

CHAPTER 103
RESIDENTIAL AND MOTOR VEHICLE SERVICE CONTRACTS

[Prior to 9/28/16, see 191—Ch 54]

191—103.1(523C) Purpose. The purpose of this chapter is to administer Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619, relating to service contracts and service companies. [ARC 2729C, IAB 9/28/16, effective 11/2/16; ARC 4495C, IAB 6/19/19, effective 5/20/19; ARC 4677C, IAB 9/25/19, effective 10/30/19]

191—103.2(523C) Definitions. The definitions in Iowa Code section 523C.1 as amended by 2019 Iowa Acts, Senate File 619, section 1, are incorporated by this reference. In addition, the following definitions shall apply to this chapter.

“*Division*” means the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division’s performance of the duties of the commissioner under Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619.

“*Division’s website*” means the website of the Iowa insurance division, iid.iowa.gov.

“*Residential customer*,” as used in the definition of “residential service contract” in Iowa Code section 523C.1 as amended by 2019 Iowa Acts, Senate File 619, section 1, means any person (whether or not the person is the owner of the residential property) who purchases a residential service contract relating to a residential property.

“*Residential property*” means any single- or multiple-unit structure, including a house, townhouse, condominium, mobile home, or other habitable structure, which is used primarily for residential purposes.

“*Service contract holder*” means the original purchaser of a service contract or the successor in interest or transferee entitled to services under the contract.

“*Structural components*,” as used in the definition of “residential service contract” in Iowa Code section 523C.1 as amended by 2019 Iowa Acts, Senate File 619, section 1, means the roof, foundation, basement, walls, ceiling or floors of a residential property.

[ARC 2729C, IAB 9/28/16, effective 11/2/16; ARC 4495C, IAB 6/19/19, effective 5/20/19; ARC 4677C, IAB 9/25/19, effective 10/30/19]

191—103.3(523C) Filings of forms, contracts and other items. If Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619, or this chapter requires an item to be filed with the division, the applicable item shall be filed with the division’s securities and regulated industries bureau, regardless of whether the applicable item has already been filed elsewhere within the division.

[ARC 4495C, IAB 6/19/19, effective 5/20/19; ARC 4677C, IAB 9/25/19, effective 10/30/19]

191—103.4(523C) Forms and instructions. Instructions for license applications, fees, forms and other filings, and copies of all required forms are available on the division’s website.

[ARC 2729C, IAB 9/28/16, effective 11/2/16; ARC 4495C, IAB 6/19/19, effective 5/20/19; ARC 4677C, IAB 9/25/19, effective 10/30/19]

191—103.5(523C) Financial security deposits.

103.5(1) For purposes of Iowa Code section 523C.5(2) “*b*” as enacted by 2019 Iowa Acts, Senate File 619, section 5, “placing in trust with the commissioner” means filing a surety bond with the commissioner or creating a financial or custodial account in a manner acceptable to the commissioner.

103.5(2) Requirements for surety bonds.

a. A surety bond filed with the commissioner as a financial security deposit pursuant to Iowa Code section 523C.5(2) “*b*” as enacted by 2019 Iowa Acts, Senate File 619, section 5, shall be in the form directed by the division and as available on the division’s website.

b. A surety bond filed with the commissioner as a financial security deposit pursuant to Iowa Code section 523C.5(2) “*b*” as enacted by 2019 Iowa Acts, Senate File 619, section 5, shall cover service contracts still outstanding that predate the effective date of the surety bond and any service contracts executed during the surety bond’s period of coverage except service contracts that have been rescinded or fulfilled or that are secured by another bond.

c. No suit or action shall be commenced by a surety bond claimant later than one year after the expiration date of the surety bond.

d. The surety bond shall, in the event of the service company's failure to perform under the service contract or otherwise, either reimburse or pay on behalf of the service company any covered amounts that the service company is legally obligated to pay under the service contract.

e. The surety bond is for the benefit of and subject to recovery by any Iowa service contract holder sustaining actionable injury due to the failure of the service company to perform its obligations under a service contract. A holder of a service contract issued in this state may, in the event of nonperformance of the contract by the service company, maintain an action and file a claim against the surety bond filed. The surety's liability shall extend to all service contracts issued by the service company and outstanding in this state, provided, however, that the surety's aggregate liability shall not exceed the penal sum of the bond.

f. The surety bond cannot be canceled by the surety except upon written notice of cancellation by the surety to the commissioner by certified mail, and not prior to the expiration of 60 days after receipt of the notice by the commissioner.

g. A service company shall maintain an adequate surety bond and shall continuously monitor the surety amount to assure its adequacy.

[ARC 4495C, IAB 6/19/19, effective 5/20/19; ARC 4677C, IAB 9/25/19, effective 10/30/19]

191—103.6(523C) Prohibited acts or practices.

103.6(1) *Defamation.* A service company is prohibited from, directly or indirectly, doing, or aiding, abetting or encouraging, the following: the making, publishing, disseminating, or circulating of any oral or written statement, or of any pamphlet, circular, article or literature which is false or maliciously critical as to the financial condition of any person and which is calculated to injure that person.

103.6(2) *Boycott, coercion, and intimidation.* A service company is prohibited from entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the service contract industry.

103.6(3) *False statements.* A service company is prohibited from knowingly filing with any supervisory or other public official, or knowingly making or causing directly or indirectly to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

103.6(4) *False entries.* A service company is prohibited from knowingly making any false entry of a material fact in any book, report or statement of any person and from knowingly omitting to make a true entry of any material fact pertaining to the business of that person in any book, report or statement of that person.

103.6(5) *Misrepresentation, false advertising, and unfair practices.*

a. A service company shall not:

(1) Use in its name, contracts, or literature, any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other service company. This subparagraph does not apply to a service company also licensed as an insurance company.

(2) Represent or imply in any manner that the service company has been sponsored or recommended, or that the service company's abilities or qualifications have in any respect been passed upon, by the division or by the state of Iowa. Nothing in this subrule prohibits a statement, other than in a paid advertisement, that a person has received a license, if the statement is true in fact and if the effect of the license's issuance is not misrepresented.

(3) Without the written consent of the customer, knowingly charge for duplication of coverage or duties required by state or federal law, or duplication of a warranty expressly issued by a manufacturer or seller of a product or any implied warranty enforceable against the lessor, seller or manufacturer of a product.

(4) Make, permit or cause any false or misleading statements, either oral or written, in connection with the sale, offer to sell or advertisement of a service contract.

(5) Permit or cause the omission of any material statement that, under the circumstances, should have been made in connection with the sale, offer to sell, or advertisement of a service contract, in order that other statements also made in connection with the sale, offer to sell or advertisement of a service contract would not be misleading.

(6) Make, permit or cause any false or misleading statements, either oral or written, about the benefits or services available under the service contract.

(7) Make, permit or cause any statement or practice which has the effect of creating or maintaining a fraud.

(8) Cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the service contract industry or with respect to any service company which is untrue, deceptive or misleading.

(9) Require the use of used parts in the repair of a motor vehicle covered by a motor vehicle service contract unless the service company has obtained prior written authorization by the vehicle owner or unless all of the following are true regarding any rebuilt parts:

1. The parts have been dismantled and reconstructed as necessary.
2. All of the internal and external parts have been cleaned and made free from rust and corrosion.
3. All impaired, defective, or substantially worn parts have been restored to a sound condition or replaced with new, rebuilt, or unimpaired used parts.
4. All rewinding or machining or other necessary operations have been performed.
5. The rebuilt parts have been put in working condition, using, as minimum standards, the manufacturer's performance specifications in existence when the parts were originally manufactured if those specifications are publicly available.

b. Rescinded IAB 6/19/19, effective 5/20/19.

[ARC 2729C, IAB 9/28/16, effective 11/2/16; ARC 4495C, IAB 6/19/19, effective 5/20/19; ARC 4677C, IAB 9/25/19, effective 10/30/19]

191—103.7(523C) Service company licenses.

103.7(1) Service company licenses shall not be transferable. A service company which sells its business shall cancel its service company license, and the purchaser of the business shall apply for a new service license under the purchaser's name.

103.7(2) A service company licensed or registered with the division on April 1, 2019, in accordance with Iowa Code chapter 516E or 523C shall be deemed licensed with the insurance division under Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619, until August 31, 2019, without any additional application or filing.

[ARC 2729C, IAB 9/28/16, effective 11/2/16; ARC 4495C, IAB 6/19/19, effective 5/20/19; ARC 4677C, IAB 9/25/19, effective 10/30/19]

191—103.8(523C) Annual form filing. Rescinded ARC 4495C, IAB 6/19/19, effective 5/20/19.

191—103.9(523C) Financial statements and calculation of net worth.

103.9(1) All financial statements, including balance statements, filed pursuant to or prepared for purposes of Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619, or this chapter shall be prepared in accordance with generally accepted accounting principles and certified by an independent certified public accountant.

103.9(2) For purposes of Iowa Code section 523C.5 as enacted by 2019 Iowa Acts, Senate File 619, section 5, "net worth" means the excess of all assets over liabilities, and any required reserves shall be treated as a liability rather than as an asset.

[ARC 2729C, IAB 9/28/16, effective 11/2/16; ARC 4495C, IAB 6/19/19, effective 5/20/19; ARC 4677C, IAB 9/25/19, effective 10/30/19]

191—103.10(523C) Records.

103.10(1) All licensed service companies shall keep accurate accounts, books, and records concerning transactions regulated under Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619.

103.10(2) A licensed service company's accounts, books, and records shall include:

- a. Copies of all service contracts;
- b. The name and address of each service contract holder; and
- c. The dates and amounts of all receipts and expenditures related to all service contracts.

103.10(3) A licensed service company shall retain all required accounts, books, and records pertaining to each service contract for at least two years after the expiration of the specified period of time.

103.10(4) All licensed service companies shall make all accounts, books, and records concerning transactions regulated under Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619, available to the division for the purpose of examination.

103.10(5) A licensed service company discontinuing business in this state shall maintain its records until it furnishes the division satisfactory proof that it has discharged all obligations to service contract holders in this state.

[ARC 2729C, IAB 9/28/16, effective 11/2/16; ARC 4495C, IAB 6/19/19, effective 5/20/19; ARC 4677C, IAB 9/25/19, effective 10/30/19]

191—103.11 to 103.14 Reserved.

191—103.15(523C) Violations. Failure to comply with this chapter or with Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619, shall be deemed a violation which shall subject a person or entity to the procedures and penalties set forth in Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619.

[ARC 2729C, IAB 9/28/16, effective 11/2/16; ARC 4495C, IAB 6/19/19, effective 5/20/19; ARC 4677C, IAB 9/25/19, effective 10/30/19]

These rules are intended to implement Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619.

[Filed ARC 2729C (Notice ARC 2666C, IAB 8/3/16), IAB 9/28/16, effective 11/2/16]

[Filed Emergency ARC 4495C, IAB 6/19/19, effective 5/20/19]

[Filed ARC 4677C (Notice ARC 4496C, IAB 6/19/19), IAB 9/25/19, effective 10/30/19]