

Senate File 2242 - Introduced

SENATE FILE _____
BY BOLKCOM and HATCH

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

A BILL FOR

1 An Act creating the office of insurance consumer advocate,
2 providing penalties, and making an appropriation.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 5727XS 82
5 av/rj/14

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1 1 Section 1. NEW SECTION. 507F.1 OFFICE OF INSURANCE
1 2 CONSUMER ADVOCATE.
1 3 1. The office of insurance consumer advocate is created in
1 4 the insurance division of the department of commerce. The
1 5 governor shall appoint a competent attorney, admitted to
1 6 practice in this state, to serve as the insurance consumer
1 7 advocate at the pleasure of the governor. The appointment is
1 8 subject to senate confirmation in accordance with section
1 9 2.32. The insurance consumer advocate shall be knowledgeable
1 10 in the general field of insurance and particularly in the area
1 11 of consumer protection. The salary of the insurance consumer
1 12 advocate shall be fixed by the governor within salary
1 13 guidelines established by the general assembly.
1 14 2. The insurance consumer advocate shall devote the
1 15 advocate's entire time to the duties of the office. During
1 16 the advocate's term of office the advocate shall not be a
1 17 member of a political committee, shall not contribute to a
1 18 political campaign fund other than through the income tax
1 19 checkoff for contributions to the Iowa election campaign fund,
1 20 and shall not take part in political campaigns or be a
1 21 candidate for a political office.
1 22 3. The governor may remove the insurance consumer advocate
1 23 for malfeasance or nonfeasance in office or for any cause
1 24 which renders the advocate ineligible for appointment or
1 25 incapable or unfit to discharge the duties of the advocate's
1 26 office. The advocate's removal, when so made, is final.
1 27 Sec. 2. NEW SECTION. 507F.2 POWERS AND DUTIES.
1 28 The insurance consumer advocate shall have the following
1 29 powers and duties:
1 30 1. To appoint and prescribe the duties of such
1 31 investigators and other employees and agents as the insurance
1 32 consumer advocate deems necessary for the enforcement of this
1 33 chapter.
1 34 2. To defer a complaint to the commissioner of insurance
1 35 under rules adopted by the commissioner in consultation with
2 1 the insurance consumer advocate.
2 2 3. To annually compile a comprehensive program budget
2 3 which reflects all fiscal matters related to the operation of
2 4 the office of insurance consumer advocate which shall be
2 5 reflected as a separate line item in the budget of the
2 6 insurance division of the department of commerce.
2 7 4. To receive, investigate, mediate, and determine the
2 8 merits of complaints by consumers alleging unfair or deceptive
2 9 acts or practices in the business of insurance in this state
2 10 as provided in chapter 507B. For the purposes of this
2 11 chapter, "consumer" means an insured pursuant to a personal
2 12 insurance policy or an applicant for a personal insurance
2 13 policy.
2 14 5. To seek a temporary injunction prior to hearing against
2 15 a respondent when it appears that a complainant may suffer
2 16 immediate and irreparable injury as a result of an alleged
2 17 unfair, deceptive, or otherwise wrongful act or practice in
2 18 the business of insurance in this state. In all other cases a
2 19 temporary injunction may be issued only after the respondent
2 20 has been notified and afforded the opportunity to be heard.

2 21 6. To hold hearings upon any complaint made against a
2 22 person, to subpoena witnesses and compel their attendance at
2 23 such hearings, to administer oaths and take the testimony of
2 24 any person and to require any person to produce for
2 25 examination any books and papers relating to any matter
2 26 involved in such complaint. The insurance consumer advocate
2 27 shall issue subpoenas for witnesses in the same manner and for
2 28 the same purposes on behalf of the respondent upon the
2 29 respondent's request. Such hearings may be held by the
2 30 insurance consumer advocate, or by any administrative law
2 31 judge appointed by the insurance consumer advocate. If a
2 32 witness either fails or refuses to obey a subpoena issued by
2 33 the insurance consumer advocate, the advocate may petition the
2 34 district court having jurisdiction for issuance of a subpoena
2 35 and the court shall in a proper case issue the subpoena.
3 1 Refusal to obey such subpoena shall be subject to punishment
3 2 for contempt.

3 3 7. To prepare and transmit to the governor and to the
3 4 general assembly from time to time, but not less often than
3 5 once each year, reports describing the proceedings, complaint
3 6 received, investigations, hearings conducted and the outcome
3 7 thereof, decisions rendered, and the other work performed by
3 8 the office of insurance consumer advocate.

3 9 8. To make recommendations to the general assembly for
3 10 such further legislation concerning insurance regulation,
3 11 especially as it relates to protection of consumers, as the
3 12 insurance consumer advocate deems necessary and desirable.

3 13 9. To make recommendations to the insurance division or
3 14 any other governmental agency which has an impact on insurance
3 15 regulation in the state through rulemaking and review and, if
3 16 the advocate deems it to be in the public interest, appeal the
3 17 rulemaking or contested case decisions of the insurance
3 18 division or any other governmental agency which has an impact
3 19 on insurance regulation in the state.

3 20 10. To cooperate, within the limits of any appropriations
3 21 made for its operation, with other agencies or organizations,
3 22 both public and private, whose purposes are consistent with
3 23 those of this chapter, and in the planning and conducting of
3 24 programs designed to educate and assist consumers with the
3 25 purchase of insurance and claims made pursuant to that
3 26 insurance.

3 27 11. To adopt rules pursuant to chapter 17A that are
3 28 consistent with and necessary for the enforcement of this
3 29 chapter.

3 30 12. To receive, administer, dispense, and account for any
3 31 funds that may be voluntarily contributed to the office of
3 32 insurance consumer advocate and any grants that may be awarded
3 33 for furthering the purposes of this chapter.

3 34 13. To issue subpoenas and order discovery as provided by
3 35 this section in aid of investigations and hearings of alleged
4 1 unfair or deceptive acts or practices in the business of
4 2 insurance. The subpoenas and discovery may be ordered to the
4 3 same extent and are subject to the same limitations as
4 4 subpoenas and discovery in a civil action in district court.

4 5 Sec. 3. NEW SECTION. 507F.3 COMPLAINT == HEARING.

4 6 1. Any consumer claiming to be aggrieved by an unfair or
4 7 deceptive act or practice by a person in the business of
4 8 insurance may, in person or by an attorney, file a written
4 9 complaint with the insurance consumer advocate which shall
4 10 state all of the following:

4 11 a. The name and address of the person alleged to have
4 12 committed the unfair or deceptive act or practice complained
4 13 of.

4 14 b. That the consumer has exhausted the internal appeal
4 15 process of the insurer involved, if applicable.

4 16 c. That the act or practice complained of occurred no more
4 17 than one hundred eighty days prior to the filing of the
4 18 complaint.

4 19 d. The particulars of the complaint.

4 20 e. Such other information as may be required by the
4 21 insurance consumer advocate.

4 22 2. The consumer shall serve a copy of the complaint on the
4 23 respondent named in the complaint by certified mail within
4 24 twenty days after the complaint is filed. The insurance
4 25 consumer advocate may assist a consumer with ascertaining the
4 26 appropriate mailing address for a respondent.

4 27 3. a. An authorized member of the office of the insurance
4 28 consumer advocate, in collaboration with the bureau of the
4 29 insurance division responsible for consumer protection, shall
4 30 make a prompt investigation and shall issue a recommendation
4 31 to the insurance consumer advocate who shall then make a

4 32 finding of probable cause or no probable cause regarding the
4 33 allegations of the complaint.

4 34 b. If the insurance consumer advocate makes a finding that
4 35 no probable cause exists regarding the allegations of the
5 1 complaint, the advocate shall issue a finding dismissing the
5 2 complaint and shall promptly mail a copy to the complainant
5 3 and to the respondent. This finding constitutes final agency
5 4 action under chapter 17A.

5 5 c. (1) If the insurance consumer advocate makes a finding
5 6 that probable cause exists regarding the allegations of the
5 7 complaint, the advocate shall endeavor to remedy or resolve
5 8 the unfair or deceptive act or practice by conference,
5 9 conciliation, and mediation between the complainant and the
5 10 respondent for a period of thirty days following the initial
5 11 conciliation meeting between the insurance consumer advocate's
5 12 staff and the respondent after a finding of probable cause.

5 13 (2) After the expiration of thirty days, the insurance
5 14 consumer advocate may order the conciliation, conference, and
5 15 mediation procedure provided in this section to be terminated
5 16 if the advocate determines that the procedure is unworkable or
5 17 if the respondent indicates in writing that the respondent is
5 18 unwilling to continue with the conciliation. The advocate
5 19 shall consult with the commissioner of insurance before
5 20 terminating the conciliation, conference, and mediation
5 21 procedure. Upon terminating the procedure, the advocate shall
5 22 state in writing the reasons for the termination.

5 23 4. When the insurance consumer advocate, in consultation
5 24 with the commissioner of insurance, is satisfied that further
5 25 endeavor to settle a complaint by conference, conciliation,
5 26 and mediation is unworkable and should be terminated, the
5 27 advocate shall issue and cause to be served a written notice
5 28 specifying the charges in the complaint as they may have been
5 29 amended and the reasons for terminating conciliation, and
5 30 requiring the respondent to answer the charges of the
5 31 complaint at a hearing before an administrative law judge
5 32 employed either by the insurance division or by the division
5 33 of administrative hearings created by section 10A.801, at a
5 34 time and place to be specified in the notice.

5 35 5. The case in support of such a complaint shall be
6 1 presented at hearing by the insurance consumer advocate or the
6 2 advocate's agent. The investigating officer shall not
6 3 participate in the hearing except as a witness and shall not
6 4 participate in deliberations of the administrative law judge.

6 5 6. The hearing shall be conducted in accordance with the
6 6 provisions of chapter 17A for contested cases. The burden of
6 7 proof in such a hearing shall be on the insurance consumer
6 8 advocate. However, acts or practices of persons in the
6 9 business of insurance shall be strictly construed against such
6 10 persons and in favor of consumers and the reasonable
6 11 expectations of a consumer shall be enforced based upon
6 12 consideration of the totality of the circumstances including
6 13 but not limited to the insurance contract, policy, or
6 14 application; marketing materials; and the market conduct of
6 15 the respondent as a person who is in the business of insurance
6 16 in this state.

6 17 7. If upon taking into consideration all of the evidence
6 18 at the hearing, the administrative law judge determines that
6 19 the respondent has engaged in an unfair or deceptive practice
6 20 in the business of insurance, the judge shall state findings
6 21 of fact and conclusions of law and shall issue an order
6 22 requiring the respondent to cease and desist from the unfair
6 23 or deceptive act or practice and to take necessary remedial
6 24 action as in the judgment of the judge will carry out the
6 25 purposes of this chapter. A copy of the order shall be
6 26 delivered to the respondent, the complainant, the insurance
6 27 consumer advocate, the commissioner of insurance, and to any
6 28 other public officers and persons as the judge deems proper.

6 29 a. For the purposes of this subsection and pursuant to the
6 30 provisions of this chapter "remedial action" includes but is
6 31 not limited to the following:

6 32 (1) Extension to all individuals of the full and equal
6 33 insurance coverage and services of the respondent that were
6 34 denied to the complainant because of the unfair or deceptive
6 35 act or practice of the respondent.

7 1 (2) Reporting to the commissioner of insurance as to the
7 2 manner of compliance required.

7 3 (3) Posting notices in conspicuous places in the
7 4 respondent's place of business in forms prescribed by the
7 5 order and inclusion of notices in the respondent's marketing
7 6 materials, applications, and policies, or contracts.

7 7 (4) Payment to the complainant of damages for an injury

7 8 caused by the unfair or deceptive act or practice which
7 9 damages shall include but are not limited to actual damages,
7 10 court costs, and reasonable attorney fees.
7 11 b. In addition to the remedies provided in the preceding
7 12 provisions of this subsection, in the case of a respondent
7 13 operating by virtue of a license issued by the state or a
7 14 political subdivision or agency, if the commissioner of
7 15 insurance, upon notice to the respondent with an opportunity
7 16 to be heard, determines that the respondent has engaged in an
7 17 unfair or deceptive act or practice in the business of
7 18 insurance, and that the unfair or deceptive practice was
7 19 authorized, requested, commanded, performed, or knowingly or
7 20 recklessly tolerated by the board of directors of the
7 21 respondent or by an officer or executive agent acting within
7 22 the scope of the officer or executive agent's employment, the
7 23 commissioner shall so certify to the licensing agency. Unless
7 24 the finding of an unfair or deceptive practice is reversed in
7 25 the course of judicial review, the finding is binding on the
7 26 licensing agency. If a certification is made pursuant to this
7 27 subsection, the licensing agency may initiate licensee
7 28 disciplinary procedures.

7 29 8. The terms of a conciliation or mediation agreement
7 30 reached with the respondent may require the respondent to
7 31 refrain in the future from committing an unfair or deceptive
7 32 act or practice of the type stated in the agreement, to take
7 33 remedial action as in the judgment of the commissioner of
7 34 insurance will carry out the purposes of this chapter, and to
7 35 consent to entry in an appropriate district court of a consent
8 1 decree embodying the terms of the conciliation or mediation
8 2 agreement. Violation of such a consent decree may be punished
8 3 as contempt by the court in which it is filed, upon a showing
8 4 by the commissioner of insurance of the violation at any time
8 5 within six months of its occurrence. At any time in its
8 6 discretion, the insurance consumer advocate may investigate
8 7 whether the terms of the agreement are being complied with by
8 8 the respondent. Upon a finding that the terms of the
8 9 conciliation or mediation agreement are not being complied
8 10 with by the respondent, the advocate shall report that finding
8 11 to the commissioner of insurance who shall take appropriate
8 12 action to assure compliance.

8 13 9. If, upon taking into consideration all of the evidence
8 14 at a hearing, the administrative law judge finds that a
8 15 respondent has not engaged in any unfair or deceptive act or
8 16 practice, the judge shall issue an order denying relief and
8 17 stating the findings of fact and conclusions of law of the
8 18 judge, and shall cause a copy of the order dismissing the
8 19 complaint to be served on the complainant and the respondent.

8 20 10. The insurance consumer advocate and the commissioner
8 21 of insurance shall adopt rules to govern, expedite, and
8 22 effectuate the procedures established by this chapter and
8 23 their own actions thereunder.

8 24 11. The insurance consumer advocate or a party to a
8 25 complaint may request mediation of the complaint at any time
8 26 during the processing of the complaint. If the complainant
8 27 and the respondent participate in mediation, any mediation
8 28 agreement may be enforced pursuant to this section. Mediation
8 29 may be discontinued at the request of any party or the
8 30 advocate.

8 31 12. Except as provided in section 614.8, a claim under
8 32 this chapter shall not be maintained unless a complaint is
8 33 filed with the insurance consumer advocate within one hundred
8 34 eighty days after the alleged unfair or deceptive act or
8 35 practice occurred.

9 1 Sec. 4. NEW SECTION. 507F.4 PENALTIES == APPROPRIATION.

9 2 1. In addition to any other penalties provided by the laws
9 3 of this state, any person in the business of insurance found
9 4 to have violated a provision of this chapter or any other
9 5 requirement of this state relating to the regulation of
9 6 insurance or the marketing of insurance shall be subject to a
9 7 fine of up to three times the amount of any commission paid
9 8 for each policy involved in the violation, up to ten thousand
9 9 dollars, whichever is greater.

9 10 2. All moneys received by the state by reason of civil
9 11 penalties pursuant to this chapter shall be deposited in the
9 12 general fund of the state and such moneys are appropriated to
9 13 the division of insurance for the use of the office of the
9 14 insurance consumer advocate. Notwithstanding section 12C.7,
9 15 interest or earnings on moneys deposited into this insurance
9 16 consumer advocate fund shall be credited to the fund.
9 17 Notwithstanding section 8.33, unencumbered or unobligated
9 18 moneys remaining in the fund shall not revert but shall be

9 19 available for expenditure for the following fiscal year.
9 20 However, if, on June 30, unencumbered or unobligated moneys
9 21 remaining in the fund exceed two hundred thousand dollars,
9 22 moneys in excess of that amount shall revert to the general
9 23 fund of the state in the same manner as provided in section
9 24 8.33.

9 25 EXPLANATION

9 26 This bill creates the office of insurance consumer
9 27 advocate, provides penalties, and makes an appropriation.

9 28 New Code chapter 507F creates the office of insurance
9 29 consumer advocate in the insurance division of the department
9 30 of commerce and provides that the governor shall appoint an
9 31 attorney, knowledgeable in the general field of insurance and
9 32 particularly in the area of consumer protection, to serve as
9 33 the insurance consumer advocate, subject to senate
9 34 confirmation. The bill specifies the powers and duties of the
9 35 consumer advocate to implement the Code chapter.

10 1 The bill provides a procedure for the insurance consumer
10 2 advocate to receive consumer complaints; conduct
10 3 investigations; remedy or resolve unfair or deceptive acts or
10 4 practices involving the business of insurance by conference,
10 5 conciliation, and mediation between the parties to the
10 6 complaint; and require a respondent to answer charges at a
10 7 hearing before an administrative law judge conducted as a
10 8 contested case under Code chapter 17A.

10 9 The administrative law judge may issue a cease and desist
10 10 order and require a respondent to take remedial action which
10 11 may include but is not limited to actual damages, court costs,
10 12 and reasonable attorney fees. A respondent who is licensed
10 13 may be subject to licensee disciplinary procedures.

10 14 Most claims made under the new Code chapter must be made
10 15 within 180 days after the alleged unfair or deceptive act or
10 16 practice occurred.

10 17 In addition to any other penalties provided by Iowa law,
10 18 any person in the business of insurance found to have violated
10 19 a provision of this new Code chapter or any other state
10 20 requirement relating to the regulation or marketing of
10 21 insurance is subject to a fine of up to three times the amount
10 22 of any commission paid for each policy involved in the
10 23 violation, up to \$10,000, whichever is greater. All moneys
10 24 received from civil penalties are to be deposited in the
10 25 general fund of the state and are appropriated to the division
10 26 of insurance for the use of the insurance consumer advocate.

10 27 LSB 5727XS 82
10 28 av/rj/14.2