CHAPTER 124

INSURANCE, INSURERS, AND DUTIES OF THE INSURANCE DIVISION

H.F. 489

AN ACT relating to various matters involving insurance and the insurance division of the department of commerce, providing penalties, and including applicability and effective date provisions.

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

Section 1. Section 123.92, subsection 2, Code 2013, is amended to read as follows:

2. *a.* Every liquor control licensee and class "B" beer permittee, except a class "E" liquor control licensee, shall furnish proof of financial responsibility by the existence of a liability insurance policy in an amount determined by the division. If an insurer provides dramshop liability insurance at a new location to a licensee or permittee who has a positive loss experience at other locations for which such insurance is provided by the insurer, and the insurer bases premium rates at the new location on the negative loss history of the previous licensee or permittee at that location, the insurer shall examine and consider adjusting the premium for the new location not less than thirty months after the insurance is issued, based on the loss experience of the licensee or permittee at that location during that thirty-month period of time.

b. A dramshop liability insurance policy may be written on an aggregate limit basis.

c. The purpose of dramshop liability insurance is to provide protection for members of the public who experience damages as a result of licensees or permittees serving patrons beer, wine, or intoxicating liquor to a point that reaches or exceeds the standard set forth in law for liability. Minimum coverage requirements for such insurance are not for the purpose of making the insurance affordable for all licensees or permittees regardless of claims experience. A dramshop liability insurance policy obtained by a licensee or permittee shall meet the minimum insurance coverage requirements as determined by the division and is a mandatory condition for holding a license or permit.

Sec. 2. Section 135.22A, subsection 2, paragraph g, Code 2013, is amended by striking the paragraph.

Sec. 3. Section 502.102, subsection 16, paragraph c, Code 2013, is amended to read as follows:

c. Is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted by the ~~securities and exchange commission under section 203A of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3a,~~ administrator pursuant to chapter 17A and is any of the following:

(1) An "investment adviser representative" as that term is defined by rule adopted under section 203A of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3a.

(2) Not a "supervised person" as that term is defined ~~in section 202(a)(25) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-2(a)(25)~~ by rule adopted by the administrator pursuant to chapter 17A.

Sec. 4. Section 502.412, subsection 3, Code 2013, is amended to read as follows:

3. *Disciplinary penalties — registrants.* If the administrator finds that the order is in the public interest and subsection 4, paragraphs "*a*" through "*f*", "*h*", "*i*", "*j*", "*l*", or "*m*", authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of ~~five~~ ten thousand dollars for a single violation or ~~five hundred thousand~~ one million dollars for more than one violation, or in an amount as agreed to by the parties, on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

Sec. 5. Section 502.604, subsection 4, Code 2013, is amended to read as follows:

4. *Civil penalty — restitution — corrective action.* In a final order under subsection 3, the administrator may impose a civil penalty up to an amount not to exceed a maximum of ~~five~~ ten thousand dollars for a single violation or ~~five hundred thousand~~ one million dollars for more than one violation, or in an amount as agreed to by the parties, order restitution, or take other corrective action as the administrator deems necessary and appropriate to accomplish compliance with the laws of the state relating to all securities business transacted in the state.

Sec. 6. Section 502.604, Code 2013, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. *Failure to obey cease and desist order.* A person who fails to obey a valid cease and desist order issued by the administrator under this section may, after notice and opportunity for a hearing, be subject to a civil penalty in an amount of not less than one thousand dollars and not to exceed ten thousand dollars for violating the order. Each day the failure to obey the cease and desist order occurs or continues constitutes a separate violation of the order. The penalties provided in this subsection are in addition to, and not exclusive of, other remedies that may be available.

Sec. 7. Section 505.8, subsection 10, Code 2013, is amended to read as follows:

10. The commissioner may, after a hearing conducted pursuant to chapter 17A, assess fines or penalties~~,~~; assess costs of an examination, investigation, or proceeding~~,~~; order restitution~~,~~; or take other corrective action as the commissioner deems necessary and appropriate to accomplish compliance with the laws of the state relating to all insurance business transacted in the state.

Sec. 8. NEW SECTION. **506.14 Voluntary dissolution of domestic mutual insurance companies.**

1. Any plan for voluntary dissolution of a domestic mutual insurance company licensed to transact the business of insurance under chapter 508, 515, 518, or 518A shall be presented for approval by the commissioner not less than ninety days in advance of notice of the plan to policyholders.

2. The commissioner shall approve the plan if the commissioner finds that the plan complies with all applicable provisions of law and is fair and equitable to the domestic mutual insurance company and its policyholders.

Sec. 9. Section 507.10, subsection 4, paragraph a, Code 2013, is amended to read as follows:

a. All orders entered pursuant to subsection 3, paragraph *"a"*, shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. Any such order is a final administrative decision and may be appealed pursuant to chapter 17A, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. ~~Within thirty days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.~~ The board of directors of the company shall timely review the adopted report. The minutes of the meeting of the board at which the adopted report is considered shall reflect that each member of the board has reviewed the adopted report.

Sec. 10. NEW SECTION. **507C.17A Rehabilitation or liquidation of certain covered domestic insurers.**

1. The provisions of this section apply in accordance with Tit. II of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 12 U.S.C. § 5301 et seq., with respect to a domestic insurer that is a covered financial company, as that term is defined under 12 U.S.C. § 5381.

2. The commissioner may petition the district court for an order of rehabilitation or liquidation of a domestic insurer pursuant to this section on any of the following grounds:

a. Upon a determination and notification given by the secretary of the treasury of the United States, in consultation with the president of the United States, that the insurer is

a covered financial company satisfying the requirements of 12 U.S.C. § 5383(b), and the board of directors, or a body performing similar functions of a board of directors, of the insurer acquiesces or consents to the appointment of a receiver pursuant to 12 U.S.C. § 5382(a)(1)(A)(i) with such consent to be considered as consent to an order of rehabilitation or liquidation.

b. Upon an order of the United States district court for the District of Columbia under 12 U.S.C. § 5382(a)(1)(A)(iv)(I) granting the petition of the secretary of the treasury of the United States concerning the insurer under 12 U.S.C. § 5382(a)(1)(A)(i).

c. A petition by the secretary of the treasury of the United States concerning the insurer is granted by operation of law under 12 U.S.C. § 5382(a)(1)(A)(v).

3. Notwithstanding any other provision of law to the contrary, after notice to the insurer, a district court may grant an order of rehabilitation or liquidation within twenty-four hours after the filing of such a petition pursuant to this section.

4. If the district court does not make a determination on a petition for an order of rehabilitation or liquidation filed by the commissioner pursuant to this section within twenty-four hours after the filing of the petition, the order shall be deemed granted by operation of law upon the expiration of the twenty-four-hour period.

a. At the time that an order is deemed granted under this subsection, the provisions of this chapter shall be deemed to be in effect, and the commissioner shall be deemed to be affirmed as receiver and to have all of the applicable powers provided by this chapter, regardless of whether an order has been entered by the district court.

b. If an order is deemed granted by operation of law under this subsection, the district court shall expeditiously enter an order of rehabilitation or liquidation that does all of the following:

(1) Is effective as of the date that the order is deemed granted by operation of law.

(2) Conforms to the provisions for rehabilitation or liquidation of an insurer contained in this chapter, as applicable.

5. An order of rehabilitation or liquidation made pursuant to this section shall not be subject to a stay or injunction pending appeal.

6. Nothing in this section shall be construed to supersede or impair any other power or authority of the commissioner or the district court under this chapter.

Sec. 11. Section 511.8, subsection 14, Code 2013, is amended to read as follows:

14. *Urban real estate and personal property.*

a. Personal or real property or both located within the United States or the Dominion of Canada, other than real property used or to be used primarily for agricultural, horticultural, ranching or mining purposes, which produces income or which by suitable improvement will produce income. However, personal property acquired under this subsection shall be acquired for the purpose of entering into a contract for the sale or for a use under which the contractual payments may reasonably be expected to result in the recovery of the investment and an investment return within the anticipated useful life of the property. Legal title to the real property may be acquired subject to a contract of sale.

b. "Real property" as used in this subsection includes ~~a~~ all of the following:

(1) A leasehold of real estate~~, an~~.

(2) An undivided interest in a leasehold of real estate~~, and an~~.

(3) An undivided interest in the fee title of real estate.

(4) A controlling membership, partnership, shareholder, or trust interest in any entity created solely for the purpose of owning and operating any of the interests described in subparagraph (1), (2), or (3), if the entity is expressly limited to that purpose within its organizational documents.

c. Investments under this subsection are not eligible in excess of ten percent of the legal reserve.

Sec. 12. Section 511.8, subsection 22, paragraph i, subparagraph (2), Code 2013, is amended to read as follows:

(2) Securities pledged as collateral for financial instruments used in highly effective hedging transactions together with securities pledged to a counterparty, clearing

organization, or clearinghouse on an upfront basis in the form of initial margin, independent amount, or other securities pledged as a precondition of entering into financial instruments used in highly effective hedging transactions pursuant to subparagraph (1), are not eligible in excess of ten percent of the legal reserve of the life insurance company or association, less any financial instruments used in hedging transactions held in the legal reserve under this subsection.

Sec. 13. Section 511.8, subsection 22, paragraph i, subparagraph (3), Code 2013, is amended by striking the subparagraph.

Sec. 14. Section 511.8, subsection 23, Code 2013, is amended by adding the following new paragraph:

NEW PARAGRAPH. *g.* For securities loaned pursuant to this subsection that are included in the legal reserve of the life insurance company or association, the collateral received for the loaned securities shall not be eligible for inclusion in the legal reserve.

Sec. 15. Section 511.40, Code 2013, is amended by adding the following new subsection:

NEW SUBSECTION. 5. *a.* The gross amount of premiums received by a life insurance company or association for an employer-owned life insurance contract which has not been allocated to another state shall be allocated to this state for purposes of section 432.1, subsection 1, if either of the following is applicable:

(1) The contract is issued or delivered in this state.

(2) The company or association is domiciled in this state.

b. To the extent that premiums are allocated to this state pursuant to paragraph "*a*", the provisions of section 505.14 are not applicable to those premiums.

c. As used in this subsection, "*employer-owned life insurance contract*" means a policy which provides coverage on a life for which the employer has an insurable interest under this section or a similar provision of the laws of another state and the policy is owned by either the employer or a trust established by the employer for the benefit of the employer or the employer's active or retired employees.

Sec. 16. Section 515.26, Code 2013, is amended to read as follows:

515.26 Directors.

The affairs of a company organized as provided by this chapter shall be managed by a number of directors, of not less than five nor more than twenty-one. ~~In the case of a mutual company, all such directors shall be policyholders.~~

Sec. 17. Section 515.35, subsection 4, paragraph f, Code 2013, is amended to read as follows:

f. Stocks, limited partnership interests, and limited liability company interests.

(1) A company may invest in common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state of the United States, or the laws of Canada or a province of Canada.

~~(1)~~ (a) Stocks purchased under this section shall not exceed one hundred percent of capital and surplus. With the approval of the commissioner, a company may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such 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.

~~(2)~~ (b) A company shall not invest more than ten percent of its capital and surplus in the stocks of any one corporation.

(2) In addition to those investments permitted under subparagraph (1), a company may invest in or otherwise acquire and hold a limited partnership interest in any limited partnership formed under the laws of any state, commonwealth, or territory of the United States, or under the laws of the United States. A company may invest in or otherwise acquire and hold a member interest in any limited liability company formed under the laws of any state, commonwealth, or territory of the United States or under the laws of the United States. A limited partnership or limited liability company interest shall not be acquired if the

investment, valued at cost, exceeds two percent of the capital and surplus of the company or if the investment, plus the book value on the date of the investment of all limited partnership or limited liability company interests then held by the company and held under the authority of this subparagraph, exceeds ten percent of the capital and surplus of the company. A limited partnership or limited liability company interest shall not be acquired under this subparagraph unless the limited partnership or limited liability company is audited annually by an independent auditor.

Sec. 18. Section 515.69, subsection 1, Code 2013, is amended to read as follows:

1. A stock insurance company organized under or by the laws of any other state or foreign government for the purpose specified in this chapter, shall not, directly or indirectly, take risks or transact business of insurance in this state unless the company ~~has two and one-half million dollars of actual paid-up capital, and a surplus in cash or invested in securities authorized by law of not less than two and one-half million dollars,~~ possesses the actual amount of capital and surplus required of any company organized pursuant to this chapter, or if the company is a mutual insurance company, the actual amount of surplus required of any mutual insurance company organized pursuant to this chapter, exclusive of assets deposited in a state, territory, district, or country for the special benefit or security of those insured in that state, territory, district, or country.

Sec. 19. Section 515.128, subsection 1, Code 2013, is amended to read as follows:

1. An insurer shall not fail to renew a commercial line policy or contract of insurance except by notice to the named insured as provided in this section. ~~Nonrenewal of a commercial line policy or contract includes a decision by the insurer not to renew the policy or contract, an increase in the premium of twenty-five percent or more, an increase in the deductible of twenty-five percent or more, or a material reduction in the limits or coverage of the policy or contract. However, a premium charge which is assessed after the beginning date of the policy period for which the premium is due shall not be deemed a premium increase for the purpose of this section.~~

Sec. 20. NEW SECTION. **515.128A Material changes in commercial lines policies or contracts — notice required.**

1. If an insurer has an increase in the premium rates of twenty-five percent or more, an increase in the deductible of twenty-five percent or more, or a material reduction in the limits or coverage of the policy or contract, the insurer shall notify the named insured by a letter of explanation of the changes by mail at least forty-five days prior to the expiration date of the policy or contract. However, a premium charge that is assessed after the beginning date of the policy or contract period for which the premium is due shall not be deemed a premium increase for the purposes of this section.

2. If the insurer fails to meet the notice requirements of this section, the named insured has the option of continuing the policy or contract for the remainder of the notice period plus an additional thirty days at the premium rate of the existing policy or contract. A post office department certificate of mailing to the named insured at the address shown in the policy or contract is proof of receipt of the mailing.

Sec. 21. Section 515.136, Code 2013, is amended to read as follows:

515.136 Value of building — liability.

~~The insurance company or association issuing such policy may show the actual value of said property at date of policy, and any depreciation in the value thereof before the loss occurred; but the said~~ An insurance company or association shall be liable for the actual cash value of the property insured at the date of the loss, unless such value exceeds the amount stated in the policy.

Sec. 22. Section 515A.7, subsection 1, paragraph b, subparagraph (5), Code 2013, is amended to read as follows:

(5) An insurer may adopt a ~~scheduled or~~ schedule rating plan providing for credits or debits in an amount not exceeding the maximum modification allowed as set forth by the

commissioner by rule. This amount shall be in addition to the permitted deviations set forth in subparagraphs (1) through (4).

Sec. 23. Section 518.14, subsection 4, paragraph f, unnumbered paragraph 1, Code 2013, is amended to read as follows:

Common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state, or the laws of Canada or a province of Canada, or limited partnerships publicly traded on a nationally established stock exchange in the United States. Aggregate investments in nondividend paying stocks shall not exceed five percent of surplus.

Sec. 24. Section 518A.12, subsection 4, paragraph f, unnumbered paragraph 1, Code 2013, is amended to read as follows:

Common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state, or the laws of Canada or a province of Canada, or limited partnerships publicly traded on a nationally established stock exchange in the United States. Aggregate investments in nondividend paying stocks shall not exceed five percent of surplus.

Sec. 25. Section 521E.1, subsection 4, unnumbered paragraph 1, Code 2013, is amended to read as follows:

"Domestic insurer" means an insurance company domiciled in this state and licensed to transact the business of insurance under chapter 508, 512B, 515, or 520, except that it shall not include any of the following:

Sec. 26. Section 521E.1, subsection 4, paragraph b, Code 2013, is amended by striking the paragraph.

Sec. 27. Section 521E.1, subsections 6 and 7, Code 2013, are amended to read as follows:

6. *"Foreign insurer"* means an insurance company not domiciled in this state which is licensed to transact the business of insurance in this state under chapter 508, 512B, 515, or 520.

7. *"Life and health insurer"* means an insurance company licensed under chapter 508, a fraternal benefit society organized under chapter 512B, or a licensed property and casualty insurer writing only accident and health insurance under chapter 515.

Sec. 28. Section 521E.3, subsection 1, paragraph a, subparagraph (2), Code 2013, is amended to read as follows:

(2) For a life and health insurer, the insurer's total adjusted capital is greater than or equal to its company-action-level risk-based capital but less than the product of its authorized-control-level risk-based capital and ~~two and one-half~~ three, and has a negative trend.

Sec. 29. Section 522C.6, Code 2013, is amended by adding the following new subsection:

NEW SUBSECTION. 3. *a.* A licensed public adjuster who, after hearing, is found to have violated this chapter or any rule adopted or order issued pursuant to this chapter, may be ordered to cease and desist from engaging in the conduct resulting in the violation and may be assessed a civil penalty as provided in section 505.7A.

b. A person who, after hearing, is found to have violated this chapter by acting as a public adjuster without proper licensure may be ordered to cease and desist from engaging in the conduct resulting in the violation and may be assessed a civil penalty according to the provisions of chapter 507A.

c. If a person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or any rule adopted or order issued pursuant to this chapter, the commissioner may issue a summary order that includes a brief statement of findings of fact, conclusions of law, and policy reasons for the order, and that directs the

person to cease and desist from engaging in the act or practice constituting the violation and that may assess a civil penalty or take other affirmative action as in the judgment of the commissioner is necessary to assure that the person complies with the requirements of this chapter as provided in chapter 507A.

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

Sec. 30. Section 598.20A, Code 2013, is amended to read as follows:

598.20A Beneficiary revocation — life insurance.

1. Except as preempted by federal law, if a decree of dissolution, annulment, or separate maintenance is issued after ~~an insured~~ the policy owner of an insurance contract insuring the policy owner's own life has designated the ~~insured's~~ policy owner's spouse or one or more relatives of the ~~insured's~~ policy owner's spouse as a beneficiary under a life insurance policy in effect on the date of the decree, a provision in the life insurance policy making such a designation is voided by the issuance of the decree unless any of the following apply:

a. The decree designates the ~~insured's~~ policy owner's former spouse or one or more relatives of the ~~insured's~~ policy owner's spouse as beneficiary.

b. After issuance of the decree, the ~~insured~~ policy owner executes a designation of beneficiary form provided by the insurance company naming the ~~insured's~~ policy owner's former spouse or one or more relatives of the ~~insured's~~ policy owner's former spouse as beneficiary.

c. The ~~insured~~ policy owner and the ~~insured's~~ policy owner's former spouse remarry.

2. If a beneficiary designation is not effective pursuant to subsection 1, the benefits or proceeds of the life insurance policy are payable to an alternate beneficiary, or if there is no alternate beneficiary, to the estate of the ~~insured~~ policy owner.

3. An insurer who pays benefits or proceeds of a life insurance policy to a beneficiary under a designation that is void pursuant to subsection 1 is not liable for payment to an alternative beneficiary as provided under subsection 2 unless both of the following apply:

a. At least ten days prior to payment of the benefits or proceeds of the life insurance policy to the designated beneficiary, the insurer receives written notice at the home office of the insurer that the designation of the beneficiary is not effective pursuant to subsection 1.

b. The insurer has failed to interplead the benefits or proceeds of the life insurance policy in a court of competent jurisdiction in accordance with the rules of civil procedure.

4. This section does not limit the right of a beneficiary to seek recovery from any person or entity that erroneously receives or collects the benefits or proceeds from a life insurance policy.

5. This section does not affect the right of ~~an insured's~~ a policy owner's former spouse to assert an ownership interest in a life insurance policy insuring the life of the policy owner that is not disclosed to the ~~insured's~~ policy owner's spouse prior to the decree of dissolution, annulment, or separate maintenance and that is not addressed by the decree.

6. For purposes of this section, *"relative of the ~~insured's~~ policy owner's spouse"* means a person who is related to the ~~insured's~~ policy owner's former spouse by blood, adoption, or affinity, and who, subsequent to a decree of dissolution, annulment, or separate maintenance, ceases to be related to the ~~insured~~ policy owner by blood, adoption, or affinity.

Sec. 31. EFFECTIVE UPON ENACTMENT. The following provision or provisions of this Act, being deemed of immediate importance, take effect upon enactment:

1. The section of this Act enacting section 507C.17A.

Sec. 32. EFFECTIVE DATE. The following provision or provisions of this Act take effect January 1, 2014:

1. The section of this Act amending section 523A.303, subsection 1, unnumbered paragraph 1. [1]

Approved June 17, 2013

[1] Not enacted