

SENATE FILE 502

BY COMMITTEE ON COMMERCE

SSB 258

Approved (p. 121)

Substituted for H.F. 704

FILED MAR 20 1985

Passed Senate, Date 3-25-85 (p. 1014) Passed House, Date 4-3-85 (p. 1361)

Vote: Ayes 48 Nays 0 Vote: Ayes 73 Nays 22

Approved May 20, 1985 *motion to rescind (p. 1270) passed 4-11-85*

Repassed House 4-26-85 (p. 1475) 90-0

A BILL FOR

- 1 An Act relating to the financial security and reporting
- 2 requirements of insurance companies and providing for
- 3 administrative penalties.

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

SENATE FILE 502

H-3622

- 1 Amend amendment H-3577 to Senate File 502 as passed
- 2 by the Senate as follows:
- 3 1. Page 1, by inserting after line 11 the
- 4 following:
- 5 " . Page 1, by inserting after line 28 the
- 6 following:"
- 7 2. Page 6, by striking lines 34 and 35 and
- 8 inserting the following:
- 9 "4. If the association fails to act as provided in
- 10 subsection 2 within a reasonable period of time,"
- 11 3. By striking page 14, line 34 through page 15,
- 12 line 2.
- 13 4. By striking page 17, line 48 through page 18,
- 14 line 19.
- 15 5. Page 18, by striking lines 24 through 26 and
- 16 inserting the following: "amending the financial
- 17 security and".
- 18 6. Renumber as necessary.

H-3622 FILED APRIL 3, 1985 BY BRAMMER of Linn
DIVISION A - WITHDRAWN, DIVISION B - ADOPTED (p. 1361)
placed out of order 4/26 (p. 1475)

21
22
23
24
25

1 Section 1. Section 508.6, Code 1985, is amended to read as
2 follows:

3 508.6 DEPOSIT OF SECURITIES -- CERTIFICATE.

4 ~~Such securities~~ Securities in the amount of the capital and
5 surplus required under section 508.5 shall be deposited with
6 the commissioner of insurance or at such places as the
7 commissioner may designate. When the deposit is made and
8 evidence furnished, by affidavit or otherwise, satisfactory to
9 the commissioner, that the capital stock is all fully paid and
10 the company possessed of the surplus required and that the
11 company is the actual and unqualified owner of the securities
12 representing the paid-up capital stock or other funds of the
13 company, and all laws have been complied with, the
14 commissioner shall issue the company the certificate provided
15 for in this chapter.

16 Sec. 2. Section 508.19, Code 1985, is amended to read as
17 follows:

18 508.19 SECURITIES.

19 The securities that are on deposit of a defaulting or
20 insolvent company, or a company against which proceedings are
21 pending under sections 508.17 and 508.18, ~~on-deposit~~ shall
22 vest in the state for the benefit of ~~the policies on which~~
23 ~~such deposits were made, and the proceeds of the same shall,~~
24 ~~by the order of the court upon final hearing, be divided among~~
25 ~~the holders thereof in the proportion of the last annual~~
26 ~~valuation of the same, or at any time be applied to the~~
27 ~~purchase of reinsurance for their benefit~~ all policyholders of
28 the company.

29 Sec. 3. Section 510.11, Code 1985, is amended to read as
30 follows:

31 510.11 BUSINESS YEAR -- ANNUAL REPORT -- FEES.

32 The annual business of such an association operating under
33 this chapter and organized under the laws of this state shall
34 close on the thirty-first day of December of each year, ~~and it~~
35 ~~shall within sixty days thereafter.~~ On or before March 1 of

1 each year the association shall prepare and file in the office
2 of the commissioner of insurance a detailed statement,
3 verified by its president and secretary, giving its assets,
4 liabilities, receipts from each assessment and all other
5 sources, expenditures, salaries of officers, number of
6 contributing members, death losses paid and amount paid on
7 each, death losses reported but not paid, and furnish-such
8 other information as the commissioner, who shall provide
9 blanks-for-that-purpose, may require, so in order that its
10 true financial condition may be shown, and shall pay, upon.
11 The information required in this section shall be provided on
12 forms specified by the national association of insurance
13 commissioners. Upon filing each annual statement, the
14 association shall pay the sum of three dollars, and such other
15 fees as are required by the provisions of sections 511.24 to
16 511.26.

17 Sec. 4. Section 511.8, subsection 16, unnumbered paragraph
18 2, Code 1985, is amended to read as follows:

19 The securities comprising the deposit of any a company or
20 association against which proceedings are pending under
21 sections 508.17 and 508.18 shall vest in the state for the
22 benefit of ~~the policies and contracts for which such deposits~~
23 were made all policyholders of the company or association.

24 Sec. 5. Section 512.42, unnumbered paragraph 1, Code 1985,
25 is amended to read as follows:

26 ~~Every such~~ On or before March 1 of each year, an
27 association operating under this chapter and doing business in
28 this state shall, on or before the first day of March of each
29 year, make, and file with the commissioner of insurance, a
30 report for the year ending on the thirty-first day of December
31 immediately preceding December 31. All reports shall be upon
32 blank annual statement forms to be provided by the
33 commissioner, or may be printed in pamphlet form, and
34 stipulated by the national association of insurance
35 commissioners, shall be verified under oath by the authorized

1 officers of such ~~the~~ association, ~~and shall be published, or~~
2 ~~the substance thereof, in the annual report of the~~
3 ~~commissioner under the separate title "Praternal-Beneficiary~~
4 ~~Associations", and shall contain answers to the following~~
5 questions:

6 Sec. 6. Section 515.65, Code 1985, is amended to read as
7 follows:

8 515.65 CERTIFICATE REFUSED.

9 The commissioner of insurance shall withhold the
10 commissioner's certificate or permission of authority to do
11 business from any a company neglecting or failing to comply
12 with ~~the provisions of~~ this chapter. In addition, a company
13 organized or authorized under this chapter which fails to file
14 the annual statement referred to in section 515.63 in the time
15 required shall pay and forfeit an administrative penalty in an
16 amount of three hundred dollars to be collected in the name of
17 the state for the use of the state general fund. The
18 company's right to transact further new business in this state
19 shall immediately cease until the company has fully complied
20 with this chapter.

21 Sec. 7. Section 515.68, Code 1985, is amended to read as
22 follows:

23 515.68 FORMS FOR STATEMENTS.

24 The commissioner ~~shall cause to be prepared and furnished~~
25 ~~to each company organized under the laws of this state, and to~~
26 ~~the attorney or agent of each company incorporated in other~~
27 ~~states and foreign governments, who may apply therefor,~~
28 ~~printed forms of statements required by this chapter, and may~~
29 from time to time make such changes in the forms as shall of
30 statements required by this chapter which seem to the
31 commissioner best adapted to elicit from the companies a true
32 exhibit of their condition in respect to the several points
33 hereinbefore enumerated in this chapter.

34 Sec. 8. Section 518A.18, Code 1985, is amended to read as
35 follows:

1 518A.18 ANNUAL REPORT.

2 Each An association doing business under ~~the provisions of~~
3 this chapter shall ~~annually~~, on or before March 1 of each
4 year, report to the commissioner of insurance, ~~upon blanks~~
5 ~~furnished by the commissioner, such~~ the facts ~~as are~~ required
6 of domestic insurance companies organizing under chapter 515,
7 as which are applicable to this chapter. These reports shall
8 be tabulated and published by the commissioner of insurance in
9 the annual report of insurance, ~~one copy of which shall be~~
10 ~~sent to each association.~~

11 Sec. 9. Section 511.3, Code 1985, is repealed.

12 EXPLANATION

13 This bill deals with several aspects of the financial
14 security and reporting requirements of insurance companies.

15 Section 1 attempts to clarify that a domestic stock life
16 insurance company must make an initial deposit upon formation
17 in the amount of the required capital and surplus.

18 Sections 3, 5, 7, 8, and 9 remove the requirements that the
19 commissioner of insurance provide annual statement blanks to
20 assessment life insurance associations, mutual assessment
21 insurance associations, companies which offer insurance other
22 than life, or fraternal beneficiary societies, orders, or as-
23 sociations. In some situations *forms* to be used are those
24 approved by the national association of insurance companies.

25 Sections 2 and 4 provide that the securities comprising the
26 deposit for a life insurance company or association against
27 which a proceeding is pending shall vest in the state for the
28 benefit of all policyholders of the company or association.

29 Section 6 provides that if an insurance company offering
30 insurance other than life insurance fails to file an annual
31 statement, the company is liable for an administrative penalty
32 of three hundred dollars that will be deposited in the school
33 fund.

34

35

SENATE FILE 502

H-3577

1 Amend Senate File 502 as passed by the Senate as
2 follows:

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

5 "Section 101. Section 22.7, Code 1985, is amended
6 by adding the following new subsection:

7 NEW SUBSECTION. 19. Information or reports
8 collected or submitted pursuant to section 508B.12,
9 subsections 3 and 5, and section 508B.14, subsection
10 2, except to the extent that release is permitted
11 under those sections.

12 Sec. 102. NEW SECTION. 508B.1 TITLE.

13 This chapter shall be cited as the "Iowa Life and
14 Health Insurance Guaranty Association Act".

15 Sec. 103. NEW SECTION. 508B.2 PURPOSE.

16 1. The purpose of this chapter is to protect,
17 subject to certain limitations, the persons specified
18 in section 508B.3, subsection 1, against failure in
19 the performance of contractual obligations under life
20 and health insurance policies and annuity contracts
21 specified in section 508B.3, subsection 2, because of
22 the impairment or insolvency of the member insurer
23 that issued the policies or contracts.

24 2. To provide this protection, an association of
25 insurers is created to enable the guaranty of payments
26 of benefits and of continuation of coverages as
27 limited in this chapter. Members of the association
28 are subject to assessment to provide funds to carry
29 out the purpose of this chapter.

30 Sec. 104. NEW SECTION. 508B.3 SCOPE.

31 1. This chapter shall provide coverage under the
32 policies and contracts specified in subsection 2 to
33 all of the following:

34 a. Except for nonresident certificate holders
35 under group policies or contracts, persons who are the
36 beneficiaries, assignees or payees of the persons
37 covered under paragraph "b".

38 b. Persons who are owners of the policies or
39 contracts specified in subsection 2, or are insureds
40 or annuitants under the policies or contracts, and who
41 are either of the following:

42 (1) Residents of this state.

43 (2) Nonresidents of this state if all of the
44 following conditions are met:

45 (a) The state in which the person resides has an
46 association similar to the association created in this
47 chapter.

48 (b) The person is not eligible for coverage by an
49 association described in subparagraph part (a).

50 (c) The insurer which issued the policy or

H-3577

Page Two

1 contract never held a license or certificate of
2 authority in the state in which the person resides.

3 (d) The insurer is domiciled in this state.

4 2. This chapter shall provide coverage to the
5 persons specified in subsection 1 under direct life
6 insurance policies, health insurance policies, annuity
7 contracts, supplemental contracts, and certificates
8 under group policies or contracts issued by member
9 insurers.

10 3. This chapter does not apply to:

11 a. Any portion of a life, health or annuity
12 benefit payment liability arising on or after the date
13 of insolvency to the extent that it is based upon a
14 rate of interest which exceeds the lesser of the
15 following:

16 (1) The minimum rate of interest guaranteed under
17 the policy or contract.

18 (2) The rate of interest calculated as prescribed
19 in the standard valuation law of this state for
20 determining the minimum standard for the valuation of
21 life insurance policies issued during the year of
22 insolvency which have an interest-guaranteed duration
23 of ten or fewer years.

24 b. That portion or part of a policy or contract
25 under which the risk is borne by the policyholder.

26 c. A policy or contract or part of a policy or
27 contract assumed by the impaired or insolvent insurer
28 under a contract of reinsurance, other than
29 reinsurance for which assumption certificates have
30 been issued.

31 d. With respect to annuities, a benefit payment
32 liability under a policy or contract which is not
33 subject to standard nonforfeiture law, not annuitized,
34 and does not provide annuity purchase rates
35 contractually guaranteed for ten or more years.

36 e. A policy or contract issued by a company which
37 is licensed under chapters 509A, 510, 512, 512A, 514,
38 514B, 518, 518A, or 520.

39 f. Except for a policy issued pursuant to section
40 515.48, subsection 5, paragraph "a", a policy or
41 contract issued by a company which is licensed under
42 chapter 515.

43 g. An insurer which was placed under an order of
44 liquidation, rehabilitation, or conservation by a
45 court prior to the effective date of this Act is not
46 an impaired insurer or an insolvent insurer for the
47 purposes of this chapter.

48 Sec. 105. NEW SECTION. 508B.4 CONSTRUCTION.

49 This chapter shall be liberally construed to effect
50 its purpose as provided under section 508B.2.

H-3577

Page Three

1 Sec. 106. NEW SECTION 508B.5 DEFINITIONS.

2 As used in this chapter unless the context
3 otherwise requires:

4 1. "Account" means any of the three accounts
5 created under section 508B.6.

6 2. "Association" means the Iowa life and health
7 insurance guaranty association created in section
8 508B.6.

9 3. "Commissioner" means the commissioner of
10 insurance.

11 4. "Contractual obligation" means an obligation
12 under a covered policy.

13 5. "Covered policy" means a policy or contract
14 within the scope of this chapter as provided under
15 section 508B.3.

16 6. "Impaired insurer" means a member insurer
17 domiciled in this state which, after the effective
18 date of this Act, is either of the following:

19 a. Deemed by the commissioner to be potentially
20 unable to fulfill its contractual obligations but is
21 not an insolvent insurer.

22 b. Placed under an order of rehabilitation or
23 conservation by a court of competent jurisdiction.

24 7. "Insolvent insurer" means a member insurer
25 which after the effective date of this Act becomes
26 insolvent and is placed under a final order of
27 liquidation, rehabilitation or conservation by a court
28 of competent jurisdiction.

29 8. "Member insurer" means a person licensed or who
30 holds a certificate of authority to transact in this
31 state any kind of insurance to which this chapter
32 applies under section 508B.3, including a person whose
33 license or certificate of authority has been
34 suspended, revoked, not renewed, or voluntarily
35 withdrawn.

36 9. "Person" means an individual, corporation,
37 partnership, association or voluntary organization.

38 10. "Premiums" means direct gross insurance
39 premiums and annuity considerations received on
40 covered policies, less return insurance premiums and
41 annuity considerations and dividends paid or credited
42 to policyholders on the direct business. "Premiums"
43 do not include premiums and considerations on
44 contracts between insurers and reinsurers, or amounts
45 received and held by a member insurer in an account or
46 fund unless and until the amounts are applied by the
47 member insurer to the purchase of an annuity or other
48 benefit for a specific person.

49 11. "Resident" means a person who resides in this
50 state, or if a corporation has its principal place of

H-3577

Page Four

1 business in this state, at the time a member insurer
2 is determined to be an impaired or insolvent insurer,
3 and to whom contractual obligations are owed.

4 12. "Supplemental contract" means an agreement
5 entered into for the distribution of policy or
6 contract proceeds.

7 Sec. 107. NEW SECTION. 508B.6 CREATION OF THE
8 ASSOCIATION.

9 1. A nonprofit legal entity is created to be known
10 as the Iowa life and health insurance guaranty
11 association. All member insurers shall be and shall
12 remain members of the association as a condition of
13 their authority to transact insurance business in this
14 state. The association shall perform its functions
15 under the plan of operation established and approved
16 under section 508B.10 and shall exercise its powers
17 through the board of directors established in section
18 508B.7. For purposes of administration and
19 assessment, the association shall maintain all of the
20 following accounts:

- 21 a. A health insurance account.
- 22 b. A life insurance account.
- 23 c. An annuity account.

24 2. The association is subject to the immediate
25 supervision of the commissioner and the applicable
26 provisions of the insurance laws of this state.

27 Sec. 108. NEW SECTION. 508B.7 BOARD OF
28 DIRECTORS.

29 1. The board of directors of the association shall
30 consist of not less than five nor more than nine
31 member insurers serving terms as established in the
32 plan of operation. The members of the board shall be
33 selected by member insurers, subject to the approval
34 of the commissioner. Vacancies on the board shall be
35 filled for the remaining period of the term by a
36 majority vote of the remaining board members, subject
37 to the approval of the commissioner. To select the
38 initial board of directors, and initially organize the
39 association, the commissioner shall give notice to all
40 member insurers of the time and place of the
41 organizational meeting. In determining voting rights
42 at the organizational meeting each member insurer is
43 entitled to one vote in person or by proxy. If the
44 board of directors is not selected within sixty days
45 after notice of the organizational meeting, the
46 commissioner may appoint the initial members.

47 2. In approving selections or in appointing
48 members to the board, the commissioner shall consider,
49 among other factors, whether all member insurers are
50 fairly represented.

H-3577

Page Five

1 3. At the option of the association, members of
2 the board may be reimbursed from the assets of the
3 association for expenses incurred by them as members
4 of the board of directors. However, members of the
5 board shall not otherwise be compensated by the
6 association for their services.

7 Sec. 109. NEW SECTION. 508B.8 POWERS AND DUTIES
8 OF THE ASSOCIATION.

9 1. If a domestic insurer is an impaired insurer,
10 the association, subject to conditions imposed by the
11 association and approved by the impaired insurer and
12 the commissioner, may:

13 a. Guarantee, assume, reinsure, or cause to be
14 guaranteed, assumed, or reinsured, any or all of the
15 covered policies of the impaired insurer.

16 b. Provide moneys, pledges, notes, guarantees, or
17 other means as proper to effectuate paragraph "a" and
18 assure payment of the contractual obligations of the
19 impaired insurer pending action under paragraph "a".

20 c. Loan money to the impaired insurer and
21 guarantee borrowings by the impaired insurer, provided
22 the association has concluded, based on reasonable
23 assumptions, that there is a likelihood of repayment
24 of the loan and a probability that unless a loan is
25 made the association would incur substantial
26 liabilities under subsection 2.

27 2. If a domestic, foreign, or alien insurer is an
28 insolvent insurer, subject to the approval of the
29 commissioner the association shall:

30 a. Guarantee, assume, or reinsure, or cause to be
31 guaranteed, assumed, or reinsured the covered policies
32 of the insolvent insurer.

33 b. Assure payment of the contractual obligations
34 of the insolvent insurer.

35 c. Provide moneys, pledges, notes, guarantees, or
36 other means as reasonably necessary to discharge the
37 duties described in this subsection.

38 3. a. In carrying out its duties under subsection
39 2, permanent policy liens or contract liens may be
40 imposed in connection with a guarantee, assumption or
41 reinsurance agreement, if the court does both of the
42 following:

43 (1) Finds either that the amounts which can be
44 assessed under this chapter are less than the amounts
45 needed to assure full and prompt performance of the
46 insolvent insurer's contractual obligations, or that
47 the economic or financial conditions as they affect
48 member insurers are sufficiently adverse to the public
49 interest to justify the imposition of policy or
50 contract liens.

H-3577

Page Six

1 (2) Approves the specific policy liens or contract
2 liens to be used.

3 b. Before being obligated under subsection 2, the
4 association may request the imposition of a temporary
5 moratorium, not exceeding three years, or liens on
6 payments of cash values, termination values and policy
7 loans in addition to any contractual provisions for
8 deferral of cash values, termination values or policy
9 loans. The temporary moratoriums and liens may be
10 imposed by the court as a condition of the
11 association's liability with respect to the insolvent
12 insurer.

13 c. The obligations of the association under
14 subsection 2 regarding a covered policy shall be
15 reduced to the extent that the person entitled to the
16 obligations has received payment of all or any part of
17 the contractual benefits payable under the covered
18 policy from any other source.

19 d. The association may offer modifications to the
20 owners of policies or contracts or classes of policies
21 or contracts issued by the insolvent insurer, if the
22 association finds that under the policies or contracts
23 the benefits provided, provisions pertaining to
24 renewal, or the premiums charged or which may be
25 charged are not reasonable. If the owner of a policy
26 or contract to be modified fails or refuses to accept
27 the modification as approved by the court, the
28 association may terminate the policy or contract as of
29 a date not less than one hundred eighty days after the
30 modification is sent to the owner. The association
31 shall have no liability under the policy or contract
32 for any claim incurred or continuing beyond the
33 termination date.

34 4. If the association fails to act within a
35 reasonable period of time as provided in subsection 2,
36 the commissioner shall have the powers and duties of
37 the association under this chapter with respect to
38 insolvent insurers.

39 5. Upon request the association may give
40 assistance and advice to the commissioner concerning
41 the rehabilitation, payment of claims, continuance of
42 coverage, or the performance of other contractual
43 obligations of an impaired or insolvent insurer.

44 6. The association has standing to appear before
45 any court in this state with jurisdiction over an
46 impaired or insolvent insurer concerning which the
47 association is or may become obligated under this
48 chapter. Standing shall extend to all matters germane
49 to the powers and duties of the association including,
50 but not limited to, proposals for reinsuring or

H-3577

Page Seven

1 guaranteeing the covered policies of the impaired or
2 insolvent insurer and the determination of the covered
3 policies and contractual obligations.

4 7. a. A person receiving benefits under this
5 chapter is deemed to have assigned the rights under
6 the covered policy to the association to the extent of
7 the benefits received under this chapter whether the
8 benefits are payments of contractual obligations or a
9 continuation of coverage. The association may require
10 an assignment to it of the rights by a payee,
11 policyholder or contract owner, beneficiary, insured
12 or annuitant as a condition precedent to the receipt
13 of any rights or benefits conferred by this chapter
14 upon the person. The association shall be subrogated
15 to these rights against the assets of the insolvent
16 insurer.

17 b. The subrogation rights of the association under
18 this subsection have the same priority against the
19 assets of the insolvent insurer as that possessed by
20 the person entitled to receive benefits under this
21 chapter.

22 c. In addition to the rights pursuant to
23 subsection 3, paragraphs "a" and "b", the association
24 shall have all common law rights of subrogation and
25 any other equitable or legal remedy which would have
26 been available to the insolvent insurer or holder of a
27 policy or contract.

28 8. The contractual obligations of the insolvent
29 insurer for which the association becomes or may
30 become liable are as great as but not greater than the
31 contractual obligations of the insolvent insurer would
32 have been in the absence of an insolvency, unless the
33 obligations are reduced as permitted in this chapter.
34 However, with respect to any one life, the aggregate
35 liability of the association shall not exceed one
36 hundred thousand dollars in cash and termination
37 values, or three hundred thousand dollars for all
38 benefits, including cash and termination values, death
39 benefits, annuity payments, accident and health
40 benefits and all other amounts payable under all
41 policies or contracts of the insolvent insurer.

42 9. The association has no obligation for either of
43 the following:

44 a. To continue coverage, or to pay a claim for
45 benefits to any person under an individual accident,
46 health or disability policy accruing more than three
47 years following the date the member insurer is
48 adjudicated to be insolvent.

49 b. To issue a group conversion policy of any
50 nature to a person or to continue a group coverage in

H-3577

Page Eight

1 force for more than sixty days following the date the
2 member insurer was adjudicated to be insolvent.
3 10. The association may do any of the following:
4 a. Enter into contracts as necessary or proper to
5 carry out this chapter.
6 b. Sue or be sued, including taking any legal
7 actions necessary or proper for recovery of any unpaid
8 assessments under section 508B.9.
9 c. Borrow money to effect the purposes of this
10 chapter. Any notes or other evidence of indebtedness
11 of the association held by domestic insurers and not
12 in default qualify as investments eligible for deposit
13 under section 511.8, subsection 16.
14 d. Employ or retain persons as necessary to handle
15 the financial transactions of the association, and to
16 perform other functions as necessary or proper under
17 this chapter.
18 e. Negotiate and contract with a liquidator,
19 rehabilitator, conservator, or ancillary receiver to
20 carry out the powers and duties of the association.
21 f. Take legal action as necessary to avoid payment
22 of improper claims.
23 g. For the purposes of this chapter and to the
24 extent approved by the commissioner, exercise the
25 powers of a domestic life or health insurer. However,
26 the association shall not issue insurance policies or
27 annuity contracts other than those issued to perform
28 the contractual obligations of the impaired or
29 insolvent insurer.
30 h. Join an organization of one or more other state
31 associations of similar purposes to further the
32 purposes and administer the powers and duties of the
33 association.
34 Sec. 110. NEW SECTION. 508B.9 ASSESSMENTS.
35 1. For the purpose of providing the funds
36 necessary to carry out the powers and duties of the
37 association, the board of directors shall assess the
38 member insurers, separately for each account
39 established pursuant to section 508B.6, at the time
40 and for the amounts the board finds necessary. An
41 assessment is due not less than thirty days after
42 prior written notice has been sent to the member
43 insurers and accrues interest at ten percent per annum
44 commencing on the due date.
45 2. There are two classes of assessments as
46 follows:
47 a. Class A assessments shall be made for the
48 purpose of meeting administrative costs and other
49 general expenses and examinations conducted under
50 section 508B.12, subsection 5, not related to a

H-3577

Page Nine

1 particular impaired or insolvent insurer.

2 b. Class B assessments shall be made to the extent
3 necessary to carry out the powers and duties of the
4 association under section 508B.8 with regard to an
5 impaired domestic insurer or an insolvent domestic,
6 foreign, or alien insurer.

7 3. a. The amount of a class A assessment shall be
8 determined by the board and to the extent that class A
9 assessments do not exceed one hundred dollars per
10 company in any one calendar year may be made on a per
11 capita basis. The assessment shall be credited
12 against future insolvency assessments. The amount of
13 a class B assessment shall be allocated for assessment
14 purposes among the accounts as the liabilities and
15 expenses of the association, either experienced or
16 reasonably expected, are attributable to those
17 accounts, all as determined by the association and on
18 as equitable a basis as is reasonably practical.

19 b. Class A assessments in excess of one hundred
20 dollars per company per calendar year and class B
21 assessments against member insurers for each account
22 shall be in the proportion that the aggregate premiums
23 received on business in this state by each assessed
24 member insurer on policies or contracts related to
25 that account for the three calendar years preceding
26 the year of impairment or insolvency, bear to the
27 aggregate premiums received on business in this state
28 by all assessed member insurers on policies related to
29 that account for the three calendar years preceding
30 the assessment.

31 c. Assessments for funds to meet the requirements
32 of the association with respect to an impaired or
33 insolvent insurer shall not be made until necessary to
34 implement the purposes of this chapter.
35 Classification of assessments under this subsection
36 shall be made with a reasonable degree of accuracy,
37 recognizing that exact determinations may not always
38 be possible.

39 4. The association may abate or defer, in whole or
40 in part, the assessment of a member insurer if in the
41 opinion of the board payment of the assessment would
42 endanger the ability of the member insurer to fulfill
43 its contractual obligations. If an assessment against
44 a member insurer is abated or deferred, in whole or in
45 part, the amount by which the assessment is abated or
46 deferred may be assessed against the other member
47 insurers in a manner consistent with the basis for
48 assessments set forth in this section.

49 5. The total of all assessments upon a member
50 insurer for each account shall not in any one calendar

H-3577

Page Ten

1 year exceed two percent of the insurer's premiums
2 received in this state during the calendar year
3 preceding the assessment on the policies related to
4 that account. If the maximum assessment, together
5 with the other assets of the association in either
6 account, does not provide in any one year in either
7 account an amount sufficient to carry out the
8 responsibilities of the association, the necessary
9 additional funds shall be assessed as soon as
10 permitted by this chapter.

11 6. By an equitable method as established in the
12 plan of operation, the board may refund to member
13 insurers, in proportion to the contribution of each
14 insurer to that account, the amount by which the
15 assets of the account, including assets accruing from
16 net realized gains and income from investments, exceed
17 the amount the board finds is necessary to carry out
18 during the coming year the obligations of the
19 association with regard to that account. A reasonable
20 amount may be retained in any account to provide funds
21 for the continuing expenses of the association and for
22 future losses if refunds are impractical.

23 7. In determining its premium rates and
24 policyowner dividends as to any kind of insurance
25 within the scope of this chapter, it is proper for a
26 member insurer to consider the amount reasonably
27 necessary to meet its assessment obligations under
28 this chapter.

29 8. The association shall issue to each insurer
30 paying a class B assessment under this chapter, a
31 certificate of contribution in a form prescribed by
32 the commissioner for the amount of the assessment so
33 paid. All outstanding certificates shall be of equal
34 dignity and priority without reference to amounts or
35 dates of issue. A certificate of contribution may be
36 shown by the insurer in its financial statement as an
37 asset in the form, for the amount and for a period of
38 time as the commissioner may approve.

39 Sec. 111. NEW SECTION. 508B.10 PLAN OF
40 OPERATION.

41 1. a. The association shall submit to the
42 commissioner a plan of operation and any amendments to
43 the plan of operation necessary or suitable to assure
44 the fair, reasonable, and equitable administration of
45 the association. The plan of operation and any
46 amendments to the plan are effective upon the
47 commissioner's written approval.

48 b. If the association fails to submit a suitable
49 plan of operation within one hundred eighty days
50 following the effective date of this Act or if at any

H-3577

Page Eleven

- 1 time the association fails to submit suitable
2 amendments to the plan, the commissioner shall, after
3 notice and hearing, adopt rules pursuant to chapter
4 17A as necessary or advisable to effectuate this
5 chapter. The rules shall continue in force until
6 modified by the commissioner or superseded by a plan
7 submitted by the association and approved by the
8 commissioner.
- 9 2. All member insurers shall comply with the plan
10 of operation.
- 11 3. In addition to other requirements established
12 in this chapter the plan of operation shall establish
13 all of the following:
- 14 a. Procedures for handling the assets of the
15 association.
- 16 b. The amount and method of reimbursing members of
17 the board of directors under section 508B.7.
- 18 c. Regular places and times for meetings of the
19 board of directors.
- 20 d. Procedures for records to be kept of all
21 financial transactions of the association, its agents,
22 and the board of directors.
- 23 e. Procedures for selecting the board of directors
24 and submitting the selections to the commissioner.
- 25 f. Any additional procedures for assessments under
26 section 508B.9.
- 27 g. Additional provisions necessary or proper for
28 the execution of the powers and duties of the
29 association.
- 30 4. The plan of operation may provide that any
31 powers and duties of the association, except those
32 under section 508B.8, subsection 10, paragraph "c" and
33 section 508B.9 are delegated to a corporation,
34 association, or other organization which performs or
35 will perform functions similar to those of this
36 association, or its equivalent, in two or more states.
37 Such a corporation, association, or organization shall
38 be reimbursed for any payments made on behalf of the
39 association and shall be paid for its performance of
40 any function of the association. A delegation under
41 this subsection shall take effect only with the ap-
42 proval of both the board of directors and the
43 commissioner. The delegation shall be made only to a
44 corporation, association, or organization which
45 extends protection at least as favorable and effective
46 as that provided by this chapter.
- 47 Sec. 112. NEW SECTION. 508B.11 DUTIES AND POWERS
48 OF THE COMMISSIONER.
- 49 1. The commissioner shall:
- 50 a. Upon request of the board of directors, provide

H-3577

Page Twelve

1 the association with a statement of the premiums for
2 each member insurer.

3 b. When an impairment is declared and the amount
4 of the impairment is determined, serve a demand upon
5 the impaired insurer to make good the impairment
6 within a reasonable time. Notice to the impaired
7 insurer constitutes notice to its shareholders, if
8 any. The failure of the insurer to promptly comply
9 with the demand shall not excuse the association from
10 the performance of its powers and duties under this
11 chapter.

12 c. In a liquidation or rehabilitation proceeding
13 involving a domestic insurer, be appointed as the
14 liquidator or rehabilitator. If a foreign or alien
15 member insurer is subject to a liquidation proceeding
16 in its domiciliary jurisdiction or state of entry, the
17 commissioner shall be appointed conservator.

18 2. After notice and hearing, the commissioner may
19 suspend or revoke the certificate of authority to
20 transact insurance in this state of a member insurer
21 which fails to pay an assessment when due or fails to
22 comply with the plan of operation. As an alternative,
23 the commissioner may levy an administrative penalty on
24 any member insurer which fails to pay an assessment
25 when due. The administrative penalty shall not exceed
26 five percent of the unpaid assessment per month.
27 However, an administrative penalty shall not be less
28 than one hundred dollars per month.

29 3. An action of the board of directors or the
30 association may be appealed to the commissioner by a
31 member insurer if the appeal is taken within thirty
32 days of the action being appealed. A final action or
33 order of the commissioner is subject to judicial
34 review pursuant to chapter 17A in a court of competent
35 jurisdiction.

36 4. The liquidator, rehabilitator, or conservator
37 of an impaired insurer may notify all interested
38 persons of the effect of this chapter.

39 Sec. 113. NEW SECTION. 508B.12 PREVENTION OF
40 INSOLVENCIES.

41 1. To aid in the detection and prevention of
42 insurer insolvencies or impairments the commissioner
43 shall:

44 a. Notify the commissioners or insurance
45 departments of other states or territories of the
46 United States and the District of Columbia when any of
47 the following actions against a member insurer is
48 taken:

- 49 (1) A license is revoked.
50 (2) A license is suspended.

H-3577

Page Thirteen

1 (3) A formal order is made that a company restrict
2 its premium writing, obtain additional contributions
3 to surplus, withdraw from the state, reinsure all or
4 any part of its business, or increase capital,
5 surplus, or any other account for the security of
6 policyholders or creditors.

7 Notice shall be mailed to the commissioners or
8 departments within thirty days following the earlier
9 of when the action was taken or the date on which the
10 action occurs. This subparagraph does not supersede
11 section 507C.9, subsection 5.

12 b. Report to the board of directors when the
13 commissioner has taken any of the actions set forth in
14 paragraph "a" or has received a report from any other
15 commissioner indicating that any such action has been
16 taken in another state. Reports to the board of di-
17 rectors shall contain all significant details of the
18 action taken or the report received from another
19 commissioner.

20 c. Report to the board of directors when there is
21 reasonable cause to believe from an examination,
22 whether completed or in process, of a member company
23 that the company may be an impaired or insolvent
24 insurer.

25 d. Furnish to the board of directors the national
26 association of insurance commissioners' early warning
27 tests. The board may use the information in carrying
28 out its duties and responsibilities under this
29 section. The report and the information contained in
30 the report shall be kept confidential by the board of
31 directors until such time as it is made public by the
32 commissioner or other lawful authority.

33 2. The commissioner may seek the advice and
34 recommendations of the board of directors concerning
35 any matter affecting the commissioner's duties and
36 responsibilities regarding the financial condition of
37 member companies and companies seeking admission to
38 transact insurance business in this state.

39 3. The board of directors may upon majority vote
40 make reports and recommendations to the commissioner
41 upon any matter germane to the solvency, liquidation,
42 rehabilitation or conservation of a member insurer or
43 germane to the solvency of a company seeking to
44 transact insurance business in this state. These
45 reports and recommendations are not public records
46 pursuant to chapter 22.

47 4. Upon majority vote, the board of directors
48 shall notify the commissioner of any information
49 indicating that a member insurer may be an impaired or
50 insolvent insurer.

H-3577

Page Fourteen

1 5. Upon majority vote, the board of directors may
2 request that the commissioner order an examination of
3 a member insurer which the board in good faith
4 believes may be an impaired or insolvent insurer. The
5 examination may be conducted as a national association
6 of insurance commissioners examination or may be
7 conducted by persons designated by the commissioner.
8 The cost of the examination shall be paid by the
9 association and the examination report shall be
10 treated as are other examination reports. The
11 examination report shall not be released to the board
12 of directors prior to its release to the public, but
13 this shall not preclude the commissioner from
14 complying with subsection 1. The commissioner shall
15 notify the board of directors when the examination is
16 completed. The request for an examination shall be
17 kept on file by the commissioner but it is not a
18 public record pursuant to chapter 22 until the release
19 of the examination report to the public.

20 6. Upon majority vote, the board of directors may
21 make recommendations to the commissioner for the
22 detection and prevention of insurer insolvencies.

23 7. At the conclusion of an insurer insolvency in
24 which the association was obligated to pay covered
25 claims, the board of directors shall prepare a report
26 to the commissioner containing information as the
27 board may have in its possession bearing on the
28 history and causes of the insolvency. The board shall
29 cooperate with the boards of directors of guaranty
30 associations in other states in preparing a report on
31 the history and causes of insolvency of a particular
32 insurer, and may adopt by reference any report
33 prepared by other associations.

34 Sec. 114. NEW SECTION. 508B.13 CREDITS FOR
35 ASSESSMENTS PAID.

36 1. A member insurer may offset any class B
37 assessment against its premium tax liability pursuant
38 to chapter 432 to the extent of twenty percent of the
39 amount of the assessment for each of the five calendar
40 years following the year in which the assessment was
41 paid. If a member insurer ceases doing business, all
42 uncredited assessments may be credited against its
43 premium tax liability for the year it ceases doing
44 business.

45 2. Sums acquired by refund, pursuant to section
46 508B.9, subsection 6, from the association which have
47 been written off by contributing insurers and offset
48 against premium taxes as provided in subsection 1 and
49 are not then needed for purposes of this chapter shall
50 be paid by the association to the commissioner. The

H-3577

Page Fifteen

1 commissioner shall remit the moneys to the treasurer
2 of state to deposit in the state general fund.

3 Sec. 115. NEW SECTION. 508B.14 MISCELLANEOUS
4 PROVISIONS.

5 1. This chapter does not reduce the liability for
6 unpaid assessments of the insureds on an impaired or
7 insolvent insurer operating under a plan with
8 assessment liability other than the plan of this
9 chapter.

10 2. Records shall be kept of all negotiations and
11 meetings in which the association or its
12 representatives are involved to discuss the activities
13 of the association in carrying out its powers and
14 duties under section 508B.8. Records of the
15 negotiations or meetings shall be made public pursuant
16 to chapter 22 only upon the termination of a
17 liquidation, rehabilitation, or conservation
18 proceeding involving the impaired or insolvent
19 insurer, upon the termination of the impairment of
20 insolvency of the insurer, or upon the order of a
21 court of competent jurisdiction. This subsection does
22 not limit the duty of the association to render a
23 report of its activities under section 508B.15.

24 3. For the purpose of carrying out its obligations
25 under this chapter, the association shall be deemed to
26 be a creditor of the impaired or insolvent insurer to
27 the extent of assets attributable to covered policies
28 reduced by any amounts to which the association is
29 entitled pursuant to its subrogation rights under
30 section 508B.8, subsection 7. Assets of the impaired
31 or insolvent insurer attributable to covered policies
32 shall be used to continue all covered policies and pay
33 all contractual obligations of the impaired or
34 insolvent insurer as required by this chapter. As
35 used in this subsection, "assets attributable to
36 covered policies" means that proportion of the assets
37 which the reserves that should have been established
38 for the policies bear to the reserves that should have
39 been established for all policies of insurance written
40 by the impaired or insolvent insurer.

41 4. a. Prior to the termination of a liquidation,
42 rehabilitation, or conservation proceeding, the court
43 may take into consideration the contributions of the
44 respective parties, including the association, similar
45 associations of other states, the shareholders and
46 policyowners of the insolvent insurer, and any other
47 party with a bona fide interest, in making an
48 equitable distribution of the ownership rights of the
49 insolvent insurer. When considering the
50 contributions, consideration shall be given to the

H-3577

Page Sixteen

1 welfare of the policyholders of the continuing or
2 successor insurer.

3 b. A distribution to stockholders, if any, of an
4 impaired or insolvent insurer shall not be made until
5 the total amount of valid claims of the association
6 and of similar associations of other states for funds
7 expended in carrying out its powers and duties under
8 section 508B.8 with respect to the insurer have been
9 fully recovered by the association and the similar
10 associations.

11 5. a. Subject to the limitations of paragraphs
12 "b," "c," and "d," if an order for liquidation or
13 rehabilitation of an insurer domiciled in this state
14 has been entered, the receiver appointed under the
15 order may recover, on behalf of the insurer, from any
16 affiliate that controlled it, the amount of
17 distributions other than stock dividends paid by the
18 insurer on its capital stock made at any time during
19 the five years preceding the petition for liquidation
20 or rehabilitation.

21 b. Stock dividends are not recoverable if the
22 insurer shows that when paid the distribution was
23 lawful and reasonable and that the insurer did not
24 know and could not reasonably have known that the
25 distribution might adversely affect the ability of the
26 insurer to fulfill its contractual obligations.

27 c. A person who was an affiliate that controlled
28 the insurer at the time the distributions were paid is
29 liable up to the amount of distributions received. A
30 person who was an affiliate that controlled the
31 insurer at the time the distributions were declared is
32 liable up to the amount of distributions that would
33 have been received if they had been paid immediately.

34 If two persons are liable with respect to the same
35 distributions, they are jointly and severally liable.
36 d. The maximum amount recoverable under this
37 subsection is the amount needed in excess of all other
38 available assets of the insolvent insurer to pay the
39 contractual obligations of the insolvent insurer.

40 e. If a person liable under paragraph "c" is
41 insolvent, all its affiliates that controlled it at
42 the time the dividend was paid are jointly and
43 severally liable for a resulting deficiency in the
44 amount recovered from the insolvent affiliate.

45 Sec. 116. NEW SECTION. 508B.15 EXAMINATION OF
46 THE ASSOCIATION -- ANNUAL REPORT.

47 The association is subject to examination and
48 regulation by the commissioner. The board of
49 directors shall submit to the commissioner by May 1 of
50 each year, a financial report for the preceding

H-3577

Page Seventeen

1 calendar year and a report of its activities during
2 the preceding calendar year. The financial report
3 shall be in a form approved by the commissioner.

4 Sec. 117. NEW SECTION. 508B.16 TAX EXEMPTIONS.

5 The association is exempt from payment of all fees
6 and all taxes levied by this state or any of its
7 subdivisions except taxes levied on the association's
8 real property.

9 Sec. 118. NEW SECTION. 508B.17 IMMUNITY.

10 A member insurer and its agents and employees, the
11 association and its agents and employees, members of
12 the board of directors, and the commissioner and the
13 commissioner's representatives are not liable for any
14 action taken by them or omission by them while acting
15 within the scope of their employment and in the
16 performance of their powers and duties under this
17 chapter.

18 Sec. 119. NEW SECTION. 508B.18 STAY OF
19 PROCEEDINGS -- REOPENING DEFAULT JUDGMENTS.

20 Proceedings in which the insolvent insurer is a
21 party in a court in this state shall be stayed sixty
22 days from the date an order of liquidation,
23 rehabilitation, or conservation is final to permit
24 proper legal action by the association on matters
25 germane to its powers or duties. The association may
26 apply to have a judgment under a decision, order,
27 verdict, or finding based on default, set aside by the
28 same court that entered the judgment, and shall be
29 permitted to defend against the suit on the merits.

30 Sec. 120. NEW SECTION. 508B.19 PROHIBITED
31 ADVERTISEMENTS.

32 A person, including an insurer, agent or affiliate
33 of an insurer shall not make, publish, disseminate,
34 circulate, or place before the public, or cause
35 directly or indirectly, to be made, published,
36 disseminated, circulated or placed before the public
37 in a newspaper, magazine or other publication, or in
38 the form of a notice, circular, pamphlet, letter or
39 poster, or over a radio station or television station,
40 or in any other way, an advertisement, announcement or
41 statement which uses the existence of the insurance
42 guaranty association of this state for the purpose of
43 sales, solicitation, or inducement to purchase any
44 form of insurance covered by this chapter. However,
45 this section does not apply to the association or any
46 other entity which does not sell or solicit
47 insurance."

48 2. Page 3, by inserting after line 33 the
49 following:

50 "Sec. 121. NEW SECTION. 515B.19 CREDITS FOR

H-3577

Page Eighteen

1 ASSESSMENTS PAID.

2 1. An insurer may offset an assessment made
3 pursuant to section 515B.5, subsection 1, paragraph
4 "c", against its premium tax liability pursuant to
5 chapter 432 to the extent of twenty percent of the
6 amount of the assessment for each of the five calendar
7 years following the year in which the assessment was
8 paid. If an insurer ceases doing business, all
9 uncredited assessments may be credited against its
10 premium tax liability for the year it ceases doing
11 business.

12 2. Sums acquired by refund from the association
13 which have been written off by contributing insurers
14 and offset against premium taxes as provided in
15 subsection 1 and are not then needed for purposes of
16 this chapter shall be paid by the association to the
17 commissioner. The commissioner shall remit the moneys
18 to the treasurer of state to deposit in the state
19 general fund."

20 3. Title page, by striking lines 1 through 3 and
21 inserting the following:

22 "An Act relating to insurance by creating an Iowa
23 life and health insurance guaranty association,
24 providing for credits against premium taxes for
25 certain assessments by the Iowa insurance guaranty
26 association, amending the financial security and
27 reporting requirements of insurance companies, and
28 providing for administrative penalties."

BY BRAMMER of Linn

H-3577 FILED APRIL 1, 1985

SWARTZ of Marshall

*Adopted as amended by 35934 3622B
4/3 (p. 1261)*

Revised order 4/26/85 (p. 1973)

SENATE FILE 502

H-3593

1 Amend amendment H-3577 to Senate File 502 as passed
2 by the Senate as follows:

3 1. Page 1, by inserting after line 11 the
4 following:

5 " ". Page 1, by inserting after line 28 the
6 following:".

7 2. Page 6, by striking lines 34 and 35 and
8 inserting the following:

9 "4. If the association fails to act as provided in
10 subsection 2 within a reasonable period of time,".

H-3593 FILED APRIL 2, 1985

BY BRAMMER of Linn

Adopted 4/3 (p. 1260)

Placed out of order 4/26 (p. 1973)

SENATE FILE 502

H-4045

1 Amend Senate File 502 as passed by the Senate as
2 follows:

3 1. Page 4, by inserting before line 11 the
4 following:

5 "Sec. ____ . NEW SECTION. 523D.1 DEFINITIONS.

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

8 1. "Person" means an individual, partnership,
9 firm, corporation or association.

10 2. "Contract" or "preneed contract" means a
11 preneed funeral service agreement, other than a
12 contract for insurance, under which for a specified
13 consideration paid in advance of need, either in a
14 lump sum or by installments, a person promises to
15 furnish, upon the death of a beneficiary named or
16 implied in the contract, services or property for use
17 in funeral services, or to furnish cemetery
18 merchandise. Preneed service contracts do not include
19 agreements to deliver property or cemetery merchandise
20 to be used in funeral services within one hundred
21 twenty days of sale. Delivery occurs when properly
22 identifiable property or merchandise is permanently
23 installed in a grave, crypt or niche, or when it is
24 housed in a bonded warehouse with a receipt of
25 ownership issued by the seller in the name of the
26 purchaser and transmitted to the purchaser.

27 3. "Professional service, cemetery merchandise or
28 property to be used in funeral services" means all
29 property, services, supplies and equipment provided by
30 a licensed funeral director, a funeral establishment
31 or cemetery association in connection with a funeral,
32 interment, entombment or cremation, including, but not
33 limited to mortuary science services, conducting of
34 funeral and memorial services, rental fees, final
35 disposition services, burial, entombment, cremation
36 fees, caskets, crypt beds, burial vaults, catafalques,
37 grave lots, grave spaces, grave markers, monuments,
38 tombstones, crypts, niches and mausoleums.

39 Professional services do not include perpetual care
40 or maintenance as provided in chapter 566A.

41 Cemetery merchandise or property does not include
42 grave lots, grave spaces, mausoleums or niches for
43 which a deed has been delivered to the purchaser.

44 4. "Funeral establishment" or "establishment"
45 means a business situated at a specific street address
46 or location which conducts funeral services, prepares
47 dead human bodies for their final disposition and
48 transports them to the place of final disposition.
49 The term does not include establishments used only for
50 visitations or funeral services.

H-4045

Page Two

1 5. "Cemetery association" or "association" means a
2 person who owns, manages, or maintains land for the
3 purpose of burying dead human bodies.

4 6. "Financial institution" means a bank, savings
5 and loan association or credit union carrying federal
6 deposit insurance and located in this state.

7 7. "Commissioner" means the commissioner of
8 insurance.

9 Sec. ____ . NEW SECTION. 523D.2 CONTRACT SALES.

10 A person shall not engage in the sale or execution
11 of a contract unless the person is the owner or
12 manager of a funeral establishment or a cemetery
13 association, or an agent or employee of a funeral
14 establishment or cemetery association.

15 Sec. ____ . NEW SECTION. 523D.3 ANNUAL REPORT.

16 Each funeral establishment or cemetery association
17 that has entered into any contracts in the preceding
18 calendar year shall file with the commissioner, on or
19 before March 1, a report including the following
20 information:

21 1. The name and address of the establishment or
22 association and the name and address of the owner or
23 manager of the establishment or association.

24 2. The name of the purchaser and beneficiary of
25 each contract made in the preceding year and the date
26 on which it was made.

27 3. The total value of contracts made in the
28 preceding year, the total amount of moneys to be
29 trusted in accordance with section 523D.12, the total
30 amount of principal paid on contracts in the preceding
31 year, and the amount trusted for each purchaser in the
32 preceding year.

33 4. The name and address of the financial
34 institution in which trust funds were deposited.

35 5. The total amount of all payments received on
36 contracts executed by the establishment or
37 association, or in its behalf, since July 1, 1954,
38 which are still on deposit in a financial institution
39 or in the direct possession of the establishment or
40 association.

41 6. Other information reasonably required by the
42 commissioner for purposes of administration of this
43 chapter. The report shall be accompanied by a filing
44 fee determined by the commissioner which shall be
45 sufficient to defray the costs of administering this
46 chapter.

47 Sec. ____ . NEW SECTION. 523D.4 VERIFICATION BY
48 COMMISSIONER.

49 The commissioner shall verify annual reports
50 submitted by establishments and associations by

H-4045

Page Three

1 mailing, within ninety days of the receipt of a
2 report, to five percent of the contract purchasers
3 named in the report and to all financial institutions
4 named in the report, a questionnaire on which the
5 respondents will verify or refute the information
6 contained in the report. The commissioner may seek
7 any additional verification deemed necessary, but
8 shall always verify at least one contract cited in a
9 given report.

10 Sec. ____ . NEW SECTION. 523D.5 BOND.

11 Each establishment and association shall, at the
12 time of filing its annual report, also file with the
13 commissioner a corporate surety bond in the amount of
14 fifty thousand dollars. The bond shall be payable to
15 the state, and shall be in such form and style as the
16 commissioner may require for the use and benefit of
17 the purchasers, or the estates of purchasers of
18 contracts, or for the use and benefit of the
19 beneficiaries, or the estates of beneficiaries of
20 contracts if those persons suffer damages as a result
21 of the establishment's or association's failure to
22 comply with all provisions of a contract.

23 Sec. ____ . NEW SECTION. 523D.6 FRAUDULENT
24 PRACTICES.

25 A person who commits any of the following acts is
26 guilty of a fraudulent practice and is punishable as
27 provided in chapter 714:

28 1. Knowingly makes, causes to be made, or
29 subscribes to a false statement or representation in a
30 report or other document required under this chapter,
31 or renders such a report or document misleading
32 through the deliberate omission of information
33 properly belonging in the report or document.

34 2. Conspires to defraud in connection with the
35 sale of a contract.

36 3. Deliberately misrepresents or omits a material
37 fact relative to the sale of a contract to a
38 prospective purchaser of the contract.

39 Sec. ____ . NEW SECTION. 523D.7 ORDERS AND
40 INJUNCTIONS.

41 1. The commissioner may issue any order which the
42 commissioner deems necessary or appropriate to protect
43 the public interest. A person who is aggrieved by an
44 order of the commissioner may request a hearing before
45 the commissioner if the request is received within ten
46 days of the issuance of the order. Hearings shall be
47 held in accordance with chapter 17A.

48 2. The attorney general or the commissioner may
49 apply to the district court in any county of the state
50 for an injunction to restrain a person and any agents,

H-4045
Page FOUR

1 employees, or associates of the person from engaging
2 any further in conduct or practices deemed contrary to
3 the public interest. In any proceeding for an
4 injunction, the attorney general or commissioner may
5 apply to the court for the issuance of a subpoena to
6 require the appearance of a defendant and the
7 defendant's agents and any documents, books and
8 records germane to the hearing upon the petition for
9 an injunction. Upon proof of any of the offenses
10 described in the petition for injunction the court may
11 grant the injunction as the facts warrant.

12 Sec. ____ . NEW SECTION. 523D.8 INVESTIGATIONS AND
13 SUBPOENAS.

14 1. The attorney general or the commissioner may:

15 a. Initiate investigations deemed necessary to
16 determine whether or not a person has violated a
17 provision of this chapter or a rule or order issued
18 pursuant to this chapter.

19 b. Require or permit a person to file a written
20 statement, whether under oath or not, germane to a
21 matter under investigation.

22 c. Publish information concerning a violation of
23 this chapter or a violation of a rule or order issued
24 pursuant to this chapter.

25 d. Administer oaths and affirmations, subpoena
26 witnesses, receive evidence and require the production
27 of documents and records in connection with an
28 investigation or proceeding being conducted pursuant
29 to this chapter.

30 e. Apply to the district court for issuance of an
31 order requiring a person's appearance before the
32 commissioner or attorney general, or a designee of
33 either or both, in cases where the person has refused
34 to obey a subpoena issued by the commissioner or
35 attorney general. The person may also be required to
36 produce documentary evidence germane to the subject of
37 the investigation, and failure to obey a court order
38 of this nature shall be regarded and punished by the
39 court as a contempt of court.

40 Sec. ____ . NEW SECTION. 523D.9 PROSECUTION FOR
41 VIOLATIONS OF LAW.

42 If, as a result of verification procedures or
43 investigations provided for in sections 523D.4 or
44 523D.8, the commissioner and attorney general believe
45 that grounds exist for criminal prosecution of
46 officials of an establishment or association for
47 alleged violation of this chapter or any other law of
48 this state, the commissioner may forward to the
49 appropriate county attorney the grounds for the
50 belief, including all evidence in the commissioner's

H-4045

Page Five

1 possession, in order that the county attorney may
2 proceed with the matter as the county attorney deems
3 appropriate.

4 Sec. ____ . NEW SECTION. 523D.10 ADMINISTRATION.

5 The commissioner shall adopt rules necessary to
6 administer this chapter, in accordance with chapter
7 17A.

8 Sec. ____ . NEW SECTION. 523D.11 PENALTY.

9 A person found to be in violation of this chapter
10 is guilty of a serious misdemeanor unless otherwise
11 specifically stated.

12 Sec. ____ . NEW SECTION. 523D.12 DEPOSIT OF TRUST
13 FUND PAYMENTS.

14 1. When an establishment or association receives
15 payment in full on a contract, an amount equal to one
16 hundred ten percent of the wholesale costs of property
17 and cemetery merchandise to be used in funeral
18 services and sixty percent of the fees charged for
19 professional services under terms of the contract
20 shall be deposited within thirty days of receipt and
21 held in trust by a financial institution carrying
22 federal deposit insurance and located in this state.
23 In the case of a contract paid in installment payments
24 the seller shall deposit a percentage of each payment
25 in trust until the full amount to be trusted has been
26 deposited. The percentage of each payment to be
27 deposited shall be the same percentage that the total
28 amount to be trusted represents of the total price of
29 the contract. However, in no case shall the amount
30 deposited represent less than forty percent of the
31 payment received by the seller.

32 If the contract is financed with or sold to a
33 financial institution, then the contract shall be
34 considered paid in full and the deposit requirements
35 of this section shall be satisfied within thirty days
36 after the close of the month in which payment is
37 received from the financial institution.

38 Wholesale costs shall be determined by using a
39 current invoice price for the property or cemetery
40 merchandise delivered on an F.O.B. basis from a third
41 party manufacturer or the price printed on a current
42 price list furnished by a third party manufacturer.

43 Subject to the approval of the commissioner,
44 wholesale costs may be determined by a reasonable
45 alternative method in the event wholesale costs cannot
46 be determined by a current invoice price or a current
47 price list. At least once a year, the seller shall
48 review and revise trust fund accounts to reflect
49 current wholesale costs.

50 2. An establishment or association that is a party

H-4045

Page Six

1 to a contract shall maintain records of all receipts,
2 interest and disbursements relative to contract
3 payments held in trust, and shall make the records
4 available to the commissioner or the attorney general
5 at any reasonable time upon request. The commissioner
6 or attorney general may require an audit by a
7 certified public accountant of the records of an
8 establishment or association required to deposit funds
9 in trust under this chapter if there is reasonable
10 evidence of noncompliance. The audit shall be
11 performed at the expense of the establishment or
12 association audited and a copy of the audit report
13 shall be provided for the commissioner and the
14 attorney general.

15 3. Financial institutions shall maintain records
16 of all contract accounts, including the name of the
17 depositor, the name of the person making the payments
18 to the depositor and the name of the contract
19 beneficiary.

20 Sec. ____ . NEW SECTION. 523D.13 RELEASE OF TRUST
21 FUNDS.

22 If, after a purchaser has paid a preneed contract
23 in full, the seller does not deliver the appropriate
24 goods and services in the manner provided for in the
25 contract, or if the seller fails to deliver within
26 twenty days after receipt of a written notice to
27 deliver from the purchaser, then the purchaser,
28 assignees, heirs or duly authorized representatives
29 are entitled to a refund of the purchase price.

30 Upon failure to deliver, funds held in trust,
31 including accrued interest or income, may be released
32 at the written request of the purchaser upon a five-
33 day written notice, by registered or certified mail,
34 delivered from the financial institution to the
35 seller.

36 If a seller of a preneed contract fails to provide
37 a written guarantee of delivery to a purchaser who
38 moves more than one hundred and fifty miles from the
39 seller's place of business, the purchaser is entitled
40 to a refund. Upon failure to guarantee delivery,
41 funds held in trust, including accrued interest or
42 income, may be released at the written request of the
43 purchaser upon five days written notice, by registered
44 or certified mail, delivered from the financial
45 institution to the seller.

46 In the event that a purchaser is in default of a
47 contract, the financial institution shall release to
48 the depositor the funds, including accrued interest or
49 income, deposited on behalf of the defaulted contract,
50 upon receiving from the seller a sworn affidavit

H-4045

Page Seven

1 stating that the purchaser is in default, the date of
2 the default, an explanation of the default and that
3 the seller has mailed a copy of the affidavit to the
4 purchaser's last known address at least fifteen days
5 prior to the request for release. This provision does
6 not limit the contract rights of either party.

7 In the event that no request to deliver has been
8 made under the terms of the contract for a period of
9 fifty years from the date of the contract, and the
10 seller has been unable to contact the purchaser, the
11 funds held in trust, including accrued interest or
12 income, shall be released to the seller.

13 A financial institution shall not be responsible
14 for any refunds made upon written notices submitted in
15 accordance with this section.

16 Partial delivery does not relieve a seller from the
17 provisions of this section that may apply to the
18 remainder and does not relieve a seller from any
19 liability for nonperformance of the contract terms.

20 Sec. ____ . NEW SECTION. 523D.14 ADMINISTRATION OF
21 TRUST FUND.

22 The trust fund established pursuant to section
23 523D.12 shall be held by a financial institution which
24 shall serve as trustee of the fund. The trustee may
25 commingle the deposits in the trust fund for purposes
26 of the management and investment of the fund. The
27 trustee may invest, reinvest, exchange, retain, sell
28 and otherwise manage the trust fund. The depositor
29 may appoint an independent investment advisor to act
30 in an advisory capacity with the trustee relative to
31 the investment of the trust funds. The depositor
32 shall pay the costs of the operation of the trust and
33 the annual audit fees.

34 Funds, both principal and accrued interest or
35 income, shall be held in trust and remain intact until
36 delivery or release under the provisions of section
37 523D.13. Income or interest earned on the trust fund
38 shall be retained and accumulated in a separate income
39 account within the trust fund. The principal and any
40 accrued earnings or losses relative to each individual
41 account shall be held in suspense until the final
42 determination is made as to which party the account
43 will be paid.

44 Sec. ____ . NEW SECTION. 523D.15 REGISTRATION.

45 No person shall engage in the sale of contracts
46 subject to this chapter without registering with the
47 commissioner at least thirty days in advance. The fee
48 for the registration shall be fifty dollars and the
49 registration form prescribed by the commissioner's
50 office shall contain the following information:

H-4045

Page Eight

1 1. The name and location of the registrant's
2 business.

3 2. The names and addresses of each owner, officer
4 or other officials of the registrant's business.

5 3. The financial institution to be used for the
6 deposit of trust funds.

7 4. The types of professional services or property
8 to be sold.

9 A registrant shall inform the commissioner of
10 changes in the information contained in the
11 registration form within thirty days of the change.

12 Sec. ____ . NEW SECTION. 523D.16 COMPLIANCE WITH
13 OTHER LAWS.

14 A seller of contracts subject to this chapter shall
15 comply with chapter 82. Failure to comply subjects
16 the seller to remedies and penalties provided by that
17 chapter.

18 Sec. ____ . NEW SECTION. 523D.17 CONFIDENTIAL
19 RECORDS.

20 Notwithstanding chapter 22, all records maintained
21 by the commissioner or the attorney general pursuant
22 to this chapter are confidential except that they are
23 subject to discovery, subpoena or other means of legal
24 compulsion.

25 Sec. ____ . NEW SECTION. 523D.18 EXCEPTIONS.

26 Section 156.9, subsection 3, or 156.12 do not
27 prohibit the sale of contracts in accordance with this
28 chapter."

29 2. By renumbering as necessary.

H-4045 FILED APRIL 24, 1985 BY BRAMMER of Linn

4/25 4/26 (p. 1914)

SENATE FILE 502

H-4060

1 Amend Senate File 502 as passed by the Senate as
2 follows:

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

5 "Sec. _____. Section 714.16, subsection 2, paragraph
6 a, Code 1985, is amended to read as follows:

7 a. The act, use or employment by any a person of
8 any an unfair practice, deception, fraud, false
9 pretense, false promise, misrepresentation, or the
10 concealment, suppression, or omission of any a
11 material fact with intent that others rely upon such
12 the concealment, suppression or omission, in
13 connection with the lease, sale or advertisement of
14 any merchandise, whether or not any person has in fact
15 been misled, deceived or damaged thereby, is declared
16 to-be an unlawful practice.

17 It is deceptive advertising within the meaning of
18 this section for a person to represent in connection
19 with the lease, sale or advertisement of any
20 merchandise that certain merchandise has performance
21 characteristics, accessories, uses or benefits or that
22 certain services are performed on behalf of clients or
23 customers of that person when, at the time of the
24 representation, there existed no reasonable
25 substantiation for the claim. The burden is on the
26 person making the representation to demonstrate that
27 there is reasonable substantiation for the claim.

28 "Material fact" as used in this subsection does not
29 include repairs of damage to or adjustments on or
30 replacements of parts with new parts of otherwise new
31 merchandise if the repairs, adjustments or
32 replacements are made to achieve compliance with
33 factory specifications and are made before sale of the
34 merchandise at retail and the actual cost of any labor
35 and parts charged to or performed by a retailer for
36 any-such the repairs, adjustments and parts does not
37 exceed three hundred dollars or ten percent of the
38 actual cost to a retailer including freight of the
39 merchandise, whichever is less, providing that the
40 seller posts in a conspicuous place notice that
41 repairs, adjustments or replacements will be disclosed
42 upon request. The exemption provided in this
43 paragraph does not apply to the concealment,
44 suppression or omission of a material fact if the
45 purchaser requests disclosure of any repair,
46 adjustment or replacement.

47 Sec. _____. Section 714.16, subsection 2, Code 1985,
48 is amended by adding the following new lettered
49 paragraph:

50 NEW LETTERED PARAGRAPH. h. A professional fund

H-4960

Page Two

1 raiser shall not solicit for a charitable purpose
2 unless the solicitation contains a conspicuous and
3 correct statement, prominently displayed if the
4 solicitation is in writing, of the minimum percentage
5 of the gross income to be donated to any charitable
6 organization, fund or person. However, this provision
7 does not apply when the minimum percentage of the
8 gross income to be used for the charitable purpose of
9 the organization, fund or person on whose behalf the
10 donations are being solicited exceeds sixty percent.
11 A violation of this subsection is an unlawful
12 practice.

13 As used in this paragraph:

14 (1) "Charitable" means with or pertaining to a
15 benevolent, educational, philanthropic, humane,
16 eleemosynary, health, environmental, social welfare,
17 civic, or public service objective.

18 (2) "Professional fund raiser" means a person who
19 for compensation or other consideration solicits in
20 this state for a charitable organization, fund, or
21 person whether the solicitation is performed
22 individually or by persons employed or otherwise
23 engaged on any basis for that purpose or a person who
24 engages or represents to be engaged in the business of
25 solicitation for the benefit of charitable purposes.
26 A bona fide salaried officer or regular nontemporary
27 employee of a charitable organization, fund, or person
28 is not deemed to be a professional fund raiser.

29 (3) "Solicit" and "solicitation" mean the direct
30 or indirect request for a contribution on the plea or
31 representation, express or implied, that the
32 contribution or a portion of the contribution is for a
33 charitable purpose or will benefit a charitable
34 organization, fund or person. "Solicit" and
35 "solicitation" include the sale of, or offer or
36 attempt to sell, any advertising space, book, card,
37 tag, coupon, magazine, merchandise, subscription,
38 flower, ticket, candy, cookies, service, or any other
39 thing tangible or intangible. A solicitation is
40 deemed to have taken place when the request is
41 received, whether or not the person making the request
42 receives a contribution.

43 Sec. ____ . Section 714.16, subsection 7, Code 1985,
44 is amended to read as follows:

45 7. Whenever A civil action pursuant to this
46 section shall be by equitable proceedings whenever it
47 appears to the attorney general that a person has
48 engaged in, is engaging in or is about to engage in
49 any a practice declared to be unlawful by this section
50 the The attorney general may seek and obtain in an

H-4060

Page Three

1 action in a district court ~~as~~ a temporary or permanent
2 injunction prohibiting such the person from continuing
3 such-practices the practice or engaging therein in the
4 practice or doing any-acts an act in furtherance
5 thereof of the practice. The court may make such
6 orders or judgments as ~~may-be~~ necessary to prevent the
7 use or employment by a person of any prohibited
8 practices, or which ~~may-be~~ are necessary to restore to
9 any person in interest any moneys or property, real or
10 personal which may have been acquired by means of any
11 a practice in-this-section declared to be unlawful by
12 this section including the appointment of a receiver
13 in cases of substantial and willful violation of the
14 provisions-of this section. Except as expressly
15 provided in subsection 2, paragraph "a", for the
16 concealment, suppression, or omission of a material
17 fact, in an action for restitution or an injunction,
18 it is not necessary to allege or to prove reliance,
19 damages, intent to deceive, or that the person who
20 engaged in an unlawful act had knowledge of the
21 falsity of the claim or ignorance of the truth. A
22 claim for restitution may be proved by any competent
23 evidence, including evidence that would be appropriate
24 in a class action.

25 In addition to the remedies otherwise provided for
26 in this subsection, the attorney general may request
27 and the court may impose a civil penalty in a sum not
28 to exceed fifty thousand dollars per violation against
29 a person found by the court to have engaged in a
30 method, act or practice declared unlawful under this
31 section. In addition, on the motion of the attorney
32 general or its own motion, the court may impose a
33 civil penalty of not more than five thousand dollars
34 for each day of violation of a temporary restraining
35 order, preliminary injunction, or permanent injunction
36 issued under authority of this section. A penalty
37 imposed pursuant to this subsection is in addition to
38 any penalty imposed pursuant to section 537.6113.
39 Civil penalties ordered pursuant to this subsection
40 shall be paid to the treasurer of state to be
41 deposited in the general fund.

42 Sec. ____. Section 714.16, Code 1985, is amended by
43 adding the following new subsection 10 and renumbering
44 the subsequent subsections:

45 NEW SUBSECTION. 10. A civil action pursuant to
46 this section may be commenced in the county in which
47 the person against whom it is brought resides, has a
48 principal place of business, or is doing business,
49 where the transaction or any substantial portion of
50 the transaction occurred, or where one or more of the

H-4060

Page Four

1 victims reside.

2 Sec. ____ . Section 714.16, subsection 10, Code
3 1985, is amended to read as follows:

4 ~~to 11.~~ In any an action brought under the
5 ~~provisions of~~ this section, the attorney general is
6 entitled to recover costs of the court action and any
7 investigation which may have been conducted, including
8 reasonable attorneys' fees, for the use of this state.

9 Sec. ____ . Section 714.16, Code 1985, is amended by
10 adding the following new subsection 13 and renumbering
11 the subsequent subsections:

12 NEW SUBSECTION. 13. The attorney general or the
13 designee of the attorney general is deemed to be a
14 regulatory agency under chapter 692 for the purpose of
15 receiving criminal intelligence data relating to
16 violations of this section.

17 Sec. ____ . Section 714.16, subsection 12, Code
18 1985, is amended to read as follows:

19 ~~to 14.~~ Nothing contained in this This section
20 ~~shall~~ does not apply to the owner or publisher of
21 newspapers, magazines, publications or printed matter
22 ~~wherein such in which the~~ advertisement appears, or to
23 the owner or operator of a radio or television station
24 which disseminates such the advertisement when if the
25 owner, publisher or operator has no knowledge of the
26 intent, design or purpose of the advertiser; ~~and~~
27 ~~provided, further, that nothing herein contained shall~~
28 ~~apply to any advertisement which complies with the~~
29 ~~rules and regulations of, and the statutes~~
30 ~~administered by the federal trade commission."~~

H-4060 FILED APRIL 25, 1985 BY CHAPMAN of Linn

w/d 4/26 (A 1974)

COMMERCE: Holden, Chair; Priebe and Tieden

*New
SF 502*

SENATE/HOUSE FILE 502

BY (PREFILED DEPARTMENT
OF INSURANCE BILL)

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

A BILL FOR

1 An Act relating to the financial security and reporting
2 requirements of insurance companies and providing for
3 administrative penalties.

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

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 Section 1. Section 508.6, Code 1985, is amended to read as
2 follows:

3 508.6 DEPOSIT OF SECURITIES -- CERTIFICATE.

4 ~~Such-securities~~ Securities in the amount of the capital and
5 surplus required under section 508.5 shall be deposited with
6 the commissioner of insurance or at such places as the
7 commissioner may designate. When the deposit is made and
8 evidence furnished, by affidavit or otherwise, satisfactory to
9 the commissioner, that the capital stock is all fully paid and
10 the company possessed of the surplus required and that the
11 company is the actual and unqualified owner of the securities
12 representing the paid-up capital stock or other funds of the
13 company, and all laws have been complied with, the
14 commissioner shall issue the company the certificate provided
15 for in this chapter.

16 Sec. 2. Section 508.19, Code 1985, is amended to read as
17 follows:

18 508.19 SECURITIES.

19 The securities that are on deposit of a defaulting or
20 insolvent company, or a company against which proceedings are
21 pending under sections 508.17 and 508.18, ~~on-deposit shall~~
22 ~~vest in the state for the benefit of the policies on which~~
23 ~~such deposits were made, and the proceeds of the same shall,~~
24 ~~by the order of the court upon final hearing, be divided among~~
25 ~~the holders thereof in the proportion of the last annual~~
26 ~~valuation of the same, or at any time be applied to the~~
27 ~~purchase of reinsurance for their benefit~~ all policyholders of
28 the company.

29 Sec. 3. Section 510.11, Code 1985, is amended to read as
30 follows:

31 510.11 BUSINESS YEAR -- ANNUAL REPORT -- FEES.

32 The annual business of such an association operating under
33 this chapter and organized under the laws of this state shall
34 close on the thirty-first day of December of each year, ~~and it~~
35 ~~shall within sixty days thereafter.~~ On or before March 1 of

1 each year the association shall prepare and file in the office
2 of the commissioner of insurance a detailed statement,
3 verified by its president and secretary, giving its assets,
4 liabilities, receipts from each assessment and all other
5 sources, expenditures, salaries of officers, number of
6 contributing members, death losses paid and amount paid on
7 each, death losses reported but not paid, and furnish such
8 other information as the commissioner, ~~who shall provide~~
9 ~~blanks for that purpose,~~ may require, so in order that its
10 true financial condition may be shown, ~~and shall pay upon.~~
11 The information required in this section shall be provided on
12 forms specified by the national association of insurance
13 commissioners. Upon filing each annual statement, the
14 association shall pay the sum of three dollars, and such other
15 fees as are required by the ~~provisions of~~ sections 511.24 to
16 511.26.

17 Sec. 4. Section 511.8, subsection 16, unnumbered paragraph
18 2, Code 1985, is amended to read as follows:

19 The securities comprising the deposit of any a company or
20 association against which proceedings are pending under
21 sections 508.17 and 508.18 shall vest in the state for the
22 benefit of ~~the policies and contracts for which such deposits~~
23 ~~were made~~ all policyholders of the company or association.

24 Sec. 5. Section 512.42, unnumbered paragraph 1, Code 1985,
25 is amended to read as follows:

26 ~~Every such~~ On or before March 1 of each year, an
27 association operating under this chapter and doing business in
28 this state shall, on or before the first day of March of each
29 year, make, and file with the commissioner of insurance, a
30 report for the year ending on the thirty-first day of December
31 immediately preceding December 31. All reports shall be upon
32 blank annual statement forms to be provided by the
33 commissioner, or may be printed in pamphlet form, and
34 stipulated by the national association of insurance
35 commissioners, shall be verified under oath by the authorized

S.F. _____ H.F. _____

1 officers of such the association, ~~and shall be published, or~~
2 ~~the substance thereof, in the annual report of the~~
3 ~~commissioner under the separate title "Fraternal Beneficiary~~
4 ~~Associations"~~, and shall contain answers to the following
5 questions:

6 Sec. 6. Section 515.65, Code 1985, is amended to read as
7 follows:

8 515.65 CERTIFICATE REFUSED.

9 The commissioner of insurance shall withhold the
10 commissioner's certificate or permission of authority to do
11 business from any a company neglecting or failing to comply
12 ~~with the provisions of~~ this chapter. In addition, a company
13 organized or authorized under this chapter which fails to file
14 the annual statement referred to in section 515.63 in the time
15 required shall pay and forfeit an administrative penalty in an
16 amount of three hundred dollars to be collected in the name of
17 the state for the use of the school fund. The company's right
18 to transact further new business in this state shall
19 immediately cease until the company has fully complied with
20 this chapter.

21 Sec. 7. Section 515.68, Code 1985, is amended to read as
22 follows:

23 515.68 FORMS FOR STATEMENTS.

24 The commissioner ~~shall cause to be prepared and furnished~~
25 ~~to each company organized under the laws of this state, and to~~
26 ~~the attorney or agent of each company incorporated in other~~
27 ~~states and foreign governments, who may apply therefor,~~
28 ~~printed forms of statements required by this chapter, and may~~
29 from time to time make such changes in the forms as shall of
30 statements required by this chapter which seem to the
31 commissioner best adapted to elicit from the companies a true
32 exhibit of their condition in respect to the several points
33 hereinbefore enumerated in this chapter.

34 Sec. 8. Section 518A.18, Code 1985, is amended to read as
35 follows:

1 518A.18 ANNUAL REPORT.

2 Each An association doing business under the ~~provisions of~~
3 this chapter shall ~~annually~~, on or before March 1 of each
4 year, report to the commissioner of insurance ~~upon blanks~~
5 ~~furnished by the commissioner~~ such the facts ~~as are~~ required
6 of domestic insurance companies organizing under chapter 515,
7 as which are applicable to this chapter. These reports shall
8 be tabulated and published by the commissioner of insurance in
9 the annual report of insurance ~~one copy of which shall be~~
10 ~~sent to each association.~~

11 Sec. 9. Section 511.3, Code 1985, is repealed.

12 EXPLANATION

13 This bill deals with several aspects of the financial
14 security and reporting requirements of insurance companies.

15 Section 1 attempts to clarify that a domestic stock life
16 insurance company must make an initial deposit upon formation
17 in the amount of the required capital and surplus.

18 Sections 3, 5, 7, 8, and 9 remove the requirements that the
19 commissioner of insurance provide annual statement blanks to
20 assessment life insurance associations, mutual assessment
21 insurance associations, companies which offer insurance other
22 than life, or fraternal beneficiary societies, orders, or as-
23 sociations. In some situations forms to be used are those
24 approved by the national association of insurance companies.

25 Sections 2 and 4 provide that the securities comprising the
26 deposit for a life insurance company or association against
27 which a proceeding is pending shall vest in the state for the
28 benefit of all policyholders of the company or association.

29 Section 6 provides that if an insurance company offering
30 insurance other than life insurance fails to file an annual
31 statement, the company is liable for an administrative penalty
32 of three hundred dollars that will be deposited in the school
33 fund.

34

35

SENATE FILE 502

AN ACT

RELATING TO THE FINANCIAL SECURITY AND REPORTING REQUIREMENTS OF INSURANCE COMPANIES AND PROVIDING FOR ADMINISTRATIVE PENALTIES.

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

Section 1. Section 508.6, Code 1985, is amended to read as follows:

508.6 DEPOSIT OF SECURITIES -- CERTIFICATE.

Such securities in the amount of the capital and surplus required under section 508.5 shall be deposited with the commissioner of insurance or at such places as the commissioner may designate. When the deposit is made and evidence furnished, by affidavit or otherwise, satisfactory to the commissioner, that the capital stock is all fully paid and the company possessed of the surplus required and that the company is the actual and unqualified owner of the securities representing the paid-up capital stock or other funds of the company, and all laws have been complied with, the commissioner shall issue the company the certificate provided for in this chapter.

Sec. 2. Section 508.19, Code 1985, 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 508.18, on deposit shall vest in the state for the benefit of the policies on which such deposits were made, and the proceeds of the same shall, by the order of the court upon final hearing, be divided among the holders thereof in the proportion of the last annual valuation of the same, or at any time be applied to the purchase of reinsurance for their benefit all policyholders of the company.

Sec. 3. Section 510.11, Code 1985, is amended to read as follows:

510.11 BUSINESS YEAR -- ANNUAL REPORT -- FEES.

The annual business of such an association operating under this chapter and organized under the laws of this state shall close on the thirty-first day of December of each year, and it shall within sixty days thereafter, on or before March 1 of each year the association shall prepare and file in the office of the commissioner of insurance a detailed statement, verified by its president and secretary, giving its assets, liabilities, receipts from each assessment and all other sources, expenditures, salaries of officers, number of contributing members, death losses paid and amount paid on each, death losses reported but not paid, and furnish such other information as the commissioner, who shall provide blanks for that purpose, may require, so in order that its true financial condition may be shown, and shall pay, upon the information required in this section shall be provided on forms specified by the national association of insurance commissioners. Upon filing each annual statement, the association shall pay the sum of three dollars, and such other fees as are required by the provisions of sections 511.24 to 511.26.

Sec. 4. Section 511.8, subsection 16, unnumbered paragraph 2, Code 1985, is amended to read as follows:

The securities comprising the deposit of any a company or association against which proceedings are pending under sections 508.17 and 508.18 shall vest in the state for the benefit of the policies and contracts for which such deposits were made all policyholders of the company or association.

Sec. 5. Section 512.42, unnumbered paragraph 1, Code 1985, is amended to read as follows:

Every such on or before March 1 of each year, an association operating under this chapter and doing business in this state shall, on or before the first day of March of each year, make, and file with the commissioner of insurance, a report for the year ending on the thirty-first day of December

immediately preceding December 31. All reports shall be upon blank annual statement forms to be provided by the commissioner or may be printed in pamphlet form and stipulated by the national association of insurance commissioners, shall be verified under oath by the authorized officers of such the association and shall be published or the substance thereof, in the annual report of the commissioner under the separate title "Fraternal-Beneficiary Associations", and shall contain answers to the following questions:

Sec. 6. Section 515.65, Code 1985, is amended to read as follows:

515.65 CERTIFICATE REFUSED.

The commissioner of insurance shall withhold the commissioner's certificate or permission of authority to do business from any a company neglecting or failing to comply with the provisions of this chapter. In addition, a company organized or authorized under this chapter which fails to file the annual statement referred to in section 515.63 in the time required shall pay and forfeit an administrative penalty in an amount of three hundred dollars to be collected in the name of the state for the use of the state general fund. The company's right to transact further new business in this state shall immediately cease until the company has fully complied with this chapter.

Sec. 7. Section 515.68, Code 1985, is amended to read as follows:

515.68 FORMS FOR STATEMENTS.

The commissioner shall cause to be prepared and furnished to each company organized under the laws of this state, and to the attorney or agent of each company incorporated in other states and foreign governments, who may apply therefor, printed forms of statements required by this chapter, and may from time to time make such changes in the forms and shall of statements required by this chapter which seem to the commissioner best adapted to elicit from the companies a true exhibit of their condition in respect to the several points hereinbefore enumerated in this chapter.

Sec. 8. Section 518A.18, Code 1985, is amended to read as follows:

518A.18 ANNUAL REPORT.

Each An association doing business under the provisions of this chapter shall annually, on or before March 1 of each year, report to the commissioner of insurance upon blanks furnished by the commissioner such the facts as are required of domestic insurance companies organizing under chapter 515, as which are applicable to this chapter. These reports shall be tabulated and published by the commissioner of insurance in the annual report of insurance, one copy of which shall be sent to each association.

Sec. 9. Section 511.3, Code 1985, is repealed.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 502, Seventy-first General Assembly.

F. MARIE THAYER
Secretary of the Senate

Approved *May 30*, 1985

THOMAS E. BRANSTAD
Governor