shall
7 at a minimum provide an aggregate annual limit for
8 enteral formula coverage benefits of not less than ten
9 thousand dollars per year for each family covered, not
10 including deductibles, coinsurance, or copayments.

11 The policy, contract, or plan may include deductibles,
12 coinsurance, or copayments, provided that the amounts
13 and extent of such deductibles, coinsurance, or
14 copayments are the same as those applicable to other
15 health, medical, or surgical services coverage under
16 the policy, contract, or plan."

17 2. Title page, line 5, by inserting after the
18 word "applications," the following: "health insurance
19 coverage for certain enteral formulas,".

20 3. By renumbering as necessary.

By PETERSEN of Polk

H-1416 FILED APRIL 19, 2005

WITHDRAWN

Wieck co-chair
McCoy co-chair
Zawn
Rielly

Succeeded By
SF HF 360

SSB# 1142
Commerce

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE
DIVISION BILL)

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

A BILL FOR

1 An Act relating to various provisions administered by the
2 insurance division of the department of commerce concerning
3 premium tax refunds, the interstate insurance compact, insurer
4 insolvency proceedings, individual health insurance, the small
5 employer carrier reinsurance program, the Iowa comprehensive
6 health association, fire insurance policies, the Iowa
7 insurance guaranty association, the FAIR plan, motor vehicle
8 service contracts, investments by county and state mutual
9 associations, reciprocal or interinsurance contract premium
10 rates, unauthorized activity of insurance producers, and
11 annuity contracts for cemetery and funeral merchandise and
12 funeral services, and making fees and penalties applicable and
13 providing effective and retroactive applicability dates.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

15
16
17
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19
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22

1 Section 1. Section 322.19, subsection 2, paragraph a, Code
2 2005, is amended to read as follows:

3 a. A ~~motor-vehicle~~ service contract as defined in section
4 516E.1.

5 Sec. 2. Section 432.1, subsection 6, paragraph d, Code
6 2005, is amended to read as follows:

7 d. The sums prepaid by a company or association under this
8 subsection shall be allowed as credits against its premium tax
9 liability for the calendar year during which the payments are
10 made. If a prepayment made under this subsection exceeds the
11 annual premium tax liability, the excess shall be allowed as a
12 credit against subsequent prepayment or tax liabilities. The
13 commissioner of insurance shall authorize the department of
14 revenue to make a cash refund to an insurer, in lieu of a
15 credit against subsequent prepayment or tax liabilities, if
16 the insurer demonstrates the inability to recoup the funds
17 paid via a credit. The commissioner shall adopt rules
18 establishing eligibility criteria for such a refund and a
19 refund process. The commissioner may suspend or revoke the
20 license of a company or association that fails to make a
21 prepayment on or before the due date.

22 Sec. 3. Section 505A.1, Article II, section 8, Code 2005,
23 is amended to read as follows:

24 8. "Member" means the person chosen by a compacting state
25 as its representative to the commission, or the person's
26 designee. The commissioner of insurance shall be the
27 representative member of the compact for the state of Iowa.

28 Sec. 4. Section 507C.2, Code 2005, is amended by adding
29 the following new subsections:

30 NEW SUBSECTION. 01. "Affiliate" of or "affiliated" with a
31 specific person, means a person that directly or indirectly,
32 through one or more intermediaries, controls or is controlled
33 by, or is under common control with, the person specified.

34 NEW SUBSECTION. 2A. "Commodity contract" means any of the
35 following:

1 a. A contract for the purchase or sale of a commodity for
2 future delivery on, or subject to the rules of, a board of
3 trade designated as a contract market by the commodity futures
4 trading commission under the federal Commodity Exchange Act, 7
5 U.S.C. § 1 et seq., or a board of trade outside the United
6 States.

7 b. An agreement that is subject to regulation under
8 section 19 of the federal Commodity Exchange Act, 7 U.S.C. § 1
9 et seq., and that is commonly known to the commodities trade
10 as a margin account, margin contract, leverage account, or
11 leverage contract.

12 c. An agreement or transaction that is subject to
13 regulation under section 4c(b) of the federal Commodity
14 Exchange Act, 7 U.S.C. § 1 et seq., and that is commonly known
15 to the commodities trade as a commodity option.

16 NEW SUBSECTION. 2B. "Control" means the same as defined
17 in section 521A.1, subsection 3.

18 NEW SUBSECTION. 8A. "Forward contract" means a contract
19 for the purchase, sale, or transfer of a commodity, as defined
20 in section 1 of the federal Commodity Exchange Act, 7 U.S.C. §
21 1 et seq., or any similar good, article, service, right, or
22 interest that is presently or in the future becomes the
23 subject of dealing in the forward contract trade, or product
24 or byproduct thereof, with a maturity date more than two days
25 after the date the contract is entered into, including, but
26 not limited to, a repurchase transaction, reverse repurchase
27 transaction, consignment, lease, swap, hedge transaction,
28 deposit, loan, option, allocated transaction, unallocated
29 transaction, or a combination of them or option on any of
30 them. "Forward contract" does not include a commodity
31 contract.

32 NEW SUBSECTION. 12A. "Netting agreement" means an
33 agreement, including terms and conditions incorporated by
34 reference therein, including a master agreement, which master
35 agreement, together with all schedules, confirmations,

1 definitions, and addenda thereto and transactions under any
2 thereof, shall be treated as one netting agreement, that
3 documents one or more transactions between parties to the
4 agreement for or involving one or more qualified financial
5 contracts and that provides for the netting or liquidation of
6 qualified financial contracts or present or future payment
7 obligations or payment entitlements thereunder, including
8 liquidation or closeout values relating to such obligations or
9 entitlements among the parties to the netting agreement.

10 NEW SUBSECTION. 13A. "Qualified financial contract" means
11 a commodity contract, forward contract, repurchase agreement,
12 securities contract, swap agreement, and any similar agreement
13 that the commissioner determines by regulation, resolution, or
14 order to be a qualified financial contract for the purposes of
15 this chapter.

16 NEW SUBSECTION. 15A. "Repurchase agreement" means an
17 agreement, including related terms, that provides for the
18 transfer of certificates of deposit, eligible bankers'
19 acceptances, or securities that are direct obligations of, or
20 that are fully guaranteed as to principal and interest by, the
21 United States or an agency of the United States against the
22 transfer of funds by the transferee of the certificates of
23 deposit, eligible bankers' acceptances or securities, with a
24 simultaneous agreement by the transferee to transfer to the
25 transferor certificates of deposit, eligible bankers'
26 acceptances, or securities as described above, at a date
27 certain not later than one year after the transfers or on
28 demand against the transfer of funds. For the purposes of
29 this definition, the items that may be subject to a repurchase
30 agreement include, but are not limited to, mortgage-related
31 securities, a mortgage loan, and an interest in a mortgage
32 loan, but shall not include any participation in a commercial
33 mortgage loan, unless the commissioner determines by rule,
34 resolution, or order to include the participation within the
35 meaning of the term. Repurchase agreement also applies to a

1 reverse repurchase agreement.

2 NEW SUBSECTION. 16A. "Securities contract" means a
3 contract for the purchase, sale, or loan of a security,
4 including an option for the repurchase or sale of a security,
5 certificate of deposit, or group or index of securities,
6 including an interest therein or based on the value thereof,
7 or an option entered into on a national securities exchange
8 relating to foreign currencies, or the guarantee of a
9 settlement of cash or securities by or to a securities
10 clearing agency. For the purposes of this definition, the
11 term "security" includes a mortgage loan, mortgage-related
12 securities, and an interest in any mortgage loan or mortgage-
13 related security.

14 NEW SUBSECTION. 18A. "Swap agreement" means an agreement,
15 including the terms and conditions incorporated by reference
16 in an agreement, that is a rate swap agreement, basis swap,
17 commodity swap, forward rate agreement, interest rate future,
18 interest rate option, forward foreign exchange agreement, spot
19 foreign exchange agreement, rate cap agreement, rate floor
20 agreement, rate collar agreement, currency swap agreement,
21 cross-currency rate swap agreement, currency future, or
22 currency option or any other similar agreement, and includes
23 any combination of agreements and an option to enter into an
24 agreement.

25 Sec. 5. NEW SECTION. 507C.28A QUALIFIED FINANCIAL
26 CONTRACTS.

27 1. Notwithstanding any other provision of this chapter to
28 the contrary, including any other provision of this chapter
29 permitting the modification of contracts, or other law of a
30 state, a person shall not be stayed or prohibited from
31 exercising any of the following:

32 a. A contractual right to terminate, liquidate, or close
33 out any netting agreement or qualified financial contract with
34 an insurer because of any of the following:

35 (1) The insolvency, financial condition, or default of the

1 insurer at any time, provided that the right is enforceable
2 under applicable law other than this chapter.

3 (2) The commencement of a formal delinquency proceeding
4 under this chapter.

5 b. Any right under a pledge, security, collateral, or
6 guarantee agreement or any other similar security arrangement
7 or credit support document relating to a netting agreement or
8 qualified financial contract.

9 c. Subject to any provision of section 507C.30, subsection
10 2, any right to set off or net out any termination value,
11 payment amount, or other transfer obligation arising under or
12 in connection with a netting agreement or qualified financial
13 contract where the counterparty or its guarantor is organized
14 under the laws of the United States or a state or foreign
15 jurisdiction approved by the securities valuation office or
16 the national association of insurance commissioners as
17 eligible for netting.

18 2. Upon termination of a netting agreement, the net or
19 settlement amount, if any, owed by a nondefaulting party to an
20 insurer against which an application or petition has been
21 filed under this chapter shall be transferred to or on the
22 order of the receiver for the insurer, even if the insurer is
23 the defaulting party, notwithstanding any provision in the
24 netting agreement that may provide that the nondefaulting
25 party is not required to pay any net or settlement amount due
26 to the defaulting party upon termination. Any limited two-
27 way payment provision in a netting agreement with an insurer
28 that has defaulted shall be deemed to be a full two-way
29 payment provision as against the defaulting insurer. Any such
30 amount shall, except to the extent it is subject to one or
31 more secondary liens or encumbrances, be a general asset of
32 the insurer.

33 3. In making any transfer of a netting agreement or
34 qualified financial contract of an insurer subject to a
35 proceeding under this chapter, the receiver shall do either of

1 the following:

2 a. Transfer to one party, other than an insurer subject to
3 a proceeding under this chapter, all netting agreements and
4 qualified financial contracts between a counterparty or any
5 affiliate of the counterparty and the insurer that is the
6 subject of the proceeding, including all of the following:

7 (1) All rights and obligations of each party under each
8 such netting agreement and qualified financial contract.

9 (2) All property, including any guarantees or credit
10 support documents, securing any claims of each party under
11 each such netting agreement and qualified financial contract.

12 b. Transfer none of the netting agreements, qualified
13 financial contracts, rights, obligations, or property referred
14 to in paragraph "a" with respect to the counterparty and any
15 affiliate of the counterparty.

16 4. If a receiver for an insurer makes a transfer of one or
17 more netting agreements or qualified financial contracts, the
18 receiver shall use the receiver's best efforts to notify any
19 person who is a party to the netting agreements or qualified
20 financial contracts of the transfer by noon of the receiver's
21 local time on the business day following the transfer. For
22 purposes of this subsection, "business day" means a day other
23 than a Saturday, Sunday, or any day on which either the New
24 York stock exchange or the federal reserve bank of New York is
25 closed.

26 5. Notwithstanding any other provision of this chapter to
27 the contrary, a receiver shall not avoid a transfer of money
28 or other property arising under or in connection with a
29 netting agreement or qualified financial contract, or any
30 pledge security, collateral, or guarantee agreement or any
31 other similar security arrangement or credit support document
32 relating to a netting agreement or qualified financial
33 contract, that is made before the commencement of a formal
34 delinquency proceeding under this chapter. However, a
35 transfer may be avoided under section 507C.28 if the transfer

1 was made with actual intent to hinder, delay, or defraud the
2 insurer, a receiver appointed for the insurer, or existing or
3 future creditors.

4 6. In exercising any of its powers under this chapter to
5 disaffirm or repudiate a netting agreement or qualified
6 financial contract, the receiver must take action with respect
7 to each netting agreement or qualified financial contract and
8 all transactions entered into in connection therewith, in its
9 entirety. Notwithstanding any other provision of this chapter
10 to the contrary, any claim of a counterparty against the
11 estate arising from the receiver's disaffirmance or
12 repudiation of a netting agreement or qualified financial
13 contract that has not been previously affirmed in the
14 liquidation or in the immediately preceding rehabilitation
15 case shall be determined and shall be allowed or disallowed as
16 if the claim had arisen before the date of the filing of the
17 petition for liquidation or, if a rehabilitation proceeding is
18 converted to a liquidation proceeding, as if the claim had
19 arisen before the date of filing the petition for
20 rehabilitation. The amount of the claim shall be the actual
21 direct compensatory damages determined as of the date of the
22 disaffirmance or repudiation of the netting agreement or
23 qualified financial contract. The term "actual direct
24 compensatory damages" does not include punitive or exemplary
25 damages, damages for lost profit or lost opportunity, or
26 damages for pain and suffering, but does include normal and
27 reasonable costs of cover or other reasonable measures of
28 damages utilized in the derivatives market for the contract
29 and agreement claims.

30 7. The term "contractual right" as used in this section
31 includes any right, whether or not evidenced in writing,
32 arising under statutory or common law, a rule or bylaw of a
33 national securities exchange, national securities clearing
34 organization or securities clearing agency, a rule or bylaw,
35 or a resolution of the governing body of a contract market or

1 its clearing organization, or under law merchant.

2 8. This section shall not apply to persons who are
3 affiliates of the insurer that is the subject of the
4 proceeding.

5 9. All rights of a counterparty under this chapter shall
6 apply to netting agreements and qualified financial contracts
7 entered into on behalf of the general account or separate
8 accounts, provided that the assets of each separate account
9 are available only to counterparties to netting agreements and
10 qualified financial contracts entered into on behalf of that
11 separate account.

12 Sec. 6. Section 507C.30, subsection 2, paragraph a,
13 subparagraphs (4) and (5), Code 2005, are amended to read as
14 follows:

15 (4) The obligation of the person is owed to the affiliate
16 of the insurer, or any other entity or association other than
17 the insurer.

18 ~~(4)~~ (5) The obligation of the person is to pay an
19 assessment levied against the members or subscribers of the
20 insurer, or is to pay a balance upon a subscription to the
21 capital stock of the insurer, or is in any other way in the
22 nature of a capital contribution.

23 ~~(5)~~ (6) The obligation of the person is to pay earned
24 premiums to the insurer.

25 Sec. 7. Section 513B.12, Code 2005, is amended by adding
26 the following new subsection:

27 NEW SUBSECTION. 6. During the period of time that the
28 operation of the small employer carrier reinsurance program is
29 suspended pursuant to section 513B.13, subsection 14, a small
30 employer carrier is not required to make an application to
31 become a risk-assuming carrier pursuant to this section.

32 Sec. 8. Section 513B.13, subsection 3, Code 2005, is
33 amended by adding the following new paragraph:

34 NEW PARAGRAPH. e. During the period of time that the
35 program is suspended pursuant to subsection 14, the size of

1 the board may be reduced with the approval of the
2 commissioner.

3 Sec. 9. Section 513B.17, subsection 4, Code 2005, is
4 amended by striking the subsection.

5 Sec. 10. Section 513C.6, Code 2005, is amended by adding
6 the following new subsection:

7 NEW SUBSECTION. 7. An individual who has coverage as a
8 dependent under a basic or standard health benefit plan may,
9 when that individual is no longer a dependent under such
10 coverage, elect to continue coverage under the basic or
11 standard health benefit plan if the individual so elects
12 immediately upon termination of the coverage under which the
13 individual was covered as a dependent.

14 Sec. 11. Section 514B.13, unnumbered paragraph 2, Code
15 2005, is amended to read as follows:

16 Health maintenance organizations providing services
17 exclusively on a group contract basis may limit the open
18 enrollment provided for in this section to all members of the
19 group covered by the contract, including those members of the
20 group who previously waived coverage.

21 Sec. 12. Section 514E.2, subsection 1, paragraph a, Code
22 2005, is amended to read as follows:

23 a. All carriers and all organized delivery systems
24 licensed by the director of public health providing health
25 insurance or health care services in Iowa, whether on an
26 individual or group basis, and all other insurers designated
27 by the association's board of directors and approved by the
28 commissioner shall be members of the association.

29 Sec. 13. Section 514E.2, subsection 5, paragraph 1, Code
30 2005, is amended to read as follows:

31 1. Develop a method of advising applicants of the
32 availability of other coverages outside the association, ~~and~~
33 ~~shall promulgate a list of health conditions the existence of~~
34 ~~which would make an applicant eligible without demonstrating a~~
35 ~~rejection of coverage by one carrier.~~

1 Sec. 14. Section 514E.2, subsection 7, Code 2005, is
2 amended by adding the following new unnumbered paragraph:

3 NEW UNNUMBERED PARAGRAPH. For purposes of this subsection,
4 "total health insurance premiums" and "payments for subscriber
5 contracts" include, without limitation, premiums or other
6 amounts paid to or received by a member for individual and
7 group health plan care coverage provided under any chapter of
8 the Code or Acts, and "paid losses" includes, without
9 limitation, claims paid by a member operating on a self-funded
10 basis for individual and group health plan care coverage
11 provided under any chapter of the Code or Acts. For purposes
12 of calculating and conducting the assessment, the association
13 shall have the express authority to require members to report
14 on an annual basis each member's total health insurance
15 premiums and payments for subscriber contracts and paid
16 losses. A member is liable for its share of the assessment
17 calculated in accordance with this section regardless of
18 whether it participates in the individual insurance market.

19 Sec. 15. Section 514E.7, subsection 1, Code 2005, is
20 amended by adding the following new paragraphs:

21 NEW PARAGRAPH. d. That the individual has a health
22 condition that is established by the association's board of
23 directors, with the approval of the commissioner, to be
24 eligible for plan coverage.

25 NEW PARAGRAPH. e. That the individual has coverage under
26 a basic or standard health benefit plan under chapter 513C.

27 Sec. 16. Section 514E.8, subsection 1, Code 2005, is
28 amended to read as follows:

29 1. An association policy shall contain provisions under
30 which the association is obligated to renew the coverage for
31 an individual until the day the individual becomes eligible
32 for Medicare coverage based on age, provided that any
33 individual who is covered by an association policy and is
34 eligible for Medicare coverage based on age prior to January
35 1, 2005, may continue to renew the coverage under the

1 association policy.

2 Sec. 17. Section 515.138, sixth subsection, paragraph
3 entitled perils not included, Code 2005, is amended to read as
4 follows:

5 PERILS NOT INCLUDED. This company shall not be liable for
6 loss by fire or other perils insured against in this policy
7 caused, directly or indirectly, by: (a) Enemy attack by armed
8 forces, including action taken by military, naval or air
9 forces in resisting an actual or an immediately impending
10 enemy attack; (b) invasion; (c) insurrection; (d) rebellion;
11 (e) revolution; (f) civil war; (g) usurped power; (h) order of
12 any civil authority except acts of destruction at the time of
13 and for the purpose of preventing the spread of fire, provided
14 that such fire did not originate from any of the perils
15 excluded by this policy; (i) neglect of the an insured to use
16 all reasonable means to save and preserve the property at and
17 after a loss, or when the property is endangered by fire in
18 neighboring premises; (j) nor shall this company be liable for
19 loss by theft.

20 Sec. 18. Section 515.138, sixth subsection, paragraph
21 entitled concealment -- fraud, Code 2005, is amended to read
22 as follows:

23 CONCEALMENT -- FRAUD. This entire policy shall be void if,
24 whether before or after a loss, the an insured has willfully
25 concealed or misrepresented any material fact or circumstance
26 concerning this insurance or the subject thereof, or the
27 interest of the an insured therein, or in case of any fraud or
28 false swearing by the an insured relating thereto.

29 Sec. 19. Section 515.138, sixth subsection, paragraph
30 entitled conditions suspending or restricting insurance, Code
31 2005, is amended to read as follows:

32 CONDITIONS SUSPENDING OR RESTRICTING INSURANCE. Unless
33 otherwise provided in writing added hereto this company shall
34 not be liable for loss occurring under any of the following
35 circumstances:

1 a. While the hazard is created or increased by any means
2 within the control or knowledge of ~~the~~ an insured~~,-or.~~

3 b. While a described building, whether intended for
4 occupancy by owner or tenant, is vacant or unoccupied beyond a
5 period of sixty consecutive days~~,-or.~~

6 c. As a result of explosion or riot, unless fire ensue,
7 and in that event for loss by fire only.

8 Sec. 20. Section 515B.2, subsection 4, paragraph b,
9 subparagraph (7), Code 2005, is amended to read as follows:

10 (7) That would otherwise be a covered claim, but is an
11 obligation to or on behalf of a person who has a net worth~~,-on~~
12 ~~the-date-of-the-occurrence-giving-rise-to-the-claim,~~ greater
13 than that allowed by the guarantee fund law of the state of
14 residence of the claimant, and which state has denied coverage
15 to that claimant on that basis.

16 Sec. 21. Section 515B.17, Code 2005, is amended to read as
17 follows:

18 515B.17 TIMELY FILING OF CLAIMS.

19 Notwithstanding any other provision of this chapter, a
20 covered claim shall not include any claim filed with the
21 association after twenty-four months from the date of the
22 order of liquidation or after the final date set by the court
23 for the filing of claims against the insolvent insurer or its
24 receiver, whichever occurs first.

25 Sec. 22. Section 515F.36, subsection 2, Code 2005, is
26 amended to read as follows:

27 2. The committee shall consist of seven members~~,-one-of~~
28 whom.

29 a. Five of the members shall be elected by to the
30 committee, with one member from each of the following:

31 a- (1) American insurance association.

32 b- (2) ~~Alliance-of-American-insurers~~ Property casualty
33 insurers association of America.

34 c-~~National-association-of-independent-insurers.~~

35 d- (3) Iowa insurance institute.

1 e- (4) Mutual insurance association of Iowa.

2 f- (5) Independent insurance agents of Iowa.

3 g- b. ~~All-other-insurers~~ Two of the members shall be
4 elected to the committee by other insurer members of the plan.

5 Sec. 23. Section 516E.1, Code 2005, is amended to read as
6 follows:

7 516E.1 DEFINITIONS.

8 For the purposes of this chapter:

9 1. "Administrator" means the deputy administrator
10 appointed pursuant to section 502.601.

11 ~~2. "Commissioner" means the commissioner of insurance~~
12 ~~as provided in section 505.1 or-the-deputy-administrator~~
13 ~~appointed-under-section-502-601.~~

14 3. "Maintenance agreement" means a contract of limited
15 duration that provides for scheduled maintenance only.

16 ~~2.~~ 4. "Mechanical breakdown insurance" means a policy,
17 contract, or agreement that undertakes to perform or provide
18 repair or replacement service, or indemnification for that
19 service, for the operational or structural failure of a motor
20 vehicle due to a defect in materials or skill of work or
21 normal wear and tear, and that is issued by an insurance
22 company authorized to do business in this state.

23 ~~3.~~ 5. "Motor vehicle" means any self-propelled vehicle
24 subject to registration under chapter 321.

25 ~~4.--"Motor-vehicle-service-contract"-or-"service-contract"~~
26 ~~means-a-contract-or-agreement-given-for-consideration-over-and~~
27 ~~above-the-lease-or-purchase-price-of-a-new-or-used-motor~~
28 ~~vehicle-having-a-gross-vehicle-weight-rating-of-less-than~~
29 ~~sixteen-thousand-pounds-that-undertakes-to-perform-or-provide~~
30 ~~repair-or-replacement-service,-or-indemnification-for-that~~
31 ~~service,-for-the-operational-or-structural-failure-of-a-motor~~
32 ~~vehicle-due-to-a-defect-in-materials-or-skill-of-work-or~~
33 ~~normal-wear-and-tear,-but-does-not-include-mechanical~~
34 ~~breakdown-insurance-or-maintenance-agreements-providing~~
35 ~~scheduled-repair-and-maintenance-services-for-leased-vehicles.~~

1 5. ~~6. "Motor-vehicle-service-contract-provider"-or~~
2 ~~"provider"~~ "Provider" means a person who issues, makes,
3 provides, sells, or offers to sell a motor-vehicle service
4 contract.

5 ~~6.---"Motor-vehicle-service-contract-reimbursement-insurance~~
6 ~~policy"-or-"reimbursement-insurance-policy"-means-a-policy-of~~
7 ~~insurance-providing-coverage-for-all-obligations-and~~
8 ~~liabilities-incurred-by-a-motor-vehicle-service-contract~~
9 ~~provider-under-the-terms-of-motor-vehicle-service-contracts~~
10 ~~issued-by-the-provider.~~

11 7. "Record" means information stored or preserved in any
12 medium, including in an electronic or paper format. A record
13 includes but is not limited to documents, books, publications,
14 accounts, correspondence, memoranda, agreements, computer
15 files, film, microfilm, photographs, and audio or visual
16 tapes.

17 8. "Reimbursement insurance policy" means a policy of
18 insurance issued to a service company and pursuant to which
19 the insurer agrees, for the benefit of the service contract
20 holders, to discharge all of the obligations and liabilities
21 of the service company under the terms of service contracts
22 issued by the service company in the event of nonperformance
23 by the service company. For the purposes of this definition,
24 "all obligations and liabilities" include, but are not limited
25 to, failure of the service company to perform under the
26 service contract and the return of the unearned service
27 company fee in the event of the service company's
28 unwillingness or inability to reimburse the unearned service
29 company fee in the event of termination of a service contract.

30 9. "Service company" means a person who issues and is
31 obligated to perform, or arrange for the performance of,
32 services pursuant to a service contract.

33 10. "Service contract" means a contract or agreement given
34 for consideration over and above the lease or purchase price
35 of a new or used motor vehicle having a gross vehicle weight

1 rating of less than sixteen thousand pounds, that undertakes
2 to perform or provide repair or replacement service, or
3 indemnification for that service, for the operation or
4 structural failure of a motor vehicle due to a defect in
5 materials or skill of work or normal wear and tear, but does
6 not include mechanical breakdown insurance or maintenance
7 agreements.

8 ~~8.~~ 11. "Service contract holder" means a person who
9 purchases a motor-vehicle service contract.

10 12. "Third-party administrator" means a person who
11 contracts with a service company to be responsible for the
12 administration of the service company's service contracts,
13 including processing and adjudicating claims pursuant to a
14 service contract.

15 Sec. 24. Section 516E.2, Code 2005, is amended to read as
16 follows:

17 516E.2 ~~INSURANCE-REQUIRED~~ REQUIREMENTS FOR DOING BUSINESS.

18 1. ~~A motor-vehicle service contract shall not be issued,~~
19 ~~sold, or offered for sale in this state unless the provider-of~~
20 ~~the-service-contract-is-insured-under-a-motor-vehicle-service~~
21 ~~contract-reimbursement-insurance-policy-issued-by-an-insurer~~
22 ~~authorized-to-do-business-in-this-state.~~ service company does
23 all of the following:

24 a. Provides a receipt for the purchase of the service
25 contract to the service contract holder.

26 b. Provides a copy of the service contract to the service
27 contract holder within a reasonable period of time after the
28 date of purchase of the service contract.

29 ~~2. The-issuer-of-a-reimbursement-insurance-policy-shall~~
30 ~~not-cancel-a-reimbursement-insurance-policy-unless-a-written~~
31 ~~notice-has-been-received-by-the-commissioner-and-by-each~~
32 ~~applicable-provider,-including-automobile-dealers-and-third-~~
33 ~~party-administrators.--The-notice-shall-fix-the-date-of~~
34 ~~cancellation-at-a-date-no-earlier-than-ten-days-after-receipt~~
35 ~~of-the-notice-by-the-commissioner-and-by-the-applicable~~

~~1 provider.--The notice may be made in person or by mail and a~~
~~2 post-office department receipt of certified or registered~~
~~3 mailing shall be deemed proof of receipt of the notice. A~~
4 service company shall not issue a service contract or arrange
5 to perform services pursuant to a service contract unless the
6 service company is registered with the commissioner. A
7 service company shall file a registration with the
8 commissioner annually, on a form prescribed by the
9 commissioner, accompanied by a registration fee in the amount
10 of five hundred dollars.

11 3. In order to assure the faithful performance of a
12 service company's obligations to its service contract holders,
13 each service company shall do all of the following:

14 a. Insure all service contracts under a reimbursement
15 insurance policy issued by an insurer authorized to transact
16 insurance in this state.

17 b. Maintain a funded reserve account for the service
18 company's obligations under its service contracts issued and
19 outstanding in this state. The reserves shall not be less
20 than forty percent of gross consideration received, less
21 claims paid, on the sale of the service contracts for all in-
22 force service contracts. The reserve account shall be subject
23 to examination and review by the commissioner.

24 c. File a certificate of deposit issued by a financial
25 institution in the name of the commissioner, as trustee, with
26 terms and conditions approved by the commissioner as to
27 issuer, form, and contents, as a financial security deposit,
28 having a value of not less than five percent of the gross
29 consideration received by the service company in Iowa on the
30 sale of service contracts for all service contracts issued and
31 in force, but not less than the amount of twenty-five thousand
32 dollars.

33 4. The commissioner may issue an order denying,
34 suspending, or revoking any registration if the commissioner
35 finds that the order is in the public interest and finds any

1 of the following:

2 a. The registration is incomplete in any material respect
3 or contains any statement which, in light of the circumstances
4 under which the registration was made, is determined by the
5 commissioner to be false or misleading with respect to any
6 material fact.

7 b. A provision of this chapter or a rule, order, or
8 condition lawfully imposed under this chapter, has been
9 willfully violated in connection with the sale of service
10 contracts by any of the following persons:

11 (1) The person filing the registration, but only if the
12 person filing the registration is directly or indirectly
13 controlled by or acting for the service company.

14 (2) The service company, any partner, officer, or director
15 of the service company or any person occupying a similar
16 status or performing similar functions for the service
17 company, or any person directly or indirectly controlling or
18 controlled by the service company.

19 c. The service company has not filed a document or
20 information required under this chapter.

21 d. The service company's literature or advertising is
22 misleading, incorrect, incomplete, or deceptive.

23 e. The service company has failed to pay the proper filing
24 fee. However, the commissioner shall vacate an order issued
25 pursuant to this paragraph when the proper fee has been paid.

26 f. The service company does not have the minimum net
27 worth, as determined in accordance with generally accepted
28 accounting principles, required under this chapter.

29 The commissioner may vacate or modify an order issued under
30 this subsection if the commissioner finds that the conditions
31 which prompted the entry of the order have changed or that it
32 is otherwise in the public interest to do so.

33 Sec. 25. Section 516E.3, Code 2005, is amended to read as
34 follows:

35 516E.3 FILING AND FEE REQUIREMENTS.

1 1. SERVICE COMPANIES.

2 a. A ~~motor-vehicle~~ service contract shall not be issued,
3 sold, or offered for sale in this state unless a true and
4 correct copy of the service contract, and the provider's
5 service company's reimbursement insurance policy have been
6 filed with the commissioner by the service company.

7 2. ~~b. In-addition-to-any-other-required-filings, an~~
8 ~~accurate-copy-of-the-service-contract-and-the-provider's~~
9 ~~reimbursement-insurance-policy, the~~ A service company shall
10 file a consent to service of process on the commissioner, and
11 such other information as the commissioner requires ~~shall be~~
12 ~~filed~~ annually with the commissioner no later than the first
13 day of August. If the first day of August falls on a weekend
14 or a holiday, the date for filing shall be the next business
15 day. In addition to the annual filing, the provider service
16 company shall promptly file copies of any amended documents if
17 material amendments have been made in the materials on file
18 with the commissioner. If an annual filing is made after the
19 first of August and sales have occurred during the period when
20 the provider service company was in noncompliance with this
21 section, the commissioner shall assess an additional filing
22 fee that is two times the amount normally required for an
23 annual filing. A fee shall not be charged for interim filings
24 made to keep the materials filed with the division current and
25 accurate. The annual filing shall be accompanied by a filing
26 fee determined by the commissioner which shall be sufficient
27 to defray the costs of administering this chapter.

28 3. --a. c. A ~~motor-vehicle-service-contract-provider~~
29 service company shall promptly file the following information
30 with the insurance commissioner:

31 (1) A change in the name or ownership of the provider
32 service company.

33 (2) The termination of the provider's service company's
34 business.

35 b. (3) The provider service company is not required to

1 submit a fee as part of this filing.

2 2. PROVIDERS.

3 a. A service contract shall not be sold or offered for
4 sale in this state unless a true and correct copy of the
5 service contract has been filed with the commissioner by the
6 provider.

7 b. A provider shall file a consent to service of process
8 on the commissioner and such other information as the
9 commissioner requires annually with the commissioner no later
10 than August 1. If August 1 falls on a weekend or a holiday,
11 the date for filing shall be the next business day. In
12 addition to the annual filing, the provider shall promptly
13 file copies of any amended documents if material amendments
14 have been made in the materials on file with the commissioner.
15 If an annual filing is made after August 1 and sales have
16 occurred during the period when the provider was in
17 noncompliance with this section, the commissioner shall assess
18 an additional filing fee that is two times the amount normally
19 required for an annual filing. A fee shall not be charged for
20 interim filings made to keep the materials filed with the
21 division current and accurate. The annual filing shall be
22 accompanied by a filing fee in the amount of one hundred
23 dollars.

24 c. A provider shall promptly file the following
25 information with the commissioner:

26 (1) A change in the name or ownership of the provider.

27 (2) The termination of the provider's business.

28 (3) A provider is not required to submit a fee as part of
29 this filing.

30 Sec. 26. Section 516E.4, Code 2005, is amended by striking
31 the section and inserting in lieu thereof the following:

32 516E.4 REIMBURSEMENT INSURANCE POLICY REQUIREMENTS.

33 1. REQUIRED DISCLOSURES. A reimbursement insurance policy
34 insuring a service contract issued, sold, or offered for sale
35 in this state shall conspicuously state that, upon failure of

1 the service company to perform under the contract, including
2 but not limited to a failure to return the unearned
3 consideration paid for a service contract in excess of the
4 premium, the insurer that issued the policy shall pay on
5 behalf of the service company any amount that is owed to the
6 service contract holder by the service company to satisfy the
7 service company's obligations under a service contract issued
8 or sold by the service company.

9 2. TERMINATION. As applicable, an insurer that issued a
10 reimbursement insurance policy shall not terminate the policy
11 unless a written notice has been received by the commissioner
12 and by each applicable provider, service company, or third-
13 party administrator. The notice shall fix the date of
14 termination at a date no earlier than ten days after receipt
15 of the notice by the commissioner and by the applicable
16 provider, service company, or third-party administrator. The
17 notice may be delivered in person or sent by mail, and a
18 restricted certified mail return receipt shall be deemed proof
19 of receipt of notice. The termination of a reimbursement
20 insurance policy shall not reduce the issuer's responsibility
21 for a service contract issued by a service company prior to
22 the date of termination.

23 3. INDEMNIFICATION OR SUBROGATION. This section does not
24 prevent or limit the right of an insurer that issued a
25 reimbursement insurance policy to seek indemnification from or
26 subrogation against a service company if the insurer pays or
27 is obligated to pay a service contract holder sums that the
28 service company was obligated to pay pursuant to the
29 provisions of a service contract or pursuant to a contractual
30 agreement.

31 Sec. 27. Section 516E.5, Code 2005, is amended to read as
32 follows:

33 516E.5 DISCLOSURE TO SERVICE CONTRACT HOLDERS -- CONTRACT
34 PROVISIONS.

35 1. A motor-vehicle service contract shall not be issued,

1 sold, or offered for sale in this state unless the contract
2 conspicuously states that the obligations of the provider
3 service company to the service contract holder are guaranteed
4 under the-service-contract a reimbursement insurance policy,
5 and-unless-the including a statement in substantially the
6 following form: "Obligations of the service company under
7 this service contract are guaranteed under a reimbursement
8 insurance policy. If the service company fails to pay or
9 provide service on a claim within sixty days after proof of
10 loss has been filed with the service company, the service
11 contract holder is entitled to make a claim directly against
12 the reimbursement insurance policy." A claim against a
13 reimbursement insurance policy shall also include a claim for
14 return of the unearned consideration paid for the service
15 contract in excess of the premium paid. A service contract
16 shall conspicuously states state the name and address of the
17 issuer of the reimbursement insurance policy for that service
18 contract.

19 2. A ~~motor-vehicle~~ service contract shall be written in
20 clear, understandable language and the entire contract shall
21 be printed or typed in easy-to-read type, size, and style, and
22 shall not be issued, sold, or offered for sale in this state
23 unless the contract does all of the following:

24 a. Clearly and conspicuously states the name and address
25 of the service company, describes the service company's
26 obligations to perform services or to arrange for the
27 performance of services under the service contract, and states
28 that the obligations of the provider service company to the
29 service contract holder are guaranteed under a service
30 contract reimbursement insurance policy.

31 b. Clearly and conspicuously states the name and address
32 of the issuer of the reimbursement insurance policy.

33 c. Identifies the ~~motor-vehicle~~ service contract-provider,
34 the-seller-of-the-motor-vehicle company obligated to perform
35 the service under the service contract, any third-party

1 administrator, and the service contract holder to the extent
2 that the name and address of the service contract holder has
3 been furnished by the service contract holder.

4 d. Sets forth the total purchase price of the service
5 contract and the terms under which the purchase price of the
6 service contract is to be paid.

7 e. Sets forth the procedure for making a claim, including
8 a telephone number.

9 f. Clearly and conspicuously states the dates that
10 coverage starts and ends and the existence, terms, and
11 conditions of a deductible amount, if any.

12 g. Specifies the merchandise or services, or both, to be
13 provided and clearly states any and all limitations,
14 exceptions, or exclusions.

15 h. Sets forth the conditions on which substitution of
16 services will be allowed.

17 i. Sets forth all of the obligations and duties of the
18 service contract holder, including but not limited to the duty
19 to protect against any further damage to the motor vehicle,
20 and the obligation to notify the provider service company in
21 advance of any repair, if any.

22 j. Sets forth any and all terms, restrictions, or
23 conditions governing transferability of the service contract,
24 if any.

25 k. Describes or references any and all applicable
26 provisions of the Iowa consumer credit code, chapter 537.

27 l. States the name and address of the commissioner.

28 m. Sets forth any and all conditions on which the service
29 contract may be canceled, the terms and conditions for the
30 refund of any portion of the purchase price, the identity of
31 the person primarily liable to provide any refund, and the
32 identity of any other person liable to provide any portion of
33 the refund. If the service contract holder cancels the
34 service contract, the service company shall mail a written
35 notice of termination to the service contract holder within

1 fifteen days of the date of the termination.

2 n. Permits the service contract holder to cancel and
3 return the service contract within at least twenty days of the
4 date of mailing the service contract to the service contract
5 holder or within at least ten days after delivery of the
6 service contract if the service contract is delivered at the
7 time of sale of the service contract, or within a longer
8 period of time as permitted under the service contract. If no
9 claim has been made under the service contract prior to its
10 return, the service contract is void and the full purchase
11 price of the service contract shall be refunded to the service
12 contract holder. A ten percent penalty shall be added each
13 month to a refund that is not paid to a service contract
14 holder within thirty days of the return of the service
15 contract to the service company. The applicable time period
16 for cancellation of a service contract shall apply only to the
17 original service contract holder that purchased the service
18 contract.

19 3. A complete copy of the terms of the ~~motor-vehicle~~
20 service contract shall be delivered to the prospective service
21 contract holder at or before the time that the prospective
22 service contract holder makes application for the service
23 contract. If there is no separate application procedure, then
24 a complete copy of the ~~motor-vehicle~~ service contract shall be
25 delivered to the service contract holder at or before the time
26 the service contract holder becomes bound under the contract.

27 Sec. 28. Section 516E.6, Code 2005, is amended to read as
28 follows:

29 516E.6 COMMISSIONER MAY PROHIBIT CERTAIN SALES --
30 INJUNCTION.

31 The commissioner shall issue an order instructing the a
32 provider, service company, or third-party administrator to
33 cease and desist from selling or offering for sale motor
34 vehicle service contracts if the commissioner determines that
35 the provider, service company, or third-party administrator

1 has failed to comply with a provision of this chapter. Upon
2 the failure of a motor-vehicle provider, service contract
3 provider company, or third-party administrator to obey a cease
4 and desist order issued by the commissioner, the commissioner
5 may give notice in writing of the failure to the attorney
6 general, who shall immediately commence an action against the
7 provider, service company, or third-party administrator to
8 enjoin the provider, service company, or third-party
9 administrator from selling or offering for sale motor-vehicle
10 service contracts until the provider, service company, or
11 third-party administrator complies with the provisions of this
12 chapter and the district court may issue the injunction.

13 Sec. 29. Section 516E.7, Code 2005, is amended to read as
14 follows:

15 516E.7 RULES.

16 The commissioner may adopt rules as provided in chapter 17A
17 to administer and enforce the provisions of this chapter and
18 to establish minimum standards for disclosure of motor-vehicle
19 service contract coverage limitations and exclusions.

20 Sec. 30. Section 516E.8, Code 2005, is amended to read as
21 follows:

22 516E.8 EXEMPTION.

23 This chapter does not apply to a motor-vehicle service
24 contract issued by the manufacturer or importer of the motor
25 vehicle covered by the service contract or to any third party
26 acting in an administrative capacity on the manufacturer's
27 behalf in connection with that service contract.

28 Sec. 31. Section 516E.9, Code 2005, is amended to read as
29 follows:

30 516E.9 MISREPRESENTATIONS OF STATE APPROVAL.

31 A motor-vehicle service contract-provider company shall not
32 represent or imply in any manner that the provider service
33 company has been sponsored, recommended, or approved or that
34 the provider's service company's abilities or qualifications
35 have in any respect been passed upon by the state of Iowa,

1 including the commissioner, the insurance division, or the
2 division's securities bureau.

3 Sec. 32. Section 516E.10, Code 2005, is amended to read as
4 follows:

5 516E.10 PROHIBITED ACTS -- UNFAIR OR DECEPTIVE TRADE
6 PRACTICES.

7 1. MISREPRESENTATIONS, FALSE ADVERTISING, AND UNFAIR
8 PRACTICES.

9 a. Unless licensed as an insurance company, a ~~motor~~
10 ~~vehicle service contract-provider~~ company shall not use in its
11 name, contracts, or literature, the words "insurance",
12 "casualty", "surety", "mutual", or any other words descriptive
13 of the insurance, casualty, or surety business or deceptively
14 similar to the name or description of any insurance or surety
15 corporation, or any other ~~motor-vehicle~~ service contract
16 provider company.

17 b. A ~~motor-vehicle~~ service contract-provider company shall
18 not, without the written consent of the purchaser, knowingly
19 charge a purchaser for duplication of coverage or duties
20 required by state or federal law, a warranty expressly issued
21 by a manufacturer or seller of a product, or an implied
22 warranty enforceable against the lessor, seller, or
23 manufacturer of a product.

24 c. A ~~motor-vehicle~~ provider, service contract-provider
25 company, or third-party administrator shall not make, permit,
26 or cause a false or misleading statement, either oral or
27 written, in connection with the sale, offer to sell, or
28 advertisement of a ~~motor-vehicle~~ service contract.

29 d. A ~~motor-vehicle~~ provider, service contract-provider
30 company, or third-party administrator shall not permit or
31 cause the omission of a material statement in connection with
32 the sale, offer to sell, or advertisement of a ~~motor-vehicle~~
33 service contract, which under the circumstances should have
34 been made in order to make the statement not misleading.

35 e. A ~~motor-vehicle~~ provider, service contract-provider

1 company, or third-party administrator shall not make, permit,
2 or cause to be made a false or misleading statement, either
3 oral or written, about the benefits or services available
4 under the motor-vehicle service contract.

5 f. A motor-vehicle provider, service contract-provider
6 company, or third-party administrator shall not make, permit,
7 or cause to be made a statement of practice which has the
8 effect of creating or maintaining a fraud.

9 g. A motor-vehicle provider, service contract-provider
10 company, or third-party administrator shall not make, publish,
11 disseminate, circulate, or place before the public, or cause,
12 directly or indirectly, to be made, published, disseminated,
13 circulated, or placed before the public in a newspaper,
14 magazine, or other publication, or in the form of a notice,
15 circular, pamphlet, letter, or poster, or over a radio or
16 television station, or in any other way, an advertisement,
17 announcement, or statement containing an assertion,
18 representation, or statement with respect to the motor-vehicle
19 service contract industry or with respect to a motor-vehicle
20 provider, service contract-provider company, or third-party
21 administrator which is untrue, deceptive, or misleading. It
22 is deceptive or misleading to use any combination of words,
23 symbols, or physical materials which by their content,
24 phraseology, shape, color, or other characteristics are so
25 similar to a combination of words, symbols, or physical
26 materials used by a manufacturer or of such a nature that the
27 use would tend to mislead a person into believing that the
28 solicitation is in some manner connected with the
29 manufacturer, unless actually authorized or issued by the
30 manufacturer.

31 h. A bank, savings and loan association, credit union,
32 insurance company, or other lending institution shall not
33 require the purchase of a motor-vehicle service contract as a
34 condition of a loan.

35 2. DEFAMATION. A motor-vehicle provider, service contract

1 provider company, or third-party administrator shall not make,
2 publish, disseminate, or circulate, directly or indirectly, or
3 aid, abet, or encourage the making, publishing, disseminating,
4 or circulating of an oral or written statement or a pamphlet,
5 circular, article, or literature which is false or maliciously
6 critical of or derogatory to the financial condition of a
7 person, and which is calculated to injure the person.

8 3. BOYCOTT, COERCION, AND INTIMIDATION. A ~~motor-vehicle~~
9 provider, service contract-provider-shall-not-enter-into-an
10 company, or third-party administrator agreement to commit, or
11 by a concerted action commit, an act of boycott, coercion, or
12 intimidation resulting in or tending to result in unreasonable
13 restraint of, or monopoly in, the service contract industry.

14 4. FALSE STATEMENTS. A ~~motor-vehicle~~ provider, service
15 contract-provider company, or third-party administrator shall
16 not knowingly file with a supervisory or other public
17 official, or knowingly make, publish, disseminate, circulate,
18 or deliver to a person, or place before the public, or
19 knowingly cause directly or indirectly to be made, published,
20 disseminated, circulated, delivered to a person, or placed
21 before the public, a false material statement of fact as to
22 the financial condition of a person.

23 5. FALSE ENTRIES. A ~~motor-vehicle~~ provider, service
24 contract-provider company, or third-party administrator shall
25 not knowingly make a false entry of a material fact in a book,
26 report, or statement of a person or knowingly fail to make a
27 true entry of a material fact pertaining to the business of
28 the person in a book, report, or statement of the person.

29 6. USED OR REBUILT PARTS. A ~~motor-vehicle~~ service
30 contract-provider company shall not repair a motor vehicle
31 covered by a ~~motor-vehicle~~ service contract with any of the
32 following:

33 a. Used parts, unless the provider service company
34 receives prior written authorization by the vehicle owner.

35 b. Rebuilt parts, unless the parts are rebuilt according

1 to national standards recognized by the insurance division.

2 7. MARKETING. A provider, service company, or third-party
3 administrator shall not market, advertise, offer to sell, or
4 sell a service contract by using personal information obtained
5 in violation of the federal Driver's Privacy Protection Act,
6 18 U.S.C. § 2721 et seq.

7 ~~7.~~ 8. VIOLATIONS OF SECTION 714.16.

8 a. A violation of this chapter or rules adopted by the
9 commissioner pursuant to this chapter is an unfair practice as
10 defined in section 714.16.

11 b. An enforcement agreement between the commissioner and a
12 motor-vehicle provider, service contract-provider company, or
13 third-party administrator does not bar the attorney general
14 from bringing an action against the provider, service company,
15 or third-party administrator under section 714.16 as to
16 allegations that a violation of this chapter constitutes a
17 violation of section 714.16.

18 Sec. 33. Section 516E.11, Code 2005, is amended to read as
19 follows:

20 516E.11 RECORDS -- EXPLANATION OF REASONS FOR DENIAL OF
21 CLAIMS.

22 1. A motor-vehicle provider, service contract-provider
23 company, or third-party administrator shall keep accurate
24 records concerning transactions regulated under this chapter.

25 a. ~~A-motor-vehicle-service-contract-provider's-records~~
26 Records of a provider, service company, or third-party
27 administrator shall include all of the following:

28 (1) Copies of all-service-contracts each type of service
29 contract issued or sold.

30 (2) The name and address of each service contract holder.

31 (3) The Claim files which shall contain, at a minimum, the
32 dates, amounts, and descriptions of all receipts, claims, and
33 expenditures related to service contracts.

34 (4) Copies of all materials relating to claims which have
35 been denied.

1 b. A motor-vehicle provider, service contract-provider
2 company, or third-party administrator shall retain all
3 required records pertaining to a service contract holder for
4 at least two years after the specified period of coverage has
5 expired. A provider, service company, or third-party
6 administrator discontinuing business in this state shall
7 maintain its records until the provider, service company, or
8 third-party administrator furnishes the commissioner
9 satisfactory proof that the provider, service company, or
10 third-party administrator has discharged all obligations to
11 contract holders in this state.

12 c. Motor-vehicle-service-contract-providers Providers,
13 service companies, or third-party administrators shall make
14 all records concerning transactions regulated under the
15 chapter available to the commissioner for the purpose of
16 examination.

17 d. A provider, service company, or third-party
18 administrator may keep all records required under this chapter
19 in an electronic form. If an administrator maintains records
20 in a form other than a printed copy, the records shall be
21 accessible from a computer terminal available to the
22 commissioner and shall be capable of duplication to a legible
23 printed copy.

24 2. A motor-vehicle-service-contract provider, service
25 company, or third-party administrator shall promptly deliver a
26 written explanation to the service contract holder, describing
27 the reasons for denying a claim or for the offer of a
28 compromise settlement, based on all relevant facts or legal
29 requirements and referring to applicable provisions of the
30 service contract.

31 3. A provider, service company, or third-party
32 administrator shall keep accurate records concerning
33 transactions regulated under this chapter, including a list of
34 the locations where service contracts are marketed, sold,
35 offered for sale, or performed.

1 Sec. 34. Section 516E.12, Code 2005, is amended to read as
2 follows:

3 516E.12 SERVICE OF PROCESS.

4 The commissioner shall be the agent for service of process
5 upon a motor-vehicle provider, service contract-provider
6 company, or third-party administrator and an issuer of a
7 reimbursement insurance policy.

8 Sec. 35. Section 516E.13, subsection 4, unnumbered
9 paragraph 1, Code 2005, is amended to read as follows:

10 Upon the commissioner's determination that a provider,
11 service company, or third-party administrator has engaged, is
12 engaging, or is about to engage in any act or practice
13 constituting a violation of this chapter or a rule adopted
14 pursuant to this chapter, the commissioner may issue a summary
15 order directing the person to cease and desist from engaging
16 in the act or practice resulting in the violation or to take
17 other affirmative action as in the judgment of the
18 commissioner is necessary to comply with the requirements of
19 this chapter.

20 Sec. 36. Section 516E.14, Code 2005, is amended to read as
21 follows:

22 516E.14 AUDITS.

23 The commissioner may examine or cause to be examined the
24 records of a motor-vehicle provider, service contract-provider
25 company, or third-party administrator for the purpose of
26 verifying compliance with this chapter. The commissioner may
27 require, by a subpoena, the attendance of the provider,
28 service company, or third-party administrator, or the
29 provider's a representative thereof, and any other witness
30 whom the commissioner deems necessary or expedient, and the
31 production of records relating in any manner to compliance
32 with this chapter if a provider, service company, third-party
33 administrator, or witness fails or refuses to produce the
34 documents for examination when requested by the commissioner.
35 Sec. 37. Section 516E.15, subsection 1, paragraph b, Code

1 2005, is amended to read as follows:

2 b. A motor-vehicle provider, service contract-provider-who
3 company, or third-party administrator that fails to file
4 documents and information with the commissioner as required
5 pursuant to section 516E.3 may be subject to a civil penalty.
6 The amount of the civil penalty shall not be more than four
7 hundred dollars plus two dollars for each motor-vehicle
8 service contract that the person executed prior to satisfying
9 the filing requirement. However, a person who fails to file
10 information regarding a change in the provider's name or the
11 termination of the provider's business of a provider, service
12 company, or third-party administrator as required pursuant to
13 section 516E.3 is subject to a civil penalty of not more than
14 five hundred dollars.

15 Sec. 38. Section 516E.15, subsection 2, Code 2005, is
16 amended to read as follows:

17 2. If the commissioner believes that grounds exist for the
18 criminal prosecution of a motor-vehicle provider, service
19 contract-provider company, or third-party administrator for
20 violating this chapter or any other law of this state, the
21 commissioner may forward to the attorney general or the county
22 attorney the grounds for the belief, including all evidence in
23 the commissioner's possession for action deemed appropriate by
24 the attorney general or county attorney. At the request of
25 the attorney general, the county attorney shall appear and
26 prosecute the action when brought in the county served by the
27 county attorney.

28 Sec. 39. NEW SECTION. 516E.16 COURT ACTION FOR FAILURE
29 TO COOPERATE.

30 1. If a person fails or refuses to file a statement or
31 report or to produce any books, accounts, papers,
32 correspondence, memoranda, purchase agreements, files, or
33 other documents or records, or to obey a subpoena issued by
34 the commissioner, the commissioner may refer the matter to the
35 attorney general, who may apply to a district court to enforce

1 compliance. The court may order any of the following:

2 a. Injunctive relief restricting or prohibiting the offer
3 or sale of service contracts.

4 b. Production of documents or records including but not
5 limited to books, accounts, papers, correspondence, memoranda,
6 purchase agreements, files, or other documents or records.

7 c. Such other relief as may be appropriate.

8 2. A court order issued pursuant to subsection 1 is
9 effective until the person who is subject to the order files
10 the statement or report, produces the documents requested, or
11 obeys the subpoena.

12 **Sec. 40. NEW SECTION. 516E.17 NET WORTH REQUIREMENT.**

13 A service company that has issued or renewed in the
14 aggregate one thousand or fewer service contracts during the
15 preceding calendar year shall maintain a minimum net worth of
16 forty thousand dollars. The minimum net worth to be
17 maintained shall be increased by an additional twenty thousand
18 dollars for each additional five hundred contracts or fraction
19 thereof issued or renewed, up to a maximum required net worth
20 of four hundred thousand dollars. At least twenty thousand
21 dollars of net worth shall consist of paid-in capital.

22 **Sec. 41. NEW SECTION. 516E.18 PUBLIC ACCESS TO RECORDS.**

23 1. The administrator shall keep a register of all filings
24 and orders which have been entered. The register shall be
25 open for public inspection.

26 2. Upon request and for a reasonable fee, the
27 administrator shall furnish to any person copies of any
28 register entry or any document which is a matter of public
29 record and not confidential. Copies shall be available during
30 normal business hours and may be certified upon request. In
31 any administrative, civil, or criminal proceeding, a certified
32 copy is prima facie evidence of the contents of the document
33 certified.

34 3. Pursuant to chapter 22, the administrator may maintain
35 the confidentiality of information obtained during an

1 investigation or audit.

2 Sec. 42. NEW SECTION. 516E.19 ADMINISTRATION.

3 1. This chapter shall be administered by the commissioner.
4 The deputy administrator appointed pursuant to section 502.601
5 shall be the principal operations officer responsible to the
6 commissioner for the routine administration of this chapter
7 and management of the administrative staff. In the absence of
8 the commissioner, whether because of vacancy in the office, by
9 reason of absence, physical disability, or other cause, the
10 deputy administrator shall be the acting administrator and
11 shall, for the time being, have and exercise the authority
12 conferred upon the commissioner. The commissioner may from
13 time to time delegate to the deputy administrator any or all
14 of the functions assigned to the commissioner in this chapter.
15 The deputy administrator shall employ officers, attorneys,
16 accountants, auditors, investigators, and other employees as
17 shall be needed for the administration of this chapter.

18 2. Upon request, the commissioner may honor requests from
19 interested persons for interpretive opinions.

20 Sec. 43. Section 518.14, subsection 4, paragraph a, Code
21 2005, is amended to read as follows:

22 a. UNITED STATES GOVERNMENT OBLIGATIONS. Obligations
23 Bonds or other evidences of indebtedness issued, assumed, or
24 guaranteed by the United States of America, or by an any
25 agency or instrumentality of the United States of America,
26 include investments in an open-end management investment
27 company registered with the federal securities and exchange
28 commission under the federal Investment Company Act of 1940,
29 15 U.S.C. § 80(a) and operated in accordance with 17 C.F.R. §
30 270.2a-7, the portfolio of which is limited to the United
31 States obligations described in this paragraph, and which are
32 included in the national association of insurance
33 commissioners' securities valuation office's United States
34 direct obligation - full faith and credit list.

35 Sec. 44. Section 518A.12, subsection 4, paragraph a, Code

1 2005, is amended to read as follows:

2 a. UNITED STATES GOVERNMENT OBLIGATIONS. Obligations
3 Bonds or other evidences of indebtedness issued, assumed, or
4 guaranteed by the United States of America, or an by any
5 agency or instrumentality of the United States of America,
6 include investments in an open-end management investment
7 company registered with the federal securities and exchange
8 commission under the federal Investment Company Act of 1940,
9 15 U.S.C. § 80(a) and operated in accordance with 17 C.F.R. §
10 270.2a-7, the portfolio of which is limited to the United
11 States obligations described in this paragraph, and which are
12 included in the national association of insurance
13 commissioners' securities valuation office's United States
14 direct obligation - full faith and credit list.

15 Sec. 45. Section 520.19, Code 2005, is amended to read as
16 follows:

17 520.19 ANNUAL TAX -- FEES.

18 In lieu of all other taxes, licenses, charges, and fees
19 whatsoever, such attorney shall annually pay to the
20 commissioner the same fees as are paid by mutual companies
21 transacting the same kind of business, and an annual tax of
22 ~~two-percent, if a domestic reciprocal organization, and two~~
23 ~~percent, if a foreign reciprocal organization,~~ based upon the
24 applicable percentage stated in section 432.1, subsection 4,
25 calculated upon the gross premiums or deposits collected from
26 subscribers in this state during the preceding calendar year,
27 after deducting therefrom returns, or cancellations, and all
28 amounts returned to subscribers or credited to their accounts
29 as savings, and the amount returned upon canceled policies and
30 rejected applications covering property situated or on
31 business done within this state.

32 Sec. 46. Section 522B.17, Code 2005, is amended to read as
33 follows:

34 522B.17 PENALTY.

35 An insurer or insurance producer who, after hearing, is

1 found to have violated this chapter may be ordered to cease
2 and desist from engaging in the conduct resulting in the
3 violation and may be assessed a civil penalty pursuant to
4 chapter 507B.

5 A person found who, after hearing, is found to have acted
6 violated this chapter by acting as an agent of an insurer or
7 otherwise selling, soliciting, or negotiating insurance in
8 this state, or offering to the public advice, counsel, or
9 services with regard to insurance, who is not properly
10 licensed is-subject-to may be ordered to cease and desist from
11 engaging in the conduct resulting in the violation and may be
12 assessed a civil penalty according to the provisions of
13 chapter 507A.

14 If a person does not comply with an order issued pursuant
15 to this section, the commissioner may petition a court of
16 competent jurisdiction to enforce the order. The court shall
17 not require the commissioner to post a bond in an action or
18 proceeding under this section. If the court finds, after
19 notice and opportunity for hearing, that the person is not in
20 compliance with an order, the court may adjudge the person to
21 be in civil contempt of the order. The court may impose a
22 civil penalty against the person for contempt in an amount not
23 less than three thousand dollars but not greater than ten
24 thousand dollars for each violation and may grant any other
25 relief that the court determines is just and proper in the
26 circumstances.

27 Sec. 47. NEW SECTION. 522B.17A INJUNCTIVE RELIEF.

28 An association with at least twenty-five insurance producer
29 members may bring an action in district court to enjoin a
30 person from selling, soliciting, or negotiating insurance in
31 violation of section 522B.2. If the court finds that the
32 person is in violation of section 522B.2 and enjoins the
33 person from selling, soliciting, or negotiating insurance in
34 violation of that section, the court's findings of fact and
35 law, and the judgment and decree, when final, shall be

1 admissible in any proceeding initiated pursuant to section
2 522B.17 by the commissioner against the person enjoined and
3 the person enjoined shall be precluded from contesting in that
4 proceeding the court's determination that the person sold,
5 solicited, or negotiated insurance in violation of section
6 522B.2.

7 Sec. 48. Section 523A.402, subsection 6, paragraph c, Code
8 2005, is amended to read as follows:

9 c. The annuity shall not be contestable, or limit death
10 benefits in the case of suicide, with respect to that portion
11 of the face amount of the annuity which is required by
12 paragraph "b". The annuity shall not refer to physical
13 examination, or otherwise operate as an exclusion, limitation,
14 or condition other than requiring submission of proof of death
15 or surrender of the annuity at the time the prepaid purchase
16 agreement is funded, matures, or is canceled, as the case may
17 be.

18 Sec. 49. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.
19 This section and the sections of this Act amending sections
20 513C.6 and 514E.2, and amending section 514E.7, subsection 1,
21 by enacting paragraph "e", being deemed of immediate
22 importance, take effect upon enactment. The section of the
23 Act amending section 513C.6 is retroactively applicable to
24 January 1, 2005, and is applicable on and after that date.
25 The sections of the Act amending section 514E.2 are
26 retroactively applicable to July 1, 1986, and are applicable
27 on and after that date. The portion of the section of the Act
28 amending section 514E.7, subsection 1, by enacting paragraph
29 "e" is retroactively applicable to January 1, 2005, and is
30 applicable on and after that date.

31

EXPLANATION

32 This bill relates to various provisions administered by the
33 insurance division of the department of commerce.

34 Code section 432.1 provides for cash refunds of excess
35 prepayments of premium tax to an insurance carrier when a

1 premium tax credit will not allow recoupment of the funds
2 paid.

3 Code section 505A.1 is amended to provide that the
4 commissioner of insurance shall be the state's representative
5 for the interstate insurance product regulation compact.

6 Code section 507C.2 is amended to include additional
7 definitions, including definitions of certain derivative
8 contracts that may be involved in insurer insolvency
9 proceedings.

10 New Code section 507C.28A is amended concerning rights that
11 may be exercised under netting agreements or qualified
12 financial contracts under certain circumstances.

13 Code section 507C.30 is amended by adding a new
14 subparagraph concerning the disallowance of certain setoffs
15 during insolvency proceedings.

16 Code section 513B.12 is amended to exempt small employer
17 carriers from electing risk-assuming status while the small
18 employer carrier reinsurance program is suspended.

19 Code section 513B.13 is amended to permit reduction of the
20 size of the small employer carrier reinsurance program board
21 while the program is suspended, with the approval of the
22 commissioner of insurance.

23 Code section 513B.17 strikes language allowing expansion of
24 the small employer carrier reinsurance program to employer
25 groups employing 25 to 50 employees if the market is
26 constricted and not competitive, since state law already
27 includes employee groups of that size in the program.

28 Code section 513C.6 is amended to allow an individual who
29 has coverage as a dependent under a basic or standard health
30 benefit plan to elect to continue coverage under the plan when
31 the individual is no longer covered as a dependent under the
32 plan. The bill provides that this provision is effective upon
33 enactment and is retroactively applicable to January 1, 2005,
34 and applies on and after that date.

35 Code section 514B.13 is amended to allow a health

1 maintenance organization that provides services exclusively on
2 a group contract basis to limit the applicability of the open
3 enrollment period provided for in the section to members of
4 the group covered by the contract, including those members of
5 the group who previously waived coverage.

6 Code section 514E.2, subsection 1, is amended to provide
7 that all carriers and all organized delivery systems licensed
8 by the director of public health providing health insurance or
9 health care services on an individual or group basis are
10 members of the Iowa comprehensive health insurance
11 association.

12 Code section 514E.2, subsection 5, is amended to strike a
13 requirement that the Iowa comprehensive health insurance
14 association include a list of health conditions which would
15 make an applicant eligible without demonstrating a rejection
16 of coverage by one carrier.

17 Code section 514E.2, subsection 7, is amended to include
18 definitions of "total health insurance premiums" and "payments
19 for subscriber contracts" for the purpose of computing
20 assessments of members by the Iowa comprehensive health
21 insurance association.

22 The bill provides that all the amendments to Code section
23 514E.2 take effect upon enactment and are retroactively
24 applicable to July 1, 1986, and apply on and after that date.

25 Code section 514E.7 is amended to provide that an
26 individual is eligible for coverage under the Iowa
27 comprehensive health insurance association if the person has
28 certain health conditions established by the association's
29 board of directors with the approval of the commission. Code
30 section 514E.7 is also amended to provide eligibility for such
31 coverage if the individual has coverage under a basic or
32 standard health benefit plan under Code chapter 513C and this
33 provision is effective upon enactment and is retroactively
34 applicable to January 1, 2005, and applies on and after that
35 date.

1 Code section 514E.8, subsection 1, is amended to provide
2 that an individual who is covered by an association health
3 insurance policy and who is eligible for Medicare coverage
4 based on age prior to January 1, 2005, may continue to renew
5 the coverage under the association policy.

6 Code section 515.138 revises language about intentional
7 acts in standard fire policy language which are
8 noncompensable.

9 Code section 515B.2 is amended to change the date used when
10 calculating the net worth of a person for the purpose of
11 determining whether the person has a covered claim under the
12 Iowa insurance guaranty association.

13 Code section 515B.17 is amended to provide a date certain
14 when claims must be filed in order to be covered by the Iowa
15 insurance guaranty association.

16 Code section 515F.36 is amended to change the membership of
17 the governing board of the FAIR plan, the plan to assure fair
18 access to insurance requirements.

19 Code chapter 516E concerning service contracts for the
20 repair or placement of certain motor vehicles is extensively
21 revised. Code section 516E.1 concerning definitions is
22 amended to include the addition of definitions for an
23 "administrator", for a "third-party administrator", and for a
24 "service company", to redefine "provider" and to redefine
25 "reimbursement insurance policy" to specify that such a policy
26 is for the benefit of the service contract holders.

27 Code section 516E.2 is amended to specify the requirements
28 for a service company to issue, sell, or offer service
29 contracts in this state, including financial security
30 requirements to protect service contract holders in the form
31 of a funded reserve in the amount of 40 percent of gross
32 consideration received by the service company, and the filing
33 of a certificate of deposit with the commissioner in the
34 amount of not less than 5 percent of consideration received,
35 but not less than \$25,000. Service companies are also

1 required to register with the commissioner of insurance and
2 pay a \$500 registration fee. Grounds for denial, suspension,
3 or revocation of such registrations are also specified.

4 Code section 516E.3 is amended to provide that service
5 companies and providers, such as auto dealers and other
6 sellers, are required to file copies of service contracts with
7 the insurance commissioner, including copies of service
8 contracts offered for sale or sold, and a copy of the service
9 company's reimbursement insurance policy. A provider is
10 required to pay a \$100 filing fee. Providers and service
11 companies are required to make additional filings concerning
12 name or ownership changes or cessation of business.

13 Code section 516E.4 is amended to require that
14 reimbursement insurance policies must include a statement that
15 the reimbursement insurer is obligated to pay the service
16 contract holder upon a failure of the service company to
17 perform, must include specified terms for termination of the
18 policy, and may include the right of an insurer to seek
19 indemnification or subrogation against a service company if
20 the insurer is required to pay a service contract holder
21 pursuant to the policy.

22 Code section 516E.5 is amended to require service contracts
23 to include information about the service company and the
24 service company's obligations under the service contract, a
25 statement that the obligations of the service company are
26 guaranteed under a reimbursement insurance policy and that the
27 service contract holder may file claims directly with the
28 insurer if the service company fails to perform under the
29 service contract. The Code section is also amended to require
30 identification of the third-party administrator and the
31 service company for the service contract, to require a written
32 termination notice of a service contract, and to allow a
33 cancellation period by a service contract holder after a
34 service contract has been purchased.

35 Code sections 516E.6, 516E.7, 516E.8, 516E.9, 516E.10,

1 516E.12, 516E.13, 516E.14, and 516E.15 are amended to apply to
2 service companies, providers, and third-party administrators.

3 Code section 516E.11 is amended to conform with changes in
4 definitions made in Code section 516E.1, to require providers,
5 service companies, and third-party administrators to comply
6 with recordkeeping requirements, to reduce recordkeeping
7 requirements as to individual service contracts, and to update
8 recordkeeping requirements to reflect modern technology.

9 Providers, service companies, and third-party administrators
10 are also required to keep a list of locations where service
11 contracts are marketed, sold, offered for sale, or performed.

12 New Code section 516E.16 allows the insurance commissioner
13 to pursue court action when a person does not respond to
14 insurance division orders and requests for information.

15 New Code section 516E.17 imposes a net worth requirement on
16 service companies, based on the number of service contracts
17 issued or renewed in a year, that utilizes the same formula
18 and amounts that are used for residential service contracts
19 under Code chapter 523C.

20 New Code section 516E.18 codifies an existing rule
21 concerning public access to the records of an administrator.

22 New Code section 516E.19 relates to the administration of
23 Code chapter 516E by the commissioner of insurance with the
24 assistance of the deputy administrator of insurance.

25 Code sections 518.14 and 518A.12 are amended to allow
26 county and state mutual associations to invest in United
27 States obligations that include open-end management investment
28 accounts.

29 Code section 520.19 is amended to provide that reciprocal
30 or interinsurance contracts are subject to the new premium tax
31 rate structure contained in Code section 432.1, subsection 4.

32 Code section 522B.17 is amended to provide that if an
33 insurer or insurance producer is found to have violated Code
34 chapter 522B, that person may be ordered to cease and desist
35 from engaging in the illegal conduct and may be assessed a

1 civil penalty pursuant to Code chapter 507B. The section is
2 also amended to provide that a person who violates Code
3 chapter 522B by acting as an agent of an insurer or otherwise
4 sells, solicits, or negotiates insurance in this state or
5 offers advice or services regarding insurance and who is not
6 properly licensed may be ordered to cease and desist from
7 engaging in the illegal conduct and may be assessed a civil
8 penalty pursuant to Code chapter 507B.

9 Code section 522B.17 is also amended to allow the
10 commissioner to enforce a cease and desist order by
11 petitioning a court of competent jurisdiction. The
12 commissioner is not required to file a bond in such an action
13 and if the court finds that the person is not in compliance
14 with the cease and desist order, the court may find the person
15 in civil contempt and may impose a civil penalty against the
16 person in an amount not less than \$3,000 and not more than
17 \$10,000 and grant any other relief that the court determines
18 is appropriate under the circumstances.

19 New Code section 522B.17A allows an association with a
20 least 25 members to bring an action in district court for
21 injunctive relief against a person who sells, solicits, or
22 negotiates insurance in violation of Code section 522B.2. The
23 section provides that if the court finds that such a violation
24 has occurred and enjoins the person from continuing to violate
25 the chapter, the court's findings of law and fact, and the
26 final judgment and decree of the court shall be admissible in
27 any proceeding initiated against the person by the
28 commissioner and the person enjoined is precluded from
29 contesting the court's determination that a violation of Code
30 section 522B.2 has occurred.

31 Code section 523A.402 is amended to correct an error in
32 language concerning annuity contracts for the purpose of
33 funding cemetery and funeral merchandise and funeral services.
34 The change will conform the language to changes made in
35 legislation contained in House File 2269, which was enacted in

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SENATE FILE 360

AN ACT

RELATING TO VARIOUS PROVISIONS ADMINISTERED BY THE INSURANCE DIVISION OF THE DEPARTMENT OF COMMERCE CONCERNING PREMIUM TAX REFUNDS, THE INTERSTATE INSURANCE COMPACT, INSURER INSOLVENCY PROCEEDINGS, INDIVIDUAL HEALTH INSURANCE, THE SMALL EMPLOYER CARRIER REINSURANCE PROGRAM, INSURANCE APPLICATIONS, THE IOWA COMPREHENSIVE HEALTH ASSOCIATION, FIRE INSURANCE POLICIES, THE IOWA INSURANCE GUARANTY ASSOCIATION, THE FAIR PLAN, MOTOR VEHICLE SERVICE CONTRACTS, INVESTMENTS BY COUNTY AND STATE MUTUAL ASSOCIATIONS, RECIPROCAL OR INTERINSURANCE CONTRACT PREMIUM RATES, UNAUTHORIZED ACTIVITY OF INSURANCE PRODUCERS, AND ANNUITY CONTRACTS FOR CEMETERY AND FUNERAL MERCHANDISE AND FUNERAL SERVICES, AND MAKING FEES AND PENALTIES APPLICABLE AND PROVIDING EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 322.19, subsection 2, paragraph a, Code 2005, is amended to read as follows:

a. A motor-vehicle service contract as defined in section 516E.1.

Sec. 2. Section 432.1, subsection 6, paragraph d, Code 2005, is amended to read as follows:

d. The sums prepaid by a company or association under this subsection shall be allowed as credits against its premium tax liability for the calendar year during which the payments are made. If a prepayment made under this subsection exceeds the annual premium tax liability, the excess shall be allowed as a credit against subsequent prepayment or tax liabilities. The commissioner of insurance shall authorize the department of revenue to make a cash refund to an insurer, in lieu of a credit against subsequent prepayment or tax liabilities, if the insurer demonstrates the inability to recoup the funds paid via a credit. The commissioner shall adopt rules establishing eligibility criteria for such a refund and a refund process. The commissioner may suspend or revoke the license of a company or association that fails to make a prepayment on or before the due date.

Sec. 3. Section 505A.1, Article II, section 8, Code 2005, is amended to read as follows:

8. "Member" means the person chosen by a compacting state as its representative to the commission, or the person's designee. The commissioner of insurance shall be the representative member of the compact for the state of Iowa.

Sec. 4. Section 507C.2, Code 2005, is amended by adding the following new subsections:

NEW SUBSECTION. 01. "Affiliate" of or "affiliated" with a specific person, means a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

NEW SUBSECTION. 2A. "Commodity contract" means any of the following:

a. A contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade designated as a contract market by the commodity futures trading commission under the federal Commodity Exchange Act, 7

U.S.C. § 1 et seq., or a board of trade outside the United States.

b. An agreement that is subject to regulation under section 19 of the federal Commodity Exchange Act, 7 U.S.C. § 1 et seq., and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract.

c. An agreement or transaction that is subject to regulation under section 4c(b) of the federal Commodity Exchange Act, 7 U.S.C. § 1 et seq., and that is commonly known to the commodities trade as a commodity option.

NEW SUBSECTION. 2B. "Control" means the same as defined in section 521A.1, subsection 3.

NEW SUBSECTION. 8A. "Forward contract" means a contract for the purchase, sale, or transfer of a commodity, as defined in section 1 of the federal Commodity Exchange Act, 7 U.S.C. § 1 et seq., or any similar good, article, service, right, or interest that is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or a combination of them or option on any of them. "Forward contract" does not include a commodity contract.

NEW SUBSECTION. 12A. "Netting agreement" means an agreement, including terms and conditions incorporated by reference therein, including a master agreement, which master agreement, together with all schedules, confirmations, definitions, and addenda thereto and transactions under any thereof, shall be treated as one netting agreement, that documents one or more transactions between parties to the agreement for or involving one or more qualified financial

contracts and that provides for the netting or liquidation of qualified financial contracts or present or future payment obligations or payment entitlements thereunder, including liquidation or closeout values relating to such obligations or entitlements among the parties to the netting agreement.

NEW SUBSECTION. 13A. "Qualified financial contract" means a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the commissioner determines by regulation, resolution, or order to be a qualified financial contract for the purposes of this chapter.

NEW SUBSECTION. 15A. "Repurchase agreement" means an agreement, including related terms, that provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or an agency of the United States against the transfer of funds by the transferee of the certificates of deposit, eligible bankers' acceptances or securities, with a simultaneous agreement by the transferee to transfer to the transferor certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than one year after the transfers or on demand against the transfer of funds. For the purposes of this definition, the items that may be subject to a repurchase agreement include, but are not limited to, mortgage-related securities, a mortgage loan, and an interest in a mortgage loan, but shall not include any participation in a commercial mortgage loan, unless the commissioner determines by rule, resolution, or order to include the participation within the meaning of the term. Repurchase agreement also applies to a reverse repurchase agreement.

NEW SUBSECTION. 16A. "Securities contract" means a contract for the purchase, sale, or loan of a security, including an option for the repurchase or sale of a security,

certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof, or an option entered into on a national securities exchange relating to foreign currencies, or the guarantee of a settlement of cash or securities by or to a securities clearing agency. For the purposes of this definition, the term "security" includes a mortgage loan, mortgage-related securities, and an interest in any mortgage loan or mortgage-related security.

NEW SUBSECTION. 18A. "Swap agreement" means an agreement, including the terms and conditions incorporated by reference in an agreement, that is a rate swap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or currency option or any other similar agreement, and includes any combination of agreements and an option to enter into an agreement.

Sec. 5. NEW SECTION. 507C.28A QUALIFIED FINANCIAL CONTRACTS.

1. Notwithstanding any other provision of this chapter to the contrary, including any other provision of this chapter permitting the modification of contracts, or other law of a state, a person shall not be stayed or prohibited from exercising any of the following:

a. A contractual right to terminate, liquidate, or close out any netting agreement or qualified financial contract with an insurer because of any of the following:

(1) The insolvency, financial condition, or default of the insurer at any time, provided that the right is enforceable under applicable law other than this chapter.

(2) The commencement of a formal delinquency proceeding under this chapter.

b. Any right under a pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract.

c. Subject to any provision of section 507C.30, subsection 2, any right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a netting agreement or qualified financial contract where the counterparty or its guarantor is organized under the laws of the United States or a state or foreign jurisdiction approved by the securities valuation office or the national association of insurance commissioners as eligible for netting.

2. Upon termination of a netting agreement, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under this chapter shall be transferred to or on the order of the receiver for the insurer, even if the insurer is the defaulting party, notwithstanding any provision in the netting agreement that may provide that the nondefaulting party is not required to pay any net or settlement amount due to the defaulting party upon termination. Any limited two-way payment provision in a netting agreement with an insurer that has defaulted shall be deemed to be a full two-way payment provision as against the defaulting insurer. Any such amount shall, except to the extent it is subject to one or more secondary liens or encumbrances, be a general asset of the insurer.

3. In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under this chapter, the receiver shall do either of the following:

a. Transfer to one party, other than an insurer subject to a proceeding under this chapter, all netting agreements and qualified financial contracts between a counterparty or any

affiliate of the counterparty and the insurer that is the subject of the proceeding, including all of the following:

(1) All rights and obligations of each party under each such netting agreement and qualified financial contract.

(2) All property, including any guarantees or credit support documents, securing any claims of each party under each such netting agreement and qualified financial contract.

b. Transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in paragraph "a" with respect to the counterparty and any affiliate of the counterparty.

4. If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, the receiver shall use the receiver's best efforts to notify any person who is a party to the netting agreements or qualified financial contracts of the transfer by noon of the receiver's local time on the business day following the transfer. For purposes of this subsection, "business day" means a day other than a Saturday, Sunday, or any day on which either the New York stock exchange or the federal reserve bank of New York is closed.

5. Notwithstanding any other provision of this chapter to the contrary, a receiver shall not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract, or any pledge security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract, that is made before the commencement of a formal delinquency proceeding under this chapter. However, a transfer may be avoided under section 507C.28 if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

6. In exercising any of its powers under this chapter to disaffirm or repudiate a netting agreement or qualified financial contract, the receiver must take action with respect to each netting agreement or qualified financial contract and all transactions entered into in connection therewith, in its entirety. Notwithstanding any other provision of this chapter to the contrary, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or in the immediately preceding rehabilitation case shall be determined and shall be allowed or disallowed as if the claim had arisen before the date of the filing of the petition for liquidation or, if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of filing the petition for rehabilitation. The amount of the claim shall be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract. The term "actual direct compensatory damages" does not include punitive or exemplary damages, damages for lost profit or lost opportunity, or damages for pain and suffering, but does include normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives market for the contract and agreement claims.

7. The term "contractual right" as used in this section includes any right, whether or not evidenced in writing, arising under statutory or common law, a rule or bylaw of a national securities exchange, national securities clearing organization or securities clearing agency, a rule or bylaw, or a resolution of the governing body of a contract market or its clearing organization, or under law merchant.

8. This section shall not apply to persons who are affiliates of the insurer that is the subject of the proceeding.

9. All rights of a counterparty under this chapter shall apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts, provided that the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

Sec. 6. Section 507C.30, subsection 2, paragraph a, subparagraphs (4) and (5), Code 2005, are amended to read as follows:

(4) The obligation of the person is owed to the affiliate of the insurer, or any other entity or association other than the insurer.

~~(4)~~ (5) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution.

~~(5)~~ (6) The obligation of the person is to pay earned premiums to the insurer.

Sec. 7. Section 509.3, subsection 1, Code 2005, is amended to read as follows:

1. The policy shall have a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued or shall be furnished to the policyholder within thirty days after the policy is issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person.

Sec. 8. Section 513B.12, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 6. During the period of time that the operation of the small employer carrier reinsurance program is

suspended pursuant to section 513B.13, subsection 14, a small employer carrier is not required to make an application to become a risk-assuming carrier pursuant to this section.

Sec. 9. Section 513B.13, subsection 3, Code 2005, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. During the period of time that the program is suspended pursuant to subsection 14, the size of the board may be reduced with the approval of the commissioner.

Sec. 10. Section 513B.17, subsection 4, Code 2005, is amended by striking the subsection.

Sec. 11. Section 513C.6, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 7. An individual who has coverage as a dependent under a basic or standard health benefit plan may, when that individual is no longer a dependent under such coverage, elect to continue coverage under the basic or standard health benefit plan if the individual so elects immediately upon termination of the coverage under which the individual was covered as a dependent.

Sec. 12. Section 514A.5, subsection 1, Code 2005, is amended to read as follows:

1. The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is ~~attached to or~~ endorsed on the policy when issued as a part thereof or is furnished to the policyholder within thirty days after the policy is issued. If any such policy delivered or issued for delivery to any person in this state shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within fifteen days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If

such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

Sec. 13. Section 514B.13, unnumbered paragraph 2, Code 2005, is amended to read as follows:

Health maintenance organizations providing services exclusively on a group contract basis may limit the open enrollment provided for in this section to all members of the group covered by the contract, including those members of the group who previously waived coverage.

Sec. 14. Section 514E.2, subsection 1, paragraph a, Code 2005, is amended to read as follows:

a. All carriers and all organized delivery systems licensed by the director of public health providing health insurance or health care services in Iowa, whether on an individual or group basis, and all other insurers designated by the association's board of directors and approved by the commissioner shall be members of the association.

Sec. 15. Section 514E.2, subsection 5, paragraph 1, Code 2005, is amended to read as follows:

1. Develop a method of advising applicants of the availability of other coverages outside the association, ~~and shall promulgate a list of health conditions the existence of which would make an applicant eligible without demonstrating a rejection of coverage by one carrier.~~

Sec. 16. Section 514E.2, subsection 7, Code 2005, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. For purposes of this subsection, "total health insurance premiums" and "payments for subscriber contracts" include, without limitation, premiums or other amounts paid to or received by a member for individual and group health plan care coverage provided under any chapter of the Code or Acts, and "paid losses" includes, without limitation, claims paid by a member operating on a self-funded

basis for individual and group health plan care coverage provided under any chapter of the Code or Acts. For purposes of calculating and conducting the assessment, the association shall have the express authority to require members to report on an annual basis each member's total health insurance premiums and payments for subscriber contracts and paid losses. A member is liable for its share of the assessment calculated in accordance with this section regardless of whether it participates in the individual insurance market.

Sec. 17. Section 514E.7, subsection 1, Code 2005, is amended by adding the following new paragraphs:

NEW PARAGRAPH. d. That the individual has a health condition that is established by the association's board of directors, with the approval of the commissioner, to be eligible for plan coverage.

NEW PARAGRAPH. e. That the individual has coverage under a basic or standard health benefit plan under chapter 513C.

Sec. 18. Section 514E.8, subsection 1, Code 2005, is amended to read as follows:

1. An association policy shall contain provisions under which the association is obligated to renew the coverage for an individual until the day the individual becomes eligible for Medicare coverage based on age, provided that any individual who is covered by an association policy and is eligible for Medicare coverage based on age prior to January 1, 2005, may continue to renew the coverage under the association policy.

Sec. 19. Section 515.138, sixth subsection, paragraph entitled concealment -- fraud, Code 2005, is amended to read as follows:

CONCEALMENT -- FRAUD. This entire policy shall be void if, whether before or after a loss, the an insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the an insured therein, or in case of any fraud or false swearing by the an insured relating thereto.

Sec. 20. Section 515.138, sixth subsection, paragraph entitled perils not included, Code 2005, is amended to read as follows:

PERILS NOT INCLUDED. This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (a) Enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (i) neglect of the an insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this company be liable for loss by theft.

Sec. 21. Section 515.138, sixth subsection, paragraph entitled conditions suspending or restricting insurance, Code 2005, is amended to read as follows:

CONDITIONS SUSPENDING OR RESTRICTING INSURANCE. Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring under any of the following circumstances:

a. While the hazard is created or increased by any means within the control or knowledge of the an insured, ~~or,~~

b. While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days, ~~or,~~

c. As a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

Sec. 22. Section 515B.2, subsection 4, paragraph b, subparagraph (7), Code 2005, is amended to read as follows:

(7) That would otherwise be a covered claim, but is an obligation to or on behalf of a person who has a net worth, ~~on the date of the occurrence giving rise to the claim,~~ greater than that allowed by the guarantee fund law of the state of residence of the claimant, and which state has denied coverage to that claimant on that basis.

Sec. 23. Section 515B.17, Code 2005, is amended to read as follows:

515B.17 TIMELY FILING OF CLAIMS.

Notwithstanding any other provision of this chapter, a covered claim shall not include any claim filed with the association after twenty-four months from the date of the order of liquidation or after the final date set by the court for the filing of claims against the insolvent insurer or its receiver, whichever occurs first.

Sec. 24. Section 515F.36, subsection 2, Code 2005, is amended to read as follows:

2. The committee shall consist of seven members, ~~one of whom,~~

a. Five of the members shall be elected by to the committee, with one member from each of the following:

~~a-~~ (1) American insurance association.

~~b-~~ (2) ~~Alliance of American Insurers~~ Property casualty insurers association of America.

~~c-~~ ~~National association of independent insurers;~~

~~d-~~ (3) Iowa insurance institute.

~~e-~~ (4) Mutual insurance association of Iowa.

~~f-~~ (5) Independent insurance agents of Iowa.

~~g-~~ b. All other insurers Two of the members shall be elected to the committee by other insurer members of the plan.

Sec. 25. Section 516E.1, Code 2005, is amended to read as follows:

516E.1 DEFINITIONS.

For the purposes of this chapter:

1. "Administrator" means the deputy administrator appointed pursuant to section 502.601.

1- 2. "Commissioner" means the commissioner of insurance as provided in section 505.1 ~~or the deputy administrator appointed under section 502.601.~~

3. "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.

2- 4. "Mechanical breakdown insurance" means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, and that is issued by an insurance company authorized to do business in this state.

3- 5. "Motor vehicle" means any self-propelled vehicle subject to registration under chapter 321.

4- ~~"Motor vehicle service contract" or "service contract" means a contract or agreement given for consideration over and above the lease or purchase price of a new or used motor vehicle having a gross vehicle weight rating of less than sixteen thousand pounds that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, but does not include mechanical breakdown insurance or maintenance agreements providing scheduled repair and maintenance services for leased vehicles.~~

5- 6. ~~"Motor vehicle service contract provider" or "provider"~~ "Provider" means a person who issues, makes, provides, sells, or offers to sell a motor vehicle service contract.

6- ~~"Motor vehicle service contract reimbursement insurance policy" or "reimbursement insurance policy" means a policy of insurance providing coverage for all obligations and liabilities incurred by a motor vehicle service contract~~

~~provider under the terms of motor vehicle service contracts issued by the provider.~~

7. "Record" means information stored or preserved in any medium, including in an electronic or paper format. A record includes but is not limited to documents, books, publications, accounts, correspondence, memoranda, agreements, computer files, film, microfilm, photographs, and audio or visual tapes.

8. "Reimbursement insurance policy" means a policy of insurance issued to a service company and pursuant to which the insurer agrees, for the benefit of the service contract holders, to discharge all of the obligations and liabilities of the service company under the terms of service contracts issued by the service company in the event of nonperformance by the service company. For the purposes of this definition, "all obligations and liabilities" include, but are not limited to, failure of the service company to perform under the service contract and the return of the unearned service company fee in the event of the service company's unwillingness or inability to reimburse the unearned service company fee in the event of termination of a service contract.

9. "Service company" means a person who issues and is obligated to perform, or arrange for the performance of, services pursuant to a service contract.

10. "Service contract" means a contract or agreement given for consideration over and above the lease or purchase price of a new or used motor vehicle having a gross vehicle weight rating of less than sixteen thousand pounds, that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operation or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, but does not include mechanical breakdown insurance or maintenance agreements.

8- 11. "Service contract holder" means a person who purchases a motor-vehicle service contract.

12. "Third-party administrator" means a person who contracts with a service company to be responsible for the administration of the service company's service contracts, including processing and adjudicating claims pursuant to a service contract.

Sec. 26. Section 516E.2, Code 2005, is amended to read as follows:

516E.2 INSURANCE-REQUIRED REQUIREMENTS FOR DOING BUSINESS.

1. A motor-vehicle service contract shall not be issued, sold, or offered for sale in this state unless the provider of the service contract is insured under a motor-vehicle service contract reimbursement insurance policy issued by an insurer authorized to do business in this state. service company does all of the following:

a. Provides a receipt for the purchase of the service contract to the service contract holder.

b. Provides a copy of the service contract to the service contract holder within a reasonable period of time after the date of purchase of the service contract.

2. ~~The issuer of a reimbursement insurance policy shall not cancel a reimbursement insurance policy unless a written notice has been received by the commissioner and by each applicable provider, including automobile dealers and third-party administrators. The notice shall fix the date of cancellation at a date no earlier than ten days after receipt of the notice by the commissioner and by the applicable provider. The notice may be made in person or by mail and a post-office department receipt of certified or registered mailing shall be deemed proof of receipt of the notice. A service company shall not issue a service contract or arrange to perform services pursuant to a service contract unless the service company is registered with the commissioner. A service company shall file a registration with the~~

commissioner annually, on a form prescribed by the commissioner, accompanied by a registration fee in the amount of five hundred dollars.

3. In order to assure the faithful performance of a service company's obligations to its service contract holders, the administrator may by rule require financial responsibility standards.

4. The commissioner may issue an order denying, suspending, or revoking any registration if the commissioner finds that the order is in the public interest and finds any of the following:

a. The registration is incomplete in any material respect or contains any statement which, in light of the circumstances under which the registration was made, is determined by the commissioner to be false or misleading with respect to any material fact.

b. A provision of this chapter or a rule, order, or condition lawfully imposed under this chapter, has been willfully violated in connection with the sale of service contracts by any of the following persons:

(1) The person filing the registration, but only if the person filing the registration is directly or indirectly controlled by or acting for the service company.

(2) The service company, any partner, officer, or director of the service company or any person occupying a similar status or performing similar functions for the service company, or any person directly or indirectly controlling or controlled by the service company.

c. The service company has not filed a document or information required under this chapter.

d. The service company's literature or advertising is misleading, incorrect, incomplete, or deceptive.

e. The service company has failed to pay the proper filing fee. However, the commissioner shall vacate an order issued pursuant to this paragraph when the proper fee has been paid.

f. The service company does not have the minimum net worth, as determined in accordance with generally accepted accounting principles, required under this chapter.

The commissioner may vacate or modify an order issued under this subsection if the commissioner finds that the conditions which prompted the entry of the order have changed or that it is otherwise in the public interest to do so.

Sec. 27. Section 516E.3, Code 2005, is amended to read as follows:

516E.3 FILING AND FEE REQUIREMENTS.

1. SERVICE COMPANIES.

a. A motor-vehicle service contract shall not be issued, sold, or offered for sale in this state unless a true and correct copy of the service contract, and the provider's service company's reimbursement insurance policy have been filed with the commissioner by the service company.

~~2. b. In addition to any other required filings, an accurate copy of the service contract and the provider's reimbursement insurance policy, the~~ A service company shall file a consent to service of process on the commissioner, and such other information as the commissioner requires shall be filed annually with the commissioner no later than the first day of August. If the first day of August falls on a weekend or a holiday, the date for filing shall be the next business day. In addition to the annual filing, the provider service company shall promptly file copies of any amended documents if material amendments have been made in the materials on file with the commissioner. If an annual filing is made after the first of August and sales have occurred during the period when the provider service company was in noncompliance with this section, the commissioner shall assess an additional filing fee that is two times the amount normally required for an annual filing. A fee shall not be charged for interim filings made to keep the materials filed with the division current and accurate. The annual filing shall be accompanied by a filing

fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

~~3. a. c.~~ A motor-vehicle-service-contract-provider service company shall promptly file the following information with the insurance commissioner:

(1) A change in the name or ownership of the provider service company.

(2) The termination of the provider's service company's business.

~~b. (3)~~ The provider service company is not required to submit a fee as part of this filing.

2. PROVIDERS.

a. A service contract shall not be sold or offered for sale in this state unless a true and correct copy of the service contract has been filed with the commissioner by the provider.

b. A provider shall file a consent to service of process on the commissioner and such other information as the commissioner requires annually with the commissioner no later than August 1. If August 1 falls on a weekend or a holiday, the date for filing shall be the next business day. In addition to the annual filing, the provider shall promptly file copies of any amended documents if material amendments have been made in the materials on file with the commissioner. If an annual filing is made after August 1 and sales have occurred during the period when the provider was in noncompliance with this section, the commissioner shall assess an additional filing fee that is two times the amount normally required for an annual filing. A fee shall not be charged for interim filings made to keep the materials filed with the division current and accurate. The annual filing shall be accompanied by a filing fee in the amount of one hundred dollars.

c. A provider shall promptly file the following information with the commissioner:

- (1) A change in the name or ownership of the provider.
- (2) The termination of the provider's business.
- (3) A provider is not required to submit a fee as part of this filing.

Sec. 28. Section 516E.4, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

516E.4 REIMBURSEMENT INSURANCE POLICY REQUIREMENTS.

1. REQUIRED DISCLOSURES. A reimbursement insurance policy insuring a service contract issued, sold, or offered for sale in this state shall conspicuously state that, upon failure of the service company to perform under the contract, including but not limited to a failure to return the unearned consideration paid for a service contract in excess of the premium, the insurer that issued the policy shall pay on behalf of the service company any amount that is owed to the service contract holder by the service company to satisfy the service company's obligations under a service contract issued or sold by the service company.

2. TERMINATION. As applicable, an insurer that issued a reimbursement insurance policy shall not terminate the policy unless a written notice has been received by the commissioner and by each applicable provider, service company, or third-party administrator. The notice shall fix the date of termination at a date no earlier than ten days after receipt of the notice by the commissioner and by the applicable provider, service company, or third-party administrator. The notice may be delivered in person or sent by mail, and a restricted certified mail return receipt shall be deemed proof of receipt of notice. The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for a service contract issued by a service company prior to the date of termination.

3. INDEMNIFICATION OR SUBROGATION. This section does not prevent or limit the right of an insurer that issued a reimbursement insurance policy to seek indemnification from or

subrogation against a service company if the insurer pays or is obligated to pay a service contract holder sums that the service company was obligated to pay pursuant to the provisions of a service contract or pursuant to a contractual agreement.

Sec. 29. Section 516E.5, Code 2005, is amended to read as follows:

516E.5 DISCLOSURE TO SERVICE CONTRACT HOLDERS -- CONTRACT PROVISIONS.

1. A motor-vehicle service contract shall not be issued, sold, or offered for sale in this state unless the contract conspicuously states that the obligations of the provider service company to the service contract holder are guaranteed under the service contract a reimbursement insurance policy, and unless the including a statement in substantially the following form: "Obligations of the service company under this service contract are guaranteed under a reimbursement insurance policy. If the service company fails to pay or provide service on a claim within sixty days after proof of loss has been filed with the service company, the service contract holder is entitled to make a claim directly against the reimbursement insurance policy." A claim against a reimbursement insurance policy shall also include a claim for return of the unearned consideration paid for the service contract in excess of the premium paid. A service contract shall conspicuously state the name and address of the issuer of the reimbursement insurance policy for that service contract.

2. A motor-vehicle service contract shall be written in clear, understandable language and the entire contract shall be printed or typed in easy-to-read type, size, and style, and shall not be issued, sold, or offered for sale in this state unless the contract does all of the following:

a. Clearly and conspicuously states the name and address of the service company, describes the service company's

obligations to perform services or to arrange for the performance of services under the service contract, and states that the obligations of the provider service company to the service contract holder are guaranteed under a service contract reimbursement insurance policy.

b. Clearly and conspicuously states the name and address of the issuer of the reimbursement insurance policy.

c. Identifies the motor-vehicle service contract-provider, the-seller-of-the-motor-vehicle company obligated to perform the service under the service contract, any third-party administrator, and the service contract holder to the extent that the name and address of the service contract holder has been furnished by the service contract holder.

d. Sets forth the total purchase price of the service contract and the terms under which the purchase price of the service contract is to be paid.

e. Sets forth the procedure for making a claim, including a telephone number.

f. Clearly and conspicuously states the dates that coverage starts and ends and the existence, terms, and conditions of a deductible amount, if any.

g. Specifies the merchandise or services, or both, to be provided and clearly states any and all limitations, exceptions, or exclusions.

h. Sets forth the conditions on which substitution of services will be allowed.

i. Sets forth all of the obligations and duties of the service contract holder, including but not limited to the duty to protect against any further damage to the motor vehicle, and the obligation to notify the provider service company in advance of any repair, if any.

j. Sets forth any and all terms, restrictions, or conditions governing transferability of the service contract, if any.

k. Describes or references any and all applicable provisions of the Iowa consumer credit code, chapter 537.

l. States the name and address of the commissioner.

m. Sets forth any and all conditions on which the service contract may be canceled, the terms and conditions for the refund of any portion of the purchase price, the identity of the person primarily liable to provide any refund, and the identity of any other person liable to provide any portion of the refund. If the service contract holder cancels the service contract, the service company shall mail a written notice of termination to the service contract holder within fifteen days of the date of the termination.

n. Permits the service contract holder to cancel and return the service contract within at least twenty days of the date of mailing the service contract to the service contract holder or within at least ten days after delivery of the service contract if the service contract is delivered at the time of sale of the service contract, or within a longer period of time as permitted under the service contract. If no claim has been made under the service contract prior to its return, the service contract is void and the full purchase price of the service contract shall be refunded to the service contract holder. A ten percent penalty shall be added each month to a refund that is not paid to a service contract holder within thirty days of the return of the service contract to the service company. The applicable time period for cancellation of a service contract shall apply only to the original service contract holder that purchased the service contract.

3. A complete copy of the terms of the motor-vehicle service contract shall be delivered to the prospective service contract holder at or before the time that the prospective service contract holder makes application for the service contract. If there is no separate application procedure, then a complete copy of the motor-vehicle service contract shall be

delivered to the service contract holder at or before the time the service contract holder becomes bound under the contract.

Sec. 30. Section 516E.6, Code 2005, is amended to read as follows:

516E.6 COMMISSIONER MAY PROHIBIT CERTAIN SALES --
INJUNCTION.

The commissioner shall issue an order instructing the a provider, service company, or third-party administrator to cease and desist from selling or offering for sale motor vehicle service contracts if the commissioner determines that the provider, service company, or third-party administrator has failed to comply with a provision of this chapter. Upon the failure of a motor-vehicle provider, service contract provider company, or third-party administrator to obey a cease and desist order issued by the commissioner, the commissioner may give notice in writing of the failure to the attorney general, who shall immediately commence an action against the provider, service company, or third-party administrator to enjoin the provider, service company, or third-party administrator from selling or offering for sale motor-vehicle service contracts until the provider, service company, or third-party administrator complies with the provisions of this chapter and the district court may issue the injunction.

Sec. 31. Section 516E.7, Code 2005, is amended to read as follows:

516E.7 RULES.

The commissioner may adopt rules as provided in chapter 17A to administer and enforce the provisions of this chapter and to establish minimum standards for disclosure of motor-vehicle service contract coverage limitations and exclusions.

Sec. 32. Section 516E.8, Code 2005, is amended to read as follows:

516E.8 EXEMPTION.

This chapter does not apply to a motor-vehicle service contract issued by the manufacturer or importer of the motor

vehicle covered by the service contract or to any third party acting in an administrative capacity on the manufacturer's behalf in connection with that service contract.

Sec. 33. Section 516E.9, Code 2005, is amended to read as follows:

516E.9 MISREPRESENTATIONS OF STATE APPROVAL.

A motor-vehicle service contract-provider company shall not represent or imply in any manner that the provider service company has been sponsored, recommended, or approved or that the provider's service company's abilities or qualifications have in any respect been passed upon by the state of Iowa, including the commissioner, the insurance division, or the division's securities bureau.

Sec. 34. Section 516E.10, Code 2005, is amended to read as follows:

516E.10 PROHIBITED ACTS -- UNFAIR OR DECEPTIVE TRADE PRACTICES.

1. MISREPRESENTATIONS, FALSE ADVERTISING, AND UNFAIR PRACTICES.

a. Unless licensed as an insurance company, a motor vehicle service contract-provider company shall not use in its name, contracts, or literature, the words "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other motor-vehicle service contract provider company.

b. A motor-vehicle service contract-provider company shall not, without the written consent of the purchaser, knowingly charge a purchaser for duplication of coverage or duties required by state or federal law, a warranty expressly issued by a manufacturer or seller of a product, or an implied warranty enforceable against the lessor, seller, or manufacturer of a product.

c. A motor-vehicle provider, service contract-provider company, or third-party administrator shall not make, permit, or cause a false or misleading statement, either oral or written, in connection with the sale, offer to sell, or advertisement of a motor-vehicle service contract.

d. A motor-vehicle provider, service contract-provider company, or third-party administrator shall not permit or cause the omission of a material statement in connection with the sale, offer to sell, or advertisement of a motor-vehicle service contract, which under the circumstances should have been made in order to make the statement not misleading.

e. A motor-vehicle provider, service contract-provider company, or third-party administrator shall not make, permit, or cause to be made a false or misleading statement, either oral or written, about the benefits or services available under the motor-vehicle service contract.

f. A motor-vehicle provider, service contract-provider company, or third-party administrator shall not make, permit, or cause to be made a statement of practice which has the effect of creating or maintaining a fraud.

g. A motor-vehicle provider, service contract-provider company, or third-party administrator shall not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with respect to the motor-vehicle service contract industry or with respect to a motor-vehicle provider, service contract-provider company, or third-party administrator which is untrue, deceptive, or misleading. It is deceptive or misleading to use any combination of words, symbols, or physical materials which by their content,

phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a manufacturer or of such a nature that the use would tend to mislead a person into believing that the solicitation is in some manner connected with the manufacturer, unless actually authorized or issued by the manufacturer.

h. A bank, savings and loan association, credit union, insurance company, or other lending institution shall not require the purchase of a motor-vehicle service contract as a condition of a loan.

2. DEFAMATION. A motor-vehicle provider, service contract provider company, or third-party administrator shall not make, publish, disseminate, or circulate, directly or indirectly, or aid, abet, or encourage the making, publishing, disseminating, or circulating of an oral or written statement or a pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of a person, and which is calculated to injure the person.

3. BOYCOTT, COERCION, AND INTIMIDATION. A motor-vehicle provider, service contract-provider-shall-not-enter-into-an company, or third-party administrator agreement to commit, or by a concerted action commit, an act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the service contract industry.

4. FALSE STATEMENTS. A motor-vehicle provider, service contract-provider company, or third-party administrator shall not knowingly file with a supervisory or other public official, or knowingly make, publish, disseminate, circulate, or deliver to a person, or place before the public, or knowingly cause directly or indirectly to be made, published, disseminated, circulated, delivered to a person, or placed before the public, a false material statement of fact as to the financial condition of a person.

5. FALSE ENTRIES. A motor-vehicle provider, service contract-provider company, or third-party administrator shall not knowingly make a false entry of a material fact in a book, report, or statement of a person or knowingly fail to make a true entry of a material fact pertaining to the business of the person in a book, report, or statement of the person.

6. USED OR REBUILT PARTS. A motor-vehicle service contract-provider company shall not repair a motor vehicle covered by a motor-vehicle service contract with any of the following:

- a. Used parts, unless the provider service company receives prior written authorization by the vehicle owner.
- b. Rebuilt parts, unless the parts are rebuilt according to national standards recognized by the insurance division.

7. MARKETING. A provider, service company, or third-party administrator shall not market, advertise, offer to sell, or sell a service contract by using personal information obtained in violation of the federal Driver's Privacy Protection Act, 18 U.S.C. § 2721 et seq.

7- 8. VIOLATIONS OF SECTION 714.16.

a. A violation of this chapter or rules adopted by the commissioner pursuant to this chapter is an unfair practice as defined in section 714.16.

b. An enforcement agreement between the commissioner and a motor-vehicle provider, service contract-provider company, or third-party administrator does not bar the attorney general from bringing an action against the provider, service company, or third-party administrator under section 714.16 as to allegations that a violation of this chapter constitutes a violation of section 714.16.

Sec. 35. Section 516E.11, Code 2005, is amended to read as follows:

516E.11 RECORDS -- EXPLANATION OF REASONS FOR DENIAL OF CLAIMS.

1. A motor-vehicle provider, service contract-provider company, or third-party administrator shall keep accurate records concerning transactions regulated under this chapter.

a. A-motor-vehicle-service-contract-provider's-records Records of a provider, service company, or third-party administrator shall include all of the following:

- (1) Copies of all-service-contracts each type of service contract issued or sold.
- (2) The name and address of each service contract holder.
- (3) The Claim files which shall contain, at a minimum, the dates, amounts, and descriptions of all receipts, claims, and expenditures related to service contracts.
- (4) Copies of all materials relating to claims which have been denied.

b. A motor-vehicle provider, service contract-provider company, or third-party administrator shall retain all required records pertaining to a service contract holder for at least two years after the specified period of coverage has expired. A provider, service company, or third-party administrator discontinuing business in this state shall maintain its records until the provider, service company, or third-party administrator furnishes the commissioner satisfactory proof that the provider, service company, or third-party administrator has discharged all obligations to contract holders in this state.

c. Motor-vehicle-service-contract-providers Providers, service companies, or third-party administrators shall make all records concerning transactions regulated under the chapter available to the commissioner for the purpose of examination.

d. A provider, service company, or third-party administrator may keep all records required under this chapter in an electronic form. If an administrator maintains records in a form other than a printed copy, the records shall be accessible from a computer terminal available to the

commissioner and shall be capable of duplication to a legible printed copy.

2. A motor-vehicle-service-contract provider, service company, or third-party administrator shall promptly deliver a written explanation to the service contract holder, describing the reasons for denying a claim or for the offer of a compromise settlement, based on all relevant facts or legal requirements and referring to applicable provisions of the service contract.

3. A provider, service company, or third-party administrator shall keep accurate records concerning transactions regulated under this chapter, including a list of the locations where service contracts are marketed, sold, offered for sale, or performed.

Sec. 36. Section 516E.12, Code 2005, is amended to read as follows:

516E.12 SERVICE OF PROCESS.

The commissioner shall be the agent for service of process upon a motor-vehicle provider, service contract-provider company, or third-party administrator and an issuer of a reimbursement insurance policy.

Sec. 37. Section 516E.13, subsection 4, unnumbered paragraph 1, Code 2005, is amended to read as follows:

Upon the commissioner's determination that a provider, service company, or third-party administrator has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted pursuant to this chapter, the commissioner may issue a summary order directing the person to cease and desist from engaging in the act or practice resulting in the violation or to take other affirmative action as in the judgment of the commissioner is necessary to comply with the requirements of this chapter.

Sec. 38. Section 516E.14, Code 2005, is amended to read as follows:

516E.14 AUDITS.

The commissioner may examine or cause to be examined the records of a motor-vehicle provider, service contract-provider company, or third-party administrator for the purpose of verifying compliance with this chapter. The commissioner may require, by a subpoena, the attendance of the provider, service company, or third-party administrator, or the provider's a representative thereof, and any other witness whom the commissioner deems necessary or expedient, and the production of records relating in any manner to compliance with this chapter if a provider, service company, third-party administrator, or witness fails or refuses to produce the documents for examination when requested by the commissioner.

Sec. 39. Section 516E.15, subsection 1, paragraph b, Code 2005, is amended to read as follows:

b. A motor-vehicle provider, service contract-provider who company, or third-party administrator that fails to file documents and information with the commissioner as required pursuant to section 516E.3 may be subject to a civil penalty. The amount of the civil penalty shall not be more than four hundred dollars plus two dollars for each motor-vehicle service contract that the person executed prior to satisfying the filing requirement. However, a person who fails to file information regarding a change in the provider's name or the termination of the provider's business of a provider, service company, or third-party administrator as required pursuant to section 516E.3 is subject to a civil penalty of not more than five hundred dollars.

Sec. 40. Section 516E.15, subsection 2, Code 2005, is amended to read as follows:

2. If the commissioner believes that grounds exist for the criminal prosecution of a motor-vehicle provider, service contract-provider company, or third-party administrator for violating this chapter or any other law of this state, the commissioner may forward to the attorney general or the county

attorney the grounds for the belief, including all evidence in the commissioner's possession for action deemed appropriate by the attorney general or county attorney. At the request of the attorney general, the county attorney shall appear and prosecute the action when brought in the county served by the county attorney.

Sec. 41. NEW SECTION. 516E.16 COURT ACTION FOR FAILURE TO COOPERATE.

1. If a person fails or refuses to file a statement or report or to produce any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records, or to obey a subpoena issued by the commissioner, the commissioner may refer the matter to the attorney general, who may apply to a district court to enforce compliance. The court may order any of the following:

a. Injunctive relief restricting or prohibiting the offer or sale of service contracts.

b. Production of documents or records including but not limited to books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records.

c. Such other relief as may be appropriate.

2. A court order issued pursuant to subsection 1 is effective until the person who is subject to the order files the statement or report, produces the documents requested, or obeys the subpoena.

Sec. 42. NEW SECTION. 516E.17 NET WORTH REQUIREMENT.

A service company that has issued or renewed in the aggregate one thousand or fewer service contracts during the preceding calendar year shall maintain a minimum net worth of forty thousand dollars. The minimum net worth to be maintained shall be increased by an additional twenty thousand dollars for each additional five hundred contracts or fraction thereof issued or renewed, up to a maximum required net worth of four hundred thousand dollars. At least twenty thousand dollars of net worth shall consist of paid-in capital.

Sec. 43. NEW SECTION. 516E.18 PUBLIC ACCESS TO RECORDS.

1. The administrator shall keep a register of all filings and orders which have been entered. The register shall be open for public inspection.

2. Upon request and for a reasonable fee, the administrator shall furnish to any person copies of any register entry or any document which is a matter of public record and not confidential. Copies shall be available during normal business hours and may be certified upon request. In any administrative, civil, or criminal proceeding, a certified copy is prima facie evidence of the contents of the document certified.

3. Pursuant to chapter 22, the administrator may maintain the confidentiality of information obtained during an investigation or audit.

Sec. 44. NEW SECTION. 516E.19 ADMINISTRATION.

1. This chapter shall be administered by the commissioner. The deputy administrator appointed pursuant to section 502.601 shall be the principal operations officer responsible to the commissioner for the routine administration of this chapter and management of the administrative staff. In the absence of the commissioner, 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 the time being, have and exercise the authority conferred upon the commissioner. The commissioner may from time to time delegate to the deputy administrator any or all of the functions assigned to the commissioner in this chapter. The deputy administrator shall employ officers, attorneys, accountants, auditors, investigators, and other employees as shall be needed for the administration of this chapter.

2. Upon request, the commissioner may honor requests from interested persons for interpretive opinions.

Sec. 45. Section 518.14, subsection 4, paragraph a, Code 2005, is amended to read as follows:

a. UNITED STATES GOVERNMENT OBLIGATIONS. Obligations Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by an 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 obligations described in this paragraph, 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. 46. Section 518A.12, subsection 4, paragraph a, Code 2005, is amended to read as follows:

a. UNITED STATES GOVERNMENT OBLIGATIONS. Obligations Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or an 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 obligations described in this paragraph, 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. 47. Section 520.19, Code 2005, is amended to read as follows:

520.19 ANNUAL TAX -- FEES.

In lieu of all other taxes, licenses, charges, and fees whatsoever, such attorney shall annually pay to the commissioner the same fees as are paid by mutual companies transacting the same kind of business, and an annual tax of

~~two-percent, if a domestic reciprocal organization, and two percent, if a foreign reciprocal organization, based upon the applicable percentage stated in section 432.1, subsection 4,~~ calculated upon the gross premiums or deposits collected from subscribers in this state during the preceding calendar year, after deducting therefrom returns, or cancellations, and all amounts returned to subscribers or credited to their accounts as savings, and the amount returned upon canceled policies and rejected applications covering property situated or on business done within this state.

Sec. 48. Section 522B.17, Code 2005, is amended to read as follows:

522B.17 PENALTY.

An insurer or insurance producer who, after hearing, is found to have violated this chapter may be ordered to cease and desist from engaging in the conduct resulting in the violation and may be assessed a civil penalty pursuant to chapter 507B.

A person found who, after hearing, is found to have acted violated this chapter by acting as an agent of an insurer or otherwise selling, soliciting, or negotiating insurance in this state, or offering to the public advice, counsel, or services with regard to insurance, who is not properly licensed is-subject-to may be ordered to cease and desist from engaging in the conduct resulting in the violation and may be assessed a civil penalty according to the provisions of chapter 507A.

If a person does not comply with an order issued pursuant to this section, the commissioner may petition a court of competent jurisdiction to enforce the order. The court shall not require the commissioner to post a bond in an action or proceeding under this section. If the court finds, after notice and opportunity for hearing, that the person is not in compliance with an order, the court may adjudge the person to be in civil contempt of the order. The court may impose a

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 that the court determines is just and proper in the circumstances.

Sec. 49. NEW SECTION. 522B.17A INJUNCTIVE RELIEF.

1. An association with at least twenty-five insurance producer members may bring an action in district court to enjoin a person from selling, soliciting, or negotiating insurance in violation of section 522B.2. However, before bringing an action in district court to enjoin a person pursuant to this section, an association shall file a complaint with the insurance division alleging that the person is selling, soliciting, or negotiating insurance in violation of section 522B.2.

2. If the division makes a determination to proceed administratively against the person for a violation of section 522B.2, the complainant shall not bring an action in district court against the person pursuant to this section based upon the allegations contained in the complaint filed with the division.

3. If the division does not make a determination to proceed administratively against the person for a violation of section 522B.2, the division shall issue, on or before ninety days from the date of filing of the complaint, a release to the complainant that permits the complainant to bring an action in district court pursuant to this section.

4. The filing of a complaint with the division pursuant to this section tolls the statute of limitations pursuant to section 614.1 as to the alleged violation for a period of one hundred twenty days from the date of filing the complaint.

5. Any action brought in district court by a complainant against a person pursuant to this section, based upon the allegations contained in the complaint filed with the division, shall be brought within one year after the ninety-

day period following the filing of the complaint with the division, or the date of the issuance of a release by the division, whichever is earlier.

6. If the court finds that the person is in violation of section 522B.2 and enjoins the person from selling, soliciting, or negotiating insurance in violation of that section, the court's findings of fact and law, and the judgment and decree, when final, shall be admissible in any proceeding initiated pursuant to section 522B.17 by the commissioner against the person enjoined and the person enjoined shall be precluded from contesting in that proceeding the court's determination that the person sold, solicited, or negotiated insurance in violation of section 522B.2.

Sec. 50. Section 523A.402, subsection 6, paragraph c, Code 2005, is amended to read as follows:

c. The annuity shall not 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 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 the annuity at the time the prepaid purchase agreement is funded, matures, or is canceled, as the case may be.

Sec. 51. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES. This section and the sections of this Act amending sections 513C.6 and 514E.2, and amending section 514E.7, subsection 1, by enacting paragraph "e", being deemed of immediate importance, take effect upon enactment. The section of the Act amending section 513C.6 is retroactively applicable to January 1, 2005, and is applicable on and after that date. The sections of the Act amending section 514E.2 are retroactively applicable to July 1, 1986, and are applicable on and after that date. The portion of the section of the Act amending section 514E.7, subsection 1, by enacting paragraph

"e" is retroactively applicable to January 1, 2005, and is applicable on and after that date.

JOHN P. KIBBIE
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 360, Eighty-first General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved 4/28, 2005

THOMAS J. VILSACK
Governor