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SENATE FILE 518
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 300)

(COMPANION TO LSB 1267HV BY
COMMITTEE ON COMMERCE)

Substituted for H 7 670

Passed Senate, Date 3/22/91 (p. 900) Passed House, Date 4/2/91 (p. 370)

Vote: Ayes 47 Nays 0 Vote: Ayes 49 Nays 0

Approved April 11, 1991 (p. 1216)

A BILL FOR

1 An Act relating to the financial supervision and solvency
2 oversight of insurance companies by the commissioner of
3 insurance and accreditation of the insurance division as an
4 approved insurance regulator by the national association of
5 insurance commissioners, imposing civil liability, authorizing
6 administrative and criminal penalties, and providing effective
7 dates and applicability provisions.

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

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DIVISION I

Section 1. NEW SECTION. 510.1A SHORT TITLE.

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

Sec. 2. NEW SECTION. 510.2A DEFINITIONS.

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

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

2. "Commissioner" means the commissioner of insurance.

3. "Insurer" means a person duly licensed in this state as an insurance company pursuant to Title XX.

4. a. "Managing general agent" means any person who engages in all of the following:

(1) Negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and who acts as an agent for such insurer whether known as a managing general agent, manager, or other similar term or title.

(2) With or without authority and either separately or together with affiliates, directly or indirectly produces, and underwrites, an amount of gross direct written premium equal to or greater than five percent of the policyholder surplus in any one quarter or year as reported in the last annual statement of the insurer.

(3) Engages in either or both of the following:

(a) Adjusts or pays claims in excess of an amount determined by the commissioner.

(b) Negotiates reinsurance on behalf of the insurer.

b. Managing general agent does not include any of the following:

(1) An employee of the insurer.

(2) A manager of a United States branch of an alien insurer who resides in this country.

1 (3) An underwriting manager who, pursuant to contract,
2 manages all insurance operations of the insurer, who is un-
3 common control with the insurer, subject to chapter 521A
4 relating to the regulation of insurance holding company
5 systems, and who is not compensated based upon the volume
6 premiums written.

7 (4) An insurance company, in connection with the
8 acceptance or rejection of reinsurance on a block of business.

9 (5) The attorney-in-fact authorized by or acting for the
10 subscribers of a reciprocal insurer or interinsurance exchange
11 under power of attorney.

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

14 Sec. 3. NEW SECTION. 510.3A LICENSURE REQUIRED -- BOND.

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

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

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

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

30 Sec. 4. NEW SECTION. 510.4 REQUIRED CONTRACT PROVISIONS
31 -- LIMITATIONS.

32 1. A person acting in the capacity of a managing general
33 agent shall not place business with an insurer unless a
34 written contract is in force between the parties which sets
35 forth the responsibilities of each party. If both parties

1 share responsibility for a particular function, the contract
2 must specify the division of such responsibilities, and must
3 contain, at a minimum, all of the following provisions:

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

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

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

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

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

- 32 (1) The maximum annual premium volume.
33 (2) The basis of the rates to be charged.
34 (3) The types of risks which may be written.
35 (4) Maximum limits of liability.

- 1 (5) Applicable exclusions.
- 2 (6) Territorial limitations.
- 3 (7) Policy cancellation provisions.
- 4 (8) The maximum length or duration of the policy period.

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

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

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

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

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

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

22 (b) The claim involves a coverage dispute.

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

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

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

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

35 (4) Any settlement authority granted to the managing

1 general agent may be terminated for cause upon the insurer's
2 written notice to the managing general agent or upon the
3 termination of the contract. The insurer may suspend the
4 settlement authority during the pendency of any dispute
5 regarding the cause for termination.

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

9 c. If the contract provides for a sharing of interim
10 profits by the managing general agent, and the managing
11 general agent has the authority to determine the amount of
12 interim profits by establishing loss reserves, by controlling
13 claim payments, or by determining the amount of interim
14 profits in any other manner, interim profits shall not be paid
15 to the managing general agent until one year after they are
16 earned for property insurance business and five years after
17 they are earned for casualty insurance business, and not until
18 the interim profits have been verified pursuant to section
19 510.5.

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

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

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

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

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

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

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

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

15 h. Appoint a submanaging general agent.

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

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

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

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

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

35 5. Within thirty days of entering into or termination of a

1 contract with a managing general agent, the insurer shall
2 provide written notification of the appointment or termination
3 to the commissioner. A notice of appointment of a managing
4 general agent must include a statement of duties which the
5 applicant is expected to perform on behalf of the insurer, the
6 lines of insurance for which the applicant is to be authorized
7 to act, and any other information the commissioner may
8 request.

9 6. An insurer shall review its books and records each
10 quarter and determine if any producer, as defined by section
11 510A.2, has become, by operation of section 510.2, subsection
12 3, a managing general agent as defined in that section. If
13 the insurer determines that a producer has become a managing
14 general agent by operation of section 510.2, subsection 3, the
15 insurer shall promptly notify the producer and the
16 commissioner of such determination and the insurer and
17 producer shall fully comply with the provisions of this
18 chapter within thirty days.

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

27 Sec. 6. NEW SECTION. 510.6 EXAMINATION AUTHORITY.
28 The acts of a managing general agent are considered to be
29 the acts of the insurer on whose behalf a managing general
30 agent is acting. A managing general agent may be examined as
31 if it were the insurer.

32 Sec. 7. NEW SECTION. 510.7 PENALTIES AND LIABILITIES.
33 1. If the commissioner finds, after a hearing conducted in
34 accordance with chapter 17A, that any person has violated one
35 or more provisions of this chapter, the commissioner may order

1 one or more of the following:

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

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

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

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

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

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

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

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

22 Sec. 9. NEW SECTION. 510.9 EXEMPTION.

3216 23 A managing general agent who complies with sections 510.1
24 through 510.8 for a block of business, shall not also be
25 required to comply with sections 510.20 and 510.21 with regard
26 to the same block of business.

27 DIVISION II

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

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

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

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

34 1. "Captive insurer" means an insurance company which is
35 owned by another organization for the exclusive purpose of

1 insuring risks of the organization and any affiliated company,
2 or in the case of groups and associations, an insurance
3 organization owned by the insureds for the exclusive purpose
4 of insuring risks of group and association members and any
5 affiliates.

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

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

22 4. "Licensed property and casualty insurer" or "insurer"
23 means a person licensed to transact a property and casualty
24 insurance business in this state and which issues policies
25 covered by chapter 915B, which establishes the insurance
26 guaranty association. The following are not licensed property
27 and casualty insurers for the purposes of this chapter:

- 28 a. All nonadmitted insurers.
- 29 b. All risk retention groups as defined in the federal
30 Superfund Amendments Reauthorization Act of 1986, Pub. L. No.
31 99-499, 100 Stat. 1613 (1986), the federal Risk Retention Act,
32 15 U.S.C. 3901 et seq. (1982 & Supp. 1986), or chapter 515E.
- 33 c. All residual market pools and joint underwriting
34 authorities or associations.
- 35 d. All captive insurers.

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

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

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

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

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

31 c. The controlling producer failed to maintain records,
32 sufficient to demonstrate that the producer's dealings with
33 its controlled insurer were fair and equitable and in
34 compliance with chapter 521A or to accurately disclose the
35 nature and details of its transactions with the controlled

1 insurer, including such information as is necessary to support
2 the charges or fees to the respective parties.

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

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

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

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

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

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

26 b. The producer, prior to the effective date of any
27 policy, delivers written notice to the prospective insured
28 disclosing the relationship between the producer and the
29 controlled insurer. The disclosure notice shall be signed by
30 the insured and retained in the underwriting file until the
31 filing of the report on examination covering the period in
32 which the coverage is in effect. However, if the business is
33 placed through an agent of the producer who is not a
34 controlling producer, the controlling producer shall retain in
35 the controlling producer's records a signed commitment from

1 the agent of the producer that the agent of the producer is
2 aware of the relationship between the insurer and the producer
3 and that the agent of the producer has or will notify the
4 insured of the relationship.

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

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

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

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

33 5. A reinsurance intermediary which has control of an
34 assuming insurer shall not directly or indirectly place
35 business with the assuming insurer in any transaction in which

1 such reinsurance intermediary is acting as a broker on behalf
2 of the ceding insurer. A reinsurance intermediary which has
3 control of a ceding insurer shall not directly or indirectly
4 accept business from the ceding insurer in any transaction in
5 which such reinsurance intermediary is acting as a producer on
6 behalf of the assuming insurer. The prohibitions in this
7 subsection shall not apply to a reinsurance intermediary which
8 makes a full and complete written disclosure to the parties of
9 its relationship with the assuming or ceding insurer prior to
10 completion of the transaction.

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

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

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

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

1 investment income earned on premiums and loss reserves for
2 such business.

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

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

8 DIVISION III

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

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

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

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

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

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

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

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

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

35 d. Files annually with the commissioner a copy of its

1 annual statement filed with the insurance department of its
2 state of domicile and a copy of its most recent audited
3 financial statement and does either of the following:

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

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

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

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

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

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

35 (2) Submits to the authority of this state to examine its

1 books and records.

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

6 4. a. Credit is allowed if the reinsurance is ceded to an
7 assuming insurer which maintains a trust fund in a qualified
8 United States financial institution, as defined in section
9 521B.4, subsection 2, for the payment of the valid claims of
10 its United States policyholders and ceding insurers, their
11 assigns, and successors in interest. The assuming insurer
12 shall report annually to the commissioner information
13 substantially the same as that required to be reported on the
14 national association of insurance commissioners' annual
15 statement form by licensed insurers to enable the commissioner
16 to determine the sufficiency of the trust fund. In the case
17 of a single assuming insurer, the trust shall consist of a
18 trusted account representing the liabilities of the assuming
19 insurer attributable to business written in the United States
20 and, in addition, the assuming insurer shall maintain a
21 trusted surplus of not less than twenty million dollars. In
22 the case of a group of individual unincorporated underwriters,
23 the trust shall consist of a trusted account representing the
24 liabilities of the group attributable to business written in
25 the United States and, in addition, the group shall maintain a
26 trusted surplus of which one hundred million dollars shall be
27 held jointly for the benefit of United States ceding insurers
28 of any member of the group. The group shall make available to
29 the commissioner an annual certification of the solvency of
30 each underwriter by the group's domiciliary regulator and its
31 independent public accountants.

32 b. In the case of a group of incorporated insurers under
33 common administration which complies with the filing
34 requirements contained in paragraph "a", which is under the
35 supervision of the department of trade and industry of the

1 United Kingdom, which submits to the authority of this state
2 to examine its books and records and bears the expense of the
3 examination, and which has aggregate policyholders' surplus of
4 at least ten billion dollars, the trust shall be in an amount
5 equal to the several liabilities of the group attributable to
6 business written in the United States. The group shall also
7 maintain a joint trustee surplus of which one hundred million
8 dollars shall be held jointly for the benefit of United States
9 ceding insurers of any member of the group, and each member of
10 the group shall make available to the commissioner an annual
11 certification of the member's solvency by the member's
12 domiciliary regulator and its independent public accountant.

13 c. Such trust shall be established in a form approved by
14 the commissioner. The trust instrument shall provide that
15 contested claims are valid and enforceable upon the final
16 order of any court of competent jurisdiction in the United
17 States. The trust vests legal title to its assets in the
18 trustees of the trust for its United States policyholders and
19 ceding insurers, their assigns, and successors in interest.
20 The trust and the assuming insurer are subject to examination
21 as determined by the commissioner. The trust described in
22 this paragraph must remain in effect for as long as the
23 assuming insurer has outstanding obligations due under the
24 reinsurance agreements subject to the trust.

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

32 5. Credit is allowed if the reinsurance is ceded to an
33 assuming insurer not meeting the requirements of subsection 1,
34 2, 3, or 4, but only with respect to the insurance of risks
35 located in a jurisdiction where such reinsurance is required

1 by applicable law or regulation of that jurisdiction. For
2 purposes of this subsection, jurisdiction refers to a
3 jurisdiction other than the United States, and any state,
4 district, or territory of the United States. This subsection
5 allows credit to ceding insurers which are mandated by such a
6 jurisdiction to cede reinsurance to state owned or controlled
7 insurance or reinsurance companies or to participate in pools,
8 guaranty funds, or joint underwriting associations.

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

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

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

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

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

35 A reduction from liability for the reinsurance ceded by a

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

14 1. Cash.

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

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

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

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

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

35 1. For purposes of this chapter, a "qualified United

1 States financial institution" means an institution that
2 satisfies all of the following conditions:

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

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

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

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

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

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

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

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

30 DIVISION IV

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

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

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

35 As used in this chapter, unless the context otherwise

1 requires:

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

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

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

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

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

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

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

31 a. An employee of the reinsurer.

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

34 c. An underwriting manager who, pursuant to contract,
35 manages all the reinsurance operations of the reinsurer, who

1 is under common control with the reinsurer, subject to chapter
2 521A relating to the regulation of insurance holding company
3 systems, and who is not compensated based upon the volume of
4 premiums written.

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

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

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

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

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

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

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

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

32 1. A person shall not act as a reinsurance intermediary-
33 broker in this state if the person maintains an office in this
34 state or another state individually or as a member or employee
35 of a firm or association, or as an officer, director, or

1 employee of a corporation, unless the person is a licensed
2 producer in this state or another state having a law
3 substantially similar to this law, or the person is licensed
4 in this state as a nonresident reinsurance intermediary.

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

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

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

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

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

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

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

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

1 authorize all of the officers, and any designated employees
2 and directors of the corporation to act as reinsurance
3 intermediaries on behalf of the corporation, and all such
4 persons shall be named in the application and any supplement
5 to the application.

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

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

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

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

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

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

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

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

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

- 10 1. The insurer may terminate the authority of the
11 reinsurance intermediary-broker at any time.
- 12 2. The reinsurance intermediary-broker shall render
13 accounts to the insurer accurately detailing all material
14 transactions, including information necessary to support all
15 commissions, charges, and other fees received by, or owing, to
16 the reinsurance intermediary-broker, and shall remit all funds
17 due to the insurer within thirty days of receipt.
- 18 3. All funds collected for the account of the insurer
19 shall be held by the reinsurance intermediary-broker in a
20 fiduciary capacity in a bank, as defined in section 524.103.
- 21 4. The reinsurance intermediary-broker shall comply with
22 section 521C.5.
- 23 5. The reinsurance intermediary-broker shall comply with
24 the written standards established by the insurer for the
25 cession or retrocession of all risks.
- 26 6. The reinsurance intermediary-broker shall disclose to
27 the insurer any relationship with any reinsurer to which
28 business will be ceded or retroceded.

29 Sec. 23. NEW SECTION. 521C.5 BOOKS AND RECORDS -- RE-
30 INSURANCE INTERMEDIARY BROKERS.

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

- 1 a. The type of contract, limits, underwriting
- 2 restrictions, classes or risks, and territory.
- 3 b. The period of coverage, including effective and
- 4 expiration dates, cancellation provisions, and notice requi.
- 5 of cancellation.
- 6 c. The reporting and settlement requirements of balances.
- 7 d. The rate used to compute the reinsurance premium.
- 8 e. The names and addresses of assuming reinsurers.
- 9 f. The rates of all reinsurance commissions, including the
- 10 commissions on any retrocessions handled by the reinsurance
- 11 intermediary-broker.
- 12 g. All related correspondence and memoranda.
- 13 h. Proof of placement.
- 14 i. The details regarding retrocessions handled by the
- 15 reinsurance intermediary-broker including the identity of
- 16 retrocessionaires and percentage of each contract assumed or
- 17 ceded.
- 18 j. Financial records, including but not limited to,
- 19 premium and loss accounts.
- 20 k. If the reinsurance intermediary-broker procures a
- 21 reinsurance contract on behalf of a licensed ceding insurer
- 22 one or both of the following shall be included in the record:
- 23 (1) Directly from any assuming reinsurer, written evidence
- 24 that the assuming reinsurer has agreed to assume the risk.
- 25 (2) If placed through a representative of the assuming
- 26 reinsurer, other than an employee, written evidence that the
- 27 assuming reinsurer has delegated binding authority to the
- 28 representative.
- 29 2. The insurer has a right of access and the right to copy
- 30 and audit all accounts and records maintained by the
- 31 reinsurance intermediary-broker related to its business in a
- 32 form usable by the insurer.

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

35 1. An insurer shall not engage the services of a person,

1 firm, association, or corporation to act as a reinsurance
2 intermediary-broker on its behalf unless the person is
3 licensed as required by section 521C.3, subsection 1.

4 2. An insurer shall not employ an individual who is
5 employed by a reinsurance intermediary-broker with which the
6 insurer transacts business, unless such reinsurance
7 intermediary-broker is under common control with the insurer
8 and subject to chapter 521A relating to the regulation of
9 insurance company holding systems.

10 3. The insurer shall annually obtain a copy of statements
11 of the financial condition of each reinsurance intermediary-
12 broker with which the insurer transacts business.

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

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

26 1. The reinsurer may terminate the contract for cause upon
27 written notice to the reinsurance intermediary-manager. The
28 reinsurer may suspend the authority of the reinsurance
29 intermediary-manager to assume or cede business during the
30 pendency of any dispute regarding the cause for termination.

31 2. The reinsurance intermediary-manager shall render
32 accounts to the reinsurer accurately detailing all material
33 transactions, including information necessary to support all
34 commissions, charges, and other fees received by, or owing to
35 the reinsurance intermediary-manager, and shall remit all

1 funds due under the contract to the reinsurer on not less than
2 a monthly basis.

3 3. All funds collected for the reinsurer's account shall
4 be held by the reinsurance intermediary-manager in a fiduciary
5 capacity in a bank which is a qualified United States
6 financial institution, as defined in section 521C.2. The
7 reinsurance intermediary-manager may retain no more than three
8 months estimated claims payments and allocated loss adjustment
9 expenses. The reinsurance intermediary-manager shall maintain
10 a separate bank account for each reinsurer that the
11 reinsurance intermediary-manager represents.

12 4. For at least ten years after expiration of each
13 contract of reinsurance transacted by the reinsurance
14 intermediary-manager, the reinsurance intermediary-manager
15 shall keep a complete record for each transaction showing all
16 of the following:

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

19 b. The period of coverage, including effective and
20 expiration dates, cancellation provisions and notice required
21 of cancellation, and disposition of outstanding reserves on
22 covered risks.

23 c. The reporting and settlement requirements of balances.

24 d. The rate used to compute the reinsurance premium.

25 e. The names and addresses of reinsurers.

26 f. The rates of all reinsurance commissions, including the
27 commissions on any retrocessions handled by the reinsurance
28 intermediary-manager.

29 g. Any related correspondence and memoranda.

30 h. Proof of placement.

31 i. The details regarding retrocessions handled by the
32 reinsurance intermediary-manager, as permitted by section
33 521C.9, subsection 4, including the identity of
34 retrocessionaires and percentage of each contract assumed or
35 ceded.

1 j. Financial records, including but not limited to,
2 premium and loss accounts.

3 k. If the reinsurance intermediary-manager places a
4 reinsurance contract on behalf of a ceding insurer one or both
5 of the following shall be included in the record:

6 (1) Directly from any assuming reinsurer, written evidence
7 that the assuming reinsurer has agreed to assume the risk.

8 (2) If placed through a representative of the assuming
9 reinsurer, other than an employee, written evidence that the
10 assuming reinsurer has delegated binding authority to the
11 representative.

12 5. The reinsurer has a right of access and the right to
13 copy all accounts and records maintained by the reinsurance
14 intermediary-manager related to its business in a form usable
15 by the reinsurer.

16 6. The contract cannot be assigned in whole or in part by
17 the reinsurance intermediary-manager.

18 7. The reinsurance intermediary-manager shall comply with
19 the written underwriting and rating standards established by
20 the insurer for the acceptance, rejection, or cession of all
21 risks.

22 8. The contract shall set forth the rates, terms, and
23 purposes of commissions, charges, and other fees which the
24 reinsurance intermediary-manager may levy against the
25 reinsurer.

26 9. If the contract permits the reinsurance intermediary-
27 manager to settle claims on behalf of the reinsurer, all of
28 the following apply:

29 a. All claims shall be reported to the reinsurer in a
30 timely manner.

31 b. A copy of the claim file shall be sent to the reinsurer
32 at its request or as soon as it becomes known that the claim
33 meets any or all of the following conditions:

34 (1) The claim has the potential to exceed the lesser of an
35 amount determined by the commissioner or the limit set by the

1 reinsurer.

2 (2) The claim involves a coverage dispute.

3 (3) The claim may exceed the claims settlement authority
4 of the reinsurance intermediary-manager.

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

6 (5) The claim is closed by payment of the lesser of an
7 amount set by the commissioner or an amount set by the
8 reinsurer.

9 c. All claim files shall be the joint property of the
10 reinsurer and reinsurance intermediary-manager. However, upon
11 an order of liquidation of the reinsurer the files shall
12 become the sole property of the reinsurer or its estate. The
13 reinsurance intermediary-manager shall have reasonable access
14 to and the right to copy the files on a timely basis.

15 d. Any settlement authority granted to the reinsurance
16 intermediary-manager may be terminated for cause upon the
17 reinsurer's written notice to the reinsurance intermediary-
18 manager or upon the termination of the contract. The
19 reinsurer may suspend the settlement authority during the
20 pendency of the dispute regarding the cause of termination.

21 10. If the contract provides for a sharing of interim
22 profits by the reinsurance intermediary-manager, interim
23 profits shall not be paid until one year after the end of each
24 underwriting period for property insurance business and five
25 years after the end of each underwriting period for casualty
26 insurance business, or a later period as determined by the
27 commissioner for each type of insurance, but in no case until
28 the adequacy of reserves on remaining claims has been verified
29 pursuant to section 521C.9, subsection 3.

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

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

1 intermediary-manager.

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

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

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

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

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

21 2. Commit the reinsurer to participate in reinsurance
22 syndicates.

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

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

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

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

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

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

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

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

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

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

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

30 6. A reinsurer shall not appoint to its board of directors
31 any officer, director, employee, controlling shareholder, or
32 an agent of a producer of its reinsurance intermediary-
33 manager. This subsection shall not apply to relationships
34 governed by chapter 521A relating to the regulation of
35 insurance company holding systems or, if applicable, governed

1 by chapter 510A relating to the regulation of producer
2 controlled property and casualty insurers.

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

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

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

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

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

15 a. For each separate violation, a civil penalty in an
16 amount not exceeding ten thousand dollars.

17 b. Revocation or suspension of the license of the
18 reinsurance intermediary.

19 c. If a violation was committed by the reinsurance
20 intermediary, restitution by the reinsurance intermediary to
21 the insurer, reinsurer, rehabilitator, or liquidator of the
22 insurer or reinsurer for the net losses incurred by the
23 insurer or reinsurer attributable to the violation.

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

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

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

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

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

1 chapter.

2

DIVISION V

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

5 NEW UNNUMBERED PARAGRAPH. The commissioner may appoint a
6 deputy commissioner for supervision whom the commissioner may
7 appoint as supervisory or special deputy pursuant to chapter
8 507C and who shall perform such other duties as may be
9 assigned by the commissioner. The deputy commissioner for
10 supervision shall receive a salary to be fixed by the
11 commissioner. The deputy commissioner for supervision shall
12 be an exempt employee under section 19A.3, subsection 17.

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

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

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

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

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

34 NEW UNNUMBERED PARAGRAPH. A report of an examination of a
35 domestic or foreign insurer which is preliminary under the

1 rules of the division is not a public record under chapter 22
2 except when sought by the insurer to which the report relates
3 or an insurance regulator of another state, and is privileged
4 and confidential in any judicial or administrative proceeding.

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

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

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

35 Sec. 36. Section 508.11, subsection 43, Code 1991, is

1 amended to read as follows:

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

12 Sec. 37. Section 508C.8, Code 1991, is amended by adding
13 the following new subsection:

14 NEW SUBSECTION. 1A. If a domestic, foreign, or alien
15 insurer is an insolvent insurer, subject to the approval of
16 the commissioner, the association shall:

17 a. Guarantee, assume, or reinsure, or cause to be
18 guaranteed, assumed, or reinsured the covered policies of the
19 insolvent insurer.

20 b. Assure payment of the contractual obligations of the
21 insolvent insurer.

22 c. Provide moneys, pledges, notes, guarantees, or other
23 means as reasonably necessary to discharge the duties
24 described in this subsection.

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

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

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

1 following:

2 514B.25 FINANCIALLY IMPAIRED OR INSOLVENT HEALTH
3 MAINTENANCE ORGANIZATIONS.

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

7 Sec. 40. Section 515.35, subsection 4, paragraph e, Code
8 1991, is amended by adding the following new unnumbered
9 paragraph:

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

13 Sec. 41. Section 515.63, unnumbered paragraph 16, Code
14 1991, is amended to read as follows:

15 Fifteenth -- All other information as required by the
16 national association of insurance commissioners' annual
17 statement blank. The annual statement blank shall be prepared
18 in accordance with instructions prescribed by the
19 commissioner. All financial information reflected in the
20 annual report shall be kept and prepared in accordance with
21 accounting practices and procedures prescribed by the
22 commissioner. The commissioner may adopt by reference the
23 annual statement handbook and the accounting practices and
24 procedures manual of the national association of insurance
25 commissioners.

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

29 515.119 COMPLIANCE WITH LAW -- CHANGE OF ARTICLES.

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

35 Sec. 43. Section 515B.2, subsection 3, unnumbered

1 paragraph 2, Code 1991, is amended by striking the paragraphs
2 and inserting in lieu thereof the following:

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

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

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

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

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

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

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

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

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

35 NEW PARAGRAPH. h. Request that all future payments of

1 workers' compensation weekly benefits, medical expenses, or
2 other payments under chapter 85, 85A, 85B, 86, or 87 be
3 } commuted to a present lump sum and upon the payment of which,
4 either to the claimant or to a licensed insurer for purchase
5 of an annuity or other periodic payment plan for the benefit
6 of the claimant, the employer and the association shall be
7 discharged from all further liability for the workers'
8 compensation claim. Notwithstanding the provisions of section
9 85.45, any future payment of medical expenses, weekly
10 compensation benefits, or other payment by the association
11 under this chapter pursuant to chapter 85, 85A, 85B, 86, or
12 87, is deemed an undue expense, hardship, or inconvenience
13 upon the employer for purposes of a full commutation pursuant
14 to section 85.45, subsection 2, and the industrial
15 commissioner shall fix the lump sum of the probable future
16 medical expenses and weekly compensation benefits capitalized
17 at their present value upon the basis of interest at the rate
18 provided in section 535.3 for court judgments and decrees.

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

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

1 and 514.

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

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

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

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

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

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

30 Sec. 49. Section 521A.3, subsection 4, paragraph b, Code
31 1991, is amended to read as follows:

32 b. The public hearing referred to in paragraph "a" ~~of this~~
33 ~~subsection~~ shall be held within thirty days after the
34 statement required by subsection 1 ~~of this section~~ is filed,
35 and at least twenty days' notice thereof of the public hearing

1 shall be given by the commissioner to the person filing the
2 statement. Not less than seven days' notice of such the
3 public hearing shall be given by the person filing the
4 statement to the insurer and to such other persons as may be
5 designated by the commissioner. ~~The insurer shall give such~~
6 ~~notice to its securityholders.~~ The commissioner shall make a
7 determination within thirty days after the conclusion of ~~such~~
8 the hearing. At ~~such the~~ hearing, the person filing the
9 statement, the insurer, any person to whom notice of hearing
10 was sent, and any other person whose interests may be affected
11 ~~thereby~~ shall have the right to present evidence, examine and
12 cross-examine witnesses, and offer oral and written arguments
13 and in connection therewith shall be entitled to conduct
14 discovery proceedings in the same manner as is presently
15 allowed in the district court of this state. All discovery
16 proceedings shall be concluded not later than three days prior
17 to the commencement of the public hearing.

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

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

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

27 Sec. 52. Section 521A.4, subsection 2, paragraph c, Code
28 1991, is amended by adding the following new subparagraph:

29 NEW SUBPARAGRAPH. (8) Consolidated tax allocation
30 agreements.

31 Sec. 53. Section 521A.4, Code 1991, is amended by adding
32 the following new subsection:

33 NEW SUBSECTION. 3A. REPORTING OF DIVIDENDS TO
34 SHAREHOLDERS. Subject to section 521A.5, subsection 3, a
35 registered insurer shall report to the commissioner all

1 dividends and other distributions to shareholders within
2 fifteen days following the declaration of the dividends or
3 distributions.

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

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

18 Sec. 55. Section 521A.10, Code 1991, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 1A. a. A director or officer of an
21 insurance holding company system who does any of the following
22 is subject to the civil penalty imposed under paragraph "b":

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

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

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

33 b. An officer or director of an insurance holding company
34 system who commits any of the acts or omissions listed in
35 paragraph "a" shall pay, in the person's individual capacity,

1 a civil penalty of not more than one thousand dollars per
2 violation, after notice and hearing before the commissioner.
3 In determining the amount of the civil penalty, the
4 commissioner shall take into account the appropriateness of
5 the penalty with respect to the gravity of the violation, the
6 history of previous violations, and such other matters as
7 justice may require.

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

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

18 DIVISION VI

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

21 507.12 PROCEDURE AGAINST LIFE COMPANIES.

22 In case of companies organized under the provisions of
23 chapter 508, ~~said the~~ officers shall proceed as provided in
24 sections ~~508:17-to~~ 508.18 and 508.19.

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

27 508.19 SECURITIES.

28 The securities that are on deposit of a defaulting or
29 insolvent company, or a company against which proceedings are
30 pending under ~~sections-508:17-and~~ section 508.18, shall vest
31 in the state for the benefit of all policyholders of the
32 company.

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

35 The securities comprising the deposit of a company or

1 association against which proceedings are pending under
2 ~~sections-508.17-and~~ section 508.18 shall vest in the state in
3 the benefit of all policyholders of the company or
4 association.

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

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

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

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

25 DIVISION VII

26 Sec. 62. Sections 1 through 9, the model managing general
27 agents Act, division I of this Act, take effect July 1, 1991.
28 An insurer shall not continue to utilize the services of a
29 managing general agent on or after July 1, 1991, except as
30 otherwise provided in the Act, unless such utilization is in
31 compliance with division I of this Act, regardless of the date
32 on which the original contract was entered into with the
33 managing general agent. An insurer which on the effective
34 date of this Act has in effect a contract with a managing
35 general agent shall give written notification to the

1 commissioner of the name of the managing general agent and the
2 relationship between the insurer and the managing general
3 agent within thirty days of the effective date of this Act and
4 shall comply with sections 1 through 9 of this Act within
5 thirty days of the effective date of rules adopted by the
6 commissioner implementing the managing general agents Act.

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

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

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

26 EXPLANATION

27 Division I of this bill adopts the NAIC model "Managing
28 General Agents (MGA) Act," which is required for NAIC
29 accreditation of the insurance division as an approved
30 insurance regulator. The MGA Act requires all managing
31 general agents to be licensed. The bill would require that a
32 written contract between a managing general agent and the
33 insurer be filed with the insurance division. The bill
34 requires the insurer to monitor and control a managing general
35 agent's activities. The bill limits the amount of insurer

1 funds that the managing general agent may hold and requires
2 sufficient records to be maintained by the managing general
3 agent. The bill requires the insurer to conduct semiannual
4 on-site reviews of the underwriting and claims processes.

5 Division II of this bill adopts the NAIC model "Producer
6 Controlled Property and Casualty Insurer Act," as a
7 prerequisite for accreditation of the division. The model Act
8 requires brokers and managers to be licensed as insurance
9 producers and limits the business placed with a controlled
10 insurer. The bill also imposes liability on the controlling
11 producer in the event of the insolvency of the controlled
12 insurer. The bill imposes strict recordkeeping and reporting
13 standards. The bill prohibits the reinsurance manager from
14 binding retrocessions in most instances and committing the
15 reinsurer to participate in reinsurance syndicates. The
16 reinsurer is required to obtain annual, independently prepared
17 financial statements from its reinsurance manager and
18 certification of loss reserves on business produced by the
19 manager.

20 Division III sets out strict standards for receiving
21 financial credit for ceded reinsurance. Division III adopts
22 the NAIC model "Credit for Reinsurance Act," and would deny
23 credit for ceded reinsurance unless the assuming company is
24 licensed to transact reinsurance in the domiciliary state of
25 the ceding company, the assuming company is an accredited
26 reinsurer in the domiciliary state of the ceding company, or
27 the assuming company is domiciled in a state which employs
28 standards regarding credit for reinsurance substantially
29 similar to the requirements under the bill. The model Act
30 would require the assuming company to maintain capital and
31 surplus equal to or exceeding \$20,000,000. To become an
32 accredited reinsurer of the ceding company's state of
33 domicile, the assuming company would have to submit to the
34 authority to examine its books and records, be licensed to
35 transact insurance or reinsurance in at least one state, and

1 file its financial statements with that state. Enactment of
2 this model Act is required for accreditation of the insurance
3 division by the NAIC as an approved insurance regulator.

4 Division IV of this bill adopts the NAIC's "Reinsurance
5 Intermediary Model Act," and requires certain brokers and
6 managers engaged in reinsurance activities to be licensed as
7 insurance producers. This bill imposes strict recordkeeping
8 and reporting standards. This bill prohibits the reinsurance
9 manager from binding retrocessions in most instances and
10 committing the reinsurer to participate in reinsurance
11 syndicates. The reinsurer is required to obtain annual,
12 independently prepared financial statements from its
13 reinsurance manager and certification of loss reserves on
14 business produced by the manager. Division IV further
15 authorizes the commissioner to examine a reinsurance
16 intermediary's books and records. The bill provides that the
17 reinsurance manager's acts are deemed the acts of the company
18 on whose behalf the reinsurance manager is acting. This bill
19 also gives the commissioner the right to order the reinsurance
20 intermediary to make restitution for net losses incurred
21 attributable to violations as provided in this bill. The
22 "Reinsurance Intermediary Model Act" is required for the
23 insurance division to be accredited as an approved regulator
24 by the NAIC.

25 Division V of this bill amends various existing Code
26 provisions also related to solvency and accreditation.

27 Sections 31 through 33 authorize the commissioner to
28 appoint a chief examiner and a deputy for supervision. The
29 salaries for each are to be set by the commissioner and paid
30 by the insurance industry as an examination expense.

31 Section 34 changes the confidentiality of examination
32 reports to reports which are merely preliminary under the
33 rules of the division, specifically 191 IAC 1.3(11), 5.1.
34 Reports are considered preliminary when the twenty-day period
35 for demanding a hearing has not expired or when a hearing has

1 been demanded but not held or no decision issued pursuant to a
2 hearing. The section also grants similar protection to the
3 financial statements and related proprietary financial
4 information filed with the division by employers which self
5 insure for workers' compensation liability pursuant to section
6 87.11.

7 Section 35 provides for the issuance of an ex parte order
8 of rehabilitation without a hearing against an insurer in a
9 financially hazardous condition.

10 Sections 36 and 41 require that annual statement blanks be
11 prepared in accordance with the NAIC instructions handbook and
12 that statutes regarding annual statement blanks refer to the
13 NAIC accounting practices and procedures manual. The sections
14 also set standards for determining what are admitted and
15 nonadmitted assets by reference to NAIC accounting standards.

16 Section 37 reinstates subsection 2 of section 508C.8 as it
17 existed prior to repeal during the 1990 Session.

18 Section 38 converts existing section 511.8 from a deposit
19 requirement into an investment standard.

20 Section 39 conforms the procedure for handling an impaired
21 or insolvent health maintenance organization (HMO) to that
22 applicable to other insurers.

23 Section 40 imposes a five-percent-of-assets limitation upon
24 the junk bond investments of a property and casualty insurer.

25 Section 42 grants the insurance division, after notice and
26 hearing, the authority to issue a cease and desist order or
27 impose a fine if a domestic or foreign company fails to adhere
28 to Iowa law.

29 Section 43 restates the existing Code subsection with no
30 substantive change.

31 Section 44 limits the future obligation of the property and
32 casualty guaranty fund to pay certain claims, by authorizing
33 the claim to be valued at its estimated present value, to
34 permit the association to close an insolvency.

35 Section 45 amends an existing condition providing that a

1 person does not have a claim against the guaranty fund if the
2 person can recover their loss under a policy from another non-
3 life insurer by restating the definition of insurance.

4 Section 46 alters the conditions under which the guaranty
5 fund would pay for an uninsured motorist claim.

6 Section 47 limits a county mutual insurer's financial
7 exposure to risk of loss in connection with reinsurance
8 coverage to 15 percent of surplus with any one reinsurer.

9 Sections 48 through 56 revise the insurance company holding
10 system Act, chapter 521A, to increase the oversight and
11 penalties applicable to holding company transactions which do
12 not comply with state law. Section 48 imposes additional
13 investment restrictions on domestic insurers with regard to
14 investments in related companies, either subsidiaries or
15 affiliates. Sections 49 and 50 eliminate the requirement of
16 notice and mailing to securityholders of a domestic insurer,
17 since review of an acquisition from the standpoint of security
18 holders is not accepted as permissible state action under
19 federal law. Sections 51 through 54 conform the Iowa Act with
20 details of the NAIC model and broaden the disclosure and scope
21 of approval of the insurance division over company
22 transactions. Sections 55 and 56 amend the penalties for
23 violation of the Iowa Act, in conformance with the NAIC model
24 Act. The Iowa Act was originally based on a prior version of
25 the NAIC model, and these revisions substantially conform
26 Iowa's Act to the current model Act.

27 Division VI repeals certain Code sections and makes
28 conforming changes. Sections 57 through 60 make conforming
29 changes necessary as a result of the repeals in section 61.
30 Section 61 repeals sections 507.11, 508.17, and 515.85 through
31 515.87, relating to the procedure for dealing with an
32 insolvent insurer. The provision is in conflict with later
33 adopted chapter 507C governing the supervision of impaired or
34 insolvent insurers.

35 Division VII, sections 62 through 65, applies special

1 effective date or applicability conditions on the model Acts
2 contained in divisions I through IV.

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SENATE FILE 518

S-3210

1 Amend Senate File 518 as follows:

- 2 1. Page 7, lines 11 and 12, by striking the word
3 and figures "510.2, subsection 3" and inserting the
4 following: "510.2A, subsection 4".
5 2. Page 7, line 14, by striking the word and
6 figures "510.2, subsection 3" and inserting the
7 following: "510.2A, subsection 4".
8 3. Page 8, line 23, by striking the figure
9 "510.1" and inserting the following: "510.1A".
10 4. Page 15, lines 27 and 28, by striking the
11 words "insurer, is entered through" and inserting the
12 following: "insurer is entered through,".
13 5. Page 15, line 34, by inserting after the word
14 "amount" the following: "of".
15 6. Page 37, line 31, by striking the words "in,
16 this" and inserting the following: "in this".

By MICHAEL E. GRONSTAL

S-3210 FILED MARCH 27, 1991

w/ls 3/28

GRONSTAL, CH.
DOYLE
JENSEN
PALMER
SLIFE

SSB 300
COMMERCE

SENATE/HOUSE FILE 518
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE DIVISION
BILL)

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

A BILL FOR

1 An Act relating to the financial supervision and solvency
2 oversight of insurance companies by the commissioner of
3 insurance and accreditation of the insurance division as an
4 approved insurance regulator by the national association of
5 insurance commissioners, imposing civil liability, authorizing
6 administrative and criminal penalties, and providing effective
7 dates and applicability provisions.

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

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DIVISION I

Section 1. NEW SECTION. 507E.1 SHORT TITLE.

This chapter shall be known and may be cited as the "Nonadmitted Insurance Act."

Sec. 2. NEW SECTION. 507E.2 PURPOSES.

Insurance transactions with nonadmitted insurers are so affected with a public interest as to require regulation, taxation, supervision, and control of such transactions and matters relating to those transactions, as provided in this chapter, in order to further all of the following:

1. Protect the insureds and claimants of this state in transactions involving the purchase of insurance from insurers not authorized to transact business in this state.

2. Assure the availability of insurance coverage for the public, to the extent that insurance is not available from admitted insurers, or from eligible surplus lines insurers through surplus lines licensees.

3. Protect the revenues of this state.

4. Protect regulated, admitted insurers from unregulated and unfair competition by nonadmitted insurers.

5. Regulate and supervise the effectuation of nonadmitted insurance in accordance with the laws of this state and Pub. L. No. 15, known as the federal McCarran Act.

6. Maintain reliable insurance markets.

Sec. 3. NEW SECTION. 507E.3 DEFINITIONS.

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

1. "Admitted insurer" means an insurer licensed to transact the business of insurance in this state.

2. "Commissioner" means the commissioner of insurance.

3. "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance under Iowa law.

4. "Export" means to place surplus lines insurance with a nonadmitted insurer.

1 5. "Nonadmitted insurer" means an insurer not licensed to
2 transact the business of insurance in this state or an
3 insurance exchange as authorized to transact business under
4 the laws of various states.

5 6. "Producing broker" means the individual broker or agent
6 dealing directly with the party seeking insurance.

7 7. "Surplus lines insurance" means any insurance in this
8 state of risks resident, located, or to be performed in this
9 state, permitted to be placed through a surplus lines licensee
10 with a nonadmitted insurer eligible to accept such insurance,
11 other than reinsurance, wet marine and transportation
12 insurance, insurance independently procured, and life and
13 health insurance and annuities.

14 8. "Surplus lines licensee" means a person licensed under
15 Iowa law to place insurance of risks resident, located, or to
16 be performed in this state with nonadmitted insurers eligible
17 to accept such insurance.

18 9. "Wet marine and transportation insurance" means one or
19 more of the following:

20 a. Insurance against loss or damage to a vessel, craft,
21 hull, and interests related to or within the vessel, craft, or
22 hull.

23 b. Insurance against loss or damage related to marine
24 builder's risks, marine war risks, and contracts of marine
25 protection and indemnity insurance.

26 c. Insurance against loss or damage to freight and
27 disbursements related to a subject of insurance defined in
28 this subsection.

29 d. Insurance against loss or damage to personal property
30 and interests in personal property, in the course of
31 exportation from or importation into any country, or in the
32 course of transportation coastwise or on inland waters,
33 including transportation by land, water, or air from point of
34 origin to final destination, in connection with any and all
35 risks or perils of navigation, transit, or transportation, and

1 while being prepared for and while awaiting shipment, and
2 during any delays, transshipment, or reshipment incident to
3 shipment.

4 Sec. 4. NEW SECTION. 507E.4 ACTING FOR OR AIDING NON-
5 ADMITTED INSURERS PROHIBITED -- EXCEPTIONS.

6 1. A person shall not, directly or indirectly, act as an
7 agent for, or otherwise represent or aid on behalf of another,
8 any nonadmitted insurer in the solicitation, negotiation,
9 procurement, or effectuation of insurance, or renewal of
10 insurance, or forwarding of applications, or delivery of
11 policies or contracts or inspection of risks, or fixing of
12 rates, or investigation or adjustment of claims or losses, or
13 collection or forwarding of premiums, or in any other manner
14 represent or assist the nonadmitted insurer in the transaction
15 of insurance.

16 2. This section does not apply to any of the following:

17 a. Matters authorized by the commissioner under chapter
18 507A.

19 b. Surplus lines insurance if it is effected and written
20 under sections 515.147 through 515.149.

21 c. Transactions for which a certificate of authority to do
22 business is not required of an insurer under the insurance
23 laws of this state.

24 d. Reinsurance.

25 e. The property and operation of railroads or aircraft
26 engaged in interstate or foreign commerce, insurance of
27 vessels, crafts or hulls, cargoes, marine builder's risks,
28 marine protection and indemnity, or other risks including
29 strikes and war risks commonly insured under ocean or wet
30 marine policy forms.

31 f. Life insurance, health insurance, and annuities when
32 solicited solely by mail or when not solicited, negotiated, or
33 procured in this state.

34 g. Transactions subsequent to issuance of a policy not
35 covering domestic risks at the time of issuance, and lawfully

1 solicited, written, or delivered outside this state.

2 3. A person who represents or aids a nonadmitted insurer
3 in violation of this section is subject to the penalties
4 provided. An insurance contract entered into in violation of
5 this section shall not preclude the insured from enforcing the
6 insured's rights under the contract of insurance in accordance
7 with the terms and provisions of the contract of insurance.

8 4. If the unauthorized insurer fails to pay a claim or
9 loss within the provisions of the insurance contract, a person
10 who assisted or in any manner aided directly or indirectly in
11 the procurement of the insurance contract, is liable to the
12 insured for the full amount under the provisions of the
13 insurance contract.

14 . Sec. 5. NEW SECTION. 507E.5 SUITS BY NONADMITTED
15 INSURERS.

16 A nonadmitted insurer shall not commence or maintain any
17 action in law or equity in this state to enforce any right
18 arising out of any insurance transaction in this state except
19 with respect to any of the following:

20 1. Claims under policies lawfully written in this state.

21 2. Liquidation of assets and liabilities of the insurer,
22 other than collection of new premium, resulting from the
23 former authorized operations of the insurer in this state.

24 3. Transactions subsequent to the issuance of a policy not
25 covering domestic risks at the time of issuance, and lawfully
26 solicited, written, or delivered outside this state.

27 4. Surplus lines coverages exported in accordance with
28 sections 515.147 through 515.149.

29 5. Reinsurance.

30 6. The continuation and servicing of life insurance,
31 health insurance policies, or annuity contracts remaining in
32 force as to residents of this state where the insurer has
33 withdrawn from the state and is not transacting new insurance
34 in this state.

35 7. Servicing of a policy written by an admitted insurer in

1 a state to which the insured has moved but in which the
2 company is not licensed, until the term of the policy expires.

3 8. Claims under policies covering wet marine and
4 transportation insurance.

5 Sec. 6. NEW SECTION. 507E.6 INSURANCE INDEPENDENTLY
6 PROCURED -- DUTY TO REPORT AND PAY TAX.

7 1. An insured in this state who procures, continues, or
8 renews insurance with a nonadmitted insurer on a risk or
9 exposure located or to be performed in whole or in part in
10 this state, other than insurance procured through a surplus
11 lines licensee pursuant to sections 515.147 through 515.149,
12 within thirty days after the date such insurance was procured,
13 continued, or renewed, shall file a written report of the
14 procurement with the commissioner upon forms prescribed by the
15 commissioner, showing the name and address of the insured or
16 insureds, name and address of the insurer, the subject of the
17 insurance, a general description of the coverage, the amount
18 of premium currently charged for the insurance, and other
19 pertinent information as is reasonably requested by the
20 commissioner.

21 2. Gross premiums charged for the insurance, less any
22 return premiums, are subject to a tax at the rate of two
23 percent. At the time of filing the report required in
24 subsection 1, the insured shall pay the tax to the department
25 of revenue and finance, which shall deposit the tax in the
26 insurance division's revolving fund.

27 3. If an independently procured policy covers risks or
28 exposures only partially located or to be performed in this
29 state, the tax payable shall be computed on the portion of the
30 premium properly attributable to the risks or exposures
31 located or to be performed in this state.

32 4. This section does not abrogate or modify, and shall not
33 be construed or deemed to abrogate or modify, any provisions
34 of section 507E.4 or 507E.5, or any other provision of this
35 chapter.

1 5. This section does not apply to life insurance, health
2 insurance, or annuities.

3 DIVISION II

4 Sec. 7. NEW SECTION. 510.1A SHORT TITLE.

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

7 Sec. 8. NEW SECTION. 510.2A DEFINITIONS.

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

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

12 2. "Commissioner" means the commissioner of insurance.

13 3. "Insurer" means a person duly licensed in this state as
14 an insurance company pursuant to Title XX.

15 4. a. "Managing general agent" means any person who
16 engages in all of the following:

17 (1) Negotiates and binds ceding reinsurance contracts on
18 behalf of an insurer or manages all or part of the insurance
19 business of an insurer, including the management of a separate
20 division, department, or underwriting office, and who acts as
21 an agent for such insurer whether known as a managing general
22 agent, manager, or other similar term or title.

23 (2) With or without authority and either separately or
24 together with affiliates, directly or indirectly produces, and
25 underwrites, an amount of gross direct written premium equal
26 to or greater than five percent of the policyholder surplus in
27 any one quarter or year as reported in the last annual
28 statement of the insurer.

29 (3) Engages in either or both of the following:

30 (a) Adjusts or pays claims in excess of an amount
31 determined by the commissioner.

32 (b) Negotiates reinsurance on behalf of the insurer.

33 b. Managing general agent does not include any of the
34 following:

35 (1) An employee of the insurer.

1 (2) A manager of a United States branch of an alien
2 insurer who resides in this country.

3 (3) An underwriting manager who, pursuant to contract,
4 manages all insurance operations of the insurer, who is under
5 common control with the insurer, subject to chapter 521A
6 relating to the regulation of insurance holding company
7 systems, and who is not compensated based upon the volume of
8 premiums written.

9 (4) An insurance company, in connection with the
10 acceptance or rejection of reinsurance on a block of business.

11 (5) The attorney-in-fact authorized by or acting for the
12 subscribers of a reciprocal insurer or interinsurance exchange
13 under power of attorney.

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

16 Sec. 9. NEW SECTION. 510.3A LICENSURE REQUIRED -- BOND.

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

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

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

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

32 Sec. 10. NEW SECTION. 510.4 REQUIRED CONTRACT PROVISIONS
33 -- LIMITATIONS.

34 1. A person acting in the capacity of a managing general
35 agent shall not place business with an insurer unless a

1 written contract is in force between the parties which sets
2 forth the responsibilities of each party. If both parties
3 share responsibility for a particular function, the contract
4 must specify the division of such responsibilities, and must
5 contain, at a minimum, all of the following provisions:

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

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

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

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

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

- 34 (1) The maximum annual premium volume.
35 (2) The basis of the rates to be charged.

- 1 (3) The types of risks which may be written.
- 2 (4) Maximum limits of liability.
- 3 (5) Applicable exclusions.
- 4 (6) Territorial limitations.
- 5 (7) Policy cancellation provisions.
- 6 (8) The maximum length or duration of the policy period.

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

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

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

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

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

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

24 (b) The claim involves a coverage dispute.

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

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

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

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

1 the files on a timely basis.

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

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

11 c. If the contract provides for a sharing of interim
12 profits by the managing general agent, and the managing
13 general agent has the authority to determine the amount of
14 interim profits by establishing loss reserves, by controlling
15 claim payments, or by determining the amount of interim
16 profits in any other manner, interim profits shall not be paid
17 to the managing general agent until one year after they are
18 earned for property insurance business and five years after
19 they are earned for casualty insurance business, and not until
20 the interim profits have been verified pursuant to section
21 510.5.

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

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

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

35 c. Appoint any producer without assuring that the producer

1 is lawfully licensed to transact the type of insurance for
2 which the producer is appointed.

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

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

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

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

17 h. Appoint a submanaging general agent.

18 Sec. 11. NEW SECTION. §10.5 DUTIES OF INSURERS.

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

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

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

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

1 with the managing general agent.

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

11 6. An insurer shall review its books and records each
12 quarter and determine if any producer, as defined by section
13 510A.2, has become, by operation of section 510.2, subsection
14 3, a managing general agent as defined in that section. If
15 the insurer determines that a producer has become a managing
16 general agent by operation of section 510.2, subsection 3, the
17 insurer shall promptly notify the producer and the
18 commissioner of such determination and the insurer and
19 producer shall fully comply with the provisions of this
20 chapter within thirty days.

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

29 Sec. 12. NEW SECTION. 510.6 EXAMINATION AUTHORITY.

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

34 Sec. 13. NEW SECTION. 510.7 PENALTIES AND LIABILITIES.

35 1. If the commissioner finds, after a hearing conducted in

1 accordance with chapter 17A, that any person has violated one
2 or more provisions of this chapter, the commissioner may order
3 one or more of the following:

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

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

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

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

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

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

20 Sec. 14. NEW SECTION. 510.8 RULES AND REGULATIONS.

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

24 Sec. 15. NEW SECTION. 510.9 EXEMPTION.

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

29 DIVISION III

30 Sec. 16. NEW SECTION. 510A.1 SHORT TITLE.

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

33 Sec. 17. NEW SECTION. 510A.2 DEFINITIONS.

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

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

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

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

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

30 a. All nonadmitted insurers.

31 b. All risk retention groups as defined in the federal
32 Superfund Amendments Reauthorization Act of 1986, Pub. L. No.
33 99-499, 100 Stat. 1613 (1986), the federal Risk Retention Act,
34 15 U.S.C. 3901 et seq. (1982 & Supp. 1986), or chapter 515E.

35 c. All residual market pools and joint underwriting

1 authorities or associations.

2 d. All captive insurers.

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

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

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

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

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

33 c. The controlling producer failed to maintain records,
34 sufficient to demonstrate that the producer's dealings with
35 its controlled insurer were fair and equitable and in

1 compliance with chapter 521A or to accurately disclose the
2 nature and details of its transactions with the controlled
3 insurer, including such information as is necessary to support
4 the charges or fees to the respective parties.

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

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

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

14 Sec. 18. NEW SECTION. 510A.3 LIMITATION ON BUSINESS
15 PLACED WITH CONTROLLED INSURER.

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

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

28 b. The producer, prior to the effective date of any
29 policy, delivers written notice to the prospective insured
30 disclosing the relationship between the producer and the
31 controlled insurer. The disclosure notice shall be signed by
32 the insured and retained in the underwriting file until the
33 filing of the report on examination covering the period in
34 which the coverage is in effect. However, if the business is
35 placed through an agent of the producer who is not a

1 controlling producer, the controlling producer shall retain in
2 the controlling producer's records a signed commitment from
3 the agent of the producer that the agent of the producer is
4 aware of the relationship between the insurer and the producer
5 and that the agent of the producer has or will notify the
6 insured of the relationship.

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

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

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

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

35 5. A reinsurance intermediary which has control of an

1 assuming insurer shall not directly or indirectly place
2 business with the assuming insurer in any transaction in which
3 such reinsurance intermediary is acting as a broker on behalf
4 of the ceding insurer. A reinsurance intermediary which has
5 control of a ceding insurer shall not directly or indirectly
6 accept business from the ceding insurer in any transaction in
7 which such reinsurance intermediary is acting as a producer on
8 behalf of the assuming insurer. The prohibitions in this
9 subsection shall not apply to a reinsurance intermediary which
10 makes a full and complete written disclosure to the parties of
11 its relationship with the assuming or ceding insurer prior to
12 completion of the transaction.

13 Sec. 19. NEW SECTION. 510A.4 LIABILITY OF CONTROLLING
14 PRODUCER IN THE EVENT OF INSOLVENCY OF CONTROLLED INSURER.

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

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

30 c. Upon a finding, pursuant to this section, that the
31 controlling producer committed a violation and the controlling
32 producer failed to establish that the violation did not
33 substantially contribute to the insolvency, the controlling
34 producer shall reimburse the state guaranty funds, created
35 pursuant to chapter 515B for all payments made for losses,

1 loss adjustment, and administrative expenses on the business
2 placed by the producer in excess of gross earned premiums and
3 investment income earned on premiums and loss reserves for
4 such business.

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

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

10 DIVISION IV

11 Sec. 20. NEW SECTION. 521B.1 SHORT TITLE.

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

14 Sec. 21. NEW SECTION. 521B.2 CREDIT ALLOWED A DOMESTIC
15 CEDING INSURER.

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

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

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

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

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

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

1 the business of reinsurance in at least one state.

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

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

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

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

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

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

35 (1) Maintains a surplus with respect to policyholders in

1 an amount not less than twenty million dollars.

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

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

8 4. a. Credit is allowed if the reinsurance is ceded to an
9 assuming insurer which maintains a trust fund in a qualified
10 United States financial institution, as defined in section
11 521B.4, subsection 2, for the payment of the valid claims of
12 its United States policyholders and ceding insurers, their
13 assigns, and successors in interest. The assuming insurer
14 shall report annually to the commissioner information
15 substantially the same as that required to be reported on the
16 national association of insurance commissioners' annual
17 statement form by licensed insurers to enable the commissioner
18 to determine the sufficiency of the trust fund. In the case
19 of a single assuming insurer, the trust shall consist of a
20 trusted account representing the liabilities of the assuming
21 insurer attributable to business written in the United States
22 and, in addition, the assuming insurer shall maintain a
23 trusted surplus of not less than twenty million dollars. In
24 the case of a group of individual unincorporated underwriters,
25 the trust shall consist of a trusted account representing the
26 liabilities of the group attributable to business written in
27 the United States and, in addition, the group shall maintain a
28 trusted surplus of which one hundred million dollars shall be
29 held jointly for the benefit of United States ceding insurers
30 of any member of the group. The group shall make available to
31 the commissioner an annual certification of the solvency of
32 each underwriter by the group's domiciliary regulator and its
33 independent public accountants.

34 b. In the case of a group of incorporated insurers under
35 common administration which complies with the filing

1 requirements contained in paragraph "a", which is under the
2 supervision of the department of trade and industry of the
3 United Kingdom, which submits to the authority of this state
4 to examine its books and records and bears the expense of the
5 examination, and which has aggregate policyholders' surplus of
6 at least ten billion dollars, the trust shall be in an amount
7 equal to the several liabilities of the group attributable to
8 business written in the United States. The group shall also
9 maintain a joint trustee surplus of which one hundred million
10 dollars shall be held jointly for the benefit of United States
11 ceding insurers of any member of the group, and each member of
12 the group shall make available to the commissioner an annual
13 certification of the member's solvency by the member's
14 domiciliary regulator and its independent public accountant.

15 c. Such trust shall be established in a form approved by
16 the commissioner. The trust instrument shall provide that
17 contested claims are valid and enforceable upon the final
18 order of any court of competent jurisdiction in the United
19 States. The trust vests legal title to its assets in the
20 trustees of the trust for its United States policyholders and
21 ceding insurers, their assigns, and successors in interest.
22 The trust and the assuming insurer are subject to examination
23 as determined by the commissioner. The trust described in
24 this paragraph must remain in effect for as long as the
25 assuming insurer has outstanding obligations due under the
26 reinsurance agreements subject to the trust.

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

34 5. Credit is allowed if the reinsurance is ceded to an
35 assuming insurer not meeting the requirements of subsection 1,

1 2, 3, or 4, but only with respect to the insurance of risks
2 located in a jurisdiction where such reinsurance is required
3 by applicable law or regulation of that jurisdiction. For
4 purposes of this subsection, jurisdiction refers to a
5 jurisdiction other than the United States, and any state,
6 district, or territory of the United States. This subsection
7 allows credit to ceding insurers which are mandated by such a
8 jurisdiction to cede reinsurance to state owned or controlled
9 insurance or reinsurance companies or to participate in pools,
10 guaranty funds, or joint underwriting associations.

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

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

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

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

34 Sec. 22. NEW SECTION. 521B.3 REDUCTION FROM LIABILITY
35 FOR REINSURANCE CEDED BY A DOMESTIC INSURER TO AN ASSUMING

1 INSURER.

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

16 1. Cash.

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

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

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

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

35 Sec. 23. NEW SECTION. 521B.4 QUALIFIED UNITED STATES

1 FINANCIAL INSTITUTIONS.

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

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

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

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

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

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

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

29 Sec. 24. NEW SECTION. 521B.5 RULES.

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

32 DIVISION V

33 Sec. 25. NEW SECTION. 521C.1 SHORT TITLE.

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

1 Sec. 26. NEW SECTION. 521C.2 DEFINITIONS.

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

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

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

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

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

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

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

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

33 a. An employee of the reinsurer.

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

1 c. An underwriting manager who, pursuant to contract,
2 manages all the reinsurance operations of the reinsurer, who
3 is under common control with the reinsurer, subject to chapter
4 521A relating to the regulation of insurance holding company
5 systems, and who is not compensated based upon the volume of
6 premiums written.

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

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

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

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

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

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

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

33 Sec. 27. NEW SECTION. 521C.3 LICENSURE.

34 1. A person shall not act as a reinsurance intermediary-
35 broker in this state if the person maintains an office in this

1 state or another state individually or as a member or employee
2 of a firm or association, or as an officer, director, or
3 employee of a corporation, unless the person is a licensed
4 producer in this state or another state having a law
5 substantially similar to this law, or the person is licensed
6 in this state as a nonresident reinsurance intermediary.

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

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

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

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

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

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

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

30 4. a. The commissioner may issue a reinsurance
31 intermediary license to a person who has complied with the
32 requirements of this chapter. Any such license issued to a
33 firm or association will authorize all the members of the firm
34 or association and any designated employees to act as
35 reinsurance intermediaries under the license, and all such

1 persons shall be named in the application and any supplements
2 to the application. A license issued to a corporation shall
3 authorize all of the officers, and any designated employees
4 and directors of the corporation to act as reinsurance
5 intermediaries on behalf of the corporation, and all such
6 persons shall be named in the application and any supplements
7 to the application.

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

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

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

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

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

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

35 6. A licensed attorney in this state when acting in a

1 professional capacity as an attorney is exempt from the
2 requirements of this section.

3 Sec. 28. NEW SECTION. 521C.4 REQUIRED CONTRACT
4 PROVISIONS -- REINSURANCE INTERMEDIARY-BROKERS.

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

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

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

20 3. All funds collected for the account of the insurer
21 shall be held by the reinsurance intermediary-broker in a
22 fiduciary capacity in a bank, as defined in section 524.3.

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

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

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

31 Sec. 29. NEW SECTION. 521C.5 BOOKS AND RECORDS -- RE-
32 INSURANCE INTERMEDIARY BROKERS.

33 1. For a minimum of ten years after expiration of each
34 contract of reinsurance transacted by the reinsurance
35 intermediary-broker, the reinsurance intermediary-broker shall

- 1 keep a complete record for each transaction showing all of the
2 following:
- 3 a. The type of contract, limits, underwriting
4 restrictions, classes or risks, and territory.
 - 5 b. The period of coverage, including effective and
6 expiration dates, cancellation provisions, and notice required
7 of cancellation.
 - 8 c. The reporting and settlement requirements of balances.
 - 9 d. The rate used to compute the reinsurance premium.
 - 10 e. The names and addresses of assuming reinsurers.
 - 11 f. The rates of all reinsurance commissions, including the
12 commissions on any retrocessions handled by the reinsurance
13 intermediary-broker.
 - 14 g. All related correspondence and memoranda.
 - 15 h. Proof of placement.
 - 16 i. The details regarding retrocessions handled by the
17 reinsurance intermediary-broker including the identity of
18 retrocessionaires and percentage of each contract assumed or
19 ceded.
 - 20 j. Financial records, including but not limited to,
21 premium and loss accounts.
 - 22 k. If the reinsurance intermediary-broker procures a
23 reinsurance contract on behalf of a licensed ceding insurer
24 one or both of the following shall be included in the record:
 - 25 (1) Directly from any assuming reinsurer, written evidence
26 that the assuming reinsurer has agreed to assume the risk.
 - 27 (2) If placed through a representative of the assuming
28 reinsurer, other than an employee, written evidence that the
29 assuming reinsurer has delegated binding authority to the
30 representative.
 - 31 2. The insurer has a right of access and the right to copy
32 and audit all accounts and records maintained by the
33 reinsurance intermediary-broker related to its business in a
34 form usable by the insurer.

35 Sec. 30. NEW SECTION. 521C.6 DUTIES OF INSURERS

1 UTILIZING THE SERVICES OF A REINSURANCE INTERMEDIARY-BROKER.

2 1. An insurer shall not engage the services of a person,
3 firm, association, or corporation to act as a reinsurance
4 intermediary-broker on its behalf unless the person is
5 licensed as required by section 521C.3, subsection 1.

6 2. An insurer shall not employ an individual who is
7 employed by a reinsurance intermediary-broker with which the
8 insurer transacts business, unless such reinsurance
9 intermediary-broker is under common control with the insurer
10 and subject to chapter 521A relating to the regulation of
11 insurance company holding systems.

12 3. The insurer shall annually obtain a copy of statements
13 of the financial condition of each reinsurance intermediary-
14 broker with which the insurer transacts business.

15 Sec. 31. NEW SECTION. 521C.7 REQUIRED CONTRACT
16 PROVISIONS -- REINSURANCE INTERMEDIARY-MANAGERS.

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

28 1. The reinsurer may terminate the contract for cause upon
29 written notice to the reinsurance intermediary-manager. The
30 reinsurer may suspend the authority of the reinsurance
31 intermediary-manager to assume or cede business during the
32 pendency of any dispute regarding the cause for termination.

33 2. The reinsurance intermediary-manager shall render
34 accounts to the reinsurer accurately detailing all material
35 transactions, including information necessary to support all

1 commissions, charges, and other fees received by, or owing to
2 the reinsurance intermediary-manager, and shall remit all
3 funds due under the contract to the reinsurer on not less than
4 a monthly basis.

5 3. All funds collected for the reinsurer's account shall
6 be held by the reinsurance intermediary-manager in a fiduciary
7 capacity in a bank which is a qualified United States
8 financial institution, as defined in section 521C.2. The
9 reinsurance intermediary-manager may retain no more than three
10 months estimated claims payments and allocated loss adjustment
11 expenses. The reinsurance intermediary-manager shall maintain
12 a separate bank account for each reinsurer that the
13 reinsurance intermediary-manager represents.

14 4. For at least ten years after expiration of each
15 contract of reinsurance transacted by the reinsurance
16 intermediary-manager, the reinsurance intermediary-manager
17 shall keep a complete record for each transaction showing all
18 of the following:

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

21 b. The period of coverage, including effective and
22 expiration dates, cancellation provisions and notice required
23 of cancellation, and disposition of outstanding reserves on
24 covered risks.

25 c. The reporting and settlement requirements of balances.

26 d. The rate used to compute the reinsurance premium.

27 e. The names and addresses of reinsurers.

28 f. The rates of all reinsurance commissions, including the
29 commissions on any retrocessions handled by the reinsurance
30 intermediary-manager.

31 g. Any related correspondence and memoranda.

32 h. Proof of placement.

33 i. The details regarding retrocessions handled by the
34 reinsurance intermediary-manager, as permitted by section
35 521C.9, subsection 4, including the identity of

1 retrocessionaires and percentage of each contract assumed or
2 ceded.

3 j. Financial records, including but not limited to,
4 premium and loss accounts.

5 k. If the reinsurance intermediary-manager places a
6 reinsurance contract on behalf of a ceding insurer one or both
7 of the following shall be included in the record:

8 (1) Directly from any assuming reinsurer, written evidence
9 that the assuming reinsurer has agreed to assume the risk.

10 (2) If placed through a representative of the assuming
11 reinsurer, other than an employee, written evidence that the
12 assuming reinsurer has delegated binding authority to the
13 representative.

14 5. The reinsurer has a right of access and the right to
15 copy all accounts and records maintained by the reinsurance
16 intermediary-manager related to its business in a form usable
17 by the reinsurer.

18 6. The contract cannot be assigned in whole or in part by
19 the reinsurance intermediary-manager.

20 7. The reinsurance intermediary-manager shall comply with
21 the written underwriting and rating standards established by
22 the insurer for the acceptance, rejection, or cession of all
23 risks.

24 8. The contract shall set forth the rates, terms, and
25 purposes of commissions, charges, and other fees which the
26 reinsurance intermediary-manager may levy against the
27 reinsurer.

28 9. If the contract permits the reinsurance intermediary-
29 manager to settle claims on behalf of the reinsurer, all of
30 the following apply:

31 a. All claims shall be reported to the reinsurer in a
32 timely manner.

33 b. A copy of the claim file shall be sent to the reinsurer
34 at its request or as soon as it becomes known that the claim
35 meets any or all of the following conditions:

1 (1) The claim has the potential to exceed the lesser of an
2 amount determined by the commissioner or the limit set by the
3 reinsurer.

4 (2) The claim involves a coverage dispute.

5 (3) The claim may exceed the claims settlement authority
6 of the reinsurance intermediary-manager.

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

8 (5) The claim is closed by payment of the lesser of an
9 amount set by the commissioner or an amount set by the
10 reinsurer.

11 c. All claim files shall be the joint property of the
12 reinsurer and reinsurance intermediary-manager. However, upon
13 an order of liquidation of the reinsurer the files shall
14 become the sole property of the reinsurer or its estate. The
15 reinsurance intermediary-manager shall have reasonable access
16 to and the right to copy the files on a timely basis.

17 d. Any settlement authority granted to the reinsurance
18 intermediary-manager may be terminated for cause upon the
19 reinsurer's written notice to the reinsurance intermediary-
20 manager or upon the termination of the contract. The
21 reinsurer may suspend the settlement authority during the
22 pendency of the dispute regarding the cause of termination.

23 10. If the contract provides for a sharing of interim
24 profits by the reinsurance intermediary-manager, interim
25 profits shall not be paid until one year after the end of each
26 underwriting period for property insurance business and five
27 years after the end of each underwriting period for casualty
28 insurance business, or a later period as determined by the
29 commissioner for each type of insurance, but in no case until
30 the adequacy of reserves on remaining claims has been verified
31 pursuant to section 521C.9, subsection 3.

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

35 12. The reinsurer shall periodically, but not less than

1 semiannually, conduct an on-site review of the underwriting
2 and claims processing operations of the reinsurance
3 intermediary-manager.

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

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

11 Sec. 32. NEW SECTION. 521C.8 PROHIBITED ACTS.

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

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

23 2. Commit the reinsurer to participate in reinsurance
24 syndicates.

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

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

34 5. Collect any payment from a retrocessionaire or commit
35 the reinsurer to any claim settlement with a retrocessionaire,

1 without prior approval of the reinsurer. If prior approval is
2 given, a report must be promptly forwarded to the reinsurer.

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

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

6 Sec. 33. NEW SECTION. 521C.9 DUTIES OF REINSURERS

7 UTILIZING THE SERVICES OF A REINSURANCE INTERMEDIARY-MANAGER.

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

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

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

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

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

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

1 governed by chapter 521A relating to the regulation of
2 insurance company holding systems or, if applicable, governed
3 by chapter 510A relating to the regulation of producer
4 controlled property and casualty insurers.

5 Sec. 34. NEW SECTION. 521C.10 EXAMINATION AUTHORITY.

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

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

12 Sec. 35. NEW SECTION. 521C.11 PENALTIES AND LIABILITIES.

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

17 a. For each separate violation, a civil penalty in an
18 amount not exceeding ten thousand dollars.

19 b. Revocation or suspension of the license of the
20 reinsurance intermediary.

21 c. If a violation was committed by the reinsurance
22 intermediary, restitution by the reinsurance intermediary to
23 the insurer, reinsurer, rehabilitator, or liquidator of the
24 insurer or reinsurer for the net losses incurred by the
25 insurer or reinsurer attributable to the violation.

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

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

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

35 Sec. 36. NEW SECTION. 521C.12 RULES.

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

4 DIVISION VI

5 Sec. 37. Section 505.4, Code 1991, is amended by adding
6 the following new unnumbered paragraph:

7 NEW UNNUMBERED PARAGRAPH. The commissioner may appoint a
8 deputy commissioner for supervision whom the commissioner may
9 appoint as supervisory or special deputy pursuant to chapter
10 507C and who shall perform such other duties as may be
11 assigned by the commissioner. The deputy commissioner for
12 supervision shall receive a salary to be fixed by the
13 commissioner. The deputy commissioner for supervision shall
14 be an exempt employee under section 19A.3, subsection 17.

15 Sec. 38. Section 505.7, Code 1991, is amended by adding
16 the following new unnumbered paragraph:

17 NEW UNNUMBERED PARAGRAPH. The annual salaries of the
18 deputy commissioner for supervision and the chief examiner
19 appointed pursuant to section 507.5 shall be expenses of
20 examination of insurance companies and shall be charged to
21 insurance companies examined on a proportionate basis as
22 provided by rule adopted by the commissioner. Insurance
23 companies examined shall pay the proportion of the salaries of
24 the deputy commissioner for supervision and the chief examiner
25 charged to them as part of the costs of examination as
26 provided in section 507.8.

27 Sec. 39. NEW SECTION. 507.4A CHIEF EXAMINER.

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

34 Sec. 40. Section 507.14, Code 1991, is amended by adding
35 the following new unnumbered paragraphs:

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

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

23 Sec. 41. Section 507C.12, Code 1991, is amended by adding
24 the following unnumbered paragraph:

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

1 hearing shall be held privately in chambers.

2 Sec. 42. Section 508.11, subsection 43, Code 1991, is
3 amended to read as follows:

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

14 Sec. 43. Section 508C.8, Code 1991, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 1A. If a domestic, foreign, or alien
17 insurer is an insolvent insurer, subject to the approval of
18 the commissioner, the association shall:

19 a. Guarantee, assume, or reinsure, or cause to be
20 guaranteed, assumed, or reinsured the covered policies of the
21 insolvent insurer.

22 b. Assure payment of the contractual obligations of the
23 insolvent insurer.

24 c. Provide moneys, pledges, notes, guarantees, or other
25 means as reasonably necessary to discharge the duties
26 described in this subsection.

27 Sec. 44. Section 511.8, Code 1991, is amended by adding
28 the following new unnumbered paragraph after unnumbered
29 paragraph 1:

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

1 Sec. 45. Section 514B.25, Code 1991, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 514B.25 FINANCIALLY IMPAIRED OR INSOLVENT HEALTH
5 MAINTENANCE ORGANIZATIONS.

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

9 Sec. 46. Section 515.35, subsection 4, paragraph d, Code
10 1991, is amended by adding the following new unnumbered
11 paragraph:

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

15 Sec. 47. Section 515.63, unnumbered paragraph 16, Code
16 1991, is amended to read as follows:

17 Fifteenth -- All other information as required by the
18 national association of insurance commissioners' annual
19 statement blank. The annual statement blank shall be prepared
20 in accordance with instructions prescribed by the
21 commissioner. All financial information reflected in the
22 annual report shall be kept and prepared in accordance with
23 accounting practices and procedures prescribed by the
24 commissioner. The commissioner may adopt by reference the
25 annual statement handbook and the accounting practices and
26 procedures manual of the national association of insurance
27 commissioners.

28 Sec. 48. Section 515.119, Code 1991, is amended by
29 striking the section and inserting in lieu thereof the
30 following:

31 515.119 COMPLIANCE WITH LAW -- CHANGE OF ARTICLES.

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

1 the insurance company.

2 Sec. 49. Section 515B.2, subsection 3, unnumbered
3 paragraph 2, Code 1991, is amended by striking the paragraph
4 and inserting in lieu thereof the following:

5 3A. "Covered claim" does not include any amount as
6 follows:

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

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

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

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

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

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

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

35 Sec. 50. Section 515B.5, subsection 2, Code 1991, is

1 amended by adding the following new paragraph:

2 NEW PARAGRAPH. h. Request that all future payments of
3 workers' compensation weekly benefits, medical expenses, or
4 other payments under chapter 85, 85A, 85B, 86, or 87 be
5 commuted to a present lump sum and upon the payment of which,
6 either to the claimant or to a licensed insurer for purchase
7 of an annuity or other periodic payment plan for the benefit
8 of the claimant, the employer and the association shall be
9 discharged from all further liability for the workers'
10 compensation claim. Notwithstanding the provisions of section
11 85.45, any future payment of medical expenses, weekly
12 compensation benefits, or other payment by the association
13 under this chapter pursuant to chapter 85, 85A, 85B, 86, or
14 87, is deemed an undue expense, hardship, or inconvenience
15 upon the employer for purposes of a full commutation pursuant
16 to section 85.45, subsection 2, and the industrial
17 commissioner shall fix the lump sum of the probable future
18 medical expenses and weekly compensation benefits capitalized
19 at their present value upon the basis of interest at the rate
20 provided in section 535.3 for court judgments and decrees.

21 Sec. 51. Section 515B.9, subsection 1, Code 1991, is
22 amended to read as follows:

23 1. Any person having a claim under another policy, which
24 claim arises out of the same facts which give rise to a
25 covered claim, ~~shall be~~ is first required to exhaust the
26 person's right under the policy. Any amount recovered or
27 recoverable by a person under another insurance policy shall
28 be credited against the liability of the association under
29 section 515B.5, subsection 1, paragraph "a". For purposes of
30 this section, another insurance policy means a policy issued
31 by any insurance company, whether a member insurer or not,
32 which policy insures against any of the types of risks set
33 ~~forth in section 515.487 except those types of risks set forth~~
34 ~~in section 515.487 subsection 5, paragraph "a"~~ and insured by
35 an insurance company authorized to write insurance under

1 chapter 515, 516A, or 520, or comparable statutes of another
2 state, except those types of risks set forth in chapters 508
3 and 514.

4 Sec. 52. Section 516A.3, unnumbered paragraph 2, Code
5 1991, is amended to read as follows:

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

12 Sec. 53. Section 518.17, Code 1991, is amended by adding
13 the following new unnumbered paragraph:

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

18 Sec. 54. Section 521A.2, subsection 3, paragraph a,
19 unnumbered paragraph 1, Code 1991, is amended to read as
20 follows:

21 Invest, in common stock, preferred stock, debt obligations,
22 and other securities of one or more subsidiaries, amounts
23 which do not exceed the lesser of ten percent of the insurer's
24 assets or fifty percent of the insurer's surplus as regards
25 policyholders, if after the investments the insurer's surplus
26 as regards policyholders will be reasonable in relation to the
27 insurer's outstanding liabilities and adequate to its
28 financial needs. For purposes of this section "subsidiaries"
29 includes "affiliates". In calculating the amount of the
30 investments, investments in domestic or foreign insurance
31 subsidiaries shall be excluded and both of the following shall
32 be included:

33 Sec. 55. Section 521A.3, subsection 4, paragraph b, Code
34 1991, is amended to read as follows:

35 b. The public hearing referred to in paragraph "a" ~~of this~~

1 subsection shall be held within thirty days after the
2 statement required by subsection 1 ~~of this section~~ is filed,
3 and at least twenty days' notice thereof of the public hearing
4 shall be given by the commissioner to the person filing the
5 statement. Not less than seven days' notice of such the
6 public hearing shall be given by the person filing the
7 statement to the insurer and to such other persons as may be
8 designated by the commissioner. ~~The insurer shall give such~~
9 ~~notice to its securityholders.~~ The commissioner shall make a
10 determination within thirty days after the conclusion of such
11 the hearing. At such the hearing, the person filing the
12 statement, the insurer, any person to whom notice of hearing
13 was sent, and any other person whose interests may be affected
14 ~~thereby~~ shall have the right to present evidence, examine and
15 cross-examine witnesses, and offer oral and written arguments
16 and in connection therewith shall be entitled to conduct
17 discovery proceedings in the same manner as is presently
18 allowed in the district court of this state. All discovery
19 proceedings shall be concluded not later than three days prior
20 to the commencement of the public hearing.

21 Sec. 56. Section 521A.3, subsection 5, Code 1991, is
22 amended by striking the subsection.

23 Sec. 57. Section 521A.4, subsection 2, unnumbered
24 paragraph 1, Code 1991, is amended to read as follows:

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

30 Sec. 58. Section 521A.4, subsection 2, paragraph c, Code
31 1991, is amended by adding the following new subparagraph:

32 NEW SUBPARAGRAPH. (8) Consolidated tax allocation
33 agreements.

34 Sec. 59. Section 521A.4, Code 1991, is amended by adding
35 the following new subsection:

1 NEW SUBSECTION. 3A. REPORTING OF DIVIDENDS TO
2 SHAREHOLDERS. Subject to section 521A.5, subsection 3, a
3 registered insurer shall report to the commissioner all
4 dividends and other distributions to shareholders within
5 fifteen days following the declaration of the dividends or
6 distributions.

7 Sec. 60. Section 521A.5, subsection 1, paragraph b,
8 unnumbered paragraph 1, Code 1991, is amended to read as
9 follows:

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

21 Sec. 61. Section 521A.10, Code 1991, is amended by adding
22 the following new subsection:

23 NEW SUBSECTION. 1A. a. A director or officer of an
24 insurance holding company system who does any of the following
25 is subject to the civil penalty imposed under paragraph "b":

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

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

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

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

11 Sec. 62. Section 521A.10, Code 1991, is amended by adding
12 the following new subsection:

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

21 DIVISION VII

22 Sec. 63. Section 507.12, Code 1991, is amended to read as
23 follows:

24 507.12 PROCEDURE AGAINST LIFE COMPANIES.

25 In case of companies organized under the provisions of
26 chapter 508, ~~said the~~ officers shall proceed as provided in
27 sections ~~508-17-to~~ 508.18 and 508.19.

28 Sec. 64. Section 508.19, Code 1991, is amended to read as
29 follows:

30 508.19 SECURITIES.

31 The securities that are on deposit of a defaulting or
32 insolvent company, or a company against which proceedings are
33 pending under ~~sections-508-17-and~~ section 508.18, shall vest
34 in the state for the benefit of all policyholders of the
35 company.

1 Sec. 65. Section 511.8, subsection 16, unnumbered
2 paragraphs 2 and 4, Code 1991, are amended to read as follows:

3 The securities comprising the deposit of a company or
4 association against which proceedings are pending under
5 ~~sections-508-17-and~~ section 508.18 shall vest in the state for
6 the benefit of all policyholders of the company or
7 association.

8 Companies or associations having securities or title to
9 real estate on deposit with the commissioner of insurance
10 shall have the right to collect all dividends, interest, rent,
11 or other income thereon from the deposit unless proceedings
12 against ~~such the~~ company or association are pending under
13 ~~sections-508-17-and~~ section 508.18, in which event the
14 commissioner shall collect such interest, dividends, rent, or
15 other income and add the same to the deposit.

16 Sec. 66. Section 511.8, subsection 21, paragraph b,
17 subparagraph (3), Code 1991, is amended to read as follows:

18 (3) Set forth provisions that custodian agreements
19 executed between custodian banks and insurers shall contain.
20 These shall include provisions stating that minimum deposit
21 levels shall be maintained and that the parties agree
22 securities in deposits with custodian banks shall vest in the
23 state in accordance with ~~sections-508-17-and~~ section 508.18
24 whenever proceedings under ~~those-sections~~ that section are
25 instituted.

26 Sec. 67. Sections 507.11, 508.17, 510.1, and 515.85
27 through 515.87, Code 1991, are repealed.

28 DIVISION VIII

29 Sec. 68. Sections 7 through 15, the model managing general
30 agents Act, division II of this Act, take effect July 1, 1991.
31 An insurer shall not continue to utilize the services of a
32 managing general agent on or after July 1, 1991, except as
33 otherwise provided in the Act, unless such utilization is in
34 compliance with division II of this Act, regardless of the
35 date on which the original contract was entered into with the

1 managing general agent. An insurer which on the effective
2 date of this Act has in effect a contract with a managing
3 general agent shall give written notification to the
4 commissioner of the name of the managing general agent and the
5 relationship between the insurer and the managing general
6 agent within thirty days of the effective date of this Act and
7 shall comply with sections 7 through 15 of this Act within
8 thirty days of the effective date of rules adopted by the
9 commissioner implementing the managing general agents Act.

10 Sec. 69. Sections 16 through 19, the producer controlled
11 property and casualty insurer Act, division III of this Act,
12 take effect July 1, 1991. An insurer or producer subject to
13 division III of this Act shall not continue, renew, or
14 initiate a contract, or place business on or after July 1,
15 1991, unless in compliance with division III of this Act,
16 regardless of the date on which the original contract was
17 entered into between the parties.

18 Sec. 70. Sections 20 through 24, the model credit for
19 reinsurance Act, division IV of this Act, shall apply to all
20 cessions and retrocessions under reinsurance agreements with
21 an inception, anniversary, or renewal date not earlier than
22 six months after the effective date of this Act.

23 Sec. 71. Sections 25 through 36, the reinsurance
24 intermediary model Act, division V of this Act, take effect
25 July 1, 1991. An insurer or reinsurer shall not continue to
26 utilize the services of a reinsurance intermediary on or after
27 July 1, 1991, unless utilization is in compliance with
28 division V of this Act.

29 EXPLANATION

30 Division I of this bill adopts the national association of
31 insurance commissioners (NAIC) model "Nonadmitted Insurance
32 Act," a prerequisite for accreditation of the insurance
33 division as an approved regulator by the NAIC.

34 Division II of this bill adopts the NAIC model "Managing
35 General Agents (MGA) Act," which is required for NAIC

1 accreditation of the insurance division as an approved
2 insurance regulator. The MGA Act requires all managing
3 general agents to be licensed. The bill would require that a
4 written contract between a managing general agent and the
5 insurer be filed with the insurance division. The bill
6 requires the insurer to monitor and control a managing general
7 agent's activities. The bill limits the amount of insurer
8 funds that the managing general agent may hold and requires
9 sufficient records to be maintained by the managing general
10 agent. The bill requires the insurer to conduct semiannual
11 on-site reviews of the underwriting and claims processes.

12 Division III of this bill adopts the NAIC model "Producer
13 Controlled Property and Casualty Insurer Act," as a
14 prerequisite for accreditation of the division. The model Act
15 requires brokers and managers to be licensed as insurance
16 producers and limits the business placed with a controlled
17 insurer. The bill also imposes liability on the controlling
18 producer in the event of the insolvency of the controlled
19 insurer. The bill imposes strict recordkeeping and reporting
20 standards. The bill prohibits the reinsurance manager from
21 binding retrocessions in most instances and committing the
22 reinsurer to participate in reinsurance syndicates. The
23 reinsurer is required to obtain annual, independently prepared
24 financial statements from its reinsurance manager and
25 certification of loss reserves on business produced by the
26 manager.

27 Division IV sets out strict standards for receiving
28 financial credit for ceded reinsurance. Division IV adopts
29 the NAIC model "Credit for Reinsurance Act," and would deny
30 credit for ceded reinsurance unless the assuming company is
31 licensed to transact reinsurance in the domiciliary state of
32 the ceding company, the assuming company is an accredited
33 reinsurer in the domiciliary state of the ceding company, or
34 the assuming company is domiciled in a state which employs
35 standards regarding credit for reinsurance substantially

1 similar to the requirements under the bill. The model Act
2 would require the assuming company to maintain capital and
3 surplus equal to or exceeding \$20,000,000. To become an
4 accredited reinsurer of the ceding company's state of
5 domicile, the assuming company would have to submit to the
6 authority to examine its books and records, be licensed to
7 transact insurance or reinsurance in at least one state, and
8 file its financial statements with that state. Enactment of
9 this model Act is required for accreditation of the insurance
10 division by the NAIC as an approved insurance regulator.

11 Division V of this bill adopts the NAIC's "Reinsurance
12 Intermediary Model Act," and requires certain brokers and
13 managers engaged in reinsurance activities to be licensed as
14 insurance producers. This bill imposes strict recordkeeping
15 and reporting standards. This bill prohibits the reinsurance
16 manager from binding retrocessions in most instances and
17 committing the reinsurer to participate in reinsurance
18 syndicates. The reinsurer is required to obtain annual,
19 independently prepared financial statements from its
20 reinsurance manager and certification of loss reserves on
21 business produced by the manager. Division V further
22 authorizes the commissioner to examine a reinsurance
23 intermediary's books and records. The bill provides that the
24 reinsurance manager's acts are deemed the acts of the company
25 on whose behalf the reinsurance manager is acting. This bill
26 also gives the commissioner the right to order the reinsurance
27 intermediary to make restitution for net losses incurred
28 attributable to violations as provided in this bill. The
29 "Reinsurance Intermediary Model Act" is required for the
30 insurance division to be accredited as an approved regulator
31 by the NAIC.

32 Division VI of this bill amends various existing Code
33 provisions also related to solvency and accreditation.

34 Sections 37 through 39 authorize the commissioner to
35 appoint a chief examiner and a deputy for supervision. The

1 salaries for each are to be set by the commissioner and paid
2 by the insurance industry as an examination expense.

3 Section 40 changes the confidentiality of examination
4 reports to reports which are merely preliminary under the
5 rules of the division, specifically 191 IAC 1.3(11), 5.1.
6 Reports are considered preliminary when the twenty-day period
7 for demanding a hearing has not expired or when a hearing has
8 been demanded but not held or no decision issued pursuant to a
9 hearing. The section also grants similar protection to the
10 financial statements and related proprietary financial
11 information filed with the division by employers which self-
12 insure for workers' compensation liability pursuant to section
13 87.11.

14 Section 41 provides for the issuance of an ex parte order
15 of rehabilitation without a hearing against an insurer in a
16 financially hazardous condition.

17 Sections 42 and 47 require that annual statement blanks be
18 prepared in accordance with the NAIC instructions handbook and
19 that statutes regarding annual statement blanks refer to the
20 NAIC accounting practices and procedures manual. The sections
21 also set standards for determining what are admitted and
22 nonadmitted assets by reference to NAIC accounting standards.

23 Section 43 reinstates subsection 2 of section 508C.8 as it
24 existed prior to repeal during the 1990 Session.

25 Section 44 converts existing section 511.8 from a deposit
26 requirement into an investment standard.

27 Section 45 conforms the procedure for handling an impaired
28 or insolvent health maintenance organization (HMO) to that
29 applicable to other insurers.

30 Section 46 imposes a five-percent-of-assets limitation upon
31 the junk bond investments of a property and casualty insurer.

32 Section 48 grants the insurance division, after notice and
33 hearing, the authority to issue a cease and desist order or
34 impose a fine if a domestic or foreign company fails to adhere
35 to Iowa law.

1 Section 49 restates the existing Code subsection with no
2 substantive change.

3 Section 50 limits the future obligation of the property and
4 casualty guaranty fund to pay certain claims, by authorizing
5 the claim to be valued at its estimated present value, to
6 permit the association to close an insolvency.

7 Section 51 amends an existing condition providing that a
8 person does not have a claim against the guaranty fund if the
9 person can recover their loss under a policy from another non-
10 life insurer by restating the definition of insurance.

11 Section 52 alters the conditions under which the guaranty
12 fund would pay for an uninsured motorist claim.

13 Section 53 limits a county mutual insurer's financial
14 exposure to risk of loss in connection with reinsurance
15 coverage to 15 percent of surplus with any one reinsurer.

16 Sections 54 through 62 revise the insurance company holding
17 system Act, chapter 521A, to increase the oversight and
18 penalties applicable to holding company transactions which do
19 not comply with state law. Section 54 imposes additional
20 investment restrictions on domestic insurers with regard to
21 investments in related companies, either subsidiaries or
22 affiliates. Sections 55 and 56 eliminate the requirement of
23 notice and mailing to securityholders of a domestic insurer,
24 since review of an acquisition from the standpoint of security
25 holders is not accepted as permissible state action under
26 federal law. Sections 57 through 60 conform the Iowa Act with
27 details of the NAIC model and broaden the disclosure and scope
28 of approval of the insurance division over company
29 transactions. Sections 61 and 62 amend the penalties for
30 violation of the Iowa Act, in conformance with the NAIC model
31 Act. The Iowa Act was originally based on a prior version of
32 the NAIC model, and these revisions substantially conform
33 Iowa's Act to the current model Act.

34 Division VII repeals certain Code sections and makes
35 conforming changes. Sections 63 through 66 make conforming

1 changes necessary as a result of the repeals in section 67.
2 Section 67 repeals sections 507.11, 508.17, and 515.85 through
3 515.87, relating to the procedure for dealing with an
4 insolvent insurer. The provision is in conflict with later
5 adopted chapter 507C governing the supervision of impaired or
6 insolvent insurers.

7 Division VIII, sections 68 through 71, applies special
8 effective date or applicability conditions on the model Acts
9 contained in divisions I through V.

10 BACKGROUND STATEMENT

11 SUBMITTED BY THE AGENCY

12 The national association of insurance commissioners (NAIC)
13 has initiated a program to accredit state insurance
14 departments as approved insurance regulators. The program is
15 in part a response to criticism of the lack of uniformity of
16 solvency standards between the states. The NAIC minimum
17 standards for accreditation require a state to enact certain
18 NAIC model Acts which relate to solvency and financial
19 oversight. The first five divisions of this bill are model
20 Acts required for accreditation which Iowa has not yet
21 enacted. Most are relatively recent, being responses to
22 problems discovered in the course of several major 1980's
23 insurer insolvencies, so Iowa's failure to previously enact
24 them does not reflect badly on the state. Division VI
25 incorporates required changes to existing Iowa law based upon
26 an initial review by the NAIC and the division's solvency task
27 force. Given Iowa's lead role in insurance, accreditation is
28 essential, so the insurance division respectfully requests the
29 general assembly to adopt the required minimum standards and
30 strengthened solvency provisions as submitted in this proposed
31 bill. Under the accreditation standards adopted, and in light
32 of the intended goal -- uniformity -- material deviation from
33 the models may result in Iowa's failure to be accredited.
34 Failure to be accredited would particularly hurt Iowa's
35 insurance development efforts, especially with international

1 insurers. The solvency package in this proposed bill is the
2 division's highest priority this legislative session.

3 Division I is necessary for the accreditation of the
4 insurance division by the NAIC as an approved regulator.
5 Division I adopts the NAIC model nonadmitted insurance Act,
6 and grants the insurance division greater authority to deal
7 with nonadmitted insurers. Nonadmitted insurers are a problem
8 because they do not conform to state requirements and
9 policyholders are not protected by the state's guaranty funds.
10 Control of improper insurance activities is necessary to
11 assure strict and fair regulation of insurers subject to state
12 standards.

13 Division II, the NAIC "Model Managing General Agents Act,"
14 is required for the accreditation of the Insurance Division by
15 the NAIC. On a national scale, over 40 percent of insurance
16 company insolvencies have involved managing general agents.
17 Some managing general agents have not complied with proper
18 underwriting standards and have insured individuals whom the
19 insurance companies would have refused to insure. These
20 managing general agents place insurance companies at risk when
21 they engage in "cleansheeting" practices and do not disclose
22 accurate information regarding the persons to whom they sell
23 policies. This bill would closely monitor managing general
24 agents' activities in this state and thereby encourage
25 trustworthy underwriting practices. The primary concern with
26 managing general agents is that they derive income from
27 commissions but also engage in the acceptance of risk.
28 Experience has proven some managing general agents are willing
29 to accept risk on behalf of an insurer which may endanger the
30 company's solvency, in order to receive the short-term
31 compensation from commissions.

32 Division III would adopt the NAIC model "Producer
33 Controlled Property and Casualty Insurer Act," as a
34 prerequisite for accreditation of the insurance division. The
35 model Act would require brokers and managers to be licensed as

1 insurance producers and limit the business placed with a
2 controlled insurer. It also imposes liability on the
3 controlling producer in the event of the insolvency of the
4 controlled insurer. The bill would impose strict
5 recordkeeping and reporting standards. The bill would
6 prohibit the reinsurance manager from binding retrocessions in
7 most instances and committing the reinsurer to participate in
8 reinsurance syndicates. The reinsurer would be required to
9 obtain annual, independently prepared financial statements
10 from its reinsurance manager and certification of loss
11 reserves on business produced by the manager. Producer
12 controlled insurance companies are captives of another
13 controlling producer, and are frequently used to contain risk
14 a parent company is not willing to carry on the parent's
15 books. This model Act addresses the potential for abuse of
16 the guaranty fund system by imposing a higher degree of
17 responsibility upon the controlling producer or parent for the
18 captive insurer's activities, and assists the commissioner to
19 oversee such arrangements by requiring notice be given to the
20 commissioner that a control relationship exists, and the terms
21 of that relationship.

22 Division IV, the NAIC model "Credit for Reinsurance Act,"
23 is required for accreditation of the insurance division by the
24 NAIC. There is a nationwide problem with reinsurers not being
25 able to pay reinsurance claims on demand. The provisions of
26 this bill ensure that assuming companies receiving credit for
27 reinsurance have met certain standards that would indicate
28 that the assuming companies are economically stable and
29 managed in compliance with the law. In one California
30 insolvency, Mission, as much as 40 percent of the reinsurance
31 credited on the books prior to the insolvency has proven to be
32 uncollectible.

33 Adoption of Division V is also necessary for the
34 accreditation of the insurance division by the NAIC. Division
35 V is the NAIC's "Reinsurance Intermediary Model Act," and it

1 will regulate activities of reinsurance intermediaries in an
2 effort to protect insurance companies seeking reinsurance from
3 reinsurers that cannot pay claims upon demand. Reinsurance
4 can be placed directly with a reinsurer by a company, or
5 through a broker. The reinsurance intermediary act
6 compliments the credit for reinsurance model Act of Division
7 IV, by requiring the broker to provide and maintain adequate
8 records to permit the application of the credit for
9 reinsurance Act.

10 Division VI covers various amendments related to solvency
11 which are not new model acts required for accreditation.

12 Including:

13 Recent concerns over insurance solvency have highlighted
14 the inflexibility of the current solvency oversight system and
15 the limited resources available to the commissioner to turn a
16 troubled company around. The commissioner must now depend
17 upon expensive, private attorneys, actuaries, and consultants,
18 hired by the hour, to intervene late in the process --
19 normally too late. The burden of the current intervention
20 system falls on three groups: First the insurance division,
21 is forced to react to crises rather than solving problems
22 while still solvable through early intervention. The division
23 pays for emergencies through shifting personnel, resources,
24 and money from normal duties to solvency intervention. The
25 work forgone by such shifting never gets done. Second,
26 insurance companies pay through guaranty fund assessments for
27 failed companies when intervention came too late and for the
28 high administrative costs of relying upon private contractors.
29 (Similar to the current indigent defense problems -- public
30 defenders are less expensive and more experienced.) Third,
31 state taxpayers and consumers pay through lost tax revenue due
32 to the premium tax offset and through losses on insurance
33 investments in failed companies (remember the guaranty funds
34 only secure the minimum obligations, and do not necessarily
35 preserve market rates of return).

1 Sections 36 through 38 propose a lower cost, more efficient
2 alternatives by strong "early intervention" with troubled
3 companies (before conservation, rehabilitation, or liquidation
4 action is necessitated). Intervention work would be
5 internalized within the division, rather than its continuance
6 with private consultants, actuaries, and attorneys (reducing
7 overall costs dramatically). The insurance industry would
8 fund all costs within the division as an examination expense.
9 The reform is revenue neutral to the general fund, while in
10 reality saving significant dollars for Iowa. Savers include:
11 the industry (lower guaranty fund assessments to do the work
12 inside the division), state taxpayers (due to the premium tax
13 offset for guaranty fund assessments), and state insurance
14 consumers (better solvency monitoring). The proposal will
15 also increase the strength of the domestic industry, and
16 retain jobs that might otherwise be lost due to the collapse
17 of Iowa insurers.

18 Section 39 adopts the NAIC geographical expense
19 reimbursement plan for examinations conducted out of state,
20 such as zone examinations of a company in which examiners from
21 several states concentrate on a particular company
22 simultaneously. The commissioner is authorized to bill the
23 actual and necessary expenses incurred out of state directly
24 to the company which is the subject of the exam. This section
25 is particularly important to assure proper oversight of
26 companies located out of state, including Iowa's growing
27 community of international insurers, and also relates to the
28 increased supervision of reinsurance and reinsurance
29 intermediaries, many of whom are located internationally. The
30 expenses of an examination are paid directly by the company
31 being examined, and not by the state's general fund. This
32 section improves the ability of Iowa's examiners to conduct
33 examinations outside the state to assure compliance and
34 solvency by assuring reimbursement of the examiners for their
35 actual and necessary expenses.

1 Section 40 makes examination reports confidential because
2 these reports contain proprietary information, which if were
3 not treated as confidential, would give an unfair advantage to
4 insurance companies competing with the insurance company
5 covered in the report. If these reports are not treated as
6 confidential, then insurance companies (in particular, weak
7 insurance companies) may become insolvent due to raiding by
8 other insurance companies or customers leaving insurance
9 companies for their competitors' coverage. This section
10 treats examination of insurance companies as confidential
11 following the confidentiality standard set out in the
12 examination of banks. The section also grants similar
13 confidentiality to the proprietary financial information filed
14 by workers' compensation self-insurers pursuant to section
15 87.11.

16 Section 41 amends Code section 507C.12, relating to the
17 issuance of an order for rehabilitation against an insurer in
18 a financially hazardous condition. The current Code language
19 is unclear as to whether the order may be issued ex parte and
20 without hearing, the usual procedure for financial regulators
21 (like state and federal bank and thrift regulators) to assume
22 supervisory authority over institutions whose solvency is
23 threatened. This section clearly provides the authority for
24 an ex parte order, with hearing after the fact to be held in
25 closed chambers at the commissioner's request. Situations
26 frequently occur where issuance of an order in this fashion is
27 necessary for protection of the insurer's policyholders.
28 Procedural protections, in the form of provisions for
29 expedited and closed hearing assure constitutional due
30 process.

31 As a part of a project reacting to the rising number of
32 insurer insolvencies in recent years, the NAIC is evaluating
33 on a state-by-state basis the statutes and rules which all
34 states have empowering them to regulate insurers' financial
35 solvency. Ultimately the NAIC plans to certify or accredit

1 each state's insurance regulator depending on its ability to
2 effectively regulate financial solvency. The initial critique
3 of Iowa observed that Iowa fails to expressly require that the
4 statement blank be prepared in accordance with the NAIC
5 instructions handbook and that Iowa statutes fail to reference
6 the NAIC accounting practices and procedures manual. A
7 further criticism of Iowa statutes is that they fail to set
8 any standards for determining what are admitted and non-
9 admitted assets. Sections 42 and 47 satisfy these
10 accreditation standards. Because the standards for admitted
11 versus nonadmitted assets are complex, and are subject to
12 change by the NAIC, a reference to the appropriate NAIC manual
13 is made in lieu of incorporating each standard item by item.

14 Section 43 restores subsection 2 of section 508C.8 as it
15 appeared in the 1989 Code. The subsection was inadvertently
16 repealed in 1990 Iowa Acts, chapter 1234, H.F. 2320.
17 Subsection 2 pertained to the obligation of the life and
18 health guaranty association when an insurer is "insolvent" as
19 opposed to when it is "impaired". In the case of
20 "insolvency", there must be a mandatory obligation of the
21 association to pay policyholders, while, with an "impairment",
22 it is sufficient if the association simply has discretion to
23 pay them. Prior to H.F. 2320, no provision existed to give
24 the association the flexibility to deal with an "impaired"
25 company and the amendment in section 24 of H.F. 2320 creating
26 that authority was appropriate. However, the provision in
27 section 508C.8 for insurers which are insolvent should not
28 have been repealed.

29 Section 44 responds to concerns by the NAIC that existing
30 section 511.8 fails to consider liquidating of investments of
31 life companies by focusing only upon the deposit of minimum
32 surplus. This section converts the deposit requirement into
33 an investment standard to assure adequate liquidity and
34 collectibility in the event of an insolvency, and thus
35 satisfies this accreditation requirement.

1 Section 45 conforms the administration of a health
2 maintenance organization (HMO) insolvency to that applicable
3 to a standard health insurer. No need exists for the special
4 procedure currently provided and repealed by this section.
5 Further, the existing HMO procedure is arguably more limiting
6 and offers less protections to covered members than chapter
7 507C.

8 Section 46 imposes a two-percent-of-assets cap upon the
9 junk bond investments of a property and casualty insurer.
10 Life and health insurers are subject to restrictions on below
11 investment grade securities (junk bonds) elsewhere. While the
12 investment patterns of property and casualty insurers vary
13 significantly from life and health insurers (where the primary
14 focus on junk bond investments has been), it was believed that
15 some limitation other than mere peer pressure was appropriate.

16 Section 48 broadens the procedure to be utilized against
17 domestic and foreign insurers who fail to comply with Iowa's
18 financial and other requirements. Presently, the division
19 would be limited to proceeding against a domestic company
20 under chapter 507C if it failed to, for example, maintain
21 adequate capital and surplus or otherwise abide by Iowa law or
22 against a foreign company by revoking or suspending its
23 license to do business in the state. This amendment would
24 give the insurance division, after notice and hearing, the
25 power to issue a cease and desist order or impose a fine if
26 the domestic or foreign company failed to adhere to Iowa law.
27 The section's change is purely procedural. It does not
28 extraterritorially make foreign companies subject to the
29 requirements of Iowa law uniquely applicable to domestic
30 insurers. A foreign insurer is subject only to the laws
31 otherwise applicable to a foreign insurer.

32 Section 49 restates an existing Code paragraph governing
33 claims not subject to payment by the property and casualty
34 insurance guaranty fund, by reorganizing the existing law in a
35 different format. The new language is intended to be more

1 readily understood. No material change in the substantive law
2 is intended.

3 Section 50 limits the future obligation of the property and
4 casualty guaranty fund to pay certain claims, by authorizing
5 the claim to be valued at its estimated present value, to
6 permit the association to close an insolvency. Liquidators of
7 defunct insurers by necessity set dates by which all claims
8 must be paid and will not honor claims based on reserved, but
9 unpaid amounts. (There must be a fixed amount of claims for
10 calculating the distribution of assets to claimants.) As a
11 result, under current law, the association could lose a part
12 of its claim against the liquidator if a claim is later
13 submitted for payment which was known in advance, but simply
14 not quantified on a timely basis. This section would allow
15 the association to pay its full liability, based on the
16 present value, and then present its full claim to the
17 liquidator.

18 Section 51 revises an existing provision limiting
19 eligibility for compensation from the property and casualty
20 guaranty fund if the person's claim is covered by another
21 policy from a nonlife insurer. The internal reference to
22 define "other insurance" is changed to more narrowly define
23 insurance.

24 Section 52 amends the conditions under which an uninsured
25 motorist claim may be paid by the guaranty fund. The existing
26 condition may be read to require a claim be made within one
27 year of the insurer's insolvency, potentially leaving an
28 injured person with no recourse if the date of insolvency is
29 past one year after the occurrence of the accident, even if
30 the claim remains unpaid.

31 Sections 54 through 62 revise the insurance company holding
32 system Act, chapter 521A to increase the oversight and
33 penalties applicable to holding company transactions which do
34 not comply with state law. For instance, section 52 imposes
35 additional investment restrictions on domestic insurers with

1 regard to investments in related companies, either
2 subsidiaries or affiliates. Sections 53 and 54 eliminate the
3 requirement of notice and mailing to security holders of a
4 domestic insurer, since review of an acquisition from the
5 standpoint of security holders is not accepted as permissible
6 state action under federal law. Sections 55 through 58
7 conform the Iowa Act with details of the NAIC model and
8 broaden the disclosure and scope of approval of the division
9 over company transactions. Sections 59 and 60 stiffen the
10 penalties for violation of the Iowa Act, in conformance with
11 the NAIC model Act. The Iowa Act was originally based on a
12 prior version of the NAIC model, and these revisions
13 substantially conform Iowa's Act to the current model Act.
14 The updates are required for accreditation of the Iowa
15 insurance division.

16 Section 53 imposes a new limitation on reinsurance for
17 county mutuals. County mutuals have lower minimum surplus and
18 capital requirements than other types of property and casualty
19 insurers. Because of their relatively smaller base of
20 capital, county mutuals are even more sensitive to large
21 losses from whatever source. This bill limits the risk of
22 single, exposure to reinsurance losses to no more than 15
23 percent from surplus in any one calendar year. Section 51 is
24 part of the division's general program of increased stringency
25 of solvency standards and financial oversight for insurers to
26 avoid future problems.

27 Section 67 repeals older Code sections which were
28 superseded by the later enactment of chapter 507C, governing
29 the supervision of impaired or insolvent insurers. Chapter
30 507C is an NAIC model Act required for accreditation of the
31 Iowa division as an approved insurance regulator.

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SENATE FILE 518

AN ACT

RELATING TO THE FINANCIAL SUPERVISION AND SOLVENCY
OVERSIGHT OF INSURANCE COMPANIES BY THE COMMISSIONER
OF INSURANCE AND ACCREDITATION OF THE INSURANCE DIVISION
AS AN APPROVED INSURANCE REGULATOR BY THE NATIONAL
ASSOCIATION OF INSURANCE COMMISSIONERS, IMPOSING
CIVIL LIABILITY, AUTHORIZING ADMINISTRATIVE AND CRIMINAL
PENALTIES, AND PROVIDING EFFECTIVE DATES AND APPLICABILITY
PROVISIONS.

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

DIVISION I

Section 1. NEW SECTION. 510.1A SHORT TITLE.

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

Sec. 2. NEW SECTION. 510.2A DEFINITIONS.

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

1. "Actuary" means a person who is a member in good
standing of the American academy of actuaries.
2. "Commissioner" means the commissioner of insurance.
3. "Insurer" means a person duly licensed in this state as
an insurance company pursuant to Title XX.
4. a. "Managing general agent" means any person who
engages in all of the following:

(1) Negotiates and binds ceding reinsurance contracts on
behalf of an insurer or manages all or part of the insurance
business of an insurer, including the management of a separate
division, department, or underwriting office, and who acts as
an agent for such insurer whether known as a managing general
agent, manager, or other similar term or title.

(2) With or without authority and either separately or
together with affiliates, directly or indirectly produces, and
underwrites, an amount of gross direct written premium equal
to or greater than five percent of the policyholder surplus in
any one quarter or year as reported in the last annual
statement of the insurer.

(3) Engages in either or both of the following:

(a) Adjusts or pays claims in excess of an amount
determined by the commissioner.

(b) Negotiates reinsurance on behalf of the insurer.

b. Managing general agent does not include any of the
following:

(1) An employee of the insurer.

(2) A manager of a United States branch of an alien
insurer who resides in this country.

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

(4) An insurance company, in connection with the
acceptance or rejection of reinsurance on a block of business.

(5) The attorney-in-fact authorized by or acting for the
subscribers of a reciprocal insurer or interinsurance exchange
under power of attorney.

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

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

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

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

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

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

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

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

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

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

c. All funds collected for the account of an insurer shall be held by a managing general agent in a fiduciary capacity in

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

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

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

- (1) The maximum annual premium volume.
- (2) The basis of the rates to be charged.
- (3) The types of risks which may be written.
- (4) Maximum limits of liability.
- (5) Applicable exclusions.
- (6) Territorial limitations.
- (7) Policy cancellation provisions.
- (8) The maximum length or duration of the policy period.

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

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

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

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

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

- (a) The claim has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less.
- (b) The claim involves a coverage dispute.
- (c) The claim may exceed the claims settlement authority of the managing general agent.
- (d) The claim is open for more than six months.
- (e) The claim is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less.

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

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

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

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

they are earned for casualty insurance business, and not until the interim profits have been verified pursuant to section 510.5.

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

- a. Bind reinsurance or retrocessions on behalf of the insurer, except that a managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.
- b. Commit the insurer to participate in insurance or reinsurance syndicates.
- c. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed.
- d. Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which exceeds one percent of the policyholder's surplus of the insurer as of December 31 of the previous calendar year.
- e. Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded by the managing general agent to the insurer.
- f. Permit its subproducer to serve on the insurer's board of directors.
- g. Jointly employ an individual who is employed by the insurer.
- h. Appoint a submanaging general agent.

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

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

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

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

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

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

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

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

Sec. 6. NEW SECTION. 510.6 EXAMINATION AUTHORITY.

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

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

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

- a. For each separate violation, the imposition of an administrative penalty of not more than ten thousand dollars.
- b. Revocation or suspension of the producer's license.
- c. Reimbursement by the managing general agent of the insurer, the rehabilitator, or the liquidator of the insurer for any losses incurred by the insurer caused by a violation of this chapter committed by the managing general agent.

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

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

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

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

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

Sec. 9. NEW SECTION. 510.9 EXEMPTION.

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

DIVISION II

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

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

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

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

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

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

3. "Independent casualty actuary" means a casualty actuary who is a member of the American academy of actuaries and who is not an employee, principal, the direct or indirect owner

of, affiliated with, or in any way controlled by the insurer or producer.

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

a. All nonadmitted insurers.

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

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

d. All captive insurers.

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

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

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

- a. The controlling producer has not materially complied with section 510A.3.
- b. The controlled insurer, with respect to business placed by the controlling producer, has engaged in a pattern of charging premiums that were lower than those being charged by the insurer or other insurers for similar risks written during the same period and placed by noncontrolling producers. When determining whether premiums were lower than those prevailing in the market, the commissioner shall take into consideration applicable industry or actuarial standards at the time the business was written.
- c. The controlling producer failed to maintain records, sufficient to demonstrate that the producer's dealings with its controlled insurer were fair and equitable and in compliance with chapter 521A or to accurately disclose the nature and details of its transactions with the controlled insurer, including such information as is necessary to support the charges or fees to the respective parties.
- d. The controlled insurer either failed to establish, or deviated from, its underwriting procedures with respect to business placed by the controlling producer.
- e. The controlled insurer's capitalization at the time the business was placed by the controlling producer and with respect to such business was not in compliance with criteria established by the commissioner or with Title XX.
- f. The controlling producer or the controlled insurer failed to substantially comply with chapter 521A.

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

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

- a. A written contract, which is subject to the commissioner's review and approval, has been entered into between the controlling producer and the insurer which has been approved by the board of directors of the insurer and filed with the commissioner.
- b. The producer, prior to the effective date of any policy, delivers written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer. The disclosure notice shall be signed by the insured and retained in the underwriting file until the filing of the report on examination covering the period in which the coverage is in effect. However, if the business is placed through an agent of the producer who is not a controlling producer, the controlling producer shall retain in the controlling producer's records a signed commitment from the agent of the producer that the agent of the producer is aware of the relationship between the insurer and the producer and that the agent of the producer has or will notify the insured of the relationship.
- c. All funds collected for the account of the insurer by the controlling producer, after commission payments, cancellations, and other adjustments are made, must be paid to the insurer at least quarterly.
2. In addition to any other required loss reserve certification, the controlled insurer, on April 1 of each year, shall annually file with the commissioner an opinion of an independent casualty actuary, or of another independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of the end of the year, including incurred losses not reported, on business placed by the producer.
3. The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage such amount represents of the net premiums

written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance.

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

5. A reinsurance intermediary which has control of an assuming insurer shall not directly or indirectly place business with the assuming insurer in any transaction in which such reinsurance intermediary is acting as a broker on behalf of the ceding insurer. A reinsurance intermediary which has control of a ceding insurer shall not directly or indirectly accept business from the ceding insurer in any transaction in which such reinsurance intermediary is acting as a producer on behalf of the assuming insurer. The prohibitions in this subsection shall not apply to a reinsurance intermediary which makes a full and complete written disclosure to the parties of its relationship with the assuming or ceding insurer prior to completion of the transaction.

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

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

b. At such hearing, the commissioner must establish that the controlling producer engaged in a violation, as defined in section 510A.2. The controlling producer shall have an

opportunity to be heard and to present evidence rebutting the charges and to establish that the insolvency of the controlled insurer arose out of events not attributable to the violation. The decision, determination, or order of the commissioner is subject to judicial review pursuant to chapter 17A.

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

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

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

DIVISION III

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

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

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

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

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

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

- a. Files with the commissioner evidence of submission to the jurisdiction of this state.
- b. Submits to the authority of this state to examine its books and records.
- c. Is licensed to transact reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact the business of reinsurance in at least one state.
- d. Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and does either of the following:

- (1) Maintains a surplus with respect to policyholders in an amount which is not less than twenty million dollars and whose accreditation has not been denied by the commissioner within ninety days of its submission to the jurisdiction of this state.
- (2) Maintains a surplus with respect to policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the commissioner. Credit shall not be allowed a domestic ceding insurer, if the accreditation of the assuming insurer is revoked by the commissioner after notice and hearing.

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

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

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

- (1) Maintains a surplus with respect to policyholders in an amount not less than twenty million dollars.
- (2) Submits to the authority of this state to examine its books and records.

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

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

trusted surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

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

c. Such trust shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust vests legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described in this paragraph must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

d. No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting

forth the balance of the trust and listing the trust's investments at the end of the preceding calendar year and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.

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

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

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

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

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

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

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

1. Cash.

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

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

Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the subsequent failure of the issuing or confirming institution or subsequent failure to meet applicable standards of issuer acceptability, continue to

be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.

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

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

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

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

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

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

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

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

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

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

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

DIVISION IV

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

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

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

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

1. "Actuary" means a person who is a member in good standing of the American academy of actuaries.
2. "Controlling person" means a person who directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.
3. "Insurer" means a person licensed to transact the business of insurance in this state.
4. "Licensed producer" means an agent, broker, or reinsurance intermediary licensed pursuant to the applicable provision of the insurance law of any jurisdiction.
5. "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager.
6. "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the ceding insurer.
7. "Reinsurance intermediary-manager" means a person who has authority to bind or manage all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an agent for the reinsurer whether known as a reinsurance intermediary-manager or manager, or known by any other similar term or title. However, for the purposes of this chapter, the following persons shall not be considered a reinsurance intermediary-manager, with respect to the reinsurer:
 - a. An employee of the reinsurer.

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

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

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

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

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

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

- a. The financial institution is organized or licensed under the laws of the United States or any state of the United States.
- b. The financial institution is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.
- c. The financial institution has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

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

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

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

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

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

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

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

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

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

4. a. The commissioner may issue a reinsurance intermediary license to a person who has complied with the requirements of this chapter. Any such license issued to a firm or association will authorize all the members of the firm or association and any designated employees to act as

reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements to the application. A license issued to a corporation shall authorize all of the officers, and any designated employees and directors of the corporation to act as reinsurance intermediaries on behalf of the corporation, and all such persons shall be named in the application and any supplements to the application.

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

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

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

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

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

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

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

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

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

1. The insurer may terminate the authority of the reinsurance intermediary-broker at any time.
2. The reinsurance intermediary-broker shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing, to the reinsurance intermediary-broker, and shall remit all funds due to the insurer within thirty days of receipt.
3. All funds collected for the account of the insurer shall be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank, as defined in section 524.103.
4. The reinsurance intermediary-broker shall comply with section 521C.5.
5. The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks.
6. The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

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

1. For a minimum of ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall

keep a complete record for each transaction showing all of the following:

- a. The type of contract, limits, underwriting restrictions, classes or risks, and territory.
 - b. The period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation.
 - c. The reporting and settlement requirements of balances.
 - d. The rate used to compute the reinsurance premium.
 - e. The names and addresses of assuming reinsurers.
 - f. The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker.
 - g. All related correspondence and memoranda.
 - h. Proof of placement.
 - i. The details regarding retrocessions handled by the reinsurance intermediary-broker including the identity of retrocessionaires and percentage of each contract assumed or ceded.
 - j. Financial records, including but not limited to, premium and loss accounts.
 - k. If the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer one or both of the following shall be included in the record:
 - (1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk.
 - (2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.
2. The insurer has a right of access and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to its business in a form usable by the insurer.
- Sec. 24. NEW SECTION. 521C.6 DUTIES OF INSURERS UTILIZING THE SERVICES OF A REINSURANCE INTERMEDIARY-BROKER.

1. An insurer shall not engage the services of a person, firm, association, or corporation to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by section 521C.3, subsection 1.

2. An insurer shall not employ an individual who is employed by a reinsurance intermediary-broker with which the insurer transacts business, unless such reinsurance intermediary-broker is under common control with the insurer and subject to chapter 521A relating to the regulation of insurance company holding systems.

3. The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which the insurer transacts business.

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

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

1. The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

2. The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to the reinsurance intermediary-manager, and shall remit all

funds due under the contract to the reinsurer on not less than a monthly basis.

3. All funds collected for the reinsurer's account shall be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank which is a qualified United States financial institution, as defined in section 521C.2. The reinsurance intermediary-manager may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that the reinsurance intermediary-manager represents.

4. For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing all of the following:

- a. The type of contract, limits, underwriting restrictions, classes or risks, and territory.
- b. The period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks.
- c. The reporting and settlement requirements of balances.
- d. The rate used to compute the reinsurance premium.
- e. The names and addresses of reinsurers.
- f. The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager.
- g. Any related correspondence and memoranda.
- h. Proof of placement.
- i. The details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by section 521C.9, subsection 4, including the identity of retrocessionaires and percentage of each contract assumed or ceded.

j. Financial records, including but not limited to, premium and loss accounts.

k. If the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer one or both of the following shall be included in the record:

(1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk.

(2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.

5. The reinsurer has a right of access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.

6. The contract cannot be assigned in whole or in part by the reinsurance intermediary-manager.

7. The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

8. The contract shall set forth the rates, terms, and purposes of commissions, charges, and other fees which the reinsurance intermediary-manager may levy against the reinsurer.

9. If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer, all of the following apply:

a. All claims shall be reported to the reinsurer in a timely manner.

b. A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim meets any or all of the following conditions:

(1) The claim has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer.

(2) The claim involves a coverage dispute.

(3) The claim may exceed the claims settlement authority of the reinsurance intermediary-manager.

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

(5) The claim is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer.

c. All claim files shall be the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer the files shall become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis.

d. Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

10. If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, interim profits shall not be paid until one year after the end of each underwriting period for property insurance business and five years after the end of each underwriting period for casualty insurance business, or a later period as determined by the commissioner for each type of insurance, but in no case until the adequacy of reserves on remaining claims has been verified pursuant to section 521C.9, subsection 3.

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

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

13. The reinsurance intermediary-manager shall disclose to the reinsurer any relationship the reinsurance intermediary-

manager has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.

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

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

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

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

2. Commit the reinsurer to participate in reinsurance syndicates.

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

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

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

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

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

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

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

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

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

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

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

6. A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling shareholder, or an agent of a producer of its reinsurance intermediary-manager. This subsection shall not apply to relationships governed by chapter 521A relating to the regulation of insurance company holding systems or, if applicable, governed by chapter 510A relating to the regulation of producer controlled property and casualty insurers.

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

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

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

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

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

a. For each separate violation, a civil penalty in an amount not exceeding ten thousand dollars.

b. Revocation or suspension of the license of the reinsurance intermediary.

c. If a violation was committed by the reinsurance intermediary, restitution by the reinsurance intermediary to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

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

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

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

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

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

DIVISION V

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

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

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

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

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

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

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

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

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

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

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

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

43. All other information as required by the national association of insurance commissioners' annual statement blank. The annual statement blank shall be prepared in accordance with instructions prescribed by the commissioner.

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

Sec. 37. Section 508C.8, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. If a domestic, foreign, or alien insurer is an insolvent insurer, subject to the approval of the commissioner, the association shall:

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

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

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

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

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

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

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

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

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

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

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

515.119 COMPLIANCE WITH LAW -- CHANGE OF ARTICLES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Any person having a claim under another policy, which claim arises out of the same facts which give rise to a covered claim, shall be ~~is~~ first required to exhaust the person's right under the policy. Any amount recovered or recoverable by a person under another insurance policy shall be credited against the liability of the association under section 515B.5, subsection 1, paragraph "a". For purposes of this section, another insurance policy means a policy issued by any insurance company, whether a member insurer or not, which policy insures against any of the types of risks set forth ~~in section 515.407, except those types of risks set forth in section 515.407, subsection 5, paragraph "a", and~~ insured by an insurance company authorized to write insurance under chapter 515, 516A, or 520, or comparable statutes of another state, except those types of risks set forth in chapters 508 and 514.

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

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

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

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

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

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

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

b. The public hearing referred to in paragraph "a" ~~of this subsection shall be held within thirty days after the statement required by subsection 1 of this section is filed, and at least twenty days' notice thereof of the public hearing shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of such the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The insurer shall give such notice to its securityholders.~~ The commissioner shall make a determination within thirty days after the conclusion of such the hearing. At such the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected

thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

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

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

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

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

NEW SUBPARAGRAPH. (8) Consolidated tax allocation agreements.

Sec. 53. Section 521A.4, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 3A. REPORTING OF DIVIDENDS TO SHAREHOLDERS. Subject to section 521A.5, subsection 3, a registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen days following the declaration of the dividends or distributions.

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

A domestic insurer and a person in its holding company system shall not enter into any of the following transactions between each other involving amounts equal to or exceeding the greater lesser of five percent of the insurer's admitted assets or twenty-five percent of the surplus as regards

policyholders as of the next preceding December 31, unless the domestic insurer notifies the commissioner in writing of its intention to enter into the transaction at least thirty days prior to entering into the transaction or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the transaction within the time period:

Sec. 55. Section 521A.10, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. a. A director or officer of an insurance holding company system who does any of the following is subject to the civil penalty imposed under paragraph "b":

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

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

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

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

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

NEW SUBSECTION. 4. A director or officer, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any

false statements, false reports, or false filings with the intent to deceive the commissioner in the performance of the commissioner's duties under this chapter is guilty of a class "D" felony. Any fines imposed shall be paid by the director, officer, or employee in the person's individual capacity.

DIVISION VI

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

507.12 PROCEDURE AGAINST LIFE COMPANIES.

In case of companies organized under the provisions of chapter 500, said the officers shall proceed as provided in sections ~~500:17~~-to 508.18 and 508.19.

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

508.19 SECURITIES.

The securities that are on deposit of a defaulting or insolvent company, or a company against which proceedings are pending under ~~sections-508:17~~-and section 508.18, shall vest in the state for the benefit of all policyholders of the company.

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

The securities comprising the deposit of a company or association against which proceedings are pending under ~~sections-508:17~~-and section 508.18 shall vest in the state for the benefit of all policyholders of the company or association.

Companies or associations having securities or title to real estate on deposit with the commissioner of insurance shall have the right to collect all dividends, interest, rent, or other income thereon from the deposit unless proceedings against such the company or association are pending under ~~sections-508:17~~-and section 508.18, in which event the commissioner shall collect such interest, dividends, rent, or other income and add the same to the deposit.

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

(3) Set forth provisions that custodian agreements executed between custodian banks and insurers shall contain. These shall include provisions stating that minimum deposit levels shall be maintained and that the parties agree securities in deposits with custodian banks shall vest in the state in accordance with ~~sections-508:17~~-and section 508.18 whenever proceedings under ~~those sections~~ that section are instituted.

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

DIVISION VII

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

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

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

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

JOE J. WELSH
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 518, Seventy-fourth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved April 11, 1991

TERRY E. BRANSTAD
Governor

SF 518