

acquired for an employee shall be in accordance with the plan document and shall be acquired from any a company, or a salesperson for that company, that is authorized to do business in this state, ~~or through an Iowa licensed salesperson that the employee selects on a group or individual basis.~~ When the state of Iowa acquires an investment product pursuant to the plan document the state does not become a shareholder, stockholder, or owner of a corporation in violation of Article VIII, section 3, of the Constitution of the State of Iowa or any other provision of law.

Approved May 26, 1997

CHAPTER 186

INSURANCE REGULATION — MISCELLANEOUS PROVISIONS

H.F. 557

AN ACT relating to the operation and regulation of certain insurance companies and mutual associations, and the regulatory authority of the insurance division of the department of commerce.

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

Section 1. Section 87.22, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The president, vice president, secretary, and treasurer of a corporation other than a family farm corporation, but not to exceed four officers per corporation, may exclude themselves from workers' compensation coverage under chapters 85, 85A, and 85B by knowingly and voluntarily rejecting workers' compensation coverage by signing, and attaching to the workers' compensation or employers' liability policy, ~~initially and upon renewal of the policy,~~ a written rejection, or if such a policy is not issued, by signing a written rejection which is witnessed by two disinterested individuals who are not, formally or informally, affiliated with the corporation and which is filed by the corporation with the industrial commissioner, in substantially the following form:

Sec. 2. Section 507.3, subsection 1, Code 1997, is amended to read as follows:

1. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee may ~~issue an examination warrant appointing~~ appoint one or more examiners to perform the examination and ~~instructing~~ instruct them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the national association of insurance commissioners. The commissioner may also employ other guidelines as the commissioner deems appropriate.

Sec. 3. Section 507C.34, subsection 2, paragraph a, subparagraph (3), Code 1997, is amended to read as follows:

(3) Claims falling within the priorities established in section 507C.42, ~~subsections subsection 1 and 2.~~

Sec. 4. Section 507C.42, Code 1997, is amended to read as follows:

507C.42 PRIORITY OF DISTRIBUTION.

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth. Claims in each class shall be paid in full

or adequate funds retained for the payment before the members of the next class receive any payment. Subclasses shall not be established within a class. The order of distribution of claims is:

1. Class 1. The costs and expenses of administration, including but not limited to the following:

- a. The actual and necessary costs of preserving or recovering the assets of the insurer.
- b. Compensation for all authorized services rendered in the liquidation.
- c. Necessary filing fees.
- d. The fees and mileage payable to witnesses.
- e. Authorized reasonable attorney's fees and other professional services rendered in the liquidation.
- f. The reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

~~2. Class 2. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or, if the rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Officers and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.~~

~~3 2. Class 3 2. Claims under policies, including claims of the federal or any state or local government, for losses incurred, including third-party claims, claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, claims of a guaranty association or foreign guaranty association, and claims for unearned premium. Claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of a loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. A payment by an employer to an employee is not a gratuity.~~

~~3. Class 3. Claims of the federal government except those under class 2.~~

~~4. Class 4. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or, if the rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Officers and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.~~

~~4 5. Class 4 5. Claims of general creditors, including claims of ceding and assuming reinsurers in their capacity as such, and subrogation claims.~~

~~5 6. Class 5 6. Claims of the federal or any state or local government except those under class 3 2. Claims, including those of a governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of such claims shall be postponed to the class of claims under subsection 8 9.~~

~~6 7. Class 6 7. Claims filed late or any other claims other than claims under subsections 7 8 and 8 9.~~

~~7 8. Class 7 8. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies are limited in accordance with law.~~

~~8 9. Class 8 9. The claims of shareholders or other owners.~~

Sec. 5. Section 507C.59, Code 1997, is amended to read as follows:
507C.59 SUBORDINATION OF CLAIMS FOR NONCOOPERATION.

If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state assets within the ancillary receiver's control other than special deposits, diminished only by the expenses of the ancillary receivership, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under section 507C.42, subsection 7 8.

Sec. 6. Section 508.10, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A foreign company authorized to do business in this state shall not assumptively reinsure a block of business which includes policyholders residing in this state to a company not authorized to do business in this state without the prior written approval of the commissioner.

Sec. 7. Section 508.14, Code 1997, is amended to read as follows:

508.14 VIOLATION BY DOMESTIC COMPANY — DISSOLUTION OR ADMINISTRATIVE PENALTY.

1. Upon a failure of a company organized under the laws of this state to make the deposit provided in section 511.8, subsection 16, or file the statement in the time herein stated, or to file in a timely manner any financial statement required by rule of the commissioner of insurance, the commissioner of insurance shall notify the attorney general of the default, who shall at once apply to the district court of the county where the home office of the company is located for an order requiring the company to show cause, upon reasonable notice to be fixed by the court, why its business shall not be discontinued. If, upon the hearing, no sufficient cause is not shown, the court shall decree its dissolution.

2. In lieu of a district court action authorized by this section, the commissioner may impose an administrative penalty of ~~three~~ five hundred dollars upon the company. The right of the company to transact further new business in this state shall immediately cease until the requirements of this chapter have been fully complied with.

3. The commissioner may give notice to a company, which has failed to file evidence of deposit and all delinquent statements within the time fixed, that the company is in violation of this section. If the company fails to file evidence of deposit and all delinquent statements within ten days of the date of the notice, the company is subject to an additional administrative penalty of one hundred dollars for each day the failure continues.

4. Amounts received by the commissioner pursuant to subsections 2 and 3 shall be paid to the treasurer of state for deposit in the general fund of the state as provided in section 505.7.

Sec. 8. Section 511.36, subsection 2, Code 1997, is amended to read as follows:

2. The rate of interest charged on a policy loan made under subsection 1, paragraph "b", shall not exceed the greater of the following:

a. The published monthly average for the calendar month ending two months before the date on which the rate is determined. For purposes of this subsection, "published monthly average" means one of the following:

(1) Moody's corporate bond yield average-monthly average corporates as published in Moody's investors service, inc., or any successor to the investors service.

(2) If Moody's corporate bond yield average-monthly average corporates is no longer published, a substantially similar average established by rule issued by the commissioner of insurance.

~~On or before the first day of each month, the commissioner of insurance shall determine the published monthly average for the calendar month ending one month before the date on which the monthly average is determined, and publish the rate, as a notice in the Iowa administrative bulletin or as a legal notice in a newspaper of general circulation published~~

in Polk county prior to the first day of the following calendar month. This published monthly average is effective on the first day of the following calendar month. The determination of this published monthly average by the commissioner of insurance is exempt from chapter 17A.

b. The rate used to compute the cash surrender values under the policy during the applicable period plus one percent per annum.

Sec. 9. NEW SECTION. 514B.33 ESTABLISHMENT OF LIMITED SERVICE ORGANIZATIONS.

1. A person may apply to the commissioner for and obtain a certificate of authority to establish and operate a limited service organization in compliance with this chapter. A person shall not establish or operate a limited service organization in this state, or sell, offer to sell, or solicit offers to purchase or receive advance or periodic consideration in conjunction with a limited service organization without obtaining a certificate of authority under this chapter.

2. The commissioner shall adopt rules pursuant to chapter 17A establishing a certification process for limited service organizations.

3. a. For purposes of this section, "limited service organization" means an organization providing dental care services, vision care services, mental health services, substance abuse services, pharmaceutical services, podiatric care services, or such other services as may be determined by the commissioner.

b. "Limited service organization" does not include an organization providing hospital, medical, surgical, or emergency services, except as such services are provided incident to those services identified in paragraph "a".

Sec. 10. Section 515.35, subsection 3, paragraph a, subparagraph (2), subparagraph subdivision (a), Code 1997, is amended to read as follows:

(a) That the loan will be fully collateralized by cash, cash equivalents, or obligations issued or guaranteed by the United States or an agency or an instrumentality of the United States, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

Sec. 11. Section 515.51, Code 1997, is amended to read as follows:

515.51 POLICIES — EXECUTION — REQUIREMENTS.

All policies or contracts of insurance made or entered into by the company may be made either with or without the seal of the company, but shall be subscribed by the president, or such other officer as may be designated by the directors for that purpose, and be attested to by the secretary or the secretary's designee of the company. ~~A policy or contract authorized by this chapter shall not be delivered in this state unless it is an individual policy or contract form~~ A group motor vehicle or group homeowners policy shall not be written or delivered within this state unless such policy is an individual policy or contract form.

Sec. 12. NEW SECTION. 515.68A FOREIGN COMPANIES — REINSURANCE.

A foreign company authorized to do business in this state shall not assumptively reinsure a block of business which includes policyholders residing in this state to a company not authorized to do business in this state without the prior written approval of the commissioner.

Sec. 13. Section 515B.1, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

515B.1 SCOPE.

This chapter shall apply to all kinds of direct insurance authorized to be written by an insurer licensed to operate in this state under chapter 515 or chapter 520, but shall not be applicable to the following:

1. Life, annuity, health, or disability insurance.
2. Mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks.
3. Fidelity or surety bonds, or any other bonding obligations.
4. Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction.
5. Insurance warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property, or indemnification for repair, replacement, or service, for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear, or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits.
6. Title insurance.
7. Ocean marine insurance.
8. A transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk.
9. Insurance provided by or guaranteed by government.

Sec. 14. Section 515B.2, Code 1997, is amended by adding the following new subsection:
NEW SUBSECTION. 1A. "Claimant" means an insured making a first party claim or any person instituting a liability claim against an insolvent insurer. "Claimant" does not include a person who is an affiliate of an insolvent insurer.

Sec. 15. Section 515B.5, subsection 1, paragraph a, Code 1997, is amended by striking the paragraph and inserting in lieu thereof the following:

a. Be obligated to pay covered claims existing prior to the final order of liquidation and arising within thirty days after the final order of liquidation, or before the policy expiration date if less than thirty days after the final order of liquidation, or before the insured replaces the policy or causes its cancellation, if the insured does so within thirty days of the final order of liquidation. Such obligation shall be satisfied by paying to the claimant an amount as follows:

- (1) The full amount of a covered claim for benefits under a workers' compensation insurance coverage.
- (2) An amount in excess of one hundred dollars but not exceeding ten thousand dollars per policy for a covered claim for the return of unearned premium.
- (3) An amount not exceeding the lesser of the policy limits or three hundred thousand dollars per claim for all covered claims for all damages arising out of any one or series of accidents, occurrences, or incidents, regardless of the number of persons making claims or the number of applicable policies.

Sec. 16. Section 515B.5, subsection 1, paragraph c, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The association shall also have the right to pursue and retain for its own account salvage and subrogation recoverable on paid covered claim obligations. An obligation of the association to defend an insured shall cease upon the association's payment of an amount equal to the lesser of the association's covered claim obligation or the applicable policy limits.

Sec. 17. Section 515B.8, subsection 2, Code 1997, is amended to read as follows:

2. The association and any similar entity in another state shall be recognized as claimants in the liquidation of an insolvent insurer for any amounts paid by them on covered claim obligations as determined under this chapter or under similar law in another state.

and shall receive dividends and any other distributions at the priority set forth under the applicable liquidation law. The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by determinations of covered claim eligibility under this chapter and by settlements of covered claims made by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority, ~~including the deductible portion thereof, equal to that which the claimant would have been entitled in the absence of this chapter~~ against the assets of the insolvent insurer ~~over all other claims not having statutory or secured priority.~~ The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

Sec. 18. Section 515B.15, unnumbered paragraph 1, Code 1997, is amended to read as follows:

All proceedings to which the insolvent insurer is a party or in which it is obligated to defend a party shall be stayed from the date of the insolvency to and including the date set as the deadline for the filing of claims against the insolvent insurer or its receiver. However, upon application, the court having jurisdiction of the receivership, may lengthen or shorten the period, either as to all claims or as to any particular claim. The association may, at the option of the association, waive such stay as to specific cases involving covered claims.

Sec. 19. Section 515B.16, Code 1997, is amended to read as follows:

515B.16 ACTIONS AGAINST THE ASSOCIATION.

Actions against the association shall be brought against it in ~~its~~ the association's own name and only in the Polk county district court. Service of original notice in actions against the association may be made on any officer thereof or upon the commissioner of insurance on its behalf. The commissioner shall promptly transmit any notice so served upon the commissioner to the association.

Sec. 20. Section 515D.4, subsection 2, unnumbered paragraph 1, Code 1997, is amended to read as follows:

~~Coverage under a policy~~ A person shall not be canceled except by notice to the insured as provided in this chapter. Notice of cancellation of coverage under a policy is not effective excluded from the policy unless it the exclusion is based on one or more of the following reasons:

Sec. 21. Section 515D.5, Code 1997, is amended to read as follows:

515D.5 DELIVERY OF NOTICE.

1. Notwithstanding the provisions of sections 515.80 through 515.81A, a notice of cancellation of a policy shall not be effective unless mailed or delivered by the insurer to the named insured at least twenty days prior to the effective date of cancellation, or, where the cancellation is for nonpayment of premium notwithstanding the provisions of sections 515.80 and 515.81A at least ten days prior to the date of cancellation. A post office department certificate of mailing to the named insured at the address shown in the policy shall be proof of receipt of such mailing. Unless the reason accompanies the notice of cancellation, the notice shall state that, upon written request of the named insured, mailed or delivered to the insurer not less than fifteen days prior to the date of cancellation, the insurer will state the reason for cancellation, together with notification of the right to a hearing before the commissioner within fifteen days as provided in this chapter.

When the reason does not accompany the notice of cancellation, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for cancellation. A statement of reason shall be mailed or delivered to the named insured within five days after receipt of a request.

2. A notice of exclusion of a person under a policy pursuant to section 515D.4, is not effective unless written notice is mailed or delivered to the named insured at least twenty days prior to the effective date of the exclusion. The written notice shall state the reason for

the exclusion, together with notification of the right to a hearing before the commissioner pursuant to section 515D.10 within fifteen days of receipt or delivery of a statement of reason as provided in this section.

Sec. 22. Section 518.7, Code 1997, is amended to read as follows:

518.7 OFFICERS AND DIRECTORS — ELECTION.

Officers or directors shall be elected in the manner and for the length of time prescribed in the articles of incorporation. The same person shall not simultaneously hold the offices of president and secretary.

Sec. 23. Section 518A.6, Code 1997, is amended to read as follows:

518A.6 OFFICERS — ELECTION.

Officers or directors shall be elected in the manner and for the length of time prescribed in the articles of incorporation or bylaws. The same person shall not simultaneously hold the offices of president and secretary.

Sec. 24. Section 521.13, Code 1997, is amended to read as follows:

521.13 CONSOLIDATION PROHIBITED — EXCEPTION.

~~No~~ A company or companies as described in section 521.1 shall not consolidate or reinsure except insofar as provided by section 515.49 with any other company or companies ~~not authorized to transact business in this state or any insurance company or companies organized under the laws of another state without the commission's approval.~~

Sec. 25. Section 521A.1, subsection 6, unnumbered paragraph 1, Code 1997, is amended to read as follows:

"Insurer" means a company qualified and licensed by the insurance division to transact the business of insurance in this state by certificate issued pursuant to chapters 508, 514B, 515, ~~518A,~~ 515E, and 520, except that it shall not include:

Sec. 26. Section 521A.3, subsection 4, paragraph a, Code 1997, is amended to read as follows:

a. The commissioner shall approve any merger or other acquisition of control referred to in subsection 1 ~~of this section unless if, after a public hearing thereon on such merger or acquisition, the applicant has demonstrated to the commissioner finds any~~ all of the following:

(1) After the change of control the domestic insurer referred to in subsection 1 ~~of this section would not~~ will be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

(2) The effect of the merger or other acquisition of control ~~would be~~ will not substantially ~~to lessen competition in insurance in this state or tend to create a monopoly therein.~~

(3) The financial condition of any acquiring party ~~is such as might~~ will not jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders.

(4) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are not unfair and or unreasonable to policyholders of the insurer and are not in ~~contrary to~~ the public interest.

(5) The competence, experience, and integrity of those persons who would control the operation of the insurer are ~~such that it would not be in the interest~~ sufficient to indicate that the interests of policyholders of the insurer and of the public ~~to permit~~ will not be jeopardized by the merger or other acquisition of control.

Sec. 27. Section 515B.25, Code 1997, is repealed.

Approved May 26, 1997