

2 b. Places any a simulated explosive or simulated incendiary device in or near any a building, vehicle, airplane, railroad engine or railroad car, or boat occupied by such another person.

3 c. Orders merchandise or services in the name of another, or to be delivered to another, without such the other person's knowledge or consent.

4 d. Reports or causes to be reported false information to a law enforcement authority implicating another in some criminal activity, knowing that the information is false, or reports the alleged occurrence of a criminal act, knowing the same act did not occur.

Harassment is a simple misdemeanor.

2. A person commits harassment in the first degree when the person commits harassment involving a threat to commit a forcible felony, or commits harassment and has previously been convicted of harassment three or more times under this section or any similar statute during the preceding ten years.

Harassment in the first degree is an aggravated misdemeanor.

3. A person commits harassment in the second degree when the person commits harassment involving a threat to commit bodily injury, or commits harassment and has previously been convicted of harassment two times under this section or any similar statute during the preceding ten years.

Harassment in the second degree is a serious misdemeanor.

4. Any other act of harassment is harassment in the third degree. Harassment in the third degree is a simple misdemeanor.

Approved May 26, 1989

CHAPTER 227

INSURANCE AGENTS AND ADMINISTRATORS

S.F. 272

AN ACT relating to insurance by providing for notice and review of contracts between insurers and managing general agents and providing for regulation of third-party administrators.

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

DIVISION I

Section 1. NEW SECTION. 515.161 DEFINITIONS.

For purposes of this subchapter, unless the context requires otherwise:

"Managing general agent" means a person, acting as an independent contractor with respect to a domestic insurer, except a county mutual association that operates only within a given county and counties contiguous to that county, who performs an underwriting or claims function for the insurer, but does not include any of the following:

1. A licensed attorney retained for the defense of an insured, as required or allowed by the policy of insurance issued by the domestic insurer.

2. A licensed insurance agent who is extended settlement authority by an insurer as an incidental part of the agent's duties as an agent.

3. An independent claims adjuster who receives periodic assignments of claims from an insurer.

4. A person retained for the purpose of obtaining photographs, diagrams, or otherwise verifying information submitted on applications for insurance, and who does not perform any other claim or underwriting services for the insurer.

Sec. 2. NEW SECTION. 515.162 CONTRACTS WITH MANAGING GENERAL AGENTS.

A domestic insurer shall not enter into a contract with a managing general agent unless the domestic insurer notifies the commissioner in writing of its intention to enter into the

contract at least thirty days prior to entering into the contract or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the contracts within the time period. The commissioner shall not approve the contracts if the commissioner finds any of the following:

1. The service or management charges in the contract are based upon criteria unrelated either to the insurer's profits or to the reasonable, customary, and usual charges for such services to the company.

2. Management personnel or other employees of the insurance company are to be performing management functions and receiving any remuneration for those management functions through the contract in addition to the compensation received directly from the insurance company for their services.

3. The contract would transfer substantial control of the insurer or any of the powers vested in the board of directors, by statute, articles of incorporation, or bylaws, or substantially all of the basic functions of the insurer's management to the managing general agent.

4. The contract contains provisions which would be clearly detrimental to the best interest of policyholders, stockholders, or members of the company.

5. The officers and directors of the managing general agent firm are of known bad character or have been affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person known to have been involved in the improper manipulation of assets, accounts, or reinsurance.

If the commissioner disapproves of a contract, notice of the disapproval shall be given to the insurer, specifying the reasons in writing. The commissioner shall grant any party to the contract a hearing on the disapproval upon request pursuant to chapter 17A.

Sec. 3. NEW SECTION. 515.163 LIABILITY OF MANAGING GENERAL AGENTS.

Notwithstanding any obligation of a director or officer of an insolvent insurer to the liquidator of the insolvent insurer, a managing general agent of a domestic insurer against whom an order of liquidation has been entered is liable for fees paid to the managing general agent prior to the entry of the order of liquidation upon a finding that the rendering of services, or failure to render services contracted for, substantially caused or contributed to the insolvency of the domestic insurer, and was pursuant to a contract which had not been submitted to the commissioner, or which had been submitted to the commissioner and disapproved, or the services did not meet accepted standards for such services.

DIVISION II

Sec. 4. NEW SECTION. 515.166 DEFINITIONS.

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

1. "Administrator" means a person who collects charges or premiums from, or who adjusts or settles claims on, residents of this state in connection with life or health insurance coverage or annuities other than any of the following:

a. A union or association on behalf of its members.

b. An insurance company which is either licensed in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business.

c. An entity licensed under chapter 514 including its sales representatives licensed in this state when engaged in the performance of its duties as sales representatives.

d. A life or health agent or broker licensed in this state, whose activities are limited exclusively to the sale of insurance.

e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

f. A trust, its trustees, agents, and employees acting under the trust, established in conformity with 29 U.S.C. § 186.

g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees, and employees acting under the trust.

h. A custodian, its agents, and employees acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code.

i. A bank, credit union, or other financial institution which is subject to supervision or examination by federal or state banking authorities.

j. A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims.

k. A person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney-at-law, and who does not collect charges or premiums in connection with life or health insurance coverage or annuities.

2. "Life or health insurance" includes, but is not limited to, the following:

a. Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.

b. An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.

c. An individual or group health maintenance organization contract regulated under chapter 514B.

d. An individual or group Medicare supplemental policy.

e. A long-term care policy.

f. An individual or group life insurance policy or annuity issued pursuant to chapter 508, 508A, or 509A.

Sec. 5. NEW SECTION. 515.167 WRITTEN AGREEMENT NECESSARY.

A person shall not act as an administrator without a written agreement between the administrator and the insurer, and the written agreement shall be retained as part of the official records of both the insurer and the administrator for the duration of the agreement plus five years. The written agreement shall contain provisions which include the requirements of sections 515.166 through 515.171, except insofar as those requirements do not apply to the functions performed by the administrator.

When a policy is issued to a trustee, a copy of the trust agreement and any amendments to the trust agreement shall be furnished to the insurer by the administrator and shall be retained as part of the official records of both the insurer and the administrator for the duration of the policy plus five years.

Sec. 6. NEW SECTION. 515.168 PAYMENT TO ADMINISTRATOR.

If an insurer uses the services of an administrator under the terms of a written contract as required in section 515.167, payment to the administrator of any premiums or charges for insurance by or on behalf of the insured shall be deemed to have been received by the insurer, and the payment of return premiums or claims by the insurer to the administrator shall not be deemed payment to the insured or claimant until the payments are received by the insured or claimant. This section does not limit any right of the insurer against the administrator resulting from the administrator's failure to make payments to the insurer, insureds, or claimants.

Sec. 7. NEW SECTION. 515.169 MAINTENANCE OF INFORMATION.

An administrator shall maintain at its principal administrative office for the duration of the written agreement referred to in section 515.167 plus five years, adequate books and records of all transactions between it, insurers, and insured persons. The administrator's books and records shall be maintained in accordance with prudent standards of insurance recordkeeping. The commissioner shall have access to such books and records for the purpose of examination, audit, and inspection. Trade secrets contained in an administrator's books and records, including but not limited to the identity and addresses of policyholders and certificate holders, shall be confidential, except the commissioner may use trade secret information in any proceeding instituted against the administrator. The insurer retains the right to continuing access

to the administrator's books and records sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and administrator on the proprietary rights of the parties in the administrator's books and records.

Sec. 8. NEW SECTION. 515.170 APPROVAL OF ADVERTISING.

An administrator may use only such advertising pertaining to the business underwritten by an insurer as has been approved by the insurer in advance of its use.

Sec. 9. NEW SECTION. 515.171 UNDERWRITING PROVISION.

The agreement shall provide for the underwriting or other standards pertaining to the business underwritten by the insurer.

Sec. 10. NEW SECTION. 515.172 PREMIUM COLLECTION.

1. All insurance charges or premiums collected by an administrator on behalf of or for an insurer, and return premiums received from the insurer, shall be held by the administrator in a fiduciary capacity. Such funds shall be immediately remitted to the person or persons entitled to them, or shall be deposited promptly in a fiduciary bank account established and maintained by the administrator. If charges or premiums so deposited have been collected on behalf of or for more than one insurer, the administrator shall cause the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from the account on behalf of or for each insurer. The administrator shall promptly obtain and keep copies of all such records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to deposits and withdrawals on behalf of or for that insurer.

2. The administrator shall not pay a claim by withdrawal from the fiduciary account. Withdrawals from the fiduciary account shall be made, as provided in the written agreement between the administrator and the insurer, for any of the following:

- a. Remittance to an insurer entitled thereto.
- b. Deposit in an account maintained in the name of the insurer.
- c. Transfer to and deposit in a claims-paying account, with claims to be paid as provided in section 515.173.
- d. Payment to a group policyholder for remittance to the insurer entitled thereto.
- e. Payment to the administrator of its commission, fees, or charges.
- f. Remittance of return premiums to the persons entitled thereto.

Sec. 11. NEW SECTION. 515.173 PAYMENT OF CLAIMS.

A claim paid by the administrator from funds collected on behalf of the insurer shall be paid only on a draft of and as authorized by the insurer.

Sec. 12. NEW SECTION. 515.174 CLAIM ADJUSTMENT AND SETTLEMENT.

The compensation paid to an administrator shall not be contingent on claim experience on policies for which the administrator adjusts or settles claims. This section does not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

Sec. 13. NEW SECTION. 515.175 NOTIFICATION REQUIRED.

When the services of an administrator are used, the administrator shall provide a written notice, approved by the insurer, to insured individuals, advising them of the identity of and relationship among the administrator, the policyholder, and the insurer. When an administrator collects funds, it must identify and state separately in writing to the person paying to the administrator any charge or premium for insurance coverage the amount of any such charge or premium specified by the insurer for such insurance coverage.

Sec. 14. NEW SECTION. 515.176 CERTIFICATE OF REGISTRATION REQUIRED.

A person shall not act as or represent oneself to be an administrator in this state, other

than an adjuster licensed in this state for the kinds of business for which the person is acting as an administrator, unless the person holds a current certificate of registration as an administrator issued by the commissioner of insurance. A certificate of registration as an administrator is renewable every three years. Failure to hold a certificate subjects the administrator to the sanctions set out in section 507B.7. The certificate shall be issued by the commissioner to an administrator unless the commissioner, after due notice and hearing, determines that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had a previous application for an insurance license denied for cause within the preceding five years.

An application for registration shall be accompanied by a filing fee of one hundred dollars. After notice and hearing, the commissioner may impose any or all of the sanctions set out in section 507B.7, upon finding that either the administrator violated any of the requirements of section 515.134 and sections 515.161 through 515.176, or the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

Sec. 15. NEW SECTION. 515.177 WAIVING OF REQUIREMENTS.

The commissioner may waive the requirements of section 515.176 for any person or class of persons. The factors taken into account in granting a waiver shall include, but are not limited to whether:

1. The person acting as an administrator is primarily in a business other than that of administrator.
2. The financial strength and history of the organization indicates stability in its continuity of doing business.
3. The regular duties being performed as an administrator are such that the covered persons are not likely to be injured by a waiver of such requirements.

Approved May 26, 1989

CHAPTER 228

TAXATION OF RETIREMENT MONEYS

S.F. 539

AN ACT relating to the taxation of certain pensions, annuities, and retirement allowances received for purposes of the state individual income tax and providing a retroactive applicability date.

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

Section 1. Section 97A.12, Code 1989, is amended to read as follows:

97A.12 EXEMPTION FROM TAXATION AND EXECUTION.

The right of any person to a pension, annuity, or retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the various funds created under this chapter, are hereby exempt from any tax of the state and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be are unassignable except as in this chapter specifically provided.