

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

Approved April 11, 1991

CHAPTER 26
INSURANCE REGULATION
S.F. 518

AN ACT relating to the financial supervision and solvency oversight of insurance companies by the commissioner of insurance and accreditation of the insurance division as an approved insurance regulator by the national association of insurance commissioners, imposing civil liability, authorizing administrative and criminal penalties, and providing effective dates and applicability provisions.

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

DIVISION I

Section 1. **NEW SECTION. 510.1A SHORT TITLE.**

This chapter may be cited as the "Managing General Agents Act."

Sec. 2. **NEW SECTION. 510.2A DEFINITIONS.**

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

1. "Actuary" means a person who is a member in good standing of the American academy of actuaries.
2. "Commissioner" means the commissioner of insurance.
3. "Insurer" means a person duly licensed in this state as an insurance company pursuant to Title XX.
4. a. "Managing general agent" means any person who engages in all of the following:
 - (1) Negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and who acts as an agent for such insurer whether known as a managing general agent, manager, or other similar term or title.
 - (2) With or without authority and either separately or together with affiliates, directly or indirectly produces, and underwrites, an amount of gross direct written premium equal to or greater than five percent of the policyholder surplus in any one quarter or year as reported in the last annual statement of the insurer.
 - (3) Engages in either or both of the following:
 - (a) Adjusts or pays claims in excess of an amount determined by the commissioner.
 - (b) Negotiates reinsurance on behalf of the insurer.
- b. Managing general agent does not include any of the following:
 - (1) An employee of the insurer.
 - (2) A manager of a United States branch of an alien insurer who resides in this country.
 - (3) An underwriting manager who, pursuant to contract, manages all insurance operations of the insurer, who is under common control with the insurer, subject to chapter 521A relating to the regulation of insurance holding company systems, and who is not compensated based upon the volume of premiums written.
 - (4) An insurance company, in connection with the acceptance or rejection of reinsurance on a block of business.
 - (5) The attorney-in-fact authorized by or acting for the subscribers of a reciprocal insurer or interinsurance exchange under power of attorney.

5. "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

Sec. 3. NEW SECTION. 510.3A LICENSURE REQUIRED — BOND.

1. A person shall not act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed producer in this state.

2. A person shall not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the person is licensed as a resident or nonresident producer in this state pursuant to the provisions of this chapter.

3. The commissioner may require a bond for each company represented by a managing general agent in an amount acceptable to the commissioner for the protection of the insurer.

4. The commissioner may require a managing general agent to maintain an errors and omissions policy.

Sec. 4. NEW SECTION. 510.4 REQUIRED CONTRACT PROVISIONS — LIMITATIONS.

1. A person acting in the capacity of a managing general agent shall not place business with an insurer unless a written contract is in force between the parties which sets forth the responsibilities of each party. If both parties share responsibility for a particular function, the contract must specify the division of such responsibilities, and must contain, at a minimum, all of the following provisions:

a. The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of a managing general agent during the pendency of any dispute regarding the cause for termination. The insurer shall advise the commissioner of a termination or a suspension pursuant to this paragraph.

b. A managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

c. All funds collected for the account of an insurer shall be held by a managing general agent in a fiduciary capacity in a bank which is a member of the federal reserve system. This account shall be used for all payments on behalf of the insurer. A managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

d. Separate records of business written by a managing general agent shall be maintained. An insurer shall have access and a right to copy all accounts and records related to the insurer's business in a form usable by the insurer and the commissioner shall have access to all books, bank accounts, and records of a managing general agent in a form usable to the commissioner. Such records shall be retained at least until after completion by the insurance division of the next triennial examination of the insurer.

e. Appropriate underwriting guidelines including, but not limited to, the following:

(1) The maximum annual premium volume.

(2) The basis of the rates to be charged.

(3) The types of risks which may be written.

(4) Maximum limits of liability.

(5) Applicable exclusions.

(6) Territorial limitations.

(7) Policy cancellation provisions.

(8) The maximum length or duration of the policy period.

The insurer may cancel or refuse to renew any policy of insurance produced or underwritten by a managing general agent, subject to the applicable laws and rules concerning the cancellation and nonrenewal of insurance policies.

2. Permissible provisions in a contract and their requirements include the following:

a. If the contract permits a managing general agent to settle claims on behalf of the insurer all of the following requirements apply:

(1) All claims reported must be reported by the managing general agent to the insurer in a timely manner.

(2) A copy of the claim file must be sent to the insurer at its request or as soon as the managing general agent knows that the claim meets one or more of the following conditions:

(a) The claim has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less.

(b) The claim involves a coverage dispute.

(c) The claim may exceed the claims settlement authority of the managing general agent.

(d) The claim is open for more than six months.

(e) The claim is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less.

(3) All claim files shall be the joint property of the insurer and the managing general agent. However, upon an order of liquidation of the insurer the files become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(4) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

b. If electronic claims files are in existence, the contract must address the timely transmission or transfer of the data contained in the files.

c. If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of interim profits by establishing loss reserves, by controlling claim payments, or by determining the amount of interim profits in any other manner, interim profits shall not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned for casualty insurance business, and not until the interim profits have been verified pursuant to section 510.5.

3. A managing general agent shall not do any of the following:

a. Bind reinsurance or retrocessions on behalf of the insurer, except that a managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

b. Commit the insurer to participate in insurance or reinsurance syndicates.

c. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed.

d. Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which exceeds one percent of the policyholder's surplus of the insurer as of December 31 of the previous calendar year.

e. Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded by the managing general agent to the insurer.

f. Permit its subproducer to serve on the insurer's board of directors.

g. Jointly employ an individual who is employed by the insurer.

h. Appoint a submanaging general agent.

Sec. 5. NEW SECTION. 510.5 DUTIES OF INSURERS.

1. An insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which the insurer does or has done business.

2. If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by a managing general agent. This is in addition to any other required loss reserve certification.

3. An insurer shall periodically, but at least semiannually, conduct an on-site review of the underwriting and claims processing operations of each managing general agent with which the insurer is currently doing business.

4. Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who is not affiliated with the managing general agent.

5. Within thirty days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the commissioner. A notice of appointment of a managing general agent must include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

6. An insurer shall review its books and records each quarter and determine if any producer, as defined by section 510A.2, has become, by operation of section 510.2, subsection 3, a managing general agent as defined in that section. If the insurer determines that a producer has become a managing general agent by operation of section 510.2, subsection 3, the insurer shall promptly notify the producer and the commissioner of such determination and the insurer and producer shall fully comply with the provisions of this chapter within thirty days.

7. An insurer shall not appoint to its board of directors an officer, director, employee, producer, or controlling shareholder of a managing general agent of the insurer. This subsection shall not apply to relationships governed by chapter 521A relating to the regulation of insurance company holding systems, or, if applicable, by chapter 510A relating to the regulation of producer controlled property and casualty insurers.

Sec. 6. NEW SECTION. 510.6 EXAMINATION AUTHORITY.

The acts of a managing general agent are considered to be the acts of the insurer on whose behalf a managing general agent is acting. A managing general agent may be examined as if it were the insurer.

Sec. 7. NEW SECTION. 510.7 PENALTIES AND LIABILITIES.

1. If the commissioner finds, after a hearing conducted in accordance with chapter 17A, that any person has violated one or more provisions of this chapter, the commissioner may order one or more of the following:

a. For each separate violation, the imposition of an administrative penalty of not more than ten thousand dollars.

b. Revocation or suspension of the producer's license.

c. Reimbursement by the managing general agent of the insurer, the rehabilitator, or the liquidator of the insurer for any losses incurred by the insurer caused by a violation of this chapter committed by the managing general agent.

2. The decision, determination, or order of the commissioner pursuant to subsection 1 is subject to judicial review pursuant to chapter 17A.

3. This section does not affect the right of the commissioner to impose any other penalties provided for under Title XX.

4. This chapter is not intended to and shall not in any manner limit or restrict the rights of policyholders, claimants, and auditors.

Sec. 8. NEW SECTION. 510.8 RULES AND REGULATIONS.

The commissioner may adopt rules, pursuant to chapter 17A, as necessary or convenient for the implementation and administration of this chapter.

Sec. 9. NEW SECTION. 510.9 EXEMPTION.

A managing general agent who complies with sections 510.1 through 510.8 for a block of business, shall not also be required to comply with sections 510.20 and 510.21 with regard to the same block of business.

DIVISION II

Sec. 10. NEW SECTION. 510A.1 SHORT TITLE.

This chapter shall be known and may be cited as the "Producer Controlled Property and Casualty Insurer Act."

Sec. 11. NEW SECTION. 510A.2 DEFINITIONS.

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

1. "Captive insurer" means an insurance company which is owned by another organization for the exclusive purpose of insuring risks of the organization and any affiliated company, or in the case of groups and associations, an insurance organization owned by the insureds for the exclusive purpose of insuring risks of group and association members and any affiliates.

2. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a contract for goods or nonmanagement services, or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the powers to vote or holds proxies representing a majority of the outstanding voting securities of any other person. A person is not deemed to control another person solely by reason of being an officer or director of the other person.

3. "Independent casualty actuary" means a casualty actuary who is a member of the American academy of actuaries and who is not an employee, principal, the direct or indirect owner of, affiliated with, or in any way controlled by the insurer or producer.

4. "Licensed property and casualty insurer" or "insurer" means a person licensed to transact a property and casualty insurance business in this state and which issues policies covered by chapter 515B, which establishes the insurance guaranty association. The following are not licensed property and casualty insurers for the purposes of this chapter:

a. All nonadmitted insurers.

b. All risk retention groups as defined in the federal Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986), the federal Risk Retention Act, 15 U.S.C. 3901 et seq. (1982 & Supp. 1986), or chapter 515E.

c. All residual market pools and joint underwriting authorities or associations.

d. All captive insurers.

5. "Producer" means an insurance broker or any other person when such person acts or aids in any manner in soliciting, negotiating, or procuring the making of an insurance contract on behalf of an insured, who is not that person, for any compensation, commission, or other thing of value. "Producer" does not include an exclusive agent or an independent agent acting on behalf of the controlled insurer or any subagent or representative of such agent, who acts as such in the solicitation of, negotiation for, or procurement or making of an insurance contract, if the agent, subagent, or representative is not also acting in the capacity of an insurance broker in the same transaction.

6. "Reinsurance intermediary" means a person who acts as a producer in soliciting, negotiating, or procuring the making of a reinsurance contract or binder on behalf of a ceding insurer, or acts as a producer in accepting a reinsurance contract or binder on behalf of an assuming insurer.

7. "Violation" means a finding by the commissioner that one or more of the following has occurred:

a. The controlling producer has not materially complied with section 510A.3.

b. The controlled insurer, with respect to business placed by the controlling producer, has engaged in a pattern of charging premiums that were lower than those being charged by the insurer or other insurers for similar risks written during the same period and placed by non-controlling producers. When determining whether premiums were lower than those prevailing in the market, the commissioner shall take into consideration applicable industry or actuarial standards at the time the business was written.

c. The controlling producer failed to maintain records, sufficient to demonstrate that the producer's dealings with its controlled insurer were fair and equitable and in compliance with chapter 521A or to accurately disclose the nature and details of its transactions with the controlled insurer, including such information as is necessary to support the charges or fees to the respective parties.

d. The controlled insurer either failed to establish, or deviated from, its underwriting procedures with respect to business placed by the controlling producer.

e. The controlled insurer's capitalization at the time the business was placed by the controlling producer and with respect to such business was not in compliance with criteria established by the commissioner or with Title XX.

f. The controlling producer or the controlled insurer failed to substantially comply with chapter 521A.

Sec. 12. NEW SECTION. 510A.3 LIMITATION ON BUSINESS PLACED WITH CONTROLLED INSURER.

1. A producer which has control of a licensed property and casualty insurer shall not directly or indirectly place business with the insurer in any transaction in which the producer, at the time the business is placed, is acting as a producer on behalf of the insured for any compensation, commission, or other thing of value, unless all of the following conditions are satisfied:

a. A written contract, which is subject to the commissioner's review and approval, has been entered into between the controlling producer and the insurer which has been approved by the board of directors of the insurer and filed with the commissioner.

b. The producer, prior to the effective date of any policy, delivers written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer. The disclosure notice shall be signed by the insured and retained in the underwriting file until the filing of the report on examination covering the period in which the coverage is in effect. However, if the business is placed through an agent of the producer who is not a controlling producer, the controlling producer shall retain in the controlling producer's records a signed commitment from the agent of the producer that the agent of the producer is aware of the relationship between the insurer and the producer and that the agent of the producer has or will notify the insured of the relationship.

c. All funds collected for the account of the insurer by the controlling producer, after commission payments, cancellations, and other adjustments are made, must be paid to the insurer at least quarterly.

2. In addition to any other required loss reserve certification, the controlled insurer, on April 1 of each year, shall annually file with the commissioner an opinion of an independent casualty actuary, or of another independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of the end of the year, including incurred losses not reported, on business placed by the producer.

3. The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage such amount represents of the net premiums written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance.

4. A controlled insurer must establish an audit committee of the board of directors composed of independent directors. Prior to approval of the annual financial statement, the audit committee shall meet with management, the insurer's independent certified public accountants, and an independent casualty actuary, or another independent loss reserve specialist acceptable to the commissioner, to review the adequacy of the insurer's loss reserves.

5. A reinsurance intermediary which has control of an assuming insurer shall not directly or indirectly place business with the assuming insurer in any transaction in which such reinsurance intermediary is acting as a broker on behalf of the ceding insurer. A reinsurance intermediary which has control of a ceding insurer shall not directly or indirectly accept business from the ceding insurer in any transaction in which such reinsurance intermediary is acting

as a producer on behalf of the assuming insurer. The prohibitions in this subsection shall not apply to a reinsurance intermediary which makes a full and complete written disclosure to the parties of its relationship with the assuming or ceding insurer prior to completion of the transaction.

Sec. 13. NEW SECTION. 510A.4 LIABILITY OF CONTROLLING PRODUCER IN THE EVENT OF INSOLVENCY OF CONTROLLED INSURER.

1. a. If the commissioner has reason to believe that a controlling producer has committed or is committing an act which could be determined to be a violation, as defined in section 510A.2, the commissioner shall serve upon the controlling producer in the manner provided by chapter 17A, a statement of the charges and notice of a hearing to be conducted in accordance with chapter 17A.

b. At such hearing, the commissioner must establish that the controlling producer engaged in a violation, as defined in section 510A.2. The controlling producer shall have an opportunity to be heard and to present evidence rebutting the charges and to establish that the insolvency of the controlled insurer arose out of events not attributable to the violation. The decision, determination, or order of the commissioner is subject to judicial review pursuant to chapter 17A.

c. Upon a finding, pursuant to this section, that the controlling producer committed a violation and the controlling producer failed to establish that the violation did not substantially contribute to the insolvency, the controlling producer shall reimburse the state guaranty funds, created pursuant to chapter 515B for all payments made for losses, loss adjustment, and administrative expenses on the business placed by the producer in excess of gross earned premiums and investment income earned on premiums and loss reserves for such business.

d. This section does not affect the right of the commissioner to impose any other penalties provided for under Title XX.

2. This chapter does not alter or affect the rights of policyholders, claimants, creditors, or other third parties.

DIVISION III

Sec. 14. NEW SECTION. 521B.1 SHORT TITLE.

This chapter shall be known and may be cited as the "Credit for Reinsurance Act."

Sec. 15. NEW SECTION. 521B.2 CREDIT ALLOWED A DOMESTIC CEDING INSURER.

Credit for reinsurance is allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only if the reinsurer meets the requirements of subsection 1, 2, 3, 4, or 5. If the reinsurer meets the requirements of subsection 3 or 4, the requirements of subsection 6 must also be met.

1. Credit is allowed if the reinsurance is ceded to an assuming insurer which is licensed to transact the business of reinsurance in this state.

2. Credit is allowed if the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which satisfies all of the following conditions:

a. Files with the commissioner evidence of submission to the jurisdiction of this state.

b. Submits to the authority of this state to examine its books and records.

c. Is licensed to transact reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact the business of reinsurance in at least one state.

d. Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and does either of the following:

(1) Maintains a surplus with respect to policyholders in an amount which is not less than twenty million dollars and whose accreditation has not been denied by the commissioner within ninety days of its submission to the jurisdiction of this state.

(2) Maintains a surplus with respect to policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the commissioner. Credit shall not be allowed a domestic ceding insurer, if the accreditation of the assuming insurer is revoked by the commissioner after notice and hearing.

To qualify as an accredited reinsurer, an assuming insurer must meet all of the requirements and the standards set forth in this subsection. If the commissioner determines that the assuming insurer has failed to continue to meet any of these requirements or standards, the commissioner may upon written notice and hearing revoke accreditation of the assuming insurer.

This section does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

3. a. Credit is allowed if the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer, is entered through a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this section, and the assuming insurer or United States branch of an alien assuming insurer does both of the following:

(1) Maintains a surplus with respect to policyholders in an amount not less than twenty million dollars.

(2) Submits to the authority of this state to examine its books and records.

b. However, the requirement of paragraph "a", subparagraph (1), does not apply to reinsurance ceded and assumed pursuant to a pooling arrangement among insurers in the same holding company system.

4. a. Credit is allowed if the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in section 521B.4, subsection 2, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners' annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusted account representing the liabilities of the assuming insurer attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusted surplus of not less than twenty million dollars. In the case of a group of individual unincorporated underwriters, the trust shall consist of a trusted account representing the liabilities of the group attributable to business written in the United States and, in addition, the group shall maintain a trusted surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

b. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in paragraph "a", which is under the supervision of the department of trade and industry of the United Kingdom, which submits to the authority of this state to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of at least ten billion dollars, the trust shall be in an amount equal to the several liabilities of the group attributable to business written in the United States. The group shall also maintain a joint trustee surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group, and each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

c. Such trust shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust vests legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns,

and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described in this paragraph must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

d. No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding calendar year and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.

5. Credit is allowed if the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection 1, 2, 3, or 4, but only with respect to the insurance of risks located in a jurisdiction where such reinsurance is required by applicable law or regulation of that jurisdiction. For purposes of this subsection, jurisdiction refers to a jurisdiction other than the United States, and any state, district, or territory of the United States. This subsection allows credit to ceding insurers which are mandated by such a jurisdiction to cede reinsurance to state owned or controlled insurance or reinsurance companies or to participate in pools, guaranty funds, or joint underwriting associations.

6. a. If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsection 3 or 4, is not allowed unless the assuming insurer agrees in the reinsurance agreements to both of the following:

(1) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give such court jurisdiction, and shall abide by the final decision of such court or of any appellate court in the event of an appeal.

(2) That the commissioner or an attorney designated in the agreement is the true and lawful attorney of the assuming insurer upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

b. This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

Sec. 16. NEW SECTION. 521B.3 REDUCTION FROM LIABILITY FOR REINSURANCE CEDED BY A DOMESTIC INSURER TO AN ASSUMING INSURER.

A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 521B.2 is allowed in an amount not exceeding the liabilities carried by the ceding insurer and the reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the reinsurance contract, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified United States financial institution, as defined in section 521B.4, subsection 2. This security may be held in the form of any of the following:

1. Cash.

2. Securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets.

3. Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in section 521B.4, subsection 2, no later than December 31 of the year for which filing is being made, and in the possession of the ceding insurer on or before the filing date of its annual statement.

Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the subsequent failure of the issuing or confirming institution or subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.

4. Any other form of security acceptable to the commissioner.

Sec. 17. NEW SECTION. 521B.4 QUALIFIED UNITED STATES FINANCIAL INSTITUTIONS.

1. For purposes of this chapter, a "qualified United States financial institution" means an institution that satisfies all of the following conditions:

a. The financial institution is organized or licensed under the laws of the United States or any state of the United States.

b. The financial institution is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

c. The financial institution has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

2. A "qualified United States financial institution" means, for purposes of those provisions of this chapter specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that is both of the following:

a. Organized or licensed under the laws of the United States or any state of the United States, and has been granted authority to operate with fiduciary powers.

b. Regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

Sec. 18. NEW SECTION. 521B.5 RULES.

The commissioner may adopt rules, pursuant to chapter 17A, as necessary or convenient to administer this chapter.

DIVISION IV

Sec. 19. NEW SECTION. 521C.1 SHORT TITLE.

This chapter shall be known and may be cited as the "Reinsurance Intermediary Model Act."

Sec. 20. NEW SECTION. 521C.2 DEFINITIONS.

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

1. "Actuary" means a person who is a member in good standing of the American academy of actuaries.

2. "Controlling person" means a person who directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.

3. "Insurer" means a person licensed to transact the business of insurance in this state.

4. "Licensed producer" means an agent, broker, or reinsurance intermediary licensed pursuant to the applicable provision of the insurance law of any jurisdiction.

5. "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

6. "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the ceding insurer.

7. "Reinsurance intermediary-manager" means a person who has authority to bind or manage all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an agent for the reinsurer whether known as a reinsurance intermediary-manager or manager, or known by any other similar term or title. However, for the purposes of this chapter, the following persons shall not be considered a reinsurance intermediary-manager, with respect to the reinsurer:

a. An employee of the reinsurer.

b. A manager of a United States branch of an alien reinsurer who resides in this country.

c. An underwriting manager who, pursuant to contract, manages all the reinsurance operations of the reinsurer, who is under common control with the reinsurer, subject to chapter 521A relating to the regulation of insurance holding company systems, and who is not compensated based upon the volume of premiums written.

d. The manager of a group, association, pool, or organization of insurers who engages in joint underwriting or joint reinsurance and who is subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

8. "Reinsurer" means a person licensed in this state as a reinsurer with the authority to assume reinsurance.

9. "To be in violation" means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this chapter.

10. "Qualified United States financial institution" means an institution that satisfies all of the following conditions:

a. The financial institution is organized or licensed under the laws of the United States or any state of the United States.

b. The financial institution is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

c. The financial institution has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

Sec. 21. NEW SECTION. 521C.3 LICENSURE.

1. A person shall not act as a reinsurance intermediary-broker in this state if the person maintains an office in this state or another state individually or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation, unless the person is a licensed producer in this state or another state having a law substantially similar to this law, or the person is licensed in this state as a nonresident reinsurance intermediary.

2. A person shall not act as a reinsurance intermediary-manager in any of the following circumstances:

a. Where the reinsurer is domiciled in this state, unless the person is a licensed producer in this state.

b. Where the person maintains an office in this state individually or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation in this state, unless the person is a licensed producer in this state.

c. Where the person would be acting in another state for a nondomestic insurer, unless the person is a licensed producer in this state or in another state having a law substantially similar to this law, or is licensed in this state as a nonresident reinsurance intermediary.

3. The commissioner may require a reinsurance intermediary-manager subject to subsection 2 to do one or more of the following:

a. File a bond in an amount determined by the commissioner from an insurer acceptable to the commissioner for the protection of each reinsurer represented by the reinsurance intermediary-manager.

b. Maintain an errors and omissions policy in an amount acceptable to the commissioner.

4. a. The commissioner may issue a reinsurance intermediary license to a person who has complied with the requirements of this chapter. Any such license issued to a firm or association will authorize all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements to the application. A license issued to a corporation shall authorize all of the officers, and any designated employees and directors of the corporation to act as reinsurance intermediaries on behalf of the corporation, and all such persons shall be named in the application and any supplements to the application.

b. If the applicant for a reinsurance intermediary license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process, and also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of a change of the designated agent for service of process, and the change becomes effective upon acknowledgment by the commissioner.

5. The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment, any of the following conditions are present:

a. The applicant, any one named in the application, or any member, principal, officer, or director of the applicant, is not trustworthy.

b. A controlling person of such applicant is not trustworthy to act as a reinsurance intermediary.

c. Conditions present in paragraph "a" or "b" have given cause for revocation or suspension of a license, or a person referred to in paragraph "a" or "b" has failed to comply with any prerequisite for the issuance of a license.

Upon written request, the commissioner shall furnish a written summary of the basis for refusal to issue a license, which document is privileged and not subject to disclosure under chapter 22.

6. A licensed attorney in this state when acting in a professional capacity as an attorney is exempt from the requirements of this section.

Sec. 22. NEW SECTION. 521C.4 REQUIRED CONTRACT PROVISIONS – REINSURANCE INTERMEDIARY-BROKERS.

Transactions between a reinsurance intermediary-broker and the insurer that the reinsurance intermediary-broker represents in such capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, contain provisions that satisfy all of the following requirements:

1. The insurer may terminate the authority of the reinsurance intermediary-broker at any time.

2. The reinsurance intermediary-broker shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing, to the reinsurance intermediary-broker, and shall remit all funds due to the insurer within thirty days of receipt.

3. All funds collected for the account of the insurer shall be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank, as defined in section 524.103.

4. The reinsurance intermediary-broker shall comply with section 521C.5.

5. The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks.

6. The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

Sec. 23. NEW SECTION. 521C.5 BOOKS AND RECORDS – REINSURANCE INTERMEDIARY BROKERS.

1. For a minimum of ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall keep a complete record for each transaction showing all of the following:

a. The type of contract, limits, underwriting restrictions, classes or risks, and territory.

b. The period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation.

c. The reporting and settlement requirements of balances.

d. The rate used to compute the reinsurance premium.

e. The names and addresses of assuming reinsurers.

f. The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker.

- g. All related correspondence and memoranda.
- h. Proof of placement.
- i. The details regarding retrocessions handled by the reinsurance intermediary-broker including the identity of retrocessionaires and percentage of each contract assumed or ceded.
- j. Financial records, including but not limited to, premium and loss accounts.
- k. If the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer one or both of the following shall be included in the record:
 - (1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk.
 - (2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.
- 2. The insurer has a right of access and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to its business in a form usable by the insurer.

Sec. 24. NEW SECTION. 521C.6 DUTIES OF INSURERS UTILIZING THE SERVICES OF A REINSURANCE INTERMEDIARY-BROKER.

- 1. An insurer shall not engage the services of a person, firm, association, or corporation to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by section 521C.3, subsection 1.
- 2. An insurer shall not employ an individual who is employed by a reinsurance intermediary-broker with which the insurer transacts business, unless such reinsurance intermediary-broker is under common control with the insurer and subject to chapter 521A relating to the regulation of insurance company holding systems.
- 3. The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which the insurer transacts business.

Sec. 25. NEW SECTION. 521C.7 REQUIRED CONTRACT PROVISIONS – REINSURANCE INTERMEDIARY-MANAGERS.

Transactions between a reinsurance intermediary-manager and the reinsurer that the reinsurance intermediary-manager represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty days before the reinsurer assumes or cedes business through a reinsurance intermediary-manager, a true copy of the approved contract shall be filed with the commissioner for approval by the commissioner. The contract, at a minimum, shall contain the following provisions:

- 1. The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.
- 2. The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to the reinsurance intermediary-manager, and shall remit all funds due under the contract to the reinsurer on not less than a monthly basis.
- 3. All funds collected for the reinsurer's account shall be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank which is a qualified United States financial institution, as defined in section 521C.2. The reinsurance intermediary-manager may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that the reinsurance intermediary-manager represents.
- 4. For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing all of the following:

- a. The type of contract, limits, underwriting restrictions, classes or risks, and territory.
- b. The period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks.
- c. The reporting and settlement requirements of balances.
- d. The rate used to compute the reinsurance premium.
- e. The names and addresses of reinsurers.
- f. The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager.
- g. Any related correspondence and memoranda.
- h. Proof of placement.
- i. The details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by section 521C.9, subsection 4, including the identity of retrocessionaires and percentage of each contract assumed or ceded.
- j. Financial records, including but not limited to, premium and loss accounts.
- k. If the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer one or both of the following shall be included in the record:
 - (1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk.
 - (2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.
5. The reinsurer has a right of access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.
6. The contract cannot be assigned in whole or in part by the reinsurance intermediary-manager.
7. The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.
8. The contract shall set forth the rates, terms, and purposes of commissions, charges, and other fees which the reinsurance intermediary-manager may levy against the reinsurer.
9. If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer, all of the following apply:
 - a. All claims shall be reported to the reinsurer in a timely manner.
 - b. A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim meets any or all of the following conditions:
 - (1) The claim has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer.
 - (2) The claim involves a coverage dispute.
 - (3) The claim may exceed the claims settlement authority of the reinsurance intermediary-manager.
 - (4) The claim is open for more than six months.
 - (5) The claim is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer.
 - c. All claim files shall be the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer the files shall become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis.
 - d. Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.
10. If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, interim profits shall not be paid until one year after the end of each underwriting

period for property insurance business and five years after the end of each underwriting period for casualty insurance business, or a later period as determined by the commissioner for each type of insurance, but in no case until the adequacy of reserves on remaining claims has been verified pursuant to section 521C.9, subsection 3.

11. The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

12. The reinsurer shall periodically, but not less than semiannually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

13. The reinsurance intermediary-manager shall disclose to the reinsurer any relationship the reinsurance intermediary-manager has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.

14. The acts of the reinsurance intermediary-manager are deemed to be the acts of the reinsurer on whose behalf the reinsurance intermediary-manager is acting.

Sec. 26. NEW SECTION. 521C.8 PROHIBITED ACTS.

The reinsurance intermediary-manager shall not do any of the following:

1. Bind retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. The guidelines shall include a list of reinsurers with which the automatic agreements are in effect, and for each reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

2. Commit the reinsurer to participate in reinsurance syndicates.

3. Appoint any producer without assuring that the producer is licensed to transact the type of reinsurance for which the producer is appointed.

4. Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, or a net amount of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year.

5. Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

6. Jointly employ an individual who is employed by the reinsurer.

7. Appoint an agent of a reinsurance intermediary-manager.

Sec. 27. NEW SECTION. 521C.9 DUTIES OF REINSURERS UTILIZING THE SERVICES OF A REINSURANCE INTERMEDIARY-MANAGER.

1. A reinsurer shall not engage the services of a person to act as a reinsurance intermediary-manager on its behalf unless the person is licensed as required by section 521C.3, subsection 2.

2. The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager whom the reinsurer has engaged pursuant to subsection 1. The statements of financial condition shall be prepared by an independent certified accountant in a form acceptable to the commissioner.

3. If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion shall be in addition to any other required loss reserve certification.

4. Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance intermediary-manager.

5. Within thirty days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the commissioner.

6. A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling shareholder, or an agent of a producer of its reinsurance intermediary-manager. This

subsection shall not apply to relationships governed by chapter 521A relating to the regulation of insurance company holding systems or, if applicable, governed by chapter 510A relating to the regulation of producer controlled property and casualty insurers.

Sec. 28. NEW SECTION. 521C.10 EXAMINATION AUTHORITY.

1. A reinsurance intermediary is subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the commissioner.

2. A reinsurance intermediary-manager may be examined as if it were the reinsurer.

Sec. 29. NEW SECTION. 521C.11 PENALTIES AND LIABILITIES.

1. A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a hearing conducted in accordance with chapter 17A, to be in violation of this chapter is subject to one or more of the following:

- a. For each separate violation, a civil penalty in an amount not exceeding ten thousand dollars.
- b. Revocation or suspension of the license of the reinsurance intermediary.
- c. If a violation was committed by the reinsurance intermediary, restitution by the reinsurance intermediary to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

2. A decision, determination, or order of the commissioner made or entered pursuant to subsection 1 is subject to judicial review pursuant to chapter 17A.

3. This section does not affect the right of the commissioner to impose any other penalties provided in Title XX.

4. This chapter shall not in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties, or confer any rights to such persons.

Sec. 30. NEW SECTION. 521C.12 RULES.

The commissioner may adopt rules, pursuant to chapter 17A, as necessary or convenient for the administration of this chapter.

DIVISION V

Sec. 31. Section 505.4, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The commissioner may appoint a deputy commissioner for supervision whom the commissioner may appoint as supervisory or special deputy pursuant to chapter 507C and who shall perform such other duties as may be assigned by the commissioner. The deputy commissioner for supervision shall receive a salary to be fixed by the commissioner. The deputy commissioner for supervision shall be an exempt employee under section 19A.3, subsection 17.

Sec. 32. Section 505.7, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The annual salaries of the deputy commissioner for supervision and the chief examiner appointed pursuant to section 507.4A shall be expenses of examination of insurance companies and shall be charged to insurance companies examined on a proportionate basis as provided by rule adopted by the commissioner. Insurance companies examined shall pay the proportion of the salaries of the deputy commissioner for supervision and the chief examiner charged to them as part of the costs of examination as provided in section 507.8.

Sec. 33. NEW SECTION. 507.4A CHIEF EXAMINER.

The commissioner may appoint a chief examiner who shall supervise insurance company examinations and perform such other duties as may be assigned by the commissioner. The chief examiner shall receive a salary to be fixed by the commissioner. The chief examiner shall be an exempt employee under section 19A.3, subsection 17.

Sec. 34. Section 507.14, Code 1991, is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. A report of an examination of a domestic or foreign insurer which is preliminary under the rules of the division is not a public record under chapter 22 except when sought by the insurer to which the report relates or an insurance regulator of another state, and is privileged and confidential in any judicial or administrative proceeding.

NEW UNNUMBERED PARAGRAPH. A financial statement filed by an employer self-insuring workers' compensation liability pursuant to section 87.11, or the working papers of an examiner or the division in connection with calculating appropriate security and reserves for the self-insured employer are not public records under chapter 22 except when sought by the employer to which the financial statement or working papers relate or an insurance or workers' compensation self-insurance regulator of another state, and are privileged and confidential in any judicial or administrative proceeding. The financial information of a nonpublicly traded employer which self-insures for workers' compensation liability pursuant to section 87.11 is protected as proprietary trade secrets to the extent consistent with the commissioner's duties to oversee the security of self-insured workers' compensation liability.

Sec. 35. Section 507C.12, Code 1991, is amended by adding the following unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If the petition alleges that extraordinary circumstances exist and that there is imminent substantial risk to the insurer's solvency if the insurer is not immediately placed into rehabilitation, the court may issue, ex parte and without a hearing, the requested order of rehabilitation. An insurer subject to an ex parte order under this section may petition the court after the issuance of the order for a hearing and review of the order. The court shall hold the hearing and review not more than fifteen days after the request. A hearing under this section may be held privately in chambers. Upon the request of the insurer, the hearing shall be held privately in chambers.

Sec. 36. Section 508.11, subsection 43, Code 1991, is amended to read as follows:

43. All other information as required by the national association of insurance commissioners' annual statement blank. The annual statement blank shall be prepared in accordance with instructions prescribed by the commissioner. All financial information reflected in the annual report shall be kept and prepared in accordance with accounting practices and procedures prescribed by the commissioner. The commissioner may adopt by reference the annual statement handbook and the accounting practices and procedures manual of the national association of insurance commissioners.

Sec. 37. Section 508C.8, Code 1991, is amended by adding the following new subsection:
NEW SUBSECTION. 1A. If a domestic, foreign, or alien insurer is an insolvent insurer, subject to the approval of the commissioner, the association shall:

- a. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the covered policies of the insolvent insurer.
- b. Assure payment of the contractual obligations of the insolvent insurer.
- c. Provide moneys, pledges, notes, guarantees, or other means as reasonably necessary to discharge the duties described in this subsection.

Sec. 38. Section 511.8, Code 1991, is amended by adding the following new unnumbered paragraph after unnumbered paragraph 1:

NEW UNNUMBERED PARAGRAPH. The investment programs developed by companies, shall take into account the safety of the company's principal, investment yield and return, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs and investment diversification.

Sec. 39. Section 514B.25, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

514B.25 FINANCIALLY IMPAIRED OR INSOLVENT HEALTH MAINTENANCE ORGANIZATIONS.

The provisions of chapter 507C shall apply to health maintenance organizations, which shall be considered insurers for the purposes of chapter 507C.

Sec. 40. Section 515.35, subsection 4, paragraph e, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Aggregate investments in below investment grade bonds shall not exceed five percent of assets.

Sec. 41. Section 515.63, unnumbered paragraph 16, Code 1991, is amended to read as follows:

Fifteenth — All other information as required by the national association of insurance commissioners' annual statement blank. The annual statement blank shall be prepared in accordance with instructions prescribed by the commissioner. All financial information reflected in the annual report shall be kept and prepared in accordance with accounting practices and procedures prescribed by the commissioner. The commissioner may adopt by reference the annual statement handbook and the accounting practices and procedures manual of the national association of insurance commissioners.

Sec. 42. Section 515.119, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

515.119 COMPLIANCE WITH LAW — CHANGE OF ARTICLES.

An insurance company organized under this chapter, or doing business in, this state, or any foreign or alien company doing business in this state, shall conform to the provisions of this chapter and all other laws of this state applicable to the insurance company.

Sec. 43. Section 515B.2, subsection 3, unnumbered paragraph 2, Code 1991, is amended by striking the paragraph and inserting in lieu thereof the following:

3A. "Covered claim" does not include any amount as follows:

a. That is due any reinsurer, insurer, insurance pool, underwriting association, or other group assuming insurance risks, as subrogation, contribution, or indemnity recoveries, or otherwise.

b. That constitutes the portion of a claim that is within an insured's deductible or self-insured retention.

c. That is a claim for unearned premium calculated on a retrospective basis, experience-rated plan, or premium subject to adjustment after termination of the policy.

d. That is due an attorney, adjuster, or witness as fees for services rendered to the insolvent insurer.

e. That is a fine, penalty, interest, or punitive or exemplary damages.

f. That constitutes a claim under a policy issued by an insolvent insurer with a deductible or self-insured retention of two hundred thousand dollars or more. However, such a claim shall be considered a covered claim, if as of the deadline set for the filing of claims against the insolvent insurer of its liquidator, the insured is a debtor under 11 U.S.C. § 701 et seq.

Notwithstanding the lettered paragraphs of this subsection, a person is not prevented from presenting a noncovered claim to the insolvent insurer or its liquidator, but the noncovered claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage of the policy issued by the insolvent insurer.

Sec. 44. Section 515B.5, subsection 2, Code 1991, is amended by adding the following new paragraph:

NEW PARAGRAPH. h. Request that all future payments of workers' compensation weekly benefits, medical expenses, or other payments under chapter 85, 85A, 85B, 86, or 87 be commuted to a present lump sum and upon the payment of which, either to the claimant or to a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the claimant, the employer and the association shall be discharged from all further liability for the workers' compensation claim. Notwithstanding the provisions of section 85.45, any future

payment of medical expenses, weekly compensation benefits, or other payment by the association under this chapter pursuant to chapter 85, 85A, 85B, 86, or 87, is deemed an undue expense, hardship, or inconvenience upon the employer for purposes of a full commutation pursuant to section 85.45, subsection 2, and the industrial commissioner shall fix the lump sum of the probable future medical expenses and weekly compensation benefits capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees.

Sec. 45. Section 515B.9, subsection 1, Code 1991, is amended to read as follows:

1. Any person having a claim under another policy, which claim arises out of the same facts which give rise to a covered claim, ~~shall be~~ is first required to exhaust the person's right under the policy. Any amount recovered or recoverable by a person under another insurance policy shall be credited against the liability of the association under section 515B.5, subsection 1, paragraph "a". For purposes of this section, another insurance policy means a policy issued by any insurance company, whether a member insurer or not, which policy insures against any of the types of risks set forth in section 515.48, ~~except those types of risks set forth in section 515.48, subsection 5, paragraph "a", and insured by an insurance company authorized to write insurance under chapter 515, 516A, or 520, or comparable statutes of another state, except those types of risks set forth in chapters 508 and 514.~~

Sec. 46. Section 516A.3, unnumbered paragraph 2, Code 1991, is amended to read as follows:

An insurer's insolvency protection ~~shall be~~ is applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect and only if the liability insurer of the tort-feasor is insolvent at the time of such an accident ~~or becomes insolvent within one year after such an accident.~~

Sec. 47. Section 518.17, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Reinsurance coverage obtained by a county mutual insurance association shall not expose the association to a loss of more than fifteen percent from surplus in any calendar year.

Sec. 48. Section 521A.2, subsection 3, paragraph a, unnumbered paragraph 1, Code 1991, is amended to read as follows:

Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of the insurer's assets or fifty percent of the insurer's surplus as regards policyholders, if after the investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries shall be excluded and both of the following shall be included:

Sec. 49. Section 521A.3, subsection 4, paragraph b, Code 1991, is amended to read as follows:

b. The public hearing referred to in paragraph "a" ~~of this subsection~~ shall be held within thirty days after the statement required by subsection 1 ~~of this section~~ is filed, and at least twenty days' notice ~~thereof~~ of the public hearing shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of such the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. ~~The insurer shall give such notice to its security-holders.~~ The commissioner shall make a determination within thirty days after the conclusion of ~~such the hearing~~. At such the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected ~~thereby~~ shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct

discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

Sec. 50. Section 521A.3, subsection 5, Code 1991, is amended by striking the subsection.

Sec. 51. Section 521A.4, subsection 2, unnumbered paragraph 1, Code 1991, is amended to read as follows:

Every insurer subject to registration shall file a registration statement on a form provided prescribed by the commissioner, which may be a form provided by the national association of insurance commissioners, which shall contain current information about:

Sec. 52. Section 521A.4, subsection 2, paragraph c, Code 1991, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (8) Consolidated tax allocation agreements.

Sec. 53. Section 521A.4, Code 1991, is amended by adding the following new subsection:
NEW SUBSECTION. 3A. REPORTING OF DIVIDENDS TO SHAREHOLDERS. Subject to section 521A.5, subsection 3, a registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen days following the declaration of the dividends or distributions.

Sec. 54. Section 521A.5, subsection 1, paragraph b, unnumbered paragraph 1, Code 1991, is amended to read as follows:

A domestic insurer and a person in its holding company system shall not enter into any of the following transactions between each other involving amounts equal to or exceeding the greater lesser of five percent of the insurer's admitted assets or twenty-five percent of the surplus as regards policyholders as of the next preceding December 31, unless the domestic insurer notifies the commissioner in writing of its intention to enter into the transaction at least thirty days prior to entering into the transaction or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the transaction within the time period:

Sec. 55. Section 521A.10, Code 1991, is amended by adding the following new subsection:
NEW SUBSECTION. 1A. a. A director or officer of an insurance holding company system who does any of the following is subject to the civil penalty imposed under paragraph "b":

(1) Knowingly participates in or assents to transactions or investments which have not been properly reported or submitted pursuant to section 521A.4 or section 521A.5, subsection 1, paragraph "b".

(2) Knowingly permits any of the officers or agents of an insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to section 521A.4 or section 521A.5, subsection 1, paragraph "b".

(3) Knowingly violates any other provision of this chapter.

b. An officer or director of an insurance holding company system who commits any of the acts or omissions listed in paragraph "a" shall pay, in the person's individual capacity, a civil penalty of not more than one thousand dollars per violation, after notice and hearing before the commissioner. In determining the amount of the civil penalty, the commissioner shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

Sec. 56. Section 521A.10, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 4. A director or officer, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false filings with the intent to deceive the commissioner in the performance of the commissioner's duties under this chapter is guilty of a class "D" felony. Any fines imposed shall be paid by the director, officer, or employee in the person's individual capacity.

DIVISION VI

Sec. 57. Section 507.12, Code 1991, is amended to read as follows:

507.12 PROCEDURE AGAINST LIFE COMPANIES.

In case of companies organized under the provisions of chapter 508, ~~said~~ the officers shall proceed as provided in sections ~~508.17 to 508.18 and~~ 508.19.

Sec. 58. Section 508.19, Code 1991, is amended to read as follows:

508.19 SECURITIES.

The securities that are on deposit of a defaulting or insolvent company, or a company against which proceedings are pending under ~~sections 508.17 and~~ section 508.18, shall vest in the state for the benefit of all policyholders of the company.

Sec. 59. Section 511.8, subsection 16, unnumbered paragraphs 2 and 4, Code 1991, are amended to read as follows:

The securities comprising the deposit of a company or association against which proceedings are pending under ~~sections 508.17 and~~ section 508.18 shall vest in the state for the benefit of all policyholders of the company or association.

Companies or associations having securities or title to real estate on deposit with the commissioner of insurance shall have the right to collect all dividends, interest, rent, or other income ~~thereon~~ from the deposit unless proceedings against ~~such~~ the company or association are pending under ~~sections 508.17 and~~ section 508.18, in which event the commissioner shall collect such interest, dividends, rent, or other income and add the same to the deposit.

Sec. 60. Section 511.8, subsection 21, paragraph b, subparagraph (3), Code 1991, is amended to read as follows:

(3) Set forth provisions that custodian agreements executed between custodian banks and insurers shall contain. These shall include provisions stating that minimum deposit levels shall be maintained and that the parties agree securities in deposits with custodian banks shall vest in the state in accordance with ~~sections 508.17 and~~ section 508.18 whenever proceedings under ~~those sections~~ that section are instituted.

Sec. 61. Sections 507.11, 508.17, 510.1, and 515.85 through 515.87, Code 1991, are repealed.

DIVISION VII

Sec. 62. Sections 1 through 9, the model managing general agents Act, division I of this Act, take effect July 1, 1991. An insurer shall not continue to utilize the services of a managing general agent on or after July 1, 1991, except as otherwise provided in the Act, unless such utilization is in compliance with division I of this Act, regardless of the date on which the original contract was entered into with the managing general agent. An insurer which on the effective date of this Act has in effect a contract with a managing general agent shall give written notification to the commissioner of the name of the managing general agent and the relationship between the insurer and the managing general agent within thirty days of the effective date of this Act and shall comply with sections 1 through 9 of this Act within thirty days of the effective date of rules adopted by the commissioner implementing the managing general agents Act.

Sec. 63. Sections 10 through 13, the producer controlled property and casualty insurer Act, division II of this Act, take effect July 1, 1991. An insurer or producer subject to division II of this Act shall not continue, renew, or initiate a contract, or place business on or after July 1, 1991, unless in compliance with division II of this Act, regardless of the date on which the original contract was entered into between the parties.

Sec. 64. Sections 14 through 18, the model credit for reinsurance Act, division III of this Act, shall apply to all cessions and retrocessions under reinsurance agreements with an inception, anniversary, or renewal date not earlier than six months after the effective date of this Act.

Sec. 65. Sections 19 through 30, the reinsurance intermediary model Act, division IV of this Act, take effect July 1, 1991. An insurer or reinsurer shall not continue to utilize the services of a reinsurance intermediary on or after July 1, 1991, unless utilization is in compliance with division IV of this Act.

Approved April 11, 1991

CHAPTER 27

TRANSPORTATION LAWS – MISCELLANEOUS CHANGES

H.F. 307

AN ACT making technical Code changes relating to transportation.

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

Section 1. Section 321.32, Code 1991, is amended to read as follows:

321.32 REGISTRATION CARD SIGNED, CARRIED, AND EXHIBITED.

Every owner upon receipt of a registration card shall write the owner's signature thereon with pen and ink in the space provided. Every such A vehicle's registration card shall at all times be carried in the vehicle to which it refers and shall be shown to any peace officer upon the officer's request.

Sec. 2. Section 321.195, Code 1991, is amended to read as follows:

321.195 DUPLICATE CERTIFICATES, MOTOR VEHICLE LICENSES, AND NONOPERATOR'S IDENTIFICATION CARDS.

~~In the event that~~ If a motor vehicle license, or nonoperator's identification card, or extension certificate issued under the provisions of this chapter is lost or destroyed, the person to whom the same license or card was issued may, upon payment of a fee of three dollars for a motor vehicle license or nonoperator's identification card, or one dollar for an extension certificate, obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the department that the motor vehicle license, or nonoperator's identification card, or extension certificate has been lost or destroyed. A fee of one dollar shall be charged for the voluntary replacement of a motor vehicle license or nonoperator's identification card.

Sec. 3. Section 322A.1, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 9. "Termination or noncontinuance" includes a reduction of the geographic area of a community.

Sec. 4. Section 327D.4, Code 1991, is amended to read as follows:

327D.4 CONNECTIONS.

If a railroad corporation in this state refuses to connect by proper switches or tracks with the tracks of another railroad corporation or refuses to receive, transport, load, discharge, reload, or return cars furnished by another connecting railroad corporation, a petition requesting resolution of the dispute may be filed with the department. The department shall notify the department of inspections and appeals which shall hold a hearing on the dispute. Upon conclusion of the hearing, the department of transportation inspections and appeals shall issue an order to resolve the dispute. The order may include the allocation of costs between the parties. The order is subject to review by the department which review shall be the final agency action.

Sec. 5. Section 601J.4, subsection 3, Code 1991, is amended to read as follows:

3. The department shall receive and distribute federal aid to political subdivisions public transit systems unless precluded by federal statute, however the department shall not retain