

CHAPTER 1110**REGULATION OF INSURANCE AND
CEMETERY AND FUNERAL MERCHANDISE AND SERVICES***H.F. 2489*

AN ACT relating to the regulation of various industries by the insurance division, including modifications related to the interstate insurance product regulation compact; investigations and penalties; procedures and contempt orders; insurance company investments; insurance producer licensing; individual health insurance programs; coverage obligations of the Iowa comprehensive health insurance association; refunds of unearned premium; coverage of federal Trade Adjustment Act recipients; penalties and discipline applicable to holders of establishment and sales permits for cemetery and funeral merchandise and services; and providing and applying penalties.

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

Section 1. Section 272C.1, subsection 6, paragraph z, Code 2003, is amended by striking the paragraph.

Sec. 2. Section 272C.3, subsection 2, paragraph a, Code Supplement 2003, is amended to read as follows:

a. Revoke a license, or suspend a license either until further order of the board or for a specified period, upon any of the grounds specified in section 147.55, 148.6, 148B.7, 152.10, 153.34, 154A.24, 169.13, 455B.219, 542.10, 542B.21, 543B.29, 544A.13, 544B.15, or 602.3203 or chapter 151, ~~or 155, 507B, or 522B~~, as applicable, or upon any other grounds specifically provided for in this chapter for revocation of the license of a licensee subject to the jurisdiction of that board, or upon failure of the licensee to comply with a decision of the board imposing licensee discipline;

Sec. 3. Section 272C.4, subsection 6, Code 2003, is amended to read as follows:

6. Define by rule acts or omissions ~~which that~~ are grounds for revocation or suspension of a license under section 147.55, 148.6, 148B.7, 152.10, 153.34, 154A.24, 169.13, 455B.219, 542.10, 542B.21, 543B.29, 544A.13, 544B.15, or 602.3203 or chapter 151, ~~or 155, 507B or 522B~~, as applicable, and to define by rule acts or omissions ~~which that~~ constitute negligence, careless acts, or omissions within the meaning of section 272C.3, subsection 2, paragraph "b", which licensees are required to report to the board pursuant to section 272C.9, subsection 2;

Sec. 4. Section 432.5, Code Supplement 2003, is amended to read as follows:

432.5 RISK RETENTION GROUPS.

A risk retention group organized and operating pursuant to Pub. L. No. 99-563, also known as the risk retention amendments of 1986, shall pay as taxes to the director of revenue an amount equal to ~~two percent the applicable percent, as provided in section 432.1, subsection 4~~ of the gross amount of the premiums received during the previous calendar year for risks placed in this state. A resident or nonresident ~~agent producer~~ shall report and pay the taxes on the premiums for risks that the ~~agent producer~~ has placed in this state with or on behalf of a risk retention group. The failure of a risk retention group to pay the tax imposed in this section shall result in the risk retention group being considered an unauthorized insurer under chapter 507A.

Sec. 5. **NEW SECTION.** 505.7A CIVIL PENALTIES.

Unless specifically provided for in this subtitle, penalties imposed under this subtitle by order of the commissioner of insurance after hearing shall not exceed one thousand dollars for each act or violation of this subtitle, up to an aggregate of ten thousand dollars, unless the person knew or reasonably should have known the person was in violation of this subtitle, in

which case the penalty shall not exceed five thousand dollars for each act or violation, up to an aggregate of fifty thousand dollars in any one six-month period.

Sec. 6. Section 505A.1, article III, subsections 1 and 2, Code Supplement 2003, are amended to read as follows:

1. The compacting states hereby create and establish ~~an entity~~ a joint public agency known as the interstate insurance product regulation commission. Pursuant to article IV, the commission has the power to develop uniform standards for product lines, receive and provide prompt review of products filed therewith, and give approval to those product filings satisfying applicable uniform standards, provided it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance, and any such filing shall be subject to the laws of the state where filed.

2. The commission is a body corporate ~~comprising each and politic, and an instrumentality of the~~ compacting state.

Sec. 7. Section 505A.1, article III, subsection 3, Code Supplement 2003, is amended by striking the subsection.

Sec. 8. Section 505A.1, article V, subsection 1, paragraph c, subparagraphs (3) and (4), Code Supplement 2003, are amended to read as follows:

(3) Providing reasonable standards and procedures:

(a) For the establishment and meetings of other committees.

(b) Governing any general or specific delegation of any authority or function of the commission.

(4) Providing reasonable procedures for calling and conducting meetings of the commission, ~~and that consists of a majority of commission members~~ ensuring reasonable advance notice of each such meeting, and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the commission shall make public:

(a) A copy of the vote to close the meeting, revealing the vote of each member, with no proxy votes allowed.

(b) Votes taken during such meeting.

Sec. 9. Section 505A.1, article V, subsection 1, paragraph c, Code Supplement 2003, is amended by adding the following new subparagraph:

NEWSUBPARAGRAPH. (8) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees.

Sec. 10. Section 505A.1, article V, subsection 1, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. The commission shall publish its bylaws in a convenient form and file a copy of the bylaws, along with any amendments, with the appropriate agency or officer in each of the compacting states.

Sec. 11. Section 505A.1, article VII, subsection 2, Code Supplement 2003, is amended to read as follows:

2. RULEMAKING PROCEDURE. Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to the model state administrative procedure act of 1981 as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committee or committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission, in adopting a uniform

standard, shall consider fully all submitted materials and issue a concise explanation of its decision.

Sec. 12. Section 505A.1, article VIII, subsection 1, Code Supplement 2003, is amended to read as follows:

1. The commission shall promulgate rules ~~to establish~~ establishing conditions and procedures ~~under which the commission shall make its information and official records available to the public for inspection or copying for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets.~~ The commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records, and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

Sec. 13. Section 505A.1, article VIII, subsection 4, paragraphs a and b, Code Supplement 2003, are amended to read as follows:

a. With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, ~~no activity of an insurer~~ the content of the product or advertisement shall not constitute a violation of the provisions, standards, or requirements of this compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

b. Before a commissioner may bring an action for violation of any provision, standard, or requirement of this compact relating to the use content of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on such requests.

Sec. 14. Section 505A.1, article XI, subsection 1, Code Supplement 2003, is amended to read as follows:

1. Not later than thirty days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. ~~The decision of the review panel shall be the final action of the commission and not subject to review by any court. Notwithstanding the foregoing, an~~ An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with article III, section 5.

Sec. 15. Section 505A.1, article XII, subsection 6, Code Supplement 2003, is amended to read as follows:

6. The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts, ~~any work papers related to any internal audit, and~~

~~any work papers related to the independent audit, shall not be confidential, provided that and such materials may be shared with the commissioner of any compacting state and shall remain confidential pursuant to article VII upon request; provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of the individuals and insurers' proprietary information, including trade secrets, shall remain confidential.~~

Sec. 16. Section 505A.1, article XVI, subsection 1, paragraph b, Code Supplement 2003, is amended to read as follows:

b. For any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission which governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, action taken by the commission shall not abrogate or restrict:

- (1) The access of any person, ~~including the attorney general,~~ to state courts.
- (2) Remedies available under state law related to breach of contract, tort, general consumer protection laws, or general consumer protection regulations that apply to the sale or advertisement of the product or other laws not specifically directed to the content of the product.
- (3) State law relating to the construction of insurance contracts.
- (4) The authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

Sec. 17. Section 507.14, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Analysis notes, work papers, or other documents related to the analysis of an insurer are not public records under chapter 22.

Sec. 18. Section 507.16, Code 2003, is amended to read as follows:

507.16 UNLAWFUL SOLICITATION OF BUSINESS.

~~Any It shall be unlawful for any officer, manager, agent, or representative of any insurance company contemplated by this chapter, who, with knowledge that its certificate of authority has been suspended or revoked, or that it is insolvent, or is doing an unlawful or unauthorized business, solicits to solicit or receive applications for insurance for said the company, or receives applications therefor, or does to do any other act or thing toward receiving or procuring any new business for said the company, shall be deemed guilty of a serious misdemeanor, and the. The provisions of sections 511.16 and 511.17 are hereby extended to all companies contemplated by this chapter.~~

Sec. 19. Section 507A.10, Code 2003, is amended to read as follows:

507A.10 CEASE AND DESIST ~~ORDER ORDERS~~ — CIVIL PENALTY AND CRIMINAL PENALTIES.

1. Upon a determination by the commissioner, after a hearing conducted pursuant to chapter 17A, that a person or insurer has violated a provision of this chapter, the commissioner shall reduce the findings of the hearing to writing and deliver a copy of the findings to the person or insurer, may issue an order requiring the person or insurer to cease and desist from engaging in the conduct resulting in the violation, and may assess a civil penalty of not more than fifty thousand dollars against the person or insurer.

2. a. Upon a determination by the commissioner that a person or insurer has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may issue a summary order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision, and directing the person or insurer to cease and desist from engaging in the

act or practice or to take other affirmative action as is in the judgment of the commissioner necessary to comply with the requirements of this chapter.

b. A person to whom a summary order has been issued under this subsection may contest the order by filing a request for a contested case proceeding and hearing as provided in chapter 17A and in accordance with rules adopted by the commissioner. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this subsection. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing.

c. A person or insurer violating a summary order issued under this subsection shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall find the person in contempt of the order if the court finds after hearing that the person or insurer is not in compliance with the order. The court may assess a civil penalty against the person or insurer and may issue further orders as it deems appropriate.

3. A person acting as an insurance producer, as defined in chapter 522B, without proper licensure, or an insurer who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, is guilty of a class "D" felony.

4. A person acting as an insurance producer, as defined in chapter 522B, without proper licensure, or an insurer who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, and when such violation results in a loss of more than ten thousand dollars, is guilty of a class "C" felony.

5. The commissioner may refer such evidence as is available concerning violations of this chapter or of any rule adopted or order issued under this chapter, or of the failure of a person to comply with the licensing requirements of chapter 522B, to the attorney general or the proper county attorney who may, with or without such reference, institute the appropriate criminal proceedings under this chapter.

6. This chapter does not limit the power of the state to punish any person for any conduct that constitutes a crime under any other statute.

Sec. 20. Section 507B.2, subsection 1, Code 2003, is amended to read as follows:

1. "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, interinsurer, fraternal beneficiary association, and any other legal entity engaged in the business of insurance, including ~~agents, brokers~~ insurance producers and adjusters. "Person" shall also mean any corporation operating under the provisions of chapter 514 and any benevolent association as defined and operated under chapter 512A. For purposes of this chapter, corporations operating under the provisions of chapter 514 and chapter 512A shall be deemed to be engaged in the business of insurance.

Sec. 21. Section 507B.3, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 3. Information obtained by the commissioner in the course of investigating a consumer complaint may, in the discretion of the commissioner, be provided to the insurance company or insurance producer which is the subject of the complaint or to the consumer who filed the complaint or the individual insured who is the subject of the complaint without waiving the confidentiality afforded by this section to the commissioner or other persons.

Sec. 22. Section 507B.6, subsection 5, Code 2003, is amended to read as follows:

5. Statements of charges, notices, orders, subpoenas, and other processes of the commissioner under this chapter may be served by anyone ~~duly~~ authorized by the commissioner, either in the manner provided by law for service of process in civil actions, or by mailing a copy ~~thereof~~ by restricted certified mail to the person affected by ~~such~~ the statement, notice, order,

subpoena, or other process at the person's residence or principal office or place of business. The verified return by the person so serving such ~~the~~ statement, notice, order, subpoena, or other process, setting forth the manner of such service, shall be proof of ~~the same service~~, and the return receipt for such ~~the~~ statement, notice, order, subpoena, or other process, ~~and~~ mailed by restricted certified mail ~~as aforesaid~~, shall be proof of the service of ~~the same~~.

Sec. 23. NEW SECTION. 507B.6A SUMMARY CEASE AND DESIST ORDERS.

1. Upon a determination by the commissioner that a person or insurer has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may issue a summary order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision, and directing the person or insurer to cease and desist from engaging in the act or practice or to take other affirmative action as is in the judgment of the commissioner necessary to comply with the requirements of this chapter.

2. A person who has been issued a summary order under this section may contest the order by filing a request for a contested case proceeding and hearing as provided in chapter 17A and in accordance with the rules adopted by the commissioner. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this section. The order shall remain effective from the date of issuance unless overturned by a presiding officer or court following a request for hearing. If a hearing is not timely requested, the summary order becomes final by operation of law.

3. A person or insurer violating a summary order issued under this section shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person or insurer is not in compliance with the order. The court may assess a civil penalty against the person or insurer and may issue further orders as it deems appropriate.

Sec. 24. Section 507B.7, Code 2003, is amended to read as follows:

507B.7 CEASE AND DESIST ORDERS AND ~~MODIFICATIONS THEREOF~~ PENALTIES.

1. If, after ~~such~~ hearing, the commissioner determines that ~~the a~~ person ~~charged~~ has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings, an order requiring such person to cease and desist from engaging in such method of competition, act, or practice, and ~~if the act or practice is a violation of section 507B.4, 507B.4A, or 507B.5, the commissioner may at the commissioner's discretion order any one or more of the following:~~

a. Payment of a civil penalty of not more than one thousand dollars for each act or violation ~~of this subtitle, but not to exceed an aggregate of ten thousand dollars, unless the person knew or reasonably should have known the person was in violation of section 507B.4, 507B.4A, or 507B.5 this subtitle, in which case the penalty shall be not more than five thousand dollars for each act or violation, but not to exceed an aggregate penalty of fifty thousand dollars in any one six-month period. If the commissioner finds that a violation of section 507B.4, 507B.4A, or 507B.5 this subtitle was directed, encouraged, condoned, ignored, or ratified by the employer of the person or by an insurer, the commissioner shall also assess a fine to the employer or insurer.~~

b. Suspension or revocation of the license of a person as defined in section 507B.2, subsection 1, if the person knew or reasonably should have known the person was in violation of ~~section 507B.4, 507B.4A, or 507B.5 this subtitle.~~

c. Payment of interest at the rate of ten percent per annum if the commissioner finds that the insurer failed to pay interest as required under section 507B.4, subsection 12.

2. Until the expiration of the time allowed under section 507B.8 for filing a petition for review if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed

in the district court, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as the commissioner may deem proper, modify or set aside in whole or in part any order issued by the commissioner under this section.

3. After the expiration of the time allowed for filing such a petition for review if no such petition has been duly filed within such time, the commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by the commissioner under this section, whenever in the commissioner's opinion conditions of fact or of law have so changed as to require such action, or if the public interest shall so require.

4. Any person who violates a cease and desist order of the commissioner, and while such order is in effect, may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to any one or more of the following:

a. A monetary penalty of not more than ten thousand dollars for each and every act or violation.

b. Suspension or revocation of such person's license.

Sec. 25. Section 507C.6, subsection 4, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

4. It shall be unlawful for a person as defined in subsection 1 to fail to cooperate with the commissioner, or to obstruct or interfere with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental to a delinquency proceeding, or to violate a valid order of the commissioner.

Sec. 26. Section 507C.11, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Notwithstanding chapter 22, in all administrative proceedings pursuant to sections 507C.9 and 507C.10 all orders, records, and documents pertaining to or a part of the record of the proceedings are confidential except as is necessary to obtain compliance with a proceeding. However, the records may be released if either of the following occurs:

Sec. 27. Section 509.18, Code 2003, is amended to read as follows:

509.18 PROHIBITED DEPOSIT IN FINANCIAL INSTITUTION.

A company or its agent licensed to sell a policy of credit life or credit accident and health insurance or certificate under a policy of group credit life or credit accident and health insurance shall not deposit or offer to deposit funds in a financial institution of this state in exchange for the privilege of selling such insurance to or on behalf of the financial institution. ~~Any person violating the provisions of this section shall be guilty of a simple misdemeanor.~~

Sec. 28. Section 511.8, subsection 1, Code Supplement 2003, is amended to read as follows:

1. UNITED STATES GOVERNMENT OBLIGATIONS.

a. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality thereof of the United States of America.

b. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality of the United States of America include investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7, the portfolio of which is limited to the United States government obligations described in paragraph "a", and which are included in the national association of insurance commissioners' securities valuation office's United States direct obligations-full faith and credit exempt list.

Sec. 29. Section 511.8, subsection 19, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

Bonds or other evidences of indebtedness, not to include currency, issued, assumed, or

guaranteed by a foreign government other than Canada, or by a corporation incorporated under the laws of a foreign government other than Canada. Such governmental obligations must be valid, legally authorized and issued, and on the date of acquisition have predominantly investment qualities and characteristics as provided by rule. Such corporate obligations must meet the qualifications established in subsection 5 for bonds and other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States or Canada. Foreign investments authorized by this subsection are not eligible in excess of ~~ten~~ twenty percent of the legal reserve of the life insurance company or association. Investments in obligations of a foreign government, other than Canada and the United Kingdom, are not eligible in excess of two percent of the legal reserve in the securities of foreign governments of any one foreign nation. Investments in obligations of the United Kingdom are not eligible in excess of four percent of the legal reserve. Investments in a corporation incorporated under the laws of a foreign government other than Canada are not eligible in excess of two percent of the legal reserve in the securities of any one foreign corporation.

Sec. 30. Section 511.8, subsection 22, paragraph e, Code Supplement 2003, is amended to read as follows:

e. Investments in financial instruments of foreign governments or foreign corporate obligations, other than Canada, used in hedging transactions are not eligible in excess of ~~ten~~ twenty percent of the legal reserve, less any foreign investment authorized by subsection 19 owned by the company or association and in which its legal reserve is invested, except insofar as the financial instruments are collateralized by cash or United States government obligations as authorized by subsection 1 deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

Sec. 31. Section 511.8, Code Supplement 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 23. SECURITY LOANS.

a. A life insurance company or association may loan securities held by it in its legal reserve to a broker-dealer registered under the Securities Exchange Act of 1934, a national bank, or a state bank, foreign bank, or trust company that is a member of the United States federal reserve system, and the loaned securities shall continue to be eligible for inclusion in the legal reserve of the life insurance company or association.

b. The loan shall be fully collateralized by cash, cash equivalents, or obligations issued or guaranteed by the United States or an agency or instrumentality of the United States. The life insurance company or association shall take delivery of the collateral either directly or through an authorized custodian.

c. If the loan is collateralized by cash or cash equivalents, the cash or cash equivalent collateral may be reinvested by the life insurance company or association in either individual securities which are eligible for inclusion in the legal reserve of the life insurance company or association or in repurchase agreements fully collateralized by such securities if the life insurance company or association takes delivery of the collateral either directly or through an authorized custodian or pooled fund comprised of individual securities which are eligible for inclusion in the legal reserve of the life insurance company or association. If such reinvestment is made in individual securities or in repurchase agreements, the individual securities or the securities which collateralize the repurchase agreements shall mature in less than two hundred seventy days. If such reinvestment is made in a pooled fund, the average maturity of the securities comprising such pooled fund must be less than two hundred seventy days. Individual securities and securities comprising the pooled fund shall be investment grade.

d. The loan shall be evidenced by a written agreement which provides all of the following:

(1) That the loan will be fully collateralized at all times during the term of the loan, 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.

(2) If the loan is fully collateralized by cash or cash equivalents, the cash or cash equivalent may be reinvested by the life insurance company or association as provided in paragraph "c".

(3) That the loan may be terminated by the life insurance company or association at any time, and that the borrower shall return the loaned stocks or obligations or equivalent stocks or obligations within five business days after termination.

(4) That the life insurance company or association has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the life insurance company or association due to default that are not covered by the collateral.

e. Securities loaned pursuant to this subsection are not eligible for inclusion in the legal reserve of the life insurance company or association in excess of twenty percent of the legal reserve.

Sec. 32. Section 511.16, Code 2003, is amended to read as follows:

511.16 ILLEGAL BUSINESS.

~~Any~~ It shall be unlawful for any officer, manager, or agent of any life insurance company or association ~~who, with knowledge that it is doing business in an unlawful manner or is insolvent, solicits to solicit or receive applications for insurance with said the company or association, or receives applications therefor, or does to do any other act or thing towards toward~~ procuring or receiving any new business for ~~such the company or association, shall be guilty of an aggravated misdemeanor.~~

Sec. 33. Section 512A.8, Code 2003, is amended to read as follows:

512A.8 PENALTIES VIOLATION.

Except as otherwise provided by law, it shall be unlawful for any person or corporation to operate a benevolent association in this state except as provided for in this chapter. ~~Any person violating the provisions of this chapter shall be guilty of a serious misdemeanor.~~

Sec. 34. Section 512B.35, Code 2003, is amended to read as follows:

512B.35 PENALTIES FALSE OR FRAUDULENT STATEMENTS.

1. ~~A person who~~ It shall be unlawful for a person knowingly makes to make a false or fraudulent statement or representation in or relating to an application for membership or for the purpose of obtaining money from or a benefit in a society, ~~is guilty of a fraudulent practice.~~

2. ~~A person who willfully makes~~ It shall be unlawful for a person to willfully make a false or fraudulent statement in a verified report or declaration under oath required or authorized by this chapter, or of a material fact or thing contained in a sworn statement concerning the death or disability of an insured for the purpose of procuring payment of a benefit named in the certificate, ~~is guilty of perjury.~~

3. ~~A person who solicits~~ It shall be unlawful for a person to solicit membership for, or in any manner ~~assists to assist~~ in procuring membership in, a society not licensed to do business in this state, ~~is guilty of a serious misdemeanor.~~

4. ~~A person guilty of a willful violation of, or neglect or refusal to comply with, a provision of this chapter for which a penalty is not otherwise prescribed, is guilty of a simple misdemeanor.~~

Sec. 35. Section 513C.3, subsection 15, Code Supplement 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. For purposes of this subsection, an association policy under chapter 514E is not considered "qualifying existing coverage" or "qualifying previous coverage".

Sec. 36. Section 513C.8, Code 2003, is amended to read as follows:

513C.8 HEALTH BENEFIT PLAN STANDARDS.

~~The commissioner board of directors of the Iowa comprehensive health insurance association, with the approval of the commissioner, shall adopt by rule the form and level of coverage of the basic health benefit plan and the standard health benefit plan for the individual market which shall provide benefits substantially similar to those as provided for under chapter 513B with respect to small group coverage, but which shall be appropriately adjusted at least every three years to reflect the current state of the individual market.~~

Sec. 37. Section 513C.10, subsection 1, paragraph a, Code Supplement 2003, is amended to read as follows:

a. All persons that provide health benefit plans in this state including insurers providing accident and sickness insurance under chapter 509, 514, or 514A, whether on an individual or group basis; fraternal benefit societies providing hospital, medical, or nursing benefits under chapter 512B; and health maintenance organizations, organized delivery systems, and all other entities providing health insurance or health benefits subject to state insurance regulation, and all other insurers as designated by the board of directors of the Iowa comprehensive health insurance association with the approval of the commissioner shall be members of the association.

Sec. 38. Section 513C.10, subsection 4, Code Supplement 2003, is amended to read as follows:

4. The board shall develop procedures and assessment mechanisms and make assessments and distributions as required to equalize the individual carrier and organized delivery system gains or losses so that each carrier or organized delivery system receives the same ratio of paid claims to ninety percent of earned premiums as the aggregate of all basic and standard plans insured by all carriers and organized delivery systems in the state.

Sec. 39. NEW SECTION. 514A.3A REFUND OF UNEARNED PREMIUM UPON DEATH OF INSURED.

In the event of the death of the insured of any policy covered by this chapter, the insurer, upon receipt of notice of the insured's death supported by a certified copy of a valid death certificate and a request for a pro rata refund by a party entitled to claim such a refund, shall refund the unearned premium prorated to the month of the insured's death. Refund of the premium and termination of the coverage shall be without prejudice to any claim originating prior to the date of the insured's death. The commissioner of insurance shall adopt by rule the minimum amount required for issuance of a refund.

Sec. 40. Section 514E.1, subsection 2, Code Supplement 2003, is amended to read as follows:

2. "Association policy" means an individual or group policy issued by the association that provides the coverage specified in section 514E.4 as set forth in the benefit plans adopted by the association's board of directors and approved by the commissioner.

Sec. 41. Section 514E.1, subsections 7, 8, and 12, Code Supplement 2003, are amended by striking the subsections.

Sec. 42. Section 514E.1, subsection 9, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. Who has been confirmed eligible under the federal Trade Adjustment Act of 2002, Pub. L. No. 107-210, as a recipient under that Act, by the department of workforce development and the federal internal revenue service.

Sec. 43. Section 514E.1, subsection 13, Code Supplement 2003, is amended to read as follows:

13. "Health care services" means services, the coverage of which is authorized under

chapter 509, chapter 514, chapter 514A, or chapter 514B as limited by ~~sections 514E.4 and 514E.5~~ benefit plans established by the association's board of directors, with the approval of the commissioner and includes services for the purposes of preventing, alleviating, curing, or healing human illness, injury or physical disability.

Sec. 44. Section 514E.2, subsection 1, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

The Iowa comprehensive health insurance association is established as a nonprofit corporation. The association shall assure that ~~health insurance, as limited by sections 514E.4 and 514E.5, is~~ benefit plans as authorized in section 514E.1, subsection 2, for an association policy, are made available to each eligible Iowa resident and each federally eligible individual applying to the association for coverage. The association shall also be responsible for administering the Iowa individual health benefit reinsurance association pursuant to all of the terms and conditions contained in chapter 513C.

Sec. 45. Section 514E.2, subsection 1, paragraph a, Code Supplement 2003, is amended to read as follows:

a. ~~All carriers as defined in section 514E.1, subsection 3,~~ and all organized delivery systems licensed by the director of public health providing health insurance or health care services in Iowa ~~and all other insurers designated by the association's board of directors and approved by the commissioner~~ shall be members of the association.

Sec. 46. Section 514E.2, subsection 6, Code Supplement 2003, is amended by striking the subsection and inserting in lieu thereof the following:

6. Rates for coverages issued by the association shall reflect rating characteristics used in the individual insurance market. The rates for a given classification shall not be more than one hundred fifty percent of the average premium or payment rate for the classification charged by the five carriers with the largest health insurance premium or payment volume in the state during the preceding calendar year. In determining the average rate of the five largest carriers, the rates or payments charged by the carriers shall be actuarially adjusted to determine the rate or payment that would have been charged for benefits similar to those issued by the association.

Sec. 47. Section 514E.4, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

514E.4 ASSOCIATION POLICY — COVERAGE AND BENEFIT REQUIREMENTS — DEDUCTIBLES — COINSURANCE.

The association policy shall pay for medically necessary eligible health care services as established in the benefit plans adopted by the association's board of directors and approved by the commissioner. The plans shall provide benefits, deductibles, and coinsurance that reflect the current state of the individual insurance market. The board may modify the benefits provided under the plans to reflect the current state of the individual insurance market with the approval of the commissioner.

Sec. 48. Section 514E.7, subsection 1, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The association shall rescind coverage for an individual who no longer resides in the state.

Sec. 49. Section 514E.7, subsection 5, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. The individual is eligible for Medicare based upon age.

Sec. 50. Section 514E.8, subsection 1, Code 2003, is amended to read as follows:

1. An association policy shall contain provisions under which the association is obligated

to renew the contract coverage for an individual until the day on which the individual in whose name the contract is issued first becomes eligible for Medicare coverage, ~~except that in a family policy covering both husband and wife, the age of the younger spouse shall be used as the basis for meeting the durational requirements of this subsection. However, when the individual in whose name the contract is issued becomes eligible for Medicare coverage, the person shall be eligible for the Medicare supplement plan offered by the association based on age.~~

Sec. 51. Section 514E.11, Code 2003, is amended to read as follows:
514E.11 NOTICE OF ASSOCIATION POLICY.

Every carrier, including a health maintenance organization subject to chapter 514B and an organized delivery system, authorized to provide health care insurance or coverage for health care services in Iowa, shall provide a notice of the availability of coverage by the association to any person who receives a rejection of coverage for health insurance or health care services, ~~or a notice to any person who is informed that a rate for health insurance or coverage for health care services~~ that will exceed the rate of an association policy, and that person is eligible to apply for health insurance provided by the association. Application for the health insurance shall be on forms prescribed by the association's board of directors and made available to the carriers and organized delivery systems and other entities providing health care insurance or coverage for health care services regulated by the commissioner.

Sec. 52. Section 515.35, subsection 3, paragraph a, subparagraph (2), Code Supplement 2003, is amended by striking the subparagraph and inserting in lieu thereof the following:

(2) A company may loan securities held by it to a broker-dealer registered under the Securities Exchange Act of 1934, a national bank, or a state bank, foreign bank, or trust company that is a member of the United States federal reserve system, and the loaned securities shall continue to be allowable investments of the company.

(a) The loan shall be fully collateralized by cash, cash equivalents, or obligations issued or guaranteed by the United States or an agency or instrumentality of the United States. The company shall take delivery of the collateral either directly or through an authorized custodian.

(b) If the loan is collateralized by cash or cash equivalents, the cash or cash equivalent collateral may be reinvested by the company in either individual securities which are allowable investments of the company or in repurchase agreements fully collateralized by such securities if the company takes delivery of the collateral either directly or through an authorized custodian or a pooled fund comprised of individual securities which are allowable investments of the company. If such reinvestment is made in individual securities or in repurchase agreements, the individual securities or the securities which collateralize the repurchase agreements shall mature in less than two hundred seventy days. If such reinvestment is made in a pooled fund, the average maturity of the securities comprising such pooled fund must be less than two hundred seventy days. Individual securities and securities comprising the pooled fund shall be investment grade.

(c) The loan shall be evidenced by a written agreement which provides all of the following:

(i) That the loan will be fully collateralized at all times during the term of the loan, 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.

(ii) If the loan is fully collateralized by cash or cash equivalents, the cash or cash equivalent collateral may be reinvested by the company as provided in subparagraph subdivision (b).

(iii) That the loan may be terminated by the company at any time, and that the borrower shall return the loaned stocks and obligations or equivalent stocks or obligations within five business days after termination.

(iv) That the company has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the company due to default that are not covered by the collateral.

(d) Securities loaned pursuant to this subparagraph (2) are not eligible for investment of the company in excess of twenty percent of admitted assets.

Sec. 53. Section 515.35, subsection 4, paragraph a, Code Supplement 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality of the United States of America include investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a) and operated in accordance with 17 C.F.R. § 270.2a-7, the portfolio of which is limited to the United States government obligations described in this paragraph “a”, and which are included in the national association of insurance commissioners’ securities valuation office’s United States direct obligation-full faith and credit list.

Sec. 54. Section 515.35, subsection 4, paragraph i, subparagraphs (3) and (4), Code Supplement 2003, are amended to read as follows:

(3) A company may invest in the obligations of a foreign government other than Canada or of a corporation incorporated under the laws of a foreign government other than Canada. Any such governmental obligation must be valid, legally authorized and issued, and on the date of acquisition have predominantly investment qualities and characteristics as provided by rule. Any such corporate obligation must on the date of acquisition have investment qualities and characteristics, and must not have speculative elements which are predominant, as provided by rule. A company shall not invest more than two percent of its admitted assets in the obligations of a foreign government other than Canada and the United Kingdom. Investments in obligations of the United Kingdom are not eligible in excess of four percent of admitted assets. A company shall not invest more than two percent of its admitted assets in the obligations of a corporation incorporated under the laws of a foreign government other than a corporation incorporated under the laws of Canada.

(4) A company shall not invest more than ~~ten~~ twenty percent of its admitted assets in foreign investments pursuant to this paragraph.

Sec. 55. Section 515.120, Code 2003, is amended to read as follows:
515.120 VIOLATIONS.

~~Any~~ It shall be unlawful for any officer, manager, or agent of any insurance company or association who, with knowledge that it is doing business in an unlawful manner, or is insolvent, ~~solicits to solicit or receive applications for~~ insurance with ~~said the~~ company or association, ~~or receives applications therefor, or does to do~~ any other act or thing ~~towards toward~~ procuring or receiving any new business for such company or association, ~~shall be guilty of a serious misdemeanor.~~

Sec. 56. Section 515.121, Code 2003, is amended to read as follows:
515.121 OFFICERS PUNISHED.

~~Any~~ It shall be unlawful for any of the following to fail to comply with or to violate any of the requirements of this chapter:

1. The president, secretary, or other officer of any company organized under the laws of this state, ~~or any.~~

2. Any officer or person doing or attempting to do business in this state for any insurance company organized either within or without this state, ~~failing to comply with any of the requirements of this chapter, or violating any of the provisions thereof, shall be guilty of a simple misdemeanor.~~

Sec. 57. Section 515.140, Code 2003, is amended to read as follows:
515.140 VIOLATIONS — STATUS OF POLICY.

Any It shall be unlawful for any insurance company, its officers or agents, or either of them,

~~violating to violate~~ any of the provisions of section 515.138, by issuing, delivering, or offering to issue or deliver any policy of fire insurance on property in this state other ~~or different from than~~ the standard form, ~~herein as provided for, shall be guilty of a simple misdemeanor in statute,~~ but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the same, ~~and such policy. The company shall, until the payment of such fine a penalty assessed by order after hearing,~~ be disqualified from doing any insurance business in this state; ~~but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the same.~~

Sec. 58. Section 518A.41, Code 2003, is amended to read as follows:
518A.41 INSURANCE PRODUCERS TO BE LICENSED.

~~No~~ A person or corporation shall not solicit any an application for insurance for any association in this state without having procured from the commissioner of insurance a license authorizing the person or corporation to act as an insurance producer. ~~Violation of this provision shall constitute a serious misdemeanor.~~

Sec. 59. Section 520.14, Code 2003, is amended to read as follows:
520.14 VIOLATIONS — EXCEPTIONS.

~~Any~~ It shall be unlawful for an attorney ~~who shall to~~ exchange any contracts of insurance of the kind and character specified in this chapter, or ~~any for an~~ attorney or representative of ~~such the~~ attorney, ~~who shall to~~ solicit or negotiate any applications for the same without the attorney having first complied with the foregoing provisions, ~~shall be deemed guilty of a simple misdemeanor.~~ For the purpose of organization and upon issuance of permit by the commissioner of insurance, powers of attorney and applications for such contracts may be solicited without compliance with the provisions of this chapter, but ~~no an~~ attorney, agent, or other person shall not make any such contracts of indemnity until all of the provisions of this chapter shall have been complied with.

Sec. 60. Section 522B.11, subsection 1, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. q. Is the subject of an order of the securities administrator of this state or any other state, province, district, or territory, denying, suspending, revoking, or otherwise taking action against a registration as a broker-dealer, agent, investment adviser, or investment adviser representative.

Sec. 61. Section 522B.11, subsection 5, Code 2003, is amended to read as follows:

5. The commissioner may conduct an investigation of any suspected violation of this chapter pursuant to section 507B.6 and may enforce the provisions and impose any penalty or remedy authorized by this chapter and chapter 507B against any person who is under investigation for, or charged with, a violation of either chapter even if the person's license has been surrendered or has lapsed by operation of law.

Sec. 62. Section 522B.11, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 6. a. In order to assure a free flow of information for accomplishing the purposes of this section, all complaint files, investigation files, other investigation reports, and other investigative information in the possession of the commissioner or the commissioner's employees or agents that relates to licensee discipline are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the licensee, and are not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. A final written decision of the commissioner in a disciplinary proceeding is a public record.

b. Investigative information in the possession of the commissioner or the commissioner's employees or agents that relates to licensee discipline may be disclosed, in the commissioner's discretion, to appropriate licensing authorities within this state, the appropriate licensing

authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license.

c. If the investigative information in the possession of the commissioner or the commissioner's employees or agents indicates a crime has been committed, the information shall be reported to the proper law enforcement agency.

d. Pursuant to the provisions of section 17A.19, subsection 6, upon an appeal by the licensee, the commissioner shall transmit the entire record of the contested case to the reviewing court.

e. Notwithstanding the provisions of section 17A.19, subsection 6, if a waiver of privilege has been involuntary and evidence has been received at a disciplinary hearing, the court shall issue an order to withhold the identity of the individual whose privilege was waived.

Sec. 63. NEW SECTION. 522B.16A DUTIES OF LICENSEES.

1. An insurance producer has a continuing duty and obligation to keep, at the insurance producer's place of business, usual and customary records pertaining to transactions undertaken by the insurance producer. All such records shall be kept available and open for inspection by the commissioner or the commissioner's representative at any time during regular business hours, provided that the commissioner or the commissioner's representative is not entitled to inspect any records prepared in anticipation of litigation or that are subject to any privilege recognized in chapter 622. Such records shall be maintained for a minimum of three years following the completion of an insurance transaction.

2. An insurance producer who willfully fails to comply with this section commits a violation of this chapter and is subject to sanctions under section 522B.11.

Sec. 64. Section 523A.401, subsection 6, paragraph c, Code 2003, is amended to read as follows:

c. The insurance policy shall not ~~allow for contesting coverage, be contestable, or limit death benefits in the case of suicide, with respect to that portion of the face amount of the policy that is required by paragraph "b".~~ The policy shall not refer to physical examination, or otherwise operate as an exclusion, limitation, or condition other than requiring submission of proof of death or surrender of policy at the time the prepaid purchase agreement is funded, matures, or is canceled, as the case may be.

Sec. 65. Section 523A.402, subsection 6, paragraph c, Code 2003, is amended to read as follows:

c. The annuity shall not ~~allow for contesting coverage, be contestable, or limit death benefits in the case of suicide, with respect to that portion of the face amount of the annuity which is required by paragraph "b".~~ The annuity shall¹ refer to physical examination, or otherwise operate as an exclusion, limitation, or condition other than requiring submission of proof of death or surrender of the annuity at the time the prepaid purchase agreement is funded, matures, or is canceled, as the case may be.

Sec. 66. Section 523A.501, subsection 6, Code 2003, is amended to read as follows:

6. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the permit, the commissioner shall notify the person in writing of the reasons for the denial. ~~The permit shall disclose on its face the permit holder's employer or the establishment on whose behalf the applicant will be making or attempting to make sales, the permit number, and the expiration date.~~

Sec. 67. Section 523A.502, subsection 7, Code 2003, is amended to read as follows:²

7. A sales permit is not assignable or transferable. A permit holder selling all or part of a

¹ The word "not" probably also intended

² See chapter 1175, §398 herein

business shall cancel the ~~permit establishment's sales permits~~ and the purchaser shall apply for a new ~~permit sales permits~~ in the purchaser's name within thirty days of the sale.

Sec. 68. Section 523A.503, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The commissioner may, pursuant to chapter 17A, deny any permit application, or immediately suspend, or revoke, ~~or otherwise impose disciplinary action related to~~ any permit issued under this chapter for several reasons, including but not limited to:

Sec. 69. Section 523A.503, subsection 3, Code 2003, is amended to read as follows:

3. Except as provided in subsection 2, a permit shall not be revoked, or suspended, ~~or otherwise be the subject of disciplinary action~~ except after notice and hearing under chapter 17A.

Sec. 70. Section 523A.503, Code 2003, is amended by adding the following new subsection: **NEW SUBSECTION.** 6. The commissioner may impose a civil penalty in an amount not exceeding ten thousand dollars per violation against any person violating this chapter. Each day of a continuing violation constitutes a separate offense.

Sec. 71. Sections 506.7, 507B.11, 508.27, 511.18, 514.6, 514A.9, 514B.29, 515.132, 515.145, and 521.15, Code 2003, are repealed.

Sec. 72. Sections 514.6, 514E.5, and 514E.6, Code 2003, are repealed.

Approved April 26, 2004

CHAPTER 1111

CRIMINAL PENALTY SURCHARGES

H.F. 2530

AN ACT relating to the assessment of surcharges in criminal proceedings.

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

Section 1. Section 331.302, subsection 2, Code Supplement 2003, is amended to read as follows:

2. A county shall not provide a penalty in excess of a five hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. The criminal penalty surcharge required by section ~~911.2~~ 911.1 shall be added to a county fine and is not a part of the county's penalty.

Sec. 2. Section 364.3, subsection 2, Code Supplement 2003, is amended to read as follows:

2. A city shall not provide a penalty in excess of a five hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. An amount equal to ten percent of all fines collected by cities shall be deposited in the account established in section 602.8108. However, one hundred percent of all fines collected by a city pursuant to section 321.236, subsection 1, shall be retained by the city. The criminal penalty surcharge required by section ~~911.2~~ 911.1 shall be added to a city fine and is not a part of the city's penalty.