

CHAPTER 1111**INSURANCE AND SECURITIES REGULATION —
MISCELLANEOUS PROVISIONS***S.F. 2279*

AN ACT relating to the regulated commercial activities of insurance and security sales, including rate adjustments for small group coverage, provisions pertaining to state and county mutual insurance associations, termination dates and licensed health care providers for emergency medical malpractice insurance, suspension of an insurer's certificate of authority for delinquency, exceptions to the right of a notice of intent not to renew, coverage requirements in a medical expense policy, tort immunity related to viatical settlement contracts, confidentiality of certain personal information in securities and insurance filings, postponement or suspension of registration under the blue sky law, reporting related to professional liability insurance, annual percentage rate used in calculations of the minimum nonforfeiture amount relating to individual deferred annuities, and providing for a future repeal.

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

Section 1. Section 272C.4, unnumbered paragraph 2, Code Supplement 2001, is amended to read as follows:

~~The commissioner of insurance shall by rule in consultation with the licensing boards enumerated in section 272C.1, require insurance~~ **Insurance** carriers which insure professional and occupational licensees for acts or omissions which ~~that~~ constitute negligence, careless acts or omissions in the practice of a profession or occupation to shall file reports with the ~~commissioner of insurance~~ appropriate licensing board. The reports shall include information pertaining to incidents by claims against a licensee which may affect the licensee as defined by rule, involving an insured of the insurer. ~~The commissioner of insurance shall forward reports pursuant to this section to the appropriate licensing board.~~

Sec. 2. Section 502.102, subsection 19, Code Supplement 2001, is amended to read as follows:

19. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement investment contract, or any fractional or pooled interest in such contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under such a lease, right, or royalty; an interest in a limited liability company or in a limited liability partnership or any class or series of such interest, including any fractional or other interest in such interest; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period. "Security" also does not include an interest in a limited liability company or a limited liability partnership if the person claiming that such an interest is not a security proves that all of the members of the limited liability company or limited liability partnership are actively engaged in the management of the limited liability company or limited liability partnership; provided that the evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company or limited liability partnership, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability compa-

ny or limited liability partnership. "Security" is any of the foregoing as provided in this subsection whether or not it is evidenced by a written instrument.

Sec. 3. Section 502.102, subsection 21, Code Supplement 2001, is amended by striking the subsection and inserting in lieu thereof the following:

21. "Viatical settlement investment contract" means a contract entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in the death benefits of a life insurance policy, which contract is entered into for the purpose of deriving economic benefit.

Sec. 4. Section 502.304, subsection 3, Code Supplement 2001, is amended to read as follows:

3. The administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons ~~therefor~~ for the postponement or suspension and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination. Section 17A.18A is inapplicable to a summary order issued under this subsection.

Sec. 5. Section 502.608, subsection 2, Code 2001, is amended to read as follows:

2. The administrator shall keep a register of all applications for registration, notice filings, and registration statements ~~which that~~ are or have been effective under this chapter and predecessor laws, and all censure, denial, suspension, or revocation orders ~~which that~~ have been entered under this chapter and predecessor laws. All records may be maintained in an electronic or microfilm format or any other form of data storage. The register shall be open for public inspection. However, notwithstanding chapter 22, the administrator may keep confidential any social security number, residence address, and residence telephone number that is contained in these records if disclosure is not required in the performance of any duty or is not otherwise required under law.

Sec. 6. Section 505.8, Code Supplement 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 7. Notwithstanding chapter 22, the commissioner may keep confidential any social security number, residence address, and residence telephone number that is contained in a record filed as part of a licensing, registration, or filing process if disclosure is not required in the performance of any duty or is not otherwise required under law.

Sec. 7. NEW SECTION. 507C.60 SUSPENSION OF CERTIFICATE OF AUTHORITY.

Without advance notice or a hearing, the commissioner may suspend immediately the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state by the public insurance supervisory official of that state.

Sec. 8. Section 508.31A, subsection 2, paragraph a, Code 2001, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (3) A person other than a natural person that has assets of at least twenty-five million dollars.

Sec. 9. Section 507E.7, subsection 3, Code 2001, is amended by striking the subsection.

Sec. 10. Section 508.38, subsection 3, paragraph a, unnumbered paragraph 1, Code 2001, is amended to read as follows:

With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of ~~three~~ one and one-half percent per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of (1) any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of ~~three~~ one and one-half percent per annum and (2) the amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract.

Sec. 11. NEW SECTION. 508E.3A IMMUNITY FROM LIABILITY.

1. A person acting without malice, fraudulent intent, or bad faith is not liable civilly as a result of filing a report, or otherwise furnishing, orally or in writing, other information concerning alleged acts in violation of this chapter, or the administrative rules that implement this chapter, if the report or information is provided to or received from any of the following:

- a. Law enforcement officials, and their agents or employees.
- b. The national association of insurance commissioners, the insurance division, a federal or state governmental agency or bureau established to detect and prevent fraudulent insurance or viatical settlement acts, or any other organization established for such purpose, and their agents, employees, or designees.
- c. An authorized representative of the life insurer that issued the insurance policy covering the life of the insured.

2. This section does not affect in any way any common law or statutory privilege or immunity applicable to such person or entity.

Sec. 12. Section 509.19, Code 2001, is amended to read as follows:

~~509.19 DISCLOSURE OF CLAIMS AND RELATED COSTS~~ CLAIMS AND PREMIUM DISCLOSURE TO POLICYHOLDERS.

1. ~~a.~~ A person issuing a policy or contract providing group health benefit coverages to a group of ~~one hundred~~ fifty-one or more persons ~~eligible employees as defined in chapter 513B~~ shall provide to the policyholder, contract holder, or sponsor of the group health benefit plan, upon request, ~~once in a twelve-month period, all of the following information:~~

- ~~a.~~ Number of claims submitted to date.
- ~~b.~~ Costs of claims submitted to date.
- ~~c.~~ Average cost per claim, and average annual cost per covered individual annually, but not more than three months prior to the policy renewal date, the total amount of actual claims identified as paid or incurred and paid, and the total amount of premiums by line of coverage.
- ~~d.~~ For purposes of this section, "line of coverage" includes medical, prescription drug card program, dental, vision, long-term disability, and short-term disability.
- ~~e.~~ The information required by paragraph "a" shall be provided separately for the current policy year-to-date and for the prior policy year.

~~f.~~ The information shall be presented in the aggregate, and required by paragraph "a" shall not disclose any confidential information or otherwise disclose the identity of an individual insured, subscriber, or enrollee, who has submitted a claim within the time frame of the report.

2. For purposes of this section, "person issuing a policy or contract providing group health benefit coverages" includes all of the following:

- a. A person issuing a group policy of accident or health insurance pursuant to this chapter.
- b. A person issuing a group contract of a nonprofit health service corporation pursuant to chapter 514.
- c. A person issuing a group contract of a health maintenance organization pursuant to chapter 514B.

d. An organized delivery system authorized under 1993 Iowa Acts, chapter 158, licensed by the director of public health.

e. A multiple employer welfare arrangement, as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40, that meets the requirements of section 507A.4, subsection 9, paragraph “a”.

f. A plan for public employees established pursuant to chapter 509A.

g. A person issuing or sponsoring an association group policy under section 509.14.

Sec. 13. Section 513B.4, subsection 1, Code Supplement 2001, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. Any adjustment in rates for claims experience, health status, and duration of coverage shall not be charged to individual employees or dependents. Any such adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer.

Sec. 14. Section 513C.3, subsection 14, Code 2001, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. Loss of eligibility for the hawk-i program authorized in chapter 514I.

Sec. 15. Section 514A.3, subsection 2, paragraph k, Code Supplement 2001, is amended by striking the paragraph and inserting in lieu thereof the following:

k. A provision as follows:

INTOXICANTS AND NARCOTICS: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician. This provision shall not be used with respect to a medical expense policy. For purposes of this provision, “medical expense policy” means an accident and sickness insurance policy that provides hospital, medical, and surgical expense coverage.

Sec. 16. Section 514E.1, subsection 6, Code Supplement 2001, is amended by adding the following new paragraph:

NEW PARAGRAPH. l. The hawk-i program authorized by chapter 514I.

Sec. 17. Section 515.80, Code 2001, is amended to read as follows:

515.80 FORFEITURE OF POLICIES — NOTICE.

1. A policy or contract of insurance, unless otherwise provided in section 515.81A or 515.81B, provided for in this chapter shall not be forfeited, suspended, or canceled except by notice to the insured as provided in this chapter. A notice of cancellation is not effective unless mailed or delivered by the insurer to the named insured at least ~~twenty~~ thirty days before the effective date of cancellation, or, where cancellation is for nonpayment of a premium, assessment, or installment provided for in the policy, or in a note or contract for the payment thereof, at least ten days prior to the date of cancellation. The notice may be made in person, or by sending by mail a letter addressed to the insured at the insured's address as given in or upon the policy, anything in the policy, application, or a separate agreement to the contrary notwithstanding.

2. An insurer shall not fail to renew a policy except by notice to the insured as provided in this chapter. A notice of intention not to renew is not effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. A notice of intention not to renew is not required if the insured is transferred from an insurer to an affiliate for future coverage as a result of a merger, acquisition, or company restructuring and if the transfer results in the same or broader coverage.

If the reason does not accompany the notice of cancellation or nonrenewal, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for cancellation or nonrenewal.

Sec. 18. Section 515.81B, Code 2001, is amended to read as follows:

515.81B NONRENEWAL OF COMMERCIAL LINES POLICIES OR CONTRACTS.

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

2. A notice of nonrenewal is not effective unless mailed or delivered by the insurer to the named insured and any loss payee at least forty-five days prior to the expiration date of the policy. If the insurer fails to meet the notice requirements of this section, the insured has the option of continuing the policy for the remainder of the notice period plus an additional thirty days at the premium rate of the existing policy or contract. A post office department certificate of mailing to the named insured at the address shown in the policy or contract is proof of receipt of the mailing.

3. This section applies to all forms of commercial property and casualty insurance written pursuant to this chapter. It does not apply if the insurer has offered to renew or if the insured fails to pay a premium due or any advance premium required by the insurer for renewal. A notice of nonrenewal is not required if the insured is transferred from an insurer to an affiliate for future coverage as a result of a merger, acquisition, or company restructuring and if the transfer results in the same or broader coverage.

Sec. 19. NEW SECTION. 515.125A LIMITATION ON TERMINATION OF INDEPENDENT PRODUCERS.

An insurance company organized under this chapter or authorized to do business in this state shall not terminate a contract of an insurance producer who is an independent contractor but who is not an exclusive insurance producer as defined in section 522B.1 without at least one hundred eighty days' notice, except for loss of license, fraud, nonpayment of company premiums that are due and not in dispute by the producer, or the withdrawal of operations in the state by the insurance company. This section does not apply to insurance producers or a business entity whose contract with an insurer authorized to do business in this state contains a written provision expressly reserving to the insurer all right, title, and interest to the ownership or the use of insurance business written by such an insurance producer or business entity.

Sec. 20. Section 515B.5, subsection 1, paragraph c, unnumbered paragraph 2, Code Supplement 2001, is amended to read as follows:

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 or tender to an excess insurer of an amount equal to the lesser of the association's covered claim obligation or the applicable policy limits.

Sec. 21. Section 515B.5, subsection 1, paragraph d, Code Supplement 2001, is amended by striking the paragraph and inserting in lieu thereof the following:

d. Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligations on covered claims and deny all other claims. The association may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which settlements, releases, and judgments may properly be contested, and, to that end, any uncontested or default judgment against the insolvent insurer or its insured shall not be binding on the association. The association shall have the right to appoint or substitute legal counsel retained to defend insureds on covered claims.

Sec. 22. Section 515D.4, Code 2001, is amended to read as follows:

515D.4 NOTICE OF CANCELLATION — REASONS.

1. A policy shall not be canceled except by notice to the insured as provided in this chapter. Notice of cancellation of a policy is not effective unless it is based on one or more of the following reasons:

- a. Nonpayment of premium.
- b. Nonpayment of dues to an association or organization other than an insurance association or organization, where payment of dues is a prerequisite to obtaining or continuing insurance in force and the dues payment requirement was in effect prior to January 1, 1969.
- c. Fraud or material misrepresentation affecting the policy or the presentation of a claim.
- d. Violation of terms or conditions of the policy.
- e. Any reason permitted in subsection 2 for exclusion of a person from the policy.

2. A person shall not be excluded from the policy unless the exclusion is based on one or more of the following reasons, or is agreed upon by both the named insured and the insurer:

- a. The named insured or any operator who either resides in the same household or customarily operates an automobile insured under the policy has that person's driver's license suspended or revoked during the policy term or, if the policy is a renewal, during its term or the one hundred eighty days immediately preceding its effective date.
- b. The named insured or any operator who either resides in the same household or customarily operates an automobile insured under the policy has during the term of the policy engaged in a competitive speed contest while operating an automobile insured under the policy.
- c. The named insured or any operator who either resides in the same household or customarily operates an automobile insured under the policy, during the thirty-six months immediately preceding the notice of cancellation or nonrenewal, has been convicted of or forfeited bail for any of the following:

(1) Criminal negligence resulting in death, homicide, or assault and arising out of the operation of a motor vehicle.

(2) Operating a motor vehicle while intoxicated or while under the influence of a drug.

(3) A violation of section 321.261.

3. This section shall not apply to any policy or coverage which has been in effect less than sixty days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy. This section shall not apply to the nonrenewal of a policy.

4. During the policy period, a modification of automobile physical damage coverage, other than coverage for loss caused by collision, where provision is made for the application of a deductible amount not exceeding one hundred dollars, shall not be deemed a cancellation of the coverage or of the policy.

Sec. 23. Section 515D.7, Code 2001, is amended to read as follows:

515D.7 NOTICE OF INTENT.

1. Notwithstanding the provisions of sections 515.80 through 515.81B, an insurer shall not fail to renew a policy except by notice to the insured as provided in this chapter. A notice of intention not to renew shall not be effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. 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 intent not to renew, the notice shall state that, upon written request of the named insured, mailed or delivered to the insurer not less than ~~twenty~~ thirty days prior to the expiration date of the policy, the insurer will state the reason for nonrenewal.

2. When the reason does not accompany the notice of intent not to renew, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for nonrenewal, together with notification of the right to a hearing before the commissioner within fifteen days as provided herein. A statement of reason shall be mailed or delivered to the named insured within ten days after receipt of a request.

3. This section shall not apply:

1. ~~a.~~ If the insurer has manifested its willingness to renew.
2. ~~b.~~ If the insured fails to pay any premium due or any advance premium required by the insurer for renewal.
- c. If the insured is transferred from an insurer to an affiliate for future coverage as a result of a merger, acquisition, or company restructuring and if the transfer results in the same or broader coverage.

Sec. 24. Section 515F.3, subsection 6, Code 2001, is amended to read as follows:

6. Insurance written by a county or state mutual insurance association as provided in chapter 518 or 518A.

Sec. 25. NEW SECTION. 518.16A LIMITATION ON TERMINATION OF INDEPENDENT PRODUCERS.

A county mutual insurance association authorized to do business in this state shall not terminate a contract of an insurance producer who is an independent contractor but who is not an exclusive insurance producer as defined in section 522B.1 without at least one hundred eighty days' notice, except for loss of license, fraud, nonpayment of association premiums that are due and not in dispute by the producer, or the withdrawal of operations in the state by the association.

Sec. 26. Section 518.17, unnumbered paragraph 2, Code 2001, is amended to read as follows:

Reinsurance sufficient to protect the financial stability of the state mutual association is also required. ~~Reinsurance~~ In general, reinsurance coverage obtained by a county mutual insurance association shall not expose the association to losses from coverages written pursuant to this chapter of more than fifteen percent from surplus in any calendar year. The commissioner of insurance may require additional reinsurance if necessary to protect the policyholders of the association.

Sec. 27. Section 518.25, Code 2001, is amended to read as follows:

518.25 SURPLUS.

An association organized under this chapter shall at all times maintain a surplus of not less than fifty thousand dollars or one-tenth of one percent of the gross ~~property~~ risk in force, whichever is greater.

Sec. 28. Section 518A.2, Code 2001, is amended to read as follows:

518A.2 STATE MUTUAL ASSOCIATIONS.

Any association incorporated under the laws of this state for the purpose of furnishing insurance as provided for in this chapter ~~may is authorized to~~ do business ~~throughout the state in the county in which its principal place of business is located, the counties contiguous thereto, and the next tier of contiguous counties~~ and in other states where they are legalized and authorized to do business. Each association seeking to modify its authorized writing territory shall file with the commissioner a plan for controlled expansion demonstrating that provisions have been made adequately to service and protect policyholders. The expansion plan shall not be modified without the prior written approval of the commissioner, which approval shall not be unreasonably withheld. The words "mutual" and "association" shall be incorporated in and become a part of their name.

Sec. 29. Section 518A.37, Code 2001, is amended to read as follows:

518A.37 SURPLUS.

An association organized under this chapter shall at all times maintain a surplus of not less than one hundred thousand dollars, or one-tenth of one percent of the gross ~~property~~ risk in force, whichever is greater.

Sec. 30. NEW SECTION. 518A.42 LIMITATION ON TERMINATION OF INDEPENDENT PRODUCERS.

A state mutual insurance association authorized to do business in this state shall not terminate a contract of an insurance producer who is an independent contractor but who is not an exclusive insurance producer as defined in section 522B.1 without at least one hundred eighty days' notice, except for loss of license, fraud, nonpayment of association premiums that are due and not in dispute by the producer, or the withdrawal of operations in the state by the association.

Sec. 31. Section 518A.44, unnumbered paragraph 2, Code 2001, is amended to read as follows:

Reinsurance sufficient to protect the financial stability of the state mutual insurance association is required. ~~Reinsurance In general, reinsurance~~ coverage obtained by an association shall not expose the association to losses from coverages written pursuant to this chapter of more than fifteen percent from surplus in any calendar year. The commissioner of insurance may require additional reinsurance if necessary to protect the policyholders of the association.

Sec. 32. Section 519A.2, subsection 3, Code 2001, is amended to read as follows:

3. "Licensed health care provider" means and includes a physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor or nurse licensed pursuant to chapter 147, ~~and a hospital licensed pursuant to chapter 135B, and a nursing facility licensed pursuant to chapter 135C.~~

Sec. 33. Section 519A.5, subsection 2, Code 2001, is amended to read as follows:

2. All policies issued by the association shall provide for a continuous period of coverage beginning with their respective effective dates ~~and terminating automatically at 12:01 a.m. on July 1, 1977, unless sooner terminated. All policies shall terminate at 12:01 a.m. two years from the date of finding of an emergency by the commissioner, or earlier in accordance with sections 519A.2 to through 519A.13,;~~ or unless terminated because of failure of the policyholder to pay any premium or stabilization reserve fund charge or portion of either when due. All policies shall be issued subject to the group retrospective rating plan and the stabilization reserve fund authorized by this chapter. No policy form shall be used by the association unless it has been filed with and approved by the commissioner.

Sec. 34. Section 519A.9, subsection 2, unnumbered paragraph 1, Code 2001, is amended to read as follows:

~~Within fifteen days after July 1, 1975 the~~ The commissioner shall designate a time and place for a meeting of the members of the association at which the eight elected members serving on the ~~first~~ board shall be elected. The commissioner shall appoint the appointive members of the board on or before the date of ~~such~~ the meeting.

Sec. 35. Section 522B.1, Code Supplement 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. "Exclusive insurance producer" means a licensed insurance producer whose contract with an insurer requires the insurance producer to act as an agent only for that insurer or a group of insurers under common ownership or control or other insurers authorized by that insurer.

Sec. 36. FUTURE REPEAL. The section of this Act amending section 508.38, subsection 3, paragraph "a", is repealed July 1, 2004. Upon the effective date of the repeal, the Code editor shall revise the applicable Code language to that language that existed in the Code of Iowa 2001. Any intervening amendments to the language in section 508.38, subsection 3, paragraph "a", shall be stricken with the repeal, unless a subsequent Act specifically provides otherwise.